

ENVIRONMENTAL AND PLANNING LAW JOURNAL

Volume 41, Number 2

2025

ARTICLES

Regulating Biodiversity Certification and Trading: An Agricultural Perspective – *Rhett Martin and David Lindenmayer*

An efficient market model in biodiversity credits is arguably the Holy Grail of environmental conservation and protection in the modern era. The *Nature Repair Act 2023* (Cth) (Act) establishes a national voluntary market in biodiversity certificate trading with the aim of enhancing biodiversity conservation. The Act represents an opportunity to trial a national biodiversity market in a commercial context. An efficient biodiversity credit market requires strong supply and demand for biodiversity credits and recognition and acceptance of property rights in natural capital, all operating under strict market rules to ensure an equitable and efficient trading environment. For a voluntary biodiversity credit market to work, a rigorous compliance and assurance system is essential to maintain market integrity and enhance biodiversity certificate value. This article examines the Act and the biodiversity trading market it creates. A focus is on analysing what underpins supply and demand for biodiversity certificates to ensure a functional biodiversity credit market. An efficient biodiversity credit market requires clear recognition of property rights and low transaction costs on credit trades. What is also essential is efficient measurement and compliance of additional biodiversity, plus strong incentives for those entering the market as buyers willing to purchase biodiversity certificates. There is also a need for government control of outcomes monitoring. Farmers should not be doing outcomes monitoring as they are not independent and are better characterised as beneficiaries of biodiversity certificates. This article considers all of these issues in relation to the Australian system of biodiversity certification and trading under the Act. 63

One Step Forward, Two Steps Back – EPA, EIA, and the Long Awaited Reforms of **Australia’s Environmental Laws – Frances Medlock and Rachael Chick**

This article sets out recent developments in environmental law reform at the national level, in relation to the Federal Government’s “Nature Positive” agenda. It is adapted from submissions made to Federal Senate inquiries on the *Nature Positive (Environment Protection Australia) Bill 2024* (Cth); *Nature Positive (Environment Information Australia) Bill 2024* (Cth); and *Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024* (Cth). The authors make recommendations to improve the Bills, particularly in relation to the governance, transparency and functions of proposed new institutions. Further recommendations are aimed at halting the extinction crisis, fixing community trust in environmental decision-making, and protecting nature from dangerous climate change. A post-script notes the February 2025 removal of these Bills from the Parliamentary notice paper, which represents a significant and concerning step backwards for nature law reform in Australia. 90

Regulating the “Trouble” of Used Textiles: Insights from Australia – Rowena Maguire, Alice Payne, Amanda Kennedy and Annastasia Bousgas

The volume of used textiles, commonly termed “textile waste”, has grown significantly, driven by the rise of fast fashion. New forms of regulation and collaboration across the textile value chain will be required to address the “trouble” of used textiles; however, there is a lack of agreement on how to best frame the problem of used textiles in a regulatory context. In this article, we employ regulatory theory and problem representation theory to analyse emerging regulation in Australia focused on addressing used textile material. We track the proposed regulatory interventions for addressing used textiles, from the submissions to the 2019 Senate Standing Inquiry to the early stages of establishing a voluntary National Clothing Product Stewardship Scheme in 2021–2023. Through analysis of stakeholder perspectives, current legislation, and proposed interventions, we argue that the trouble of used textiles in Australia requires smart regulation that is attentive to stakeholders’ conflicting problem representations and seeks to build consensus among them. 108

Redefining Carbon Property Rights in Australia: Insights from Western Australia’s Legal Approach – Tanzim Afroz, Mostafa Mahmud Naser and SM Atia Naznin

This article examines the legal recognition of carbon property rights across Australian States, focusing on Western Australia’s innovative framework under the *Carbon Rights Act 2003*. Unlike other States, which offer limited recognition, Western Australia treats carbon rights as a separate statutory land interest, enhancing legal clarity and market potential. By comparing different state approaches, the article highlights the need for a unified national framework that can effectively regulate carbon sequestration, carbon trading, and environmental sustainability. 128