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EDITORIAL

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ARTICLES

The adequacy of the law in satisfying society's expectations for major projects
– *The Hon Justice Brian J Preston*

Society has certain expectations regarding the rights or responsibilities of a business to use land and its resources. These expectations are influenced by law, and the law, in turn, is responsive to society's expectations. The law may encapsulate society's expectations to a greater or lesser degree. To the extent that the law does so, the business can be viewed as having a legal licence to use land and its resources. To the extent that the law does not do so, the business needs to rely on the notion of a social licence. This article identifies some aspects in which the laws regulating the use of land and its resources inadequately address society's expectations, having regard to the application, assessment, approval and implementation stages of the process of obtaining and maintaining a legal licence for major projects in New South Wales. One response to such societal dissatisfaction is for a business to earn a social licence to meet the unmet expectations of society. This article contends that a more immediate and definitive means of satisfying society's expectations is to improve the law and its implementation and enforcement. This article suggests numerous ways in which the process for obtaining a legal licence can be improved to better meet society's expectations regarding the rights or responsibilities of a business to use land and its resources. 182

Striving for best practice in environmental governance and justice: Reporting on the inaugural Environmental Democracy Index for Australia – *Guy J Dwyer and Judith A Preston*

International environmental law has exerted, and continues to exert, a significant influence over the development of domestic environmental laws in Australia. Instruments such as the Rio Declaration and the Aarhus Convention are widely accepted by stakeholders as providing international standards of best practice for environmental governance. During the past, however, it has often been difficult for commentators to assess the effectiveness of domestic efforts at implementing these international standards of best practice with any degree of precision. With this in mind, The Access Initiative and the World Resources Institute have recently attempted to address this problem by creating a tool that tests the extent to which domestic environmental laws at the national level have been harmonised with international standards of best practice for access to information, public participation and access to justice in areas related to the environment as reflected in the UNEP Bali Guidelines. The tool also offers a snapshot of a nation's performance in key practice areas of environmental governance. This tool is known as the Environmental Democracy Index. In May 2015, the inaugural Environmental Democracy Index project will be launched. In this article, the authors, both of whom were involved in the research and preparation of

Australia's country profile for the Environmental Democracy Index project, report on Australia's performance. The authors also outline a series of recommendations for improving Australia's index score in the future. 202

Practical precautions, reasonable responses: How South Australia's planning regime adapts to the coastal impacts of climate change – John Watson

The South Australian planning regime considers the anticipated coastal impacts of climate change (increased storm surge, coastal erosion and sea level rise) to be a serious threat to the State's natural and urban environments. It adopts the notions of ecologically sustainable development (ESD) and the precautionary principle by accepting climate change as a certain phenomenon and facilitating the implementation of adaptive and protective measures. However, the regime limits the availability of these measures to new developments. It is argued that this "narrow" approach to adaptation reflects the balancing of competing factors consistent with ESD and recognises the practical challenges of implementing a comprehensive policy response in light of resourcing, potential risks and liabilities, the dearth of evidence and climate change perceptions. Moreover, it represents a reasonable governmental response to coastal climate change which influences the potential civil liability of local and State governments for future climate change-based harm. 256

Ecuador's Yasuní-ITT initiative for mitigating the impact of climate change – Tammy Vallejo Silva and Martin Calisto Friant

This article analyses the Yasuní-ITT initiative through which Ecuador proposed to leave an estimated reserve of one billion barrels of crude oil underground, in exchange for an international commitment of half the revenue that the exploitation would have generated. The article argues that the Yasuní-ITT initiative was a coherent and innovative proposal to address climate change. It first reviews the background, structure and content of the Yasuní-ITT initiative. Second, it examines the initiative under the innovative concept of avoided net emissions. Third, it outlines the Yasuní-ITT Fund. Fourth, it assesses the theoretical and legal analysis underpinning the implementation of the Yasuní-ITT initiative, specifically reviewing its advantages in comparison to other international mechanisms such as CDM and REDD+. It concludes by asserting that this strategy was an innovative measure for the mitigation of climate change in a developing country and that it can, and should, be replicated in the future. 278

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