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ARTICLES

Commonwealth power and environmental management: Constitutional questions revisited – *Sangeetha Pillai* and *George Williams*

The Australian *Constitution* does not provide the Commonwealth with an express power to regulate or spend money on environmental management. Despite this, it has been asserted that Commonwealth power is so extensive as to enable it to exercise control over almost any environmental subject. This article tests such claims. It does so by examining the ambit of the federal legislative and spending powers. It concludes that the potential scope of federal authority over environmental matters has been overstated, especially in light of recent High Court decisions. 395

A model law for site contamination: Key features and challenges in a developing country context – *Elizabeth J Brandon*

Site contamination has emerged in the past few decades as a major public health and environmental problem for many developed countries. It is a complex issue that requires a dedicated, comprehensive regulatory framework. Although site contamination is a relatively recent phenomenon in developing countries, the need to formulate a strong regulatory response in those countries is pressing. This article reviews the development of national laws on site contamination and the need for a model law to assist countries in responding to the issue. The structure of a proposed model law is then set out, dealing with each regulatory aspect of site contamination, from the earliest stages of prevention and identification to the final stages of post-remediation and site closure. Importantly, there is a discussion as to how the model law could be adapted to reflect the needs and conditions of individual countries, with a particular emphasis on developing countries. 409

Fracking in Australia: The future in South Australia? – *Karen Bubna-Litic*

Australia has the seventh largest volume of technically recoverable shale gas in the world, most of it situated in South Australia. There is an increased push from the South Australian government to capitalise on this unconventional gas resource, in both the Copper Basin and south-east regions of South Australia. This has led to a great amount of community concern, especially in relation to the south-east, as this is adjacent to the Coonawarra wine region. This article examines the regulatory framework which has been put in place at the federal and State levels. It critically evaluates the mechanisms in place to deal with the social and environmental impacts of fracking, looking at the process in Penola and drawing on the US experience, where attempts have been made to "make fracking sustainable". 437

Miners' liability to redress reduced water quantity and quality after mine site closure: A case study of the Collie Coalfields in Western Australia – *Clare Ward*

This article argues that the current framework of mining regulation in Western Australia confers only limited authority on regulators to require miners to redress the harm their mining operations may cause to water sources after relinquishment of their production tenure. As a result, the polluter-pays principle – the principle that those who damage the environment bear the cost of redressing the harm – is not adequately upheld in Western Australia. It is contended that the polluter-pays principle would be more effectively upheld in Western Australia if the regulator could impose secured rehabilitation obligations on a miner after they have ceased mining and relinquished their production tenement to the next land user. The article examines this argument and reform proposals through a case study of the Collie Coalfields in the South-west of Western Australia. 455

The perils of fast-tracking mining development: An examination of the Mining SEPP "resource significance" amendments – *Tristan Orgill*

After considerable controversy and heated public debate, the "resource significance" amendments to the *State Environmental Planning Policy (Mining, Petroleum and Extractive Industries) 2007* (NSW) commenced operation on 4 November 2013. Twenty months later, on 7 July 2015, the new Minister for Planning released public consultation draft material proposing to undertake the law reform backflip of repealing most of the resource significance clauses. Despite the controversy that has surrounded the resource significance amendments, there has only been limited examination of the relevant clauses using statutory and common law techniques of statutory interpretation. Without this analysis, it is difficult to properly assess how the amendments have affected mine development approval decision-making and, therefore, determine the effectiveness of the resource significance clauses. Ultimately, it is argued that these clauses have been ineffective and have made the mine approval regime unnecessarily complicated, opaque and susceptible to judicial review. 486