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ARTICLES

Between a rock and a hard place: Legislative shortcomings hindering Aboriginal cultural heritage protection – *Alison Packham*

In enacting legislation for increased penalties and a strict liability offence for harming Aboriginal cultural heritage in 2010, the New South Wales Government went some way towards recognising the importance of this heritage to both Aboriginal and non-Aboriginal communities. However, as the recent Land and Environment Court decision in *Ausgrid* has highlighted, effective protection of Aboriginal cultural heritage necessitates further legislative change that addresses more fundamental deficiencies in the regulatory scheme. This article explores the application of the increased penalty regime in *Ausgrid*, to suggest additional areas for legislative reform.

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Regulating for groundwater-use efficiency: A toolbox approach based on the experiences of three disparate jurisdictions – *Madeleine Hartley*

Water-use efficiency is critical to ensuring the sustainable use of groundwater resources. To varying degrees, water-use efficiency measures are embedded in groundwater management in the Gnangara Mound (Western Australia), the Namoi Catchment (New South Wales), and in Colorado (United States). Each of these areas is subject to heavy competition for water resources, which arises from the challenges of climate uncertainty, population increases and agricultural water demand. Using case studies of these areas, this article introduces a regulatory toolbox approach to facilitating water-use efficiency to meet these challenges. A toolbox approach is useful because it integrates the use of practical measures that can help achieve water-use efficiency and unites them through their relationship to the end goal of sustainability. However, the effective operation of key toolbox measures can be challenged by ill-defined concepts and implementation inadequacies. This article identifies shortcomings in water resources accounting and anti-speculation measures as specific issues that threaten both regulatory effectiveness for achieving water-use efficiency and their contribution to sustainability of groundwater resources. Because these measures provide a critical foundation for the later incorporation of other water-use efficiency toolbox measures, it is fundamental that they are designed to achieve resource sustainability through water-use efficiency.

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Adaptation strategies for biodiversity conservation: Has Australian law got what it takes? – *Phillipa McCormack and Jan McDonald*

Climate change presents a unique threat to Australia's biodiversity. It will amplify the effect of existing non-climate anthropogenic stressors and act in its own right to accelerate biodiversity decline. New approaches to conservation practice will be needed and these must be supported by strong but flexible conservation legal frameworks. This article reviews the principal adaptation strategies supported in the conservation literature and considers the extent to which they are currently represented in Australian law. It identifies the ways in which these strategies are facilitated or impeded under current legal

frameworks. To conserve biodiversity under climate change, new processes are needed for negotiating trade-offs between competing conservation goals, particularly in relation to high-intervention strategies such as assisted colonisation and ex situ conservation. 114

Seeking balance: The promise and reality of biodiversity offsetting – Peta Norris

Avoid, mitigate, offset – that is the mantra of biodiversity offsetting policy. Reliance on offsetting to compensate for the residual impacts of development is increasing. It holds promise in the quest to balance social and economic development with environmental concerns; but, in reality, when offsetting is proposed, impacts to biodiversity are certain and effective offsets are not. Offsetting is explored through two case studies from the Hunter Valley of New South Wales – retention offsets for the critically endangered North Rothbury *Persoonia* at the Huntlee New Town Site near Branxton, and restoration offsets for Green and Golden Bell Frogs on Kooragang Island. When driven by politics and economics, biodiversity offsetting schemes risk being no more than “successful ‘symbolic policies’”, hollow attempts to curb biodiversity decline. 137