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ARTICLES

A new fast lane or just a roadblock? Mitigating road transport GHG emissions under Australia's Emissions Reduction Fund – *Prafula Pearce and Vanessa Johnston*

In November 2014 the Australian Government established the Emissions Reduction Fund (ERF) as its Direct Action Plan policy to reduce greenhouse gas (GHG) emissions to meet Australia's commitment to the *United Nations Framework Convention on Climate Change*. This article examines how the ERF is expected to apply to road transport entities specifically, on the premise that this sector makes a substantial and growing contribution to Australia's GHG emissions. More specifically, it identifies problems and pitfalls of using the ERF as the flagship mechanism to encourage mitigation of GHG emissions from road transport, which arise from both scheme design and the characteristics of entities in this sector. This article argues that the ERF is unlikely to encourage substantial mitigation of GHG emissions from Australia's road transport sector, and identifies other measures that could be used in Australia for this purpose. 181

Co-opting the precautionary principle: The Victoria Planning Provisions' "one kilometre consent requirement" for wind energy facilities – *Chiara Bryan*

In Victoria, it is a condition precedent for the planning approval of wind energy facilities (also known as wind farms) that the owners of all dwellings located within a one-kilometre radius of any proposed turbine provide their written consent for the project. This requirement has been characterised as an expression of the precautionary principle, in response to alleged human health impacts from wind turbines. However, the best available medical evidence is that turbines do not cause illness. Conversely, it is widely accepted that wind farms, as a source of renewable energy, are an important aspect of Australia's response to climate change. This article argues that Victoria's planning rule represents not only an unprecedented devolution of administrative power to individual citizens, but also an impoverished application of the precautionary principle. It further suggests that the counter-alignment of environmental and health concerns is reflective of climate change oppositional discourse more broadly. In this regard, parallels are evident with America's hotspots debate over carbon trading schemes. 203

Holding fracking operations to account for environmental contamination in risk-based regulatory regimes: Insights from the United States – *Tania Murray, Dr Edward Andre and Krishna Prasad*

This article considers the limitations of risk-based regulatory regimes applied to hydraulic fracturing (fracking) activities in Australia, in particular the risk approaches taken by regulators in Western Australia and South Australia. It considers the application of the precautionary principle and means of imposing "precaution" into regulatory arrangements, to strengthen the protections afforded to those communities likely to be impacted by future commercial production of unconventional gas. Experiences of private litigants in the United States and their failure to establish causation in fracking cases are drawn on to illustrate the importance of putting in place precautionary measures prior to the

commencement of large-scale fracking operations in Australia. The article recommends that regional management plans, which incorporate core elements of the precautionary principle and ecological sustainable development principles, are useful legal and management tools that lay the foundation for overcoming the problem of causation and lack of baseline studies. Thus regional management plans prepared for fracking operations provide the framework for establishing environmental harm such as the environmental contamination of water. 222

The drafting and content of threatened species recovery plans: Contributing to their effectiveness – *Bruce Lindsay and James Trezise*

Recovery plans are an important tool for biodiversity conservation, particularly threatened species management. At the Commonwealth level, recovery plans can be made under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). This article considers the effectiveness and potential avenues of reform to recovery planning, with particular regard to the problem of threatened species habitat loss. The content of existing recovery plans is evaluated with regard to control of habitat loss and factors contributing to limited legal and practical effectiveness of recovery plans are identified. 237

Proactive restorative justice: A set of principles for enhancing public participation – *Clara Wilson*

Restorative justice has been considered in the context of sentencing for criminal offences, in workplaces, in schools, and more recently, in an environmental law context. Restorative justice has predominantly been conceptualised as a process or processes to promote the enhanced participation of victims and offenders, and empower and heal victims. However, rather than being viewed solely as a process or processes, there is a set of core principles which are inherent to restorative justice which could be used in a much broader range of situations to prevent wrongdoing or conflict. This article proposes a set of core principles, and explores how these principles could be used throughout the application, assessment, approval and implementation process for major projects in New South Wales to enhance public participation and improve environmental outcomes. 252

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