
William L. Andreen

Although Australia and the United States share a common legal heritage, water law has developed significantly differently in the two nations. Much of the credit for Australia’s different course can be ascribed to Alfred Deakin who, after taking a study tour of the American West in 1885, wrote a report that rejected the doctrine of prior appropriation as used in the arid States of the American West and advocated a system in which the rights of the State were elevated over those of the individual. Unfortunately, both countries have generally treated water as a commodity. Until recently, little significance was attached to the adverse environmental impact of reduced stream flows and the damage caused by hydrologic modifications and land-based development activities. Both countries, therefore, face the challenge of trying to recognise freshwater systems as part of a larger ecosystem linking all land and aquatic features in a particular watershed. After exploring the separate regimes governing water use, water quality, and land use in the United States, this article will discuss a number of approaches for integrating these regulatory schemes into a mechanism that can better protect the integrity of aquatic systems while also meeting many human needs. ................................................................. 5


Charles Lawson and Richard Hindmarsh

This article deconstructs the decision of the Gene Technology Regulator to grant a license to Bayer CropScience Pty Ltd for the commercial release of genetically modified canola under the Gene Technology Act 2000 (Cth). The purpose of the article is to challenge the “science-based” decision making advocated by the Act that in practice relies almost exclusively on qualitative assessments by the Regulator. The article concludes that while more “science” will enhance the Regulator’s decisions, this “science” alone is not enough to avoid a further loss of legitimacy with regard to the current regulation of commercial and general releases of genetically modified organisms (and genetically modified products) into the environment. ................................................................. 22
GREENHOUSE CHALLENGE PLUS: A NEW DEPARTURE OR MORE OF THE SAME?

Rory Sullivan

The voluntary Greenhouse Challenge formed the centrepiece of the Australian government’s efforts to encourage business to take action on greenhouse gas emissions and climate change from 1995 to 2005. In 2005, the Greenhouse Challenge was replaced by the Greenhouse Challenge Plus which, at least to some degree, moves away from the voluntary approach that characterised the Greenhouse Challenge. This article critically reviews the outcomes achieved from the Greenhouse Challenge and assesses the likely outcomes from the Greenhouse Challenge Plus. It is concluded that, while the Greenhouse Challenge was reasonably successful in terms of its coverage and the flexibility provided to participating industry, it did not provide strong incentives for participating organisations to set greenhouse gas emission reduction targets beyond business as usual. Furthermore, the existence of the Greenhouse Challenge allowed industry to deflect calls for the introduction of stronger policy measures such as emissions trading. The article concludes that Greenhouse Challenge Plus, while representing a step forward in some regards, retains many of the same weaknesses as the Greenhouse Challenge. Perhaps most importantly, it does not provide strong incentives for companies to go beyond business as usual, nor is it likely to stimulate innovation.
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