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ARTICLES

How do environmental conservation laws interact with environmental aspects of water laws? – Michael Bennett and Alex Gardner

The environmental protection and conservation of wetlands, including Ramsar-listed wetlands of international importance, is a valuable object of study to understand how environmental protection laws interact with environmental aspects of water law. This article considers Australia's Ramsar obligations and their implications for water allocation and management. It uses a case study, the management of the Ramsar-listed Forrestdale and Thomsons Lakes, to illustrate how environmental conservation laws and water laws can interact in meeting those obligations. The article makes some observations on the respective role of water resource management laws, laws for the protection of areas designated for conservation, and environmental impact assessment legislation. It concludes that, while each of these laws has their own strengths and weaknesses, properly designed water laws are the superior tool for securing water for wetlands.

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Biodiversity offsets: Practice and promise – Martin Fallding

Biodiversity offsets are a tool to compensate for biodiversity losses, and to protect and maintain biodiversity values in alternative locations. Offsets normally apply where biodiversity loss cannot be avoided, mitigated or minimised in development proposals, and represent an often controversial decision-making innovation at the intersection of science, law, politics and economics. Biodiversity conservation underpins ecologically sustainable development and has become an important consideration in land-use planning. This article outlines what offsets are, how they work, and identifies issues for their application into the future. It provides background on how offsets have evolved and reviews policy and practice in Australia, especially in New South Wales. Biodiversity offsetting practice across Australia is inconsistent, complex and confusing. The article discusses the application of offset principles, legislative and policy frameworks, and links to land-use planning processes. Improvements to current offsetting approaches are also suggested.

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Legal frameworks for unique ecosystems – how can the EPBC Act offsets policy address the impact of development on seagrass? – Justine Bell, Megan I Saunders, Catherine E Lovelock and Hugh P Possingham

Environmental or biodiversity offset policies allow for impacts occurring at one site to be offset through activities at another site. The federal government has recently released a policy for offsetting the impacts of activities approved under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act). The EPBC Act policy can be used to offset impacts on terrestrial and marine ecosystems, and one of the first applications of the policy has been to offset impacts on seagrass meadows at risk due to the Abbot Point coal terminal expansion. The significant ecological differences between terrestrial and marine ecosystems, such as seagrass meadows, require different management approaches to ensure that impacts are offset. This article analyses the EPBC Act policy to determine whether it adequately caters for offsetting impacts on marine

ecosystems, with seagrass used as an example. It concludes with recommendations for policy change directed at ensuring that the unique characteristics of seagrass ecosystems are considered in offset policies. 34

Participation from the deep freeze: “Chilling” by SLAPP suits – Judith A Preston

True democracy rests on a number of fundamental tenets, including the right of the public to actively and effectively engage in governance. This article explores one of the impediments to exercising public participation rights – namely, the litigious tactic of Strategic Litigation Against Public Participation, known as “SLAPP suits”. The SLAPP suit is engaged by powerful and usually well-resourced parties to stifle public opinion against unpopular proposals and developments. SLAPP suits are used in a number of different areas, such as trade practices, consumer and animal protection rights; however, this article examines their use in the environmental context with reference to recent developments such as anti-SLAPP legislation and “SLAPP-backs” to counteract their “chilling” effect. 47

The disappearance of ecologically sustainable development within Australia’s mining law framework – Stephanie Venuti

Australia’s current regulatory framework concerning energy use and production reflects a strong policy commitment to the development of the coal seam gas (CSG) industry. CSG is likely to play a greater role in domestic energy production and as an export in the form of liquefied natural gas. However, the expansion of the CSG industry in Australia has been met with significant public opposition. At the core of the public debate is the current regulatory regime’s failure to address inherent issues of land-use conflict between landowners, the agricultural industry, the mining sector and government. This article reviews the recent suite of CSG regulatory reforms in Australia, (focusing on New South Wales) and comments on the limited consideration of the social and environmental impacts of CSG development. Current CSG laws and policies fail to apply a balanced approach to environmental and agricultural concerns in the face of economic incentives to extract and produce CSG. As such, this article considers CSG regulation as demonstrative of the difficulties in implementing principles of ecologically sustainable development within emerging areas of energy policy and law. 64