Submission to Regulation of Australian Agriculture Productivity Commission Draft Report

George Stigler, "The Theory of Economic Regulation," 2(1) *Bell Journal of Economics and Management Science*, (1971), 3-21 at 3: *"…as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefits."*

The Darling River with flood waters coming down after Millennium drought: photo at Lelma Station February 2008 by Maria IE Riedl

'Values v money'

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Who wants what and why?

In other words, where does the balance lie – with the public interest in ensuring the sustainable management of resources or with the protection of private rights of property? Resources – either from the point of view of the common law or of the public domain regime created by legislation – are quintessentially common resources or common property. Any private interests in or in relation to e.g. water, derive from that source and from no other source.

"Regulatory capture" occurs when special interests co-opt policymakers or political bodies — regulatory agencies, in particular — to further their own ends. Capture theory is closely related to the "rent-seeking" and "political failure" theories developed by the public choice school of economics. Another term for regulatory capture is "client politics," which according to James Q. Wilson, "occurs when most or all of the benefits of a program go to some single, reasonably small interest (and industry, profession, or locality) but most or all of the costs will be borne by a large number of people (for example, all taxpayers)." (James Q. Wilson, *Bureaucracy*, 1989, at 76).

Barry M. Mitnick, *The Political Economy of Regulation: Creating, Designing, and Removing Regulatory Forms* (New York: Columbia University Press, 1980), at 38:
"Much relatively recent research has argued that regulation was often *sought* by industries for their own protection, rather than being imposed in some 'public interest.' Although the distinction is not always made clear in this recent literature, we may add that regulation which is not directly sought at the outset is generally 'captured' later on so it behaves with consistency to the industry's major interests, or at least has been observed to behave in this manner."

Bruce Yandle,"Bootleggers and Baptists — The Education of a Regulatory Economist," *Regulation,* Vol. 3, No. 3, (May/June 1983) p. 13:
"what do industry and labor want from the regulators? They want protection from competition, from technological change, and from losses that threaten profits and jobs. A carefully constructed regulation can accomplish all kinds of anticompetitive goals of this sort, while giving the citizenry the impression that the only goal is to serve the public interest."

A challenge for Australia: Good regulation or not good regulations who decides?

Due to land use intensification, water use intensification, an increase in the world's populations, and the agreed requirement to meet economic, social and environmental objectives, is it really fair and in the public interest for vested interests to call on government to reduce regulatory protections?

The concern is that branding regulations, which some farmers, corporations, investors, vested interests groups, state are a burden or a cost, ignores the fact that they are there to 'protect the environment and conserve natural resources in the public interest, for the benefit of all Australians, including farmers.' *EDO's of Australia.* They are set in place to control what

otherwise would be the uncontrolled conversion of natural habitats driving biodiversity loss, failing to 'ensure agricultural landscapes are themselves sustainable, producing the necessary food while maximising biodiversity and ecosystem services…' *Land Use Intensification: Effects on Agriculture, Biodiversity and Ecological Processes* Eds David Lindenmayer, Saul Cunningham and Andrew Young

The world's population is set to increase by 35% to 9 billion by 2050, this means that there will be an increasing demand for 'increasing agricultural production even in the face of already existing light to severe land degradation, reduction in availability of freshwater, 'rapid' climate change, 'rapid expansion' of new energy sources, and major ongoing losses of biodiversity.' It is obvious that there are 'major set of environmental, economic and social challenges for (not just Australia) humanity.' *Land Use Intensification: Effects on Agriculture, Biodiversity and Ecological Processes* Eds David Lindenmayer, Saul Cunningham and Andrew Young

I do not support pastoral leases being converted into freehold land as the argument that this is a disincentive for developers which is being used ignores the fact that these lands belong to the crown, who hold it in trust for us. These lands belong to all Australian, and even as leasehold there is very little that prevents someone from utilising it under a lease of some form or other. This idea that you have to own the land so that it 'encourages investment and allows for land to be put to its highest value' is a bit overstated by vested interests because they want to own it like a possession. Vested interests want to put there stamp on swathes of leasehold land to the disbenefit, not a 'net benefit' to the rest of society, including Indigenous people who are still in the long drawn out process of claiming native title rights to land and water or even the public, this generation as well as the next. Government hold these lands for us. It is inconceivable that the Commission accepts the one sided view that leases prevent uses and profits.

What about this leased out land, though already intensified, one day having the opportunity to be rehabilitated for conservation purposes which benefits and encourages high biodiversity which in turn benefits farming. There is a need for a 'balanced landscape' with limitations where intensive land uses can be carried out. The focus simply cannot be purely directed onto the 'scaling-up of intensification' using the justification of 'overriding concerns with global change and food security', and this, without balancing it with landscape health and biodiversity. By selling it and removing from the public realm you would be privatising the rest of Australia purely for the sake of a few people who want to make profits for their shareholders, or corporate interests. This is of concern because of the Free Trade Agreements being entered into with the SDS provisions as well as land being snapped up by foreign interest, such as foreign government interests.

'Land use change has enormous implications for biodiversity-both positive and negative.' It is the greatest threat to biodiversity. with the acceleration of 'climate change, global human population increases, increasing food demands, shifting food consumption patterns in developing nations and with the emphasis on on food security.' It is correct to say that intensification on different land types and land use changes can 'be manipulated to increase biodiversity values' as well as losses. To encourage 'incentivising biodiversity conservation' schemes to assist 'need to be well designed and implemented and informed by robust knowledge.' *Land Use Intensification: Effects on Agriculture, Biodiversity and Ecological Processes* Eds David Lindenmayer, Saul Cunningham and Andrew Young

Murrumbidgee flooded at Hay, the levee bank held- March 2012 photo Maria Riedl

The Murrumbidgee River at Hay 2008 and same position April 2012 Photos Maria Riedl

Privatisation, corporatisation, globalisation and politicisation v public trust, common good, social and environmental justice and sharing

The following is a US example I found which also applies to Australia using the Murray Darling Basin Plan and water as an example:

