ENVIRONMENTAL AND PLANNING LAW JOURNAL

Volume 31, Number 5

September 2014

ARTICLES

Compliance with Indigenous cultural heritage legislation in Queensland: Perceptions, realities and prospects – *Michael J Rowland*, *Sean Ulm* and *Jill Reid*

Since 1959, various pieces of legislation have been enacted in Queensland which include provisions for the protection of Indigenous cultural heritage. To date there has been very limited assessment of compliance with or the efficacy of these laws. The number of prosecutions under both Commonwealth and State legislative regimes is difficult to measure, but deemed to be low. This article explores a broad range of explanations both for the lack of prosecutions and also for the lack of research on compliance in general. It provides examples of prosecutions and attempted prosecutions under the various legislative regimes in Queensland, demonstrating that the reasons for compliance/non-compliance are complex. It is proposed that cultural heritage legislation in Queensland needs to be developed and controlled by a responsible government authority that can set standards and monitor all aspects of cultural heritage management. Cultural heritage management should also be incorporated at every level of environmental planning. Reporting of all cultural heritage activities should be mandatory. The current largely self-assessable and minimally regulated legislation fails to meet best practice cultural heritage management standards and its effectiveness is also difficult to measure. 329

Restorative justice intervention in an Aboriginal cultural heritage protection context: Conspicuous absences? – *Mark Hamilton*

In the author's previous work, (2008) 25 EPLJ 263, the successful use of restorative justice conferencing in the Land and Environment Court of New South Wales decision of *Garrett v Williams* (2007) 151 LGERA 92; [2007] NSWLEC 96 was canvassed. This article explores the development, or rather the lack thereof, in the use of restorative justice conferencing for offences against cultural heritage under the *National Parks and Wildlife Act 197*4 (NSW) since *Garrett v Williams*. Despite what appear ideal opportunities for both the Land and Environment Court and the New South Wales Parliament to promote the use of restorative justice conferencing, no such opportunities have been taken. These in the author's view are lost opportunities to further restorative justice intervention in an Aboriginal cultural heritage protection context. 352

Carbon pricing and renewable energy innovation: A comparison of Australian, British and Canadian carbon pricing policies – *Karen Bubna-Litic* and *Natalie Stoianoff*

Introducing its now-abolished carbon price from July 2012, Australia argued that a price on carbon would reduce greenhouse gas emissions by improving energy efficiency and increasing investment in clean technology innovation. The United Kingdom has priced carbon since 2008 and is in the process of major electricity market reform with the aim of attracting £100 billion of infrastructure investment. British Columbia in Canada introduced a carbon tax in 2008, providing support for clean technology industries through a variety of allowances and operating subsidies. This article compares the United

Kingdom, Canada and Australia, to assess the evidence base and policy experience of these jurisdictions in carbon pricing. In so doing, the article identifies what lessons can be learnt from these policy frameworks in order to promote investment in low-carbon innovation. 368

Implementing legislative and governance frameworks for integrated catchment management: The gap between theory and practice – *Kate Matthews*

Using the Victorian catchment management and land-use planning systems as a case study, this article evaluates the delivery of integrated catchment management (ICM) legislation and governance arrangements. A key finding is that despite being relatively strong "on paper", practical implementation of ICM in Victoria is hampered by poor resourcing, a lack of communication between agencies, and differing views as to what ICM means in practice. 385

The future of Land and Environment Court oversight of major project offsets – *Vanessa Walsh*

Policy-makers in New South Wales have recognised the need for a transparent and consistent response to the assessment of offsets proposals in addressing the biodiversity impacts of major projects. This follows a high-profile rejection of a biodiversity offset proposal by the Land and Environment Court (LEC) for a coalmine extension in the Hunter Valley. A policy and methodology for calculating offset requirements has since been prepared by the New South Wales Government and will be used by consent authorities in approving new major project development. This article examines how this policy is likely to impact upon the LEC's important role in the oversight of offset proposals in both its merits review and judicial review jurisdiction. Whether implemented administratively or through legislation, this article concludes that oversight is likely to continue despite moves by the New South Wales Government to limit recourse to the LEC. 397