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ARTICLES

Filling the gaps: Recognition of environmental protection as a charitable purpose – *Rebecca Claire Byrnes*

Charity law can play an important role in enabling and incentivising action by private individuals in relation to environmental protection. However, environmental objects are currently only clearly charitable under Commonwealth legislation. Whether they are charitable at general law, and thus for the purposes of State taxation legislation, or in validating gifts or trusts, is less clear. This article conducts a comparative study of the developments in charity law with respect to environmental purposes in Australia, England and Wales, New Zealand and Canada. It then considers whether the protection of the environment is capable of being charitable at general law in Australia, through an analysis of the requirements of "public benefit" and "charitable purpose". 415

The course of statutory planning system reform and fast-tracking development – *Peter Williams*

Statutory planning systems in Australia have undergone significant reform in recent years. A key focal point of these reforms has been to streamline, simplify and progress the assessment and approval of building and other development projects. Generically referred to as "fast-tracking", this element of the reform agenda is typically set within a discourse which uses terms, for example, of removing "red tape" and "delay", and of promoting "simplification" and "appropriate assessment" of planning approvals. While considering the area of planning reform in Australia generally, emphasis in this article is placed on New South Wales. From a contextual case study analysis of statutory planning reform in New South Wales over the past two decades, the article seeks to demonstrate that there has been a paradigm shift in the nature and purpose of environmental planning which has been driving this reform process. Increasingly, reform of statutory planning systems is perceived by governments as essential for the stimulation of economic activity. 439

Protective costs orders in Australia: Increasing access to courts by capping costs – *The Honourable Justice Nicola Pain*

The first protective costs order capping costs early in proceedings was granted in the Land and Environment Court of New South Wales in 2009. Such orders can play an important role in providing access to courts for those pursuing public interest environmental litigation with limited means. The availability and success rate of other similar applications in the Land and Environment Court of New South Wales and elsewhere in Australia is considered in this article. 450

After the storm: The Whaling in the Antarctic Case and the Australian Whale Sanctuary – *Tim Stephens*

In March 2014 the International Court of Justice (ICJ) handed down its decision in the *Whaling in the Antarctic Case* between Australia and Japan, in which it found by 12 votes to four that Japan's whaling program in the Southern Ocean was not undertaken "for the

purposes of scientific research" as required by the 1946 *International Convention for the Regulation of Whaling* (ICRW). Although this was a clear endorsement of the Australian claims, the ICJ did not rule out the practice of scientific whaling altogether. The court emphasised that the ICRW expressly allows for the conduct of scientific whaling programs, including those that are lethal and that "pursue an aim other than either conservation or sustainable exploitation of whale stocks". The decision therefore leaves open the possibility that Antarctic whaling activities could be continued in an adjusted form. If so, it is possible that, as in past seasons, Japanese whaling vessels will continue to pass through the Australian Whale Sanctuary in the Australian Exclusive Economic Zone en route to Southern Ocean whaling grounds. Against this background this article considers whether Australia's domestic legal framework applicable to cetacean conservation can be applied more effectively, or further strengthened. 459