As Robert F Kennedy Jr states in the forward to *'Not a Drop to Drink: America's Water Crisis'* by Ken Midkiff (2007); *"the best measure of how a democracy functions is how it distributes the goods of the land: the air, waters, wandering animals, fisheries, and public lands, otherwise know as the 'public trust' or the 'commons'. By their nature these resources cannot be reduced to private property but are the shared assets of all the people, held in trust for future generations."*

He also draws our attention to the effects of privatisation. *"[A] more subtle but equally effective privatisation of public trust waters is occurring, as governments subsidise reckless and unsustainable water usages that favour greedy developers, powerful utilities, and agribusiness barons over the American public." "In the American West, the federal government provides oceans of money to corporate agribusiness to raise wasteful water-dependent crops like rice and alfalfa in the desert."* And goes on to say that: *"The Colorado River no longer reaches the sea or feeds the great estuaries in the Gulf of California that once teemed with life. Instead, it ignominiously dies in the Sonoran desert. What was once a dynamic and specialised ecosystem cutting through the greatest monument to America's natural heritage has been transformed into a cold-water plumbing conduit between the tow largest reservoirs in the United States-monuments to greed, shortsightedness and corporate power."*

" And all the grave prophecies of the scientists and environmentalists have come true. The reservoirs are emptying because of human consumption, a situation now exacerbated by climate change. Lake Powell is now nearly 100 feet below its capacity level. Hydropower revenues for repayment to the US Treasury have been at a standstill for six years. Recreational access at the upper reaches of Lake Mead and Lake Powell is now defunct because of the impact of sediment and fill. Water quality is dropping precipitously, and farmers need more water to flush the dissolved solids from their fields. The metropolitan growth and agribusiness consumption triggered by the dam's original promise continue at a rampant pace. The Colorado River has nothing more to give, and the train wreck is imminent. But while scientists continue to sound the warning, the rive managers insist on business as usual, encouraging wasteful agricultural uses, the proliferation of urban sprawl, and dramatic increases in consumption. It is a system geared to reward the powerful and impoverish the rest of us."

"But Americans need to be aware of their rights and the jeopardy corporate power places them in. Democracy affirms individual rights to our natural resources. But those rights cannot survive without a courageous citizenry that insists that its government not merely cater to commerce and industry but aggressively protect its citizenry's right to good health; safe air, water, and food; and the enrichment of America's national Heritage and God's creation."

All of what Mr Kennedy has said applies to Australia, the actions are the same, the reactions are the same and the ongoing actions of government, corporation and vested interest groups are the same. The parallels are unbelievably similar and though there are plenty of examples of Basin failures all over the world, the MDBA and both Commonwealth and State governments fail to act; they fail to adhere to sustainability principles.

"Sustainability can be defined as 'meeting the needs of the present without compromising the ability of future generations to meet their own needs'." If one considers carefully what the sustainable use of the MDB waters for the many stakeholders is, there really is no such thing. The use is just prolonged and not sustained. If actions are not taken to reduce the present overallocation and overuse of the waters in the MDB, both surface and ground, then it is only a matter of time until the prolongation ceases and the resource disappears.

The author of the book Ken Midkiff closes with: *" The decisions facing citizens will not be easy ones, but these decisions are much too important to be left in the hands of politicians. In order for us to continue having enough drinking water and food, citizens must become involved and take the reins away from those who would continue to ensure that water flows only toward money. We must push hard for the establishment of national conservation programs that truly conserve, allocate water to those most in need, [in this instance the degraded MDB system] and call for a halt of wasteful and unnecessary projects. Water is too precious, too valuable to be entrusted to for-profit companies and transient politicians. Water is too essential to be wasted. Water is life. [for the environment, for humans as well]."*

He adds about LA: *"The plan is to catch the rains that fall on thousands of driveways and parking lots and rooftops in the valley before it gets to the drains. Trees will soak up the water from parking lots. ('porous city concept') Homes and public buildings will capture roof water into old gravel pits and the leaky places that should recharge the city's underground water reserves. It's a direct replacement for a planned storm drain."* Plan B holds that every city should be porous and every river should have room to flood naturally.

Recent articles such as the Queensland farm lobby claiming 'victory' as the bid for tighter tree clearing controls are voted down in Queensland with the full knowledge that clearing has obscenely increased in the last 3 years due to the previous Queensland government removing broad scale clearing laws. The impacts of this huge increase in clearing in Queensland is also ensuring the loss of the Great Barrier Reef. This World Heritage Area is already impacted by chemical leaching, by releases of water from coal mining, increases in shipping, expansion of gas hubs, building of more ports, this though the World Heritage Committee has waved a red flag at Australia's lack of robust action on protecting the reef as they are required to under international agreements Australia is signatory to.

Heavy broad scale clearing of native vegetation, replacing it with large-scale cereal cropping etc is simply unacceptable for obvious reasons, as well as the fact that the clearing rate in Australia already has major unacceptable and avoidable impacts and has 'substantial negative impacts on biodiversity'. There is also the loss of connectivity of landscapes to be considered 'which is critical to maintaining species in the landscape' and the scattered small remnants deserve to be protected because of their potential to support significant biodiversity' even though they are still vulnerable.

This is when I would use the term 'regulatory capture' as it is clear that vested interests and greedy farmers, corporations, mining companies, use mis information and their influence on politicians to get their own way. Let me recall for you that 'regulatory capture' 'occurs when special interests co-opt policy makers or political bodies- regulatory agencies, in particular-to further their own ends.' This means that ' most or all of the benefits of a program go to a single, reasonable small interest (and industry, profession, or locality) but most or all of the costs will be borne by a large number of people (for example, all taxpayers). https://techliberation.com/2010/12/19/regulatory-capture-what-the-experts-have-found/ We must have regulations which ensure that we don't sell our public lands to selfish interests, regulations which stop clearing immediately since the 2011 Australian State of the Environment document as well as the EPBC Act, as well as numerous other documents and Acts which all state that land clearing which is out of control. This is most evidently the case in Queensland and now in NSW as well as other states which copy each other, and which are rejigging their Native Vegetation Acts and Biodiversity laws so they can cut so called 'red tape'. This because farmers and mining companies and others want to clear trees and native vegetation which might be in the way of their GPS driverless tractors, watering systems which extend for over 500m in circles or straight lines across paddocks. This without regard to the increasing loss of biodiversity, loss of species, loss of habitat, loss of soil and in the end will result in the loss of the ability to farm. e.g. not just large scale clearing for farming but in addition the impacts of goats, rabbits and other feral animals and then of course weeds come into it as well.

