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ARTICLES

Blue Sky Mine: Environmental Risk Disclosure in Australia – *Madeline Baker*

This article discusses the tension in the Corporations Act 2001 (Cth) between investor protection and market efficiency, and how this manifests with respect to carbon risk disclosure. Specifically, between disclosing information to the market that allows investors to make informed assessments, and the interests of the company in not disclosing information prematurely. Given that climate change poses diverse risks to the viability of investments and has the potential to affect a broad range of industries, it is problematic that there is no formal legislative requirement to specifically disclose information regarding the risk a company faces to its infrastructure, business ventures, or assets because of climate change. Prescriptive carbon risk disclosure requirements that encompass both mandatory and voluntary obligations are likely to be most effective in addressing the information asymmetry between investors and corporations. This is because voluntary disclosure is driven by shareholders which results in better long-term disclosure, while mandatory standards ensure that reporting is sufficiently detailed. 519

Fairness, Justice and Repairing Environmental Harm; Reconciling the Reparative Approach to the Sentencing of Environmental Crimes with Sentencing Principles – *Andrew Burke*

The criminal jurisdiction of the NSW Land and Environment Court (NSWLEC) is recognised for its harm-focused and problem-solving approach to sentencing environmental crimes. Orders for legal costs have recently been identified as an impediment to transparent, consistent and proportionate sentencing in the criminal jurisdiction of the NSWLEC. This article considers that finding and extends it to other aspects of NSWLEC sentencing practice. It finds that remediation and publication orders imposed by the NSWLEC as part of a sentence for a criminal offence create the same impediment to transparent, consistent and proportionate sentencing. These orders are an important aspect of the NSWLEC's harm-focused and problem-solving approach to sentencing. Reforms to reconcile them with sentencing principles are proposed. 529

Hunting for Efficacy: A Critical Evaluation of International Responses to Wildlife Trafficking in the African Great Lakes Region – *Angad Keith*

This article identifies and critically evaluates the paradigms, or "frames", that shape international responses to wildlife trafficking in the Great Lakes Region of Africa. Wildlife trafficking has become one of the largest illicit trades in the world and has been linked to fragile state security in the Great Lakes Region. Accordingly, an evaluation of the paradigms that influence international responses to wildlife trafficking is necessary to understand the underlying political motivations that drive these responses. To that end, this article highlights the trade, security and crime paradigms manifest in international conventions, Security Council resolutions and other international initiatives and critically

evaluates the effectiveness of these frames in curtailing wildlife trafficking in the Great Lakes Region. This article finds that a single approach by itself is not enough; as wildlife trafficking is a multidimensional problem, a combined approach provides the best hope for combating this issue. 542

A Comparison of Third-party Administrative Review Rights in Planning and Environmental Law from a Social Justice Perspective – *Jayna Liew*

In Victoria, proposals to build hazardous or polluting facilities require planning permits to be granted under the Planning & Environment Act 1987 (Vic) (P&E Act), as well as licences under the Environment Protection Act 1970 (Vic) (EP Act). These Acts consider overlapping issues such as noise, emissions and amenity impacts. However, the P&E Act provides generous third-party standing while the EP Act applies a high, circular test where potential objectors must first prove detriment. This dichotomy could result in scenarios where neighbours to polluting facilities have more right to object to the colour of proposed building under the Planning system, than to potential health-impacting emissions under the Environmental approvals system. A social justice perspective is taken to explore whether differences in third-party rights could be linked to the P&E Act's origins as protector of aesthetics and density in higher socioeconomic neighbourhoods, whereas issues of dirty, polluting industries considered by the EP Act are disproportionately borne by lower socioeconomic communities. Legislative change is proposed to address this inequity, and to establish environmental concerns as a fundamental human health and social concern. 560

No Butterfly Catchers Here! Citizen Science Involvement in Environmental Impact Assessment Compliance Monitoring – *Lara Clare Norman*

The goals of environmental impact assessment (EIA) include ensuring that environmental harms are minimised, and in maintaining public trust in project proponents and government regulators. However, a lack of capacity and resource to scrutinise the actual environmental impacts of projects subverts the purpose of EIA. This article will argue that an opportunity arises for citizen science to contribute to the regulatory framework of EIA follow-up. A new legislative model is proposed under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) in relation to compliance monitoring during the implementation phase of a project. Features of the model include a trigger threshold test for compliance monitoring and an expanded s 134 of the EPBC Act to incorporate the application of citizen science in project approval conditions. Challenges such as the credibility of data and the level of influence of citizen scientists within project management are discussed. 571

Challenges and Opportunities at Implementing Groundwater Governance in Australia: Case Studies from South Australia and Western Australia – *Gabriela Cuadrado-Quesada*

The aim of this article is to critically analyse the governance challenges and opportunities of groundwater in Australia, in particular in South Australia, and Western Australia. It investigates these challenges focusing attention on the design and implementation of governance instruments, for example policy and law that include the principles of participation, accountability and sustainable use. In order to identify current challenges and opportunities faced by groundwater governance in Australia, first a doctrinal analysis is included, and then empirical work is done through 29 in-depth interviews with government and non-government stakeholders. The main findings are: despite the past decades of water governance reform, groundwater continues to be neglected; and not all States and Territories have fully implemented such reforms. For example, Western Australia continues to breach the National Water Initiative. Moreover, implementing meaningful participation

and accountability procedures in groundwater planning, as well as sustainable groundwater use continue to be an elusive goal. 588

Re-examining the Approach to Alternative Sentencing Orders in New South Wales Pollution Law – *Sarah Wright*

The Protection of the Environment Operations Act 1997 (NSW) (POEO Act) contains alternative sentencing orders (ASOs), such as environmental service orders, that can be imposed in addition to, or as an alternative to, a fine or imprisonment. Despite a number of ASOs existing for many years, some have not been used, while others have failed to be utilised to their full potential or have lost favour. The NSW Environment Protection Authority (EPA) guidelines regarding the use of ASOs are outdated. In contrast to the general principles of sentencing, the principles the court applies when considering ASOs are not as well-established for some orders. This article examines the use of ASOs in POEO Act prosecutions brought by the EPA in the Land and Environment Court of NSW, focusing particularly on environmental service and payment orders, publication orders and monetary benefit orders. The aim is to examine and encourage further consideration of how the use of ASOs and relevant principles can be refined in the future. 606