ENVIRONMENTAL AND PLANNING LAW JOURNAL

Volume 30, Number 1

January 2013

ARTICLES

Is the fox still guarding the henhouse? Mining and environmental protection in South Australia – *Paul Leadbeter* and *Dr Alexandra Wawryk*

This article explains the complexities, and provides a critical analysis, of South Australia's environmental protection regime in relation to mining. In South Australia, the Mining Act 1971 (SA) and Mining Regulations 2011 (SA) together constitute the main statutory regime for protecting the environment from mining activities. While the creation of a separate set of environmental controls within the Mining Act means that a number of key environmental statutes do not generally apply to activities undertaken pursuant to licences or leases under the Mining Act, the legal position regarding environment protection is more complex than this statement suggests. This article's critique of the regime focuses on issues of compliance and enforcement. First, assuming that a robust system of third party participation is fundamental to a truly rigorous compliance and enforcement regime, it critically assesses the adequacy of rights of third party public participation in the assessment, decision and review of mining proposals. Secondly, given that the State Minister for Mineral Resources and Energy has the responsibility not only for promoting mining but also regulating the technical aspects of mining and ensuring that mining does not have adverse environmental impacts, it is argued that his or her position is open to the possibility of regulatory capture. 3

Deliberative participation, environmental law and collaborative governance: Insights from surface and groundwater studies – *Cameron Holley* and *Darren Sinclair*

Despite major reforms in water management, many water resources are still over-exploited and under threat. Hard questions are accordingly being asked as to whether present legal and governance tools are providing adequate answers to Australia's pressing water problems. Of particular concern is the need to improve community engagement in water law and governance. Responding to these concerns, this article draws on 68 interviews and a survey of community and government stakeholders involved in three different collaborative decision-making processes designed to manage diffuse pollution of local streams, dry land salinity and nutrient/sediment runoff, and groundwater overuse. The article explores and critically examines the internal dynamics of the decision-making processes, and provides a range of insights for policy and theory for designing meaningful and effective collaborative decision-making in the practice of governing water resources. The article also considers the implications of these collaborative approaches for our understanding of the modern regulatory state. 32

The silence of the plan: Will the Convention on Biological Diversity and the Ramsar Convention be implemented in the Murray-Darling Basin? – *Emma Carmody*

Over-extraction of water for consumptive use has left 20 out of 23 major river valleys in the Murray-Darling Basin in poor or very poor ecological condition. Coupled with climate change, which, as Young states, "represents a significant risk in the longer term" to ecosystem health across the Basin, the outlook for Australia's largest river system is particularly grim. It was with this in mind that the Australian government resolved to

oversee and direct State management of Basin water resources by enacting the Water Act 2007 (Cth). The Act's objects include returning Basin water resources to environmentally sustainable levels of extraction, as well as protecting, restoring and providing for the ecological values and ecosystem services of the Murray-Darling Basin. They also include giving effect to several international environmental agreements, including the Convention on Biological Diversity and the Ramsar Convention, to the extent that they are relevant to the use and management of Basin water resources. This article examines the nature of the obligations contained in these two conventions, whether the Basin Plan is likely to implement them, and the legal consequences of failing to do so. 56

Culpability versus liability: Is the polluter ultimately liable for cleaning up groundwater contamination in Victoria? – *Mia Louise Livingstone*

Groundwater contamination presents a significant problem in Australia as we redevelop to accommodate our growing housing needs. Unlike land contamination, groundwater contamination has the potential to migrate offsite, creating a "hidden" liability for owners and occupiers of sites as well as surrounding sites. Given that the obligation to clean up groundwater contamination is usually imposed on the owner or occupier of a site in Victoria, this article explores whether the often-extensive costs associated with a clean up and other resulting loss and damage can ultimately be recovered from the polluters themselves. This article reveals that the common law and statutory claims available are largely inadequate to effectively and efficiently provide compensation to owners and occupiers from polluters in Victoria. Owners and occupiers should therefore be aware of the key issues identified in this article before purchasing or leasing land or before pursuing action against a polluter for groundwater contamination. 74