1. The other thing to remember when privatising public lands, such as pastoral leases and crown land is that when land is held privately, 'regardless of whether or not is is currently being used for agriculture, traditional conservations strategies like setting aside large ecological reserves are typically not possible.'
2. Another thing to remember is the 'need to avoid irreversibility' because of land use intensification. 'That, is, circumstances in which landscapes are so radically altered that t

is almost impossible to restore them because they have been permanently shifted into an alternative stable state.' 'The problems of irreversibility are associated not only with the modification of landscapes and severely impaired ecosystem processes but also future extinction debts, and future exotic species credits.' *Land Use Intensification: Effects on Agriculture, Biodiversity and Ecological Processes* Eds David Lindenmayer, Saul Cunningham and Andrew Young

I have had a quick look at the insightful document by the sadly late Peter Sandell ***2011 'Victoria's Rangelands: In recovery or in Transition?' Report from a Parks Victoria Sabbatical Project*** and I agree with the points made with reference to this document in John Cooke's submission:
-overgrazing esp in drought leads to land degradation and takes decades and huge costs to rehabilitate esp since there is a lack of resources, both financial and manpower
-dams and other sources of stock water allows for even more grazing and overgrazing as well as feral incursions using this handy water source
-cost of rehabilitation outweighs the value of the land
-thus the potential conversion of Pastoral leases to freehold is to be **seriously** questioned as most of this land is already hugely degraded in areas, private land usage is harder to control
-who pays for/does the control of rabbits and goats and other feral and in fact weed control?
-restoration of these areas can only happen with government financial help, but the lack of resources and intentions is already demonstrated in areas around Pooncarrie and Hilston and Cobar (to name a few I have witnessed) with the huge number of goats and rabbits, which basically underline the fact that government laws (if they exist) on ferals do not work, since aren't funded properly and thus the degradation continues unabated
-build carbon levels with government cost sharing, and this would most definitely be better under leasehold tenure most certainly not under freehold tenure

- instead of privatising Pastoral leases the Commission must look elsewhere for the reasons vested interests are stating that leasing prevents increases in business etc. This is a furphy and is set to mislead. See the definition of 'regulatory capture' as it most certainly applies here!
- laws must not be further weakened, in terms of government encouraging massive land clearing under the false premiss that farmers need to do this to make profits and that strict vegetation clearing prevents them from farming-IT DOES NOT-yet another furphy and in fact I have included articles where farmers actually do not agree with weakening native vegetation laws and biodiversity laws!
- like John Cooke I ask the Committee to look at Peter Sandell's document and take serious note of his findings
- the need is for 'reforms that protects Pastoral leases and private land from further degradation and to commence the LONG processes of 'restoration' of semi-arid rangelands' John Cooke

Lack of Indigenous Rights to Land and Water and the threat of extinguishing/selling Pastoral leases (public owned lands, to vested interests)

I am also concerned about the ridiculously small, basically total of 1 page section, on Indigenous land rights, as well as the lack of any treatment of Indigenous rights to water. It is time to deal with the fact that Australia invaded this country, like Indonesia invaded East

Timor, (here too Australia broke ranks with the rest of the world, recognising Indonesian control of East Timor, because they wanted the East Timor sea gas reserves!) and that denying Indigenous title to land and water is simply not acceptable.
All this talk about profits to be made, that regulations inhibit this, thus they MUST BE altered to facilitate what basically amounts to drastic intensification of land uses, resulting in the immense loss of biodiversity, increasing ecological degradation, the sale of our Pastoral leases to satisfy corporate entities, foreign and otherwise or vested interests who see it as conveniently extinguishing native title rights to land AND water.
The fact is that 'activities that affect native title', by amending legislation, by converting Pastoral leases to private land holdings, by entering into these supposed equal land use agreements in management of land and waters, by paying money as compensation for loss to native land and water, is not acceptable and certainly don't comply with any International Indigenous agreements and even Human rights agreements, by failing to take into account and deal once and for all with the full rights of Indigenous people.
Setting one Indigenous group against another seems to be the way that corporations / politicians deal with what they consider as recalcitrant Indigenous groups. A perfect example is James Price Point gas hub, where Santos gave baseball hats with their logo on it to those who agreed with the gas hub there and demonised the group who refused to allow the hub because of their songlines and the dinosaur footprints, and whale breeding grounds close by. The Barnett government renamed the project as one of State significance removing the requirement to consult and listen. This is also an example of 'regulatory capture' and political interference with process. Totally unacceptable.

Surely the Productivity Commission, though named as such is not fixated on profits, on market forces, on ignoring moral obligations to protect our environment with regulations and resourcing these regulations so they actually work. Again, look at Queensland, at NSW and now even the Northern Territory where short term profits, where corporations and vested interests control the regulations that are to be cut and ones that allow them to dictate and do what they want to gain these profits at the cost of Indigenous rights and environmental rights.

We cannot live in a world where government and its policy makers encourages degradation, untrammelled growth, curtail or limit public consultation, don't inform the public, or declare a project of State Significance which allows those vested interests to do what they like!! We must have regulations which don't just look to encourage unsustainable growth, don't just look to deny public participation in decision making, don't just cut 'red tape' to satisfy the immoral wealthy few at the cost of the rest of society. What about Intergenerational equity, about our human right to healthy, vibrant, functioning ecosystem, what about acknowledging the services that nature provide in silence to mankind such as water, air, biodiversity?

Water, a flowing issue: environment v agriculture/ mining/forestry/urban areas

The other issue I have is with people constantly criticising environmental water and the way the MDB Plan is recovering it and its extent. The fact is that the water in the MDB are over-allocated and the degradation of the catchment was because of the greed and irresponsible allocation in the first place as it was predicated on wet years when it was parcelled out. As the Commission states 75% or two-thirds of Australia's water is used in agriculture. The Commission also states that the use of groundwater 'has consistently exceeded 2 million

megaliths a years in recent years and that the CSIRO found that existing extraction rates were likely to be unsustainable in some catchments (7 of 20 in the MDB).
The Commission also states that agricultural production in the southern MDB increase by 2% despite a 14% reduction in water use.

