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ARTICLES

Water Theft and Commercial Advantage in Victoria – Christopher Watt

Water theft through unauthorised take undermines Victoria’s water regulation framework, reducing water security for lawful users and the environment. Despite a strong compliance culture, enforcement measures under the *Water Act 1989* (Vic) fail to adequately address the commercial advantage gained by offenders, particularly irrigators who exploit water price fluctuations. Current penalties achieved in prosecutions often fall below the financial benefits of unauthorised take, weakening deterrence. Unlike other environmental offences, Victoria lacks a clear statutory mechanism to recover monetary benefits from illegal water take. This article examines the shortcomings of existing prosecution tools, comparing Victoria’s approach with New South Wales, where higher penalties are imposed. It argues for the introduction of a monetary benefits order in the *Water Act 1989* (Vic), modelled on similar provisions in environmental law. Implementing such a provision would ensure that prosecutions for unauthorised take can effectively deter potential offenders and maintain the integrity of Victoria’s water laws. 145

Opportunities and Challenges for Regulating an Australian Nuclear Dawn – Tom Goodwin

The recent 2025 federal general election was set to determine Australia’s nuclear future, with the leading political parties taking opposite stances on whether Australia should pursue electricity generated by nuclear fission. Understandably, the debate has to date centred largely around the question of whether Australia “should” pursue nuclear power, rather than considering how it might be regulated. If Australia indeed pursues a nuclear dawn, the legal moratorium on nuclear electricity will need to be lifted and replaced with a comprehensive regime. Considering the experience of Australian regulation of small-scale nuclear industries under particularly the *Australian Radiation Protection and Nuclear Safety Act 1998* (Cth), and the regulation of nuclear electricity by comparable states like the United States, this article explores some of the legal pitfalls and opportunities that Australia will encounter if it needs to develop a regulatory scheme for nuclear electricity, and calls for urgent academic and governmental consideration of these issues. 160

Is the Future Bright? Green Hydrogen Developments on First Nations Land in Western Australia – Rachele Cardaci

Law and policy are imparting increasing significance to encouraging the development of green hydrogen technology in Western Australia. Due to Western Australia’s high levels of solar irradiation and wind energy, many green hydrogen developments are set to take place on First Nations land in Western Australia. Agreements between renewable hydrogen proponents will be made pursuant to the *Native Title Act 1993* (Cth), as has been the case in the mining industry in Western Australia. Drawing on the experience of agreement-making in the mining industry, this article examines whether there is potential for agreement-making that encourages benefit-sharing with First Nations communities in green hydrogen

developments in Western Australia. This article argues that without amendment, current laws and policies that regulate green hydrogen will inevitably be used as a vehicle to limit benefit-sharing. 181

Let's Get Onboard: An Argument in Favour of Australia Ratifying the BBNJ Agreement – *Hannah Wilcox*

The BBNJ Agreement, an international agreement promoting the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, opened for signature on 19 June 2023. The BBNJ Agreement is not yet in force. Australia has signed, but not yet ratified the agreement. This article considers the key features of the BBNJ Agreement and the risks and benefits for Australia in ratifying. Potential risks include obligations to share benefits, increased costs and regulatory requirements, and the uncertainty surrounding how the provisions of the agreement will be interpreted and interact with the current regime. There are also significant benefits: the agreement promotes the preservation of the marine environment (which is of particular importance to Australia and the growth of the blue economy) and provides some much-needed clarity by addressing gaps in the current regime. It is argued that Australia should ratify the BBNJ Agreement as a matter of priority. 205

Implementing the Plastics Treaty – *Paul Martin and Catherine Moltzen*

There are great expectations that the proposed new plastic treaty will be able to address the fundamental challenges of plastic pollution. However, experience with other treaties (notably the convention on biological diversity) suggest that there will be many difficult impediments to successful implementation. This article highlights a number of these, and suggests that far more attention will need to be paid to practical implementation that has so far been indicated in the negotiations. 214

The General Environmental Duty (GED) in Western Australia – Stopping The Horse Before It Bolts – *Prafula Pearce, Joshua Aston, Kim Allen, Mostafa Naser, Tanzim Afroz and Haydn Rigby*

With increased population, coupled with growing levels of housing density and associated industrial activities, local natural environments are increasingly exposed to consequent stressors and pressures. Environmental policies, Acts and guidelines across states and territories are inconsistent and, in many cases, fail to address and mitigate growing risks to biodiversity and the environment. This article explores the Victorian government's approach which is an exemplar of jurisdictions which have included the general environmental duty (GED) principle where polluters have increased responsibility to avoid harm, and whether there is a need for a similar approach to be adopted by the West Australian (WA) government. Using the case study of the Beenyp wastewater treatment plant that is within a Class A marine park and the Sepia Depression borders, another sensitive and biodiverse marine park, the article concludes the need for integrating the GED into WA's environmental protection framework and indeed any jurisdiction without GED. 231