

the trigger proposed was more than 500,000 t CO₂-e in any 12 month period. The Australian Network of Environmental Defenders Office (ANEDO) has also recommended such a trigger based on 100,000 t CO₂-e per annum for all greenhouse emissions (that is, including existing emitters and not merely new emitters).²⁴ Similarly, the Shadow Environment Minister, Anthony Albanese MP, proposed a greenhouse trigger for the EPBC Act in a private members bill, *Avoiding Dangerous Climate Change (Climate Change Trigger) Bill* 2005. The Bill proposed a new s 25AA of the Act to provide a trigger based on emissions of 500,000 t CO₂-e and an additional threshold of establishing a “significant impact” on the environment.

The need for a greenhouse trigger in the EPBC Act and how it might be framed is an important topic deserving further consideration both by the Australian Government and in the professional literature. Further analysis in the professional literature might attempt to calculate the greenhouse emissions from projects that have been approved under the EPBC Act since its commencement.²⁵ A cursory glance at the list of referrals under the Act²⁶ indicates that many coal mines and petroleum projects have been approved. Few appear to have been assessed for greenhouse emissions.

Conclusion

This case shows the need for a specific greenhouse trigger in the EPBC Act. While the outcome indicates that there is no effective mechanism in the EPBC Act for regulating even large emissions of greenhouse gases at the present time, this is an issue that is likely to see further litigation and legislative action in the future. The Australian, State and Territory Governments accept that climate change is a pressing policy issue that requires a comprehensive and effective response. The current legal regime does not provide for effective regulation of even enormous emissions from projects such as coal mines. Clear gaps and deficiencies in regulatory systems tend to be filled over time and this gap is unlikely to be an exception.

Booth v Frippery Pty Ltd and Ors - successful appeal in fruitbat case

Readers may recall from the Spring 2005 Queensland NELR Update the case of *Booth v Frippery Pty Ltd and Ors*, the first public enforcement action under state wildlife protection laws, to stop electrocution of protected native bats by a lychee farmer. Despite the farmer’s admissions of thousands of illegal bat killings, Judge Pack DCJ found that the defence in section 88(3) of the *Nature Conservation Act* 1992 had been made out.

Dr Carol Booth sought leave to appeal from that decision on 25 grounds, and the State environment department, the Environmental Protection Agency, joined as a party to the appeal in support of Dr Booth. On 17 March 2006 the Court of Appeal upheld Dr Booth’s appeal and ordered a retrial of the case in the Planning and Environment Court. If the appeal had failed the *Nature Conservation Act* would have been rendered ineffective to protect wildlife.

TASMANIA

Gunns Ltd v Marr (No. 2) [2006] VSC 329 (28 August 2006) - Gunns’ statement of claim Version 3 struck out: “... too much has been sought to be alleged against too many ...”

In *Gunns Ltd v Marr (No. 2)* [2006] VSC 329 (28 August 2006), Bongiorno J of the Supreme Court of Victoria rejected the Tasmanian timber company’s third statement of claim against the Gunns 20 defendants. His Honour gave Gunns Ltd until 19 October 2006 to apply for leave to proceed, stating “... However, whatever they do they will need to radically alter the way they have pleaded this case to date.”

24 ANEDO, “Possible new matters of national environmental significance under the EPBC Act” (ANEDO, Sydney, 2 May 2005), pp 22-28.

25 Building on the work of Fallding M, “Predicted Impacts on Energy and Greenhouse Gases in Hunter Valley Coal Mining Environmental Impact Statements” (1999) 6 AJEM 219.

26 See the public notice website at <http://www.deh.gov.au/epbc/index.html> (viewed 15 June 2006).