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Adapting to the impacts of climate change: The limits and opportunities of law in conserving biodiversity – *Hon Justice Brian J Preston*

Climate change is likely to exacerbate existing pressures on ecosystems, habitats and biodiversity, as well as give rise to new pressures. Current baseline pressures on natural environments, such as habitat and biodiversity loss, pollution, fire and the spread of weeds and introduced animal species, are likely to increase. New pressures could also arise in the future, ranging from direct pressures such as sea-level rise to indirect pressures on settlement patterns and economic activities. The implementation and effectiveness of strategies to enable biodiversity to adapt to climate change is dependent in part on the law. This article suggests that the existence of the current baseline pressures that ecosystems, habitats and species face is evidence that the existing laws are inadequate. Hence, continuation of the existing laws, with their limitations, will not reduce the baseline pressures. The limitations in existing laws that result in the current baseline pressures will also inhibit the prevention, control and mitigation of new pressures that occur as settlement patterns and economic activities adapt to climate change. Therefore, identification and reform of the limitations of the existing laws are needed to reduce baseline pressures and prevent, control and mitigate new pressures. 375

Too much too soon? On the rise and fall of Australia's coastal climate change law – *Philippa England*

For a number of years, government and academic sources have labelled adaptation to climate change an issue for risk management. These sources have recommended methods and procedures for calculating the range of risks presented by climate change. However, analysing risk is only one part of the equation; the more intractable problem lies in deciding how to respond to those risks. The article explores how the risk threshold has been set in recent policy documents and in newly emergent legislation. It analyses two case studies – neither of which can claim unequivocal success – as test cases for the leading policy recommendations. Given the twists and turns in the law and policy at work in both case studies, it is questioned whether the risk threshold was set correctly in either case and also considered are what changes need to be made, both in setting the risk threshold and in determining the appropriate legal tools for that threshold. 390

From rights to responsibilities: Reconceptualising carbon sequestration rights in Australia – *Pamela O'Connor*, *Sharon Christensen*, *WD Duncan* and *Angela Phillips*

Biosequestration of carbon in trees, forests and vegetation is a key method for mitigating climate change in Australia. To facilitate this, all States have enacted legislation for carbon sequestration rights, separating commercial rights in carbon from ownership of the land,

trees and vegetation in which the carbon is sequestered. Ownership of carbon sequestration rights under State law is a prerequisite for the issue of carbon credits to proponents of "eligible sequestration offsets projects" under the Carbon Credits (Carbon Farming Initiative) Act 2011 (Cth) (Carbon Farming Act). This article examines the extent to which current State carbon sequestration rights support the offsets regime established by the Carbon Farming Act. The Commonwealth Act is concerned with allocating responsibilities to ensure the maintenance of the carbon sequestration, while the State Acts confer commercial rights in the carbon and leave the responsibilities to be allocated by private agreements. The carbon sequestration rights as defined by State laws do not confer the rights of access and management over land that a project proponent needs in order to discharge its responsibilities to maintain the carbon sequestration. 403

Strategic environmental assessment in Australian land-use planning – *Simon Marsden*

This article considers the application of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) provisions on strategic environmental assessment (SEA) to land-use planning. Until recently, other than application to the fisheries sector, the use of these provisions has been extremely limited. Law reform in 2006 intended to improve the take-up of the provisions, which depend on agreement between the proponent and the Australian Environment Minister, appears to have made a difference, with SEA applied to resource development proposals and in the land-use planning sector – the latter of which globally has resulted in the greatest number of SEAs. The article evaluates the strengths and weaknesses of recent practice in this sector, which was begun in the ACT in 2008. Conclusions are drawn that after considerable delays in implementation, SEA may at last have begun to realise its Australian potential. 422

"Greenbacks" versus green credits: Has the Carbon Farming Initiative got the balance right? – *Emma French*

The Carbon Farming Initiative (CFI) is an Australian government carbon offset scheme allowing agricultural producers to generate carbon credits from emissions mitigation and sequestration activities on Australian farms. This article explores the potential of the CFI to be effective as an offset scheme. It does so by examining how successfully key design principles have been balanced in the scheme. The scheme is guided by two design principles: to ensure environmental integrity; and to enable broad participation. The CFI incorporates a number of strong environmental integrity features, many of which represent significant improvements comparative to the Clean Development Mechanism. The scheme also addresses the economic issues specific to the agricultural industry to enable participation by producers. The article concludes that the two criteria have been well balanced, but that the CFI will likely be underutilised because of regulatory risk. 434

"Risk-based regulation" in environmental governance
– *Bruce Lindsay* and *Cecilia Riebl*

Concepts of "risk-based" regulation in the environmental sphere have acquired considerable official interest in Australia in recent years, both at national and State levels. This article considers origins and context of "risk-based approaches" to environmental regulation in Australia and internationally, with a view to interrogating the meaning of these concepts. It critically reviews the content and practical operation of "risk-based approaches" to environmental regulation, concluding that cautious consideration is needed. The article outlines a principled framework for the interpretation and application of risk models in the service of environmental protection. 452