It's a furphy an untruth and is set to mislead the public, when it is stated by vested interest groups (see some articles at the end of my submission) that the loss of jobs and diminishing of towns is due to the almost entirely to the MDB Plan. That pricing is a burden, that water charge rules are a burden, that water markets were distorted by the environmental water.The Commission then falls into the trap laid by these groups who consistently and loudly blame water for the environment by stating that the 'allocation of water to the environment is a potential source of uncertainty for farm businesses which can add to a cumulative sense of regulatory burden.' Yet again forgetting the entire purpose of the Plan which was to REBALANCE the unequal weight of water going to agricultural uses to the detriment of the entire MDB system. People conveniently forget that the entire system nearly collapsed just a few short years ago with the over extractions and the millennium drought. The reports all stated that nearly the entire system was degraded, with loss of wetlands, loss of species, loss of habitat, loss of flows out the mouth taking with it all the salt and chemicals and refuse we still put into the systems.

The other serious issue is this idea of farmers being able to build dams with little or no regulation and with great speed, the idea that diversion of floodwaters across landscapes does not have a serious impact on underground systems and that these floodwaters should be some sort of a secure water right.

The Commission gives an example of a cotton farm near Moree which has 250ha of dams and lots of irrigation channels and the person owning this farm is concerned about changing regulations, and reductions of water allocations whilst liking the ability to trade water. He wants floodwater to be licensed. The 42% reduction of access to groundwater, climate change, drought, and a balancing of water to allow equity for the environment all seems to disallow the farmer to expand and make profits. Being a farmer carries risks, farming is at the mercy of the weather. Just because you have a water right does mean you have automatic access to water all the time, year in year out. Since the MDB water were over allocated this had to be redressed ASAP. The millennium drought was not the fault of the MDB Plan and the sharing of water with the environment. Climate change is not the fault of the MDB Plan, it is the fault of human GHG emissions. The shrinking pool of water available for farmers and the environment to share is not the fault of the MDB Plan. The inability to plant a seasonal crop is not the fault of the MDB Plan. The inability to water permanent crops such as grapes, orange trees, almonds, walnuts, etc is not the fault of the MDB Plan. This is being complained about on the Lower Darling reaches with those in the South blaming those taking water from the top of the system as well as the MDB Plan and environmental water holdings.

The ***2011 Australia State of the Environment Report*** which is again due later this year stated that: 'COAG agreed to a policy blueprint to improve the way Australia manages its water resources-the NWI. All States and territories joined the agreement by 2006.' The NWI was to set up a 'nationally compatible water market-a regulatory and planning-based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes. Water resource development in the MDB has caused major changes in the flooding regimes that support the floodplain wetland systems int

he MDB and these are nationally and internationally important. Grave concerns emerged that the total flow at the Murray mouth was reduced by 61% with the flow through the mouth ceases to flow 40% of the time. Large-scale land clearing for agriculture has been curtailed but the legacy of sedimentation, nutrient enrichment and salivation of rivers is ongoing. Land drainage and clearing for urban expansion place obvious pressures and, in some cases irrevocable impacts on local wetlands and rivers. There are ecological consequences of dished flows of water. one of the NWI's aims was to ensure that flows and levels of water delivered positive environmental outcomes to a system that was in a quantifiable degraded condition because of high levels of water resource development, extended drought, substantial changes to ecosystem functions and declines on many native species populations. ***2011 Australia State of the Environment Report***

Key environmental elements are:
-statutory provision for environmental and other public-benefit outcomes, and improved environmental water management practices
-completion of the return of all currently over allocated or overused water systems to environmentally sustainable levels of extraction
-inclusion of Indigenous representation in water planning; incorporation of Indigenous social, spiritual and customary objectives and strategies; and taking account of the possible existence of native title rights to water.' ***2011 Australia State of the Environment Report***

Conclusion

The following are articles which I believe to be very relevant and demonstrate over and over again that people with a vested interest simply do not care about the impacts to society, to the next generations, to developing countries, to island States which are being inundated, though they might pretend to. (Mr Dutton laughingly said, upon returning from the Pacific Islands not so long ago, that, 'the water was lapping at 'their' feet' the then Prime Minister laughed and Mr Morrison pointed to the microphone above them!) This is the attitude we cannot allow to make decisions for us regarding selling our crown owned lands to private interests, and undermine Indigenous rights to land and water. Have these rights been addressed as required under the various policies?

Does the cutting of 'red tape' create a conflict between our deep moral values versus profiteers ephemeral questionably gained profits? Doesn't society have a right to protect the environment?

The Minerals Council and Farmers Federation and some politicians and others are constantly attacking environmentally minded people and groups, calling them names, denigrating them and trying to get them divested of tax deductibility status. Then as if that wasn't enough they use 'regulatory capture' techniques to change laws to enable fining them or throwing them in jail or arresting them if they stand in the path of a logging truck, or protest against CSG, or yet another hole in the ground for a polluting coal mine, or protest against trawling with huge industrial factory trawlers for fish, or object to clearing huge swathes of land for mono crops, such as cotton, or rice, or almonds, walnuts, etc, or object to the constant criticism of balancing the water accounts so that the environment receives its fair share!

It is time to look at what we value and what we want the world to be like in 20-30-90 years from now. Do we really want population to grow unsustainably? Do we really want to create a

world which is warmer by 5 degrees? Do share holders matter more than equity, justice, and human rights? Do we really believe that the 'market' will solve droughts, solve land clearing damages?

Thank you for the extension. Much appreciated.

Maria IE Riedl

Pertinent Articles Follow

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Chapter 2
Overview of native vegetation, land use and regulatory frameworks in Australia

2.1 This chapter considers the current state of Australia's native vegetation, land clearing and respective legislative and regulatory frameworks.

