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EDITORIAL 287

ARTICLES

Regulating for sustainable electricity market outcomes in Britain: Asking the law question – *Aileen McHarg*

Making the transition to sustainable electricity regulation poses formidable challenges, particularly in jurisdictions that have been strongly wedded to the market paradigm. In particular, overcoming the barriers to investment in sustainable technologies requires substantial regulatory commitment, but such commitment is difficult to secure. Using British electricity regulation as an example of a regime in transition, this article focuses on the meta-regulatory role of law in helping to reorient regulators towards sustainability objectives. It focuses on five techniques: institutional reform; statutory duties; legally-binding targets; statutory guidance; and legal protection against regulatory change. The article argues that the law performs important functions in terms of reinforcing and maintaining political commitment to sustainable electricity markets; coordinating dispersed regulatory capacities; and balancing competing requirements of regulatory certainty and flexibility. Moreover, the symbolic, institutional and procedural capacities of law are more important than judicial intervention in promoting regulatory change. 289

The role of litigation in multilevel climate change governance: Possibilities for a lower carbon future? – *Hari M Osofsky and Jacqueline Peel*

As the international community continues to struggle to address the problem of climate change, an increasing number of lawsuits at international, national, and sub-national levels have explored mitigation and adaptation concerns. Drawing from the comparative experiences of the United States and Australia in responding to climate change, this article provides a novel model for understanding the direct and indirect regulatory pathways that litigation provides in common law jurisdictions. This model and its application help to illuminate the role of litigation in multilevel climate change governance. 303

Environmental dispute resolution – lessons from the States – *Judge Michael Rackemann*

Providing effective access to justice is one of the key principles of the Rio Declaration. Reasonable access to properly constituted courts or tribunals with appropriate jurisdiction, expertise, procedures, accessibility (in both a legal standing and practical sense) and which provide effective remedies, is fundamental to achieving this goal. At a State level, Australia has some of the longest standing and most respected specialist environmental courts and tribunals (ECTs) in the world, but they arguably attract insufficient attention in national-level discussion. A comparative examination of environmental dispute resolution systems at Commonwealth and State levels, however, suggests that, if identifying “best practice” is to be the guiding light, a re-examination of what is being done by State-based ECTs will be more informative than what is being offered at the Commonwealth level. 329

Design elements of emissions trading regulation in China's pilot programs: Regulatory challenges and prospects – Hao Zhang

Emissions trading pilot programs in cities and provinces in China are playing an emerging role in what is a polycentric and fragmented set of measures proposed to reduce greenhouse gas emissions within the country. This article, by drawing together the scholarship on design elements of emissions trading programs and also the emissions trading regulations in the European Union and in Australia, examines the challenges associated with designing the regulatory elements in China's emissions trading pilot programs. The findings of this article focus on the prospective roles of the Chinese central and local governments in designing and implementing an emissions trading pilot program at local levels. 342

Trading carbon the kiwi way – Karen Price and Jessie Duffin

In December 2011, negotiations at the United Nations climate conference in Durban resulted in 195 countries pledging to develop a new international climate treaty by 2015. This agreement to reduce greenhouse gas emissions will apply to all parties to the United Nations Framework Convention on Climate Change, with binding effect. In December 2012, New Zealand chose not to sign up for the second commitment period of the Kyoto Protocol. This means New Zealand's access to international carbon markets is uncertain beyond 2015. Against this international context, this article examines New Zealand's emissions profile and its implications for the New Zealand Emissions Trading Scheme (NZ ETS). The article details the evolution of the New Zealand carbon market from a legal and policy perspective, with particular focus on the forestry sector. It highlights present trends in carbon trading in New Zealand, considers the development of a trans-Tasman market, and evaluates the effectiveness of the NZ ETS in achieving its objectives. 357