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ARTICLES

Regulation of Greenhouse Gas Emissions Generated by Major Projects: Scoping Out the Roles of the Commonwealth and State/Territory Governments – *Guy Dwyer*

Responsibility for making and administering laws relating to the environment, including greenhouse gas emissions, is divided between the Commonwealth and State/Territory Governments. For the most part, the different governments generally pursue their own law and policy agendas for addressing greenhouse gas emissions. One consequence of this is that stakeholders are left with a regulatory regime comprising an inconsistent and unsatisfactory patchwork of laws which, in the context of major projects, is not effectively integrated within established environmental and planning laws. The purpose of this article is twofold. First, it identifies the main ways in which the Commonwealth and State/Territory Governments have sought to regulate the greenhouse gas emissions associated with major projects, with a view to illuminating the unsatisfactory state of the existing regulatory regime. Second, it outlines some ways in which the regulation of greenhouse gas emissions in this context may be more effectively delineated and managed in future.

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Sustainable Finance in Australia: Compliance, Enforcement and Surrogate Regulation – *Neil Gunningham*

A previous article argued that climate finance regulation (reshaping the financial system to accelerate low-carbon investment) could contribute to a low-carbon transition by incentivising key financial actors to factor climate change risks into capital allocation decisions, investments and business operations. However, regulation in the absence of effective compliance and enforcement will achieve little, as the findings of the financial services royal commission amply demonstrate. This article examines three key compliance and enforcement strategies: Responsive Regulation, Smart Regulation and Meta-regulation, identifying ways in which each illuminates the path to best practice. However, in an age where regulatory budgets are under stress and in which neo-liberal rhetoric still prevails it also recognises the limits of government regulation and the importance of harnessing third parties as regulatory surrogates. Strategies for doing so are also proposed.

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Energy Security and “Big Stick” Legislation – *Kin Pan*

Energy security is the central goal of energy policy. It is a multidimensional concept that incorporates notions of adequacy, reliability, affordability and sustainability. However, Australia’s ongoing energy crisis, particularly on the country’s east and south coast, suggests that Australian energy law has failed to rise to the challenge of achieving energy security at a time when our climate continues to change. In an attempt to improve Australia’s energy security, the Commonwealth government has recently turned to “big stick” legislation aimed at curbing energy market misconduct. This article analyses whether the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Act 2019* (Cth) truly possesses

energy security merit, or instead illustrates the government’s lack of vision at a critical juncture in energy law. 607

Designing Managed Retreat Policy for an Uncertain Future – *John Watson*

While effective in mitigating the effects of hazards, Australia’s State and local jurisdictions have been reluctant to endorse the removal of people and structures from hazard-prone coastal land, known as “managed retreat”, as a climate change adaptation policy. Its implementation represents a significant intrusion into private property interests, which is further complicated by the uncertainty surrounding future sea-level rise and the timing of coastal hazards. This article reviews the body of legal scholarship on managed retreat. It provides a general overview of the prevailing themes, before examining the extent the literature informs policy design matters, with a focus on how the law can affect retreat; when removal from vulnerable land should occur; and criteria for constructing a policy response. The article concludes by recommending future research directions for advancing managed retreat as public policy. 626