Native vegetation

2.2 According to the consultation draft of *Australia's Native Vegetation Framework*, native vegetation is defined as all vegetation that is local to a particular site or landscape, including all terrestrial and aquatic plants both living and dead.[1] However, across states and territories, the definition of what constitutes native vegetation differs. The NSW *Native Vegetation Act 2003,* for example, defines native vegetation as 'remnant vegetation, protected regrowth or non protected regrowth'.[2] The Queensland *Vegetation Management Act 1999* defines 'Vegetation' as a 'native tree; or a native plant, other than a grass or mangrove'.[3]

2.3 It is stated in the consultation draft that 'native vegetation sustains Australia's biodiversity'.[4] The Commonwealth Department of Agriculture, Fisheries and Forestry (DAFF) provided the following comments on the importance of native vegetation:

Native vegetation is an important primary production asset providing a range of economic benefits, such as fodder for stock and sustainable forest operations. It also provides other benefits such as clean water, habitat for maintaining beneficial insects for integrated pest management, stock shade and shelter and prevention of soil and water degradation.[5]

2.4 The NSW Department of Environment, Climate Change and Water noted, moreover, that:

Effective retention and management of native vegetation is also critical in the control of erosion, land degradation, water quality and impact of salinity on agricultural urban and aquatic environments. Retention of existing native vegetation is the most cost effective way to protect these critical environmental assets.[6]

2.5 Some witnesses commented on the extent of the loss of native vegetation in Australia. DAFF stated that approximately thirteen per cent of native vegetation has been cleared since 1750 (the internationally recognised benchmark for pre-European native vegetation in Australia), of which eight per cent has been replaced with non-native vegetation.[7] While some 87 per cent of the pre-European native vegetation cover has been retained, its condition is variable, fragmented and often degraded. The consultation draft noted that some

vegetation types are reported as having less than 10 per cent of their original cover with some of those down to less than one per cent.[8]

2.6 The wide-scale clearing of native vegetation was recognised as contributing to the decrease in the number of native species, land degradation and the disruption of many ecosystems. The 2006 Australian State of Environment Committee commented on the impact of native vegetation clearing and stated that:

The most visible indicator of land condition is the extent and quality of vegetation cover. Nationally the picture is deceptive – about 87 per cent of Australia's original native vegetation cover remains, but its condition is variable and masks an underlying issue of the decline of many ecological communities. Some ecological communities occupy less than 1 per cent of their original extent as a result of clearing for agriculture, and many others are highly fragmented. In addition, the components of many ecosystems, especially the understorey in forests and woodlands, have been severely disrupted.[9]

2.7 The Nature Conservation Council of NSW also commented on clearing of native vegetation:

Loss of native vegetation impacts land values in many ways. Subsequent hydrology and salinity changes impact the productivity of the soil, micro climate changes can affect rainfall, loss of scenic amenity can impact non-agricultural and values, loss of fauna that depend on the vegetation for habitat can impact nutrient cycles and pollination. Often the impact is felt away from the area that is cleared. The unmanaged action of one landholder may have significant flow on affects for other land areas. Many land managers understand this and manage the land with conservation practices in mid, however this is not always the case.[10]

Land use in Australia

2.8 Sixty per cent of Australia's land is privately owned and/or managed by different types of landholders including farmers engaged in agricultural production.[11] According to the Commonwealth government, 70 per cent of Australia's land is managed by farmers.[12]

2.9 For the purposes of this inquiry, the term landholder is used generically to describe both freehold owners and leasehold owners of land.

2.10 In 2006–07, approximately 55.3 per cent of Australia was managed by agricultural businesses with the majority of them (67.9 per cent) engaged in grazing on land other than improved pasture. Of the land managed by agricultural businesses:

- 6.2 per cent was used for grazing on improved pasture;
- 8.9 per cent for crops;
- 3.4 per cent was used for conservation; and
- 3.2 per cent for other uses including forestry.[13]

2.11 The committee received evidence of the importance of the agricultural sector not only nationally but as an export industry. According to the NSW Farmers' Association, Australian farmers produce 93 per cent of the food eaten in Australia whilst also exporting 61 per cent of the total agricultural production overseas.[14] The President of the NSW Farmers' Association, Mr Charles Armstrong, commented on the level of agricultural productivity in Australia and its importance to security:

The Australian Farm Institute has done some work in relation to the importance of Australian farmers in terms of feeding. We feed 150 Australians per farmer and, right now, 650 people overseas – projected to go to 850. The important thing about security is really not about supply of food within Australia; it is really about the security of the global picture in terms of people who may not get access to the food that we can supply. With our highly efficient agricultural systems, Australia has a vital role to play. In short, the world needs Australia to keep producing food.[15]

Land clearing

2.12 Between 2000 and 2004, 1.5 million hectares of forest (including both native and non-native vegetation) was cleared across the continent. The 2006 State of the Environment Committee noted that after forest regrowth, the net change was a loss of 287 000 hectares. [16]

2.13 Whilst agriculture has a long history of land clearing in Australia, in recent decades, clearing has declined and farming communities have contributed to revegetation for environmental reasons.[17] According to the Australian Bureau of Statistics, approximately 1.4 million hectares of vegetation activities on private land was undertaken in 2005–06 including 101 hectares of new plantings and 1.3 million hectares of regeneration or enhancement vis-à-vis fencing to prevent grazing.[18] Reductions in land clearing rates since the early 1990s have, according to the Commonwealth Department of Climate Change and Energy Efficiency (DCCEE), resulted from factors including:

...commodity price fluctuations, climatic events and the introduction of new land clearing regulations as awareness of environmental degradation resulting from inappropriate clearing increases.[19]

2.14 According to the DCCEE, land clearing rates in Australia are influenced by factors including market forces, technology change, climatic events including drought as well as government policy.[20]

2.15 There has been much comment on the impact of land clearing of native vegetation. The Wentworth Group of Concerned Scientists, for example, stated:

The clearing of native vegetation is one of the primary causes of land and water degradation and loss of biodiversity in Australia. Broadscale land clearing has led to extensive erosion and salinisation of soils. Erosion and the removal of the vegetation in riparian zones has also reduced the quality of water that runs off the landscape and this in turn has damaged the health of our rivers, wetlands and estuaries. The clearing of native vegetation is also a prime cause of the loss of Australia's unique biodiversity.[21]

Regulatory framework

2.16 State and territory governments have responded to the challenge of the clearing of native vegetation with the establishment of regulatory regimes to control clearing and manage native vegetation, on both public and private land. They hold, therefore, primary responsibility for the legislative and administrative framework within which natural resources including native vegetation rests.

