

# ENVIRONMENTAL AND PLANNING LAW JOURNAL

Volume 33, Number 2

March 2016

## ARTICLES

### **Biodiversity offsets: Adequacy and efficacy in theory and practice – *The Hon Justice Brian J Preston***

Continuing loss of biodiversity is a significant issue. A major cause is development of sites of biodiversity value. The strategies for managing adverse impacts of development on biodiversity are, in order of priority of action, avoidance, mitigation and offsets. These form the mitigation hierarchy. Biodiversity offsets are to be used to address the residual impacts of development that remain after avoidance and mitigation measures have been implemented to compensate for the biodiversity loss. The article first considers some principles that assist in stepping through the mitigation hierarchy and evaluating when biodiversity offsets are justifiable. It next discusses four criteria for ensuring that biodiversity offsetting achieves its purpose. These are type equivalence, time equivalence, additionality and effective implementation and compliance. The article then outlines the inevitable uncertainties and risks associated with biodiversity offsets and addresses eight mechanisms to reduce uncertainty. ....

93

### **Energy regulation for a low carbon economy: Obstacles and opportunities – *Neil Gunningham and Megan Bowman***

The purpose of this article is to map and critically evaluate Australia's energy regulation landscape with a view to: (a) characterising strengths and weaknesses in Australia's current energy regime; and (b) recommending policies that can encourage and facilitate Australia's transition to a low-carbon economy. The authors argue that no single policy instrument can deliver a sustainable energy future, but that a range of measures can all make important contributions, including carbon pricing, mandatory renewable energy targets, energy efficiency measures, and capital subsidies for constructing or installing renewable energy technologies and storage capabilities. In contrast, the current federal government's Direct Action Plan is unlikely to play any substantial role in achieving a transition to a low-carbon economy and many of the government's other policies are antithetical to that objective. ....

118

### **Rising standards: Climate change and professional liability in the construction industry – *Tim Rankin***

It is estimated that climate change and associated extreme weather events will cause losses amounting to 0.5%-1% of global GDP by 2050. Existing climate change litigation has largely targeted polluters or public authorities. However, injured parties may bring actions against construction professionals for failing to be aware of, or adequately provide against, climate change. Furthermore, as actions against polluters encounter barriers of causation, and public authorities are protected by civil liability regimes, construction professionals and their insurances become attractive litigation targets. This article examines the types of actions that may be brought against construction professionals and the circumstances in which liability will arise. The standard of care expected of construction professionals is rising and compliance with industry standards may not be sufficient. ....

142