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ARTICLES

A Behavioural Approach to Environmental Conservation in Australian Agriculture – *Felicity Deane and Trent Candy*

Over the last 100 years of development, land-use change has had a significant impact on biodiversity, and there have been increasing calls for the regulation of land holders. In Australia, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the “EPBC Act”) is the premier piece of environmental legislation at the Commonwealth level, however the EPBC Act has failed to slow the decline of Australia’s natural landscape. Within this article we introduce concepts from behavioural law and economics scholarship to provide a critique of the EPBC Act. Within this article we urge policymakers to adopt a behavioural response to regulatory reform to ensure a collaborative response and better environmental outcomes. 107

Australia’s Regulatory Approach to Plastic Pollution: Letting a Thousand (Plastic) Flowers Bloom? – *Steve Kourabas and Gerry Nagtzaam*

Problems relating to plastic pollution have gained increasing attention over the last decade. In Australia, a number of government and industry initiatives, such as the prohibition on the sale of certain plastics, have sought to respond to growing community concern regarding the negative environmental effects associated with plastic production and use. However, regulation has been haphazard and, as a result, has contributed to confusion and regulatory overlap (or underlap) that contradicts the central goal of minimising the negative environmental effects of plastic. While plastic pollution has gained a great deal of attention, there has been very little legal scholarship in Australia exploring regulation. This article seeks to address this gap in legal scholarship by comprehensively analysing the different approaches to plastic regulation across various jurisdictions in Australia. The analysis suggests that the scattered regulatory approach, as well as half-hearted co-ordination, prevent the successful implementation in Australia of a circular economy for plastics: one of the key goals of regulatory regimes across Australia. 124

Indigenous Peoples and Local Communities: Wetlands Management in International Law and Australian Practice – *Simon Marsden*

This article analyses the role of Indigenous peoples and local communities in wetlands management in international law and Australian practice. It shows how this role has been elaborated in recognition of the contextual international law for “rightsholders”, and via participatory rights. It makes comparative reference to related biodiversity treaties where the roles have received greater emphasis. The principle of “wise use” is focused upon in recognition of “traditional techniques of wise use” and “the values that indigenous peoples can bring to all aspects of wise use”. The balance between western scientific knowledge and traditional ecological knowledge in wetlands management is explored. Conclusions and recommendations highlight what more needs to be done to ensure the knowledge held is accorded appropriate recognition. Lessons from international law and Australian

practice highlight the way forward to improved governance via the 2016–2024 Convention strategic plan. 146

The River as a Separate Legal Person: Implications for Sustainability Law and Governance – *Rhett Martin*

When the Whanganui River in New Zealand was given separate legal person status in 2017, a new era in the rights of natural entities emerged. This provided increased involvement of local Māori in river management, and the opportunity for the interests of the river to be represented in court. Separate legal standing provides an exciting opportunity to advance Earth jurisprudence and the recognition of the rights of natural entities. A development of this type should be assessed, at least in part, for its practical effects. What does separate legal personhood in the river mean for sustainability regulation? Are the interests of the river through separate legal person status aligned with sustainability objectives? Does the new regulatory framework provide support for sustainability objectives? This article considers legal developments relating to the Whanganui River from a sustainability perspective, and whether the idea of separate legal personhood of a natural entity provides impetus for a new sustainability agenda. 166

Analysis of the Extent to Which Australian States Incorporate Non-economic Loss Considerations into Disaster Planning and Response and the Alignment of State Responses with International Standards – *Joseph Miller*

This article addresses the extent to which the New South Wales, Victorian and Queensland governments incorporate non-economic losses into policy-making, decision-making and disaster response in the context of major climate change-related events. The responses of each State government to disaster events and the policies that each State has in place are measured alongside internationally recognised guidelines. The responses of New South Wales to the 2019/20 Black Summer bushfires, Victoria to the 2009 Black Saturday bushfires, and Queensland to the 2011 floods, as well as the policies and strategies each State has in place, are analysed and compared as a means to understand the areas in which the States align well with international standards. All States incorporate non-economic loss considerations and actions to some extent in policy and decision-making, but improvements can be made in each jurisdiction to better align with certain international recommendations. 185

Going against the Flow: Will NSW’s Floodplain Harvesting Policy Enhance Water Security in the Murray-Darling Basin? – *Kenneth Pennington*

Floodplain harvesting (FPH) involves the diversion and capture of water flowing across floodplains after significant rainfall events for later use. The practice reduces the amount of water that would have otherwise remained as wetland habitat, entered rivers and flowed downstream or recharged aquifers. The result is that permanent water holders downstream receive smaller allocations, the price of temporary water is pushed up and there is less water for the environment. The increase in FPH since 1994, primarily in the northern Murray-Darling Basin (MDB), has never been brought within the 1995 Murray-Darling Basin Cap on Surface Water Diversions. Although Basin states agreed in 2004 that strict licensing and measuring of FPH should be prioritised, FPH in New South Wales has been controlled only through work approvals under the *Water Act 1912* (NSW), which does not directly address the practice. FPH is essentially unlicensed and unregulated. 201

BOOK REVIEW

Youth Climate Courts: How You Can Host a Human Rights Trial for People and Planet, by Thomas A Kerns – *Reviewed by Kenny Ng* 220