2.17 Mr Ian Thompson, Executive Manager, DAFF stated of the role of states and territories:

Each state and territory has its own suite of policies and legislation for native vegetation, and some of the key similarities include things like: broadscale land clearing is only allowed with a specific permit or licence and often the use of voluntary measures and various assistance schemes to implement that legislation. Some of the key differences relate to the types of native vegetation that might be covered, whether there are objectives referring to climate change, and whether the legislation is coordinated by overarching legislation or incorporated into pre-existing legislation.[22]

2.18 According to the Productivity Commission, the main impetus for the establishment of clearing restrictions has been land degradation and a concern in many jurisdictions that 'levels of remnant native vegetation – especially on private leasehold or freehold land – were approaching critical levels for habitat and biodiversity maintenance'.[23] The Productivity Commission also recognised that such regulation is borne out of a commitment on the part of all Australian governments, through the Natural Heritage Trust, to reverse the decline in the quality and extent of Australia's native vegetation cover.[24]

National Framework for the Management and Monitoring of Australia's Native Vegetation

2.19 In December 1999, the Australia New Zealand Environment and Conservation Council (ANZECC) released the *National Framework for the Management and Monitoring of Australia's Native Vegetation* (the framework) as part of a commitment on the part of the Commonwealth, state and territory governments to reverse the long-term decline in quality and extent of Australia's native vegetation cover. Meeting in December 2001, the National Resource Management Ministerial Council (NRMMC)[25] comprising ministers of primary industries, national resources, environment and water across all jurisdictions, reaffirmed the commitment of all jurisdictions to the framework.

2.20 The framework is designed to provide a means through which native vegetation management commitments on the part of Commonwealth, state and territory governments can be progressed and provides a 'consistent multilateral or national approach for sharing information and experience (particularly related to best practice) over the full range of management and monitoring mechanisms':[26]

The Framework establishes a series of benchmarks for best practice native vegetation management and monitoring mechanisms...It also establishes a national monitoring and public reporting mechanism to demonstrate progress towards reducing the broad-scale clearance of native vegetation, and increasing revegetation.[27]

2.21 In terms of native vegetation, the stated outcomes of the framework are:

- a reversal in the long-term decline in the extent and quality of Australia's native vegetation cover by:
- conserving native vegetation, and substantially reducing land clearing;
- conserving Australia's biodiversity; and
- restoring, by means of substantially increased revegetation, the environmental values and productive capacity of Australia's degraded land and water;
- conservation and, where appropriate, restoration of native vegetation to maintain and enhance biodiversity, protect water quality and conserve soil resources, including on private land managed for agriculture, forestry and urban development;
- retention and enhancement of biodiversity and native vegetation at both regional and national levels; and
- an improvement in the condition of existing native vegetation.[28]

2.22 In April 2008, the NRMMC confirmed the importance of the Native Vegetation Framework as the national policy document for achieving:

- a reversal in the long-term decline of Australia's native vegetation, and
- an improvement in the condition of existing native vegetation.

2.23 The NRMMC directed that a review of the framework be finalised. It endorsed the draft *Australia's Native Vegetation Framework* on 5 November 2009. In February 2010, the NRMMC issued a consultation draft for public comment. The consultation was completed on 7 April 2010. According to the Commonwealth Department of the Environment, Water, Heritage and the Arts (DEWHR), the revised framework will be a guiding national policy document that will:

- guide the ecological sustainable management of Australia's native vegetation and help align efforts to address the increasing challenges of climate change and other threats; and
- take into account new approaches to biodiversity conservation, and align with the revised National Strategy for the Conservation of Australia's Biological Diversity and

Australia's Biodiversity and Climate Change: A strategic assessment of the vulnerability of Australia's biodiversity to climate change.[29]

Commonwealth legislation

2.24 The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) specifies the areas of Commonwealth responsibility for protecting specific matters of 'National Environmental Significance' (NES) across the country and in the surrounding ocean. Any action that is likely to have a significant impact on a matter of national environmental significance requires an assessment and approval under the EPBC Act.

2.25 The 1997 Council of Australian Governments (COAG) Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment identified the eight NES:

- World Heritage properties;
- Ramsar listed wetlands;
- national heritage places;
- listed threatened species and ecological communities;
- migratory species;
- nuclear activities;
- Commonwealth marine environment; and
- Great Barrier Reef Marine Park.[30]

2.26 DEWHR noted that whilst the EPBC Act does not directly regulate native vegetation or contain greenhouse gas abatement measures, it does 'on occasion affect native vegetation clearing but only in the context of regulating actions that are likely to have significant impacts on matters of National Environmental Significance'. According to DEWHR, to date, these have been small in number (63 of the 3409 referrals from the agricultural and forestry sector made under the EPBC Act between July 2000 and March 2010).[31]

2.27 In relation to land clearing, the EPBC Act allows for the lawful continuation of existing land use if it commenced before the EPBC Act came into force on 16 July 2000, 'as long as the use has continued uninterrupted or regularly from before this date and is not an enlargement, expansion of intensification of use that results in a substantial increase in the impact of the use on the land'.[32]

2.28 Where the affect of a minister's decision under the EPBC Act, including those related to native vegetation clearance, constitutes an acquisition of property, subsection 519(1) provides that:

If, apart from this section, the operation of this Act would result in an acquisition of property from a person that would be invalid because of paragraph 51(xxxi) of the Constitution (which deals with acquisition on just terms) the Commonwealth must pay the person a reasonable amount of compensation.[33]

2.29 Further, subsection 519(3) states in relation to determining compensation:

If the Commonwealth and the person do not agree on the amount of compensation to be paid, the person may apply to the Federal Court for the recovery from the Commonwealth of a reasonable amount of compensation fixed by the Court.[34]

2.30 According to DEWHR, no formal claims under section 519 have been made to date.[35]

2.31 The EPBC Act provides a list of Key Threatening Processes (KTPs) defined as a process that 'threatens or may threaten, the survival, abundance or evolutionary development of a native species or ecological community'.[36] If a KTP has been listed, the minister has to determine whether to develop a Threat Abatement Plan (TAP) which establish a national framework to guide and coordinate the Commonwealth's responses to listed KTPs. TAPs are developed where the minister considers that implementation is an effective means of abating

KTPs. DEWHR noted that in April 2001, 'land clearance' was listed under the EPBC Act as a KTP. However, the then minister accepted advice from the Threatened Species Scientific Committee that development of a respective TAP was not necessary given the number of relevant national and state strategies and programs that already address the issue.[37] DAFF continued:

The Threatened Species Scientific Committee recommended that a threat abatement plan was not considered a feasible, effective or efficient way to abate the process. Recognising that each state and territory needs an appropriate response to this key threatening process the Committee further advised the Minister for the Environment that the Commonwealth should encourage and support land management quality assurance and planning mechanisms at the appropriate scales to ensure the conservation of biodiversity, especially threatened species and ecological communities.[38]

Commonwealth non-regulatory framework

2.32 The Natural Heritage Trust (the trust) was set up by Australian Government in 1997 to help restore and conserve Australia's environment and natural resources. One of the Trust's five specific projects was the Native Vegetation Initiative. The trust provided funding for projects at the regional level, as well as at the state and national levels through four programs: Landcare; Bushcare; Rivercare and Coastcare. The community component was delivered via the Envirofund. DAFF provided the committee with details of the trust including the bilateral agreements between the Commonwealth and state and territory governments and the outcomes of phases 1 and 2 of the trust.[39]

2.33 On 1 July 2008, *Caring for our Country* was launched as the Australian Government's new environmental management initiative. It aims to achieve an environment that is 'healthy, better protected, well-managed, resilient and provides essential ecosystem services in a changing climate'.[40] *Caring for our Country* integrates previous federal natural resource management initiatives including the Natural Heritage Trust, National Landcare Program, Environmental Stewardship Program and the Working on Country Indigenous land and sea ranger programs.[41]

2.34 *Caring for our Country* establishes national priorities and outcomes to 'refocus investment on protection of our environment and sustainable management of our natural resources'.[42] The six national priority areas for the first five years (2008–2013) include:

- the National Reserve System;
- biodiversity and natural icons;
- coastal environments and critical aquatic habitats;
- sustainable farm practices;
- natural resource management in northern and remote Australia; and
- community skills, knowledge and engagement.[43]

2.35 The Australian government is engaged in a range of other non-regulatory native vegetation initiatives. In 1992, COAG endorsed the *National Strategy for Ecologically Sustainable Development* which recognised conservation and restoration of native vegetation as one of Australia's key challenges and established a framework for intergovernmental action on the environment. In 1996, COAG subsequently recognised the importance of native vegetation in other strategies it endorsed including the *National Strategy for the Conservation of Australia's Biological Diversity*.

2.36 In 1997, COAG agreed in principle to the *COAG Heads of Agreement on Commonwealth/ State Roles and Responsibilities for the Environment*. Designed to establish a more effective framework for intergovernmental relations, the agreement applied to matters of National Environmental Significance (NES); the environmental assessment and approval processes;

listing, protection and management of heritage places; compliance with state and territory environmental and planning legislation; and better delivery of national programs.[44]

2.37 The 1997 COAG Heads of Agreement set out 23 additional matters of NES where the Commonwealth has 'interests or obligations' including the conservation of native vegetation and fauna, reducing greenhouse gases and enhancing greenhouse sinks. In 1999, in recognition of the COAG Heads of Agreement, such matters of NES were excluded from the list of protected matters that would trigger an assessment and the approval processes of the EPBC Act as 'there was other legislation and other tools such as the Natural Heritage Trust which addressed these NES matters'.[45]

2.38 The Australian government participates in additional national agreements and strategies to improve native vegetation management, many of which are implemented subject to bilateral or multilateral agreements with other jurisdictions.[46]

The regulatory framework of the states and territories

2.39 DCCEE commented on the development of native vegetation regulatory frameworks across the states and territories:

Land clearing has long been recognised as a cause of undesirable impacts on natural resources, including biodiversity loss, soil erosion and dryland salinity. In recent decades state and territory governments have progressively adopted regulatory frameworks for management of native vegetation, in accordance with their Constitutional responsibility for land management. The contribution of land clearing controls to greenhouse gas emissions mitigation has been recognised relatively recently, and is not a primary consideration in those regulatory frameworks.[47]

2.40 Most states and territories introduced regulatory controls in relation to land clearing in the late 1980s and 1990s. All jurisdictions now have established systems whereby permits or approvals must be obtained by landholders wanting to clear native vegetation on their properties.

2.41 In its 2004 report on the impact of native vegetation and biodiversity regulations, the Productivity Commission noted that the 'application and breadth of controls varies significantly across jurisdictions with different requirements applicable to leaseholders and owners of freehold title'. It noted further that:

'Native vegetation' comprises grasses and groundcover as well as trees in New South Wales, South Australia, Victoria and Western Australia; native grassland is excluded in Queensland and (currently) in Tasmania from general permit requirements, although grasses may be protected under threatened species legislation and the Australian Government's Environment and Protection and Biodiversity Conservation Act.[48]

2.42 The following provides a brief overview of state and territory native vegetation regulatory frameworks.

New South Wales

2.43 In New South Wales (NSW), where over 60 per cent of native vegetation has been cleared, thinned or significantly disturbed since 1788, the regulatory framework for native vegetation has evolved over a century of legislation:

- 1901: Western Lands Act;
- 1938: Soil Conservation Act;
- 1979: Environmental Planning and Assessment Act;
- 1995: State Environmental Planning Policy No. 46;
- 1998: Native Vegetation Conservation Act;
- 2003: Native Vegetation Act;
- 2005: Native Vegetation Regulation; and
- 2007: Private Native Forestry Regulation.[49]

2.44 In terms of implementation, under the *Native Vegetation Act 2003* (the Act), clearing remnant native vegetation or protected regrowth requires approval unless the clearing is a permitted activity. The minister has delegated the approval for clearing to the local Catchment Management Authority (CMA), except for Private Native Forestry, where the relevant department is the delegated authority. According to the NSW Department of Environment, Climate Change and Water, CMAs can 'only approval clearing of remnant vegetation or protected regrowth when the clearing will improve or maintain environmental outcomes' whereby 'improve or maintain' means that for clearing to be approved, it cannot result in reduced environmental outcomes.[50] The impact of clearing is measured against four environmental considerations including water quality, soils, salinity and biodiversity (including threatened species).

2.45 The objectives of the Act include that to 'provide for, encourage and promote the management of native vegetation on a regional basis for the social, economic and environmental interests of the State'. It also seeks amongst other things, to 'improve the condition of existing native vegetation, particularly where it has high conservation value'.[51]

2.46 The Department of Environment, Climate Change and Water noted that since the implementation of the Act in December 2005, there has been an overall reduction in the area of land approved for clearing in NSW: in 1999 over 160 000 hectares of land was approved for clearing compared to less than 2000 hectares in 2008 and 2009 respectively under the Act. 1 677 379 ha have been approved for invasive native shrub treatment.[52]

2.47 A review of the Act was undertaken in 2009. The review found that major stakeholders generally agree with the environmental framework set up by the Act and its general philosophy and concluded:

This report identifies the depth and complexity of issues faced in the management of native vegetation in NSW. Whilst no fundamental change in the nature of the Act's framework appears to be needed, this review identifies areas for change that could enhance the current operation of the Act.[53]

Queensland

2.48 The *Vegetation Management Act 1999* (the Act) was proclaimed in September 2000 and regulates clearing on freehold and leasehold land in Queensland. The Act was amended in 2004 and 2008. The aim of the Act is to 'protect Queensland's rich biodiversity and address economic and environmental problems like salinity, soil degradation, erosion and declining water quality'.[54]

2.49 The Act makes certain land clearing 'assessable development' under the *Integrated Planning Act 1997*, for which a permit must be sought, and phased out of broadscale clearing of remnant vegetation by December 2006. It gives most protection to remnant vegetation, that is vegetation which has either never been cleared or has regrown to a specific canopy and height and density to be considered to have the same value as if it had never been cleared.

2.50 The vegetation management framework, through the Act, regulates the clearing of native vegetation mapped as either:

- remnant vegetation on a regional ecosystem map or remnant map; or
- regulated regrowth vegetation identified on a regrowth vegetation map.

The framework also protects woody vegetation on state lands.[55]

2.51 Clearing of remnant vegetation can only occur under a permit or if an exemption applies. Clearing of regrowth can only occur if it is for an exempt activity or the clearing is done in accordance with the regrowth vegetation code.

2.52 Landholders may negotiate and confirm boundaries of assessable regrowth through Property Maps of Assessable Vegetation (PMAV).

2.53 Under the 2004 amendments, financial assistance of $150 million over five years was provided to assist landholders affected by the change to the tree clearing laws. A ballot for the balance of the 500 000 hectares able to be cleared was held in September 2004.

2.54 In 2009 the Queensland Government committed to a moratorium on the clearing of endangered regrowth vegetation while it consulted with stakeholder groups about ways to improve vegetation clearing laws. The moratorium applied to all native woody vegetation within 50 metres of a watercourse in priority reef catchments of Burdekin, Mackay Whitsundays and Wet Tropics and endangered regrowth vegetation across the state, on both freehold and leasehold land. The moratorium covers a million hectares of endangered vegetation.[56]

2.55 In 2009 the Act was again amended. In addition to the existing controls on clearing of native vegetation, controls were introduced for clearing of 'regulated regrowth vegetation'. The new legislative framework requires that clearing of regulated regrowth vegetation only occur in accordance with the Regrowth Vegetation Code and where the chief executive of the Department of Environment and Resource Management that administers the Act has been notified.[57]

Victoria

2.56 The laws for native vegetation conservation and management in Victoria are contained in the *Flora and Fauna Guarantee Act 1988* (the FFG Act), the *Planning and Environment Act 1987* (the PE Act) and the *Catchment and Land Protection Act 1994* (the CLP Act).[58]

2.57 The objectives of the FFG Act are to preserve threatened species and communities and to identify and control processes that may threaten biodiversity. Under the Act threatened species or ecological communities of flora and fauna may be listed with the approval of the minister. Upon listing, an action statement is prepared to identify actions to be taken to conserve the species or community or to manage the potentially threatening process. The minister may also make interim conservation orders to conserve critical habitat of a taxon of flora or fauna that has been listed or nominated for listing, as threatened or potentially threatened. Compensation is payable to landholders for financial loss suffered as a direct and reasonable consequence of the making of an interim order and of having to comply with that order. The FFG Act provides for the implementation of a flora and fauna guarantee strategy.

2.58 The purpose of the PE Act is to establish a framework for planning the use, development and protection of land in Victoria in the present and long-term interests of all Victorians. The Act allows for the minister to prepare or approve standard planning provisions (the Victorian Planning Provisions (VPP)). The VPP require that in planning schemes established under the PE Act, a planning permit must be obtained from local councils to remove, destroy or lop native vegetation. Native vegetation includes all plants indigenous to Victoria, including trees, shrubs, herbs and grasses. Exemptions are available to the requirement to obtain a permit, many of which facilitate normal rural management practices including clearing growth less than 10 years old where the land is being re-established or maintained for the cultivation of pasture; clearing of fire breaks up to six metres wide; and clearing of dead vegetation.

2.59 Landholders may enter into a voluntary Property Vegetation Plan (PVP) with the Department of Sustainability and Environment (DSE) which considers how all the vegetation on a property will be managed over the next 10 years.[59]

South Australia

2.60 The *Native Vegetation Act 1991* (the Act) was proclaimed on 18 April 1991 and controls the clearance of native vegetation in addition to assisting the conservation, management and research of native vegetation on lands outside the National Parks and Wildlife Service (NPWS) parks and reserves system. The major features of the Act are:

- appointment of a Native Vegetation Council (the NVC) which is responsible for decisions on clearance applications and for providing advice on matters pertaining to the condition of native vegetation in the State to