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A peek around Kevin's Corner: Adapting away substantive limits? 247

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Theory to practice: Adaptive management of the groundwater impacts of Australian mining projects – *Jessica Lee*

Adaptive management is an approach to natural resource management that has gained increasing traction in Australia. Despite its appearance in a growing number of natural resource policies and regulatory instruments there remains little consideration of what adaptive management really means, how it is faring in practice and what legal mechanisms are required for its effective implementation. This article examines adaptive management in the context of groundwater impact management at Australian mines. The article first constructs a theoretical model for the practice of adaptive management and uses the United States experience to identify some primary legal obstacles to its effective implementation. The practice of adaptive groundwater management at two Australian mining projects is assessed. Each case study is evaluated against the identified primary legal obstacles with a view to assessing whether similar difficulties are being experienced in Australia. Finally, the article recommends a legal framework for the improved implementation of adaptive groundwater management at Australian mining projects that will address the legal obstacles currently being faced. 251

The precautionary principle, the coast and Temwood Holdings – *Hon Justice Stephen Estcourt*

In 1999, Stein J, then of the New South Wales Court of Appeal, observed extra judicially that how the rhetoric of the precautionary principle could be operationalised was one of the challenges for the first decade of the 21st century. French comparative law and environmental law specialist, Professor Nicolas de Sadeleer, expressed the view in 2002 that the logic of the law, with its quest for certainty, finds itself out of step with the quest of science to describe unpredictable natural phenomena and environmental threats that are inherently uncertain. The aim of this article is to endeavour to see how far Australia has come since 1992 in "operationalising" the precautionary principle, particularly in relation to planning and development applications relating to the coast. The conclusion is that the cases referred to demonstrate that there is no lack of flexibility in Australian courts and tribunals in accommodating scientific uncertainty, and in balancing the precautionary principle and the other components of environmentally sustainable development with the continuing pressure for development of the Australian coast. 288

"Marginal improvements in the West": New approaches to managing complex environmental and planning cases in the State Administrative Tribunal of Western Australia – *Peter McNab*

The practical application of the theory of incrementalism can lead to "marginal gains" in a variety of complex processes, including those of business and government. This article discusses that theory (and its counterparts) with reference to three recent State Administrative Tribunal of Western Australia cases. The use of facilitative dispute resolution processes combined with other court and tribunal methods are examined to see whether any "marginal gains" have been achieved in the handling of complex environmental/planning processes in the State Administrative Tribunal. 300

Science hubris and insufficient legal safeguards – *Paul Martin* and *Jacqueline Williams*

In the pursuit of efficient natural resource governance, market instruments offer many benefits, so too science-informed regulation. However, there are unrecognised fundamental risks with power invested in property owners or technical experts to determine how best natural resources are to be governed. In this article the authors discuss some recent developments in science and property based resource governance in water management in Australia as an illustration of more pervasive developments around the world. The authors suggest that while it is important to take advantage of innovations that can improve the effectiveness and efficiency of natural resource governance, it is no less important to create mechanisms to guard against the hubris that can be tacitly embedded. Such hubris has implications for the human rights of users and stewards of the environment, particularly Indigenous and rural communities, whose economic and educational disadvantages can be compounded by institutionalisation of particular forms of privilege. 311