

# ENVIRONMENTAL AND PLANNING LAW JOURNAL

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## ARTICLES

### **Forget Me Not: Revisiting the Common Concern of Humankind Concept in the BBNJ Context** – *Sarah Lothian*

This article explores the potential contribution of the Common Concern of Humankind (CCH) concept in the ongoing negotiations towards an International Legally Binding Instrument (ILBI) on the conservation and sustainable use of biodiversity in marine areas beyond national jurisdiction (BBNJ). Even though the CCH concept was discussed in the early stages of the negotiation process, it does not appear in the Zero Draft text. This article revisits the CCH concept and traces its historical evolution, including its incorporation in modern environmental treaty regimes. An analysis is undertaken of its scope and fundamental characteristics to ascertain whether the protection of BBNJ meets the CCH threshold. This article also reflects on the potential role of the CCH concept under the ILBI and whether it could bridge the gap between proponents of freedom of the seas and those defending the common heritage of mankind. .... 189

### **All at Sea: Preparing the Law for Offshore Aquaculture in Australia** – *Danielle McPhail and Jan McDonald*

Conflicts with competing coastal uses and climate change impacts are forcing the aquaculture industry in Australia to look offshore for expansion opportunities. Offshore locations avoid local conflicts but require strong governance to ensure that remote operations meet environmental and animal health standards and social expectations. With the economic importance of aquaculture now being recognised in Australia, we examine the preparedness of Australia's laws and policy for offshore aquaculture, using salmon farming off Tasmania as a case study. Four areas for reform are identified – strategic planning to define the future of offshore farming; standards for environmental and animal health protection; a consistent approach to governance; and independent and accountable decision-making processes. .... 204

### **Towards an Outcomes-driven Approach to Environmental Law: The Environment Protection and Biodiversity Conservation Act 1999 (Cth)** – *Kenny Ng*

The increasing number, types, and severity of environmental issues being faced in Australia have placed considerable pressure on Australia's national environmental legislation, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). One response in 2020 was to amend this legislation under the *Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020* (Cth) to devolve key aspects of the Commonwealth government's environmental powers to the State and Territories. Another response in 2020 was the decennial independent review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), which proposed a more broad-based approach. This article, in comparing these two recent responses, argues that regardless of method, our environment and our frameworks for

environmental protection can often be improved by adopting an outcomes-driven approach in environmental law. .... 223

**Responsible Investing for Food System Sustainability: A Review of Current Practice in Australia** – *Christine Parker, Ella Robinson, Rachel Carey, Laura Boehm and Gary Sacks*

This study investigates what role if any responsible investment (RI) by the finance sector is playing in promoting sustainable food systems in Australia. We report the findings of a preliminary desktop review of environmental, social and governance reporting by 35 of the most prominent RI funds managers in Australia. Only one RI fund had a comprehensive policy in relation to food system themes and 16 did not specifically mention the environmental, social and governance issues raised by food systems at all. Some addressed labour rights and intensive animal agriculture issues in the food system, and a few mentioned the climate change, biodiversity loss and water impacts of food. We conclude that a more comprehensive and holistic approach to consideration of sustainable food systems in RI is required to meet the goals set by the Paris Agreement, Sustainable Development Goals and other environmental and human rights frameworks. .... 237

**Insights for Victoria’s General Environmental Duty from across the Ditch** – *Kierra Parker*

Victoria has for the first time enacted an enforceable general environmental duty, as part of comprehensive reform of the *Environment Protection Act 1970 (Vic)*. Its interpretation, application, and impact will be novel. In seeking to anticipate the application of the duty guidance can be drawn from statutory definitions and objectives, and case law from other jurisdictions and contexts. In New Zealand, a general duty to avoid, remedy and mitigate adverse effects on the environment has existed for over 20 years. Insights for Victoria’s new general environmental duty can be drawn from the body of case law developed in New Zealand. In particular, the New Zealand experience illustrates the challenge of a causal nexus, objective assessment of the harm in issue, and the important function an environmental duty can play in achieving the objectives of the legislation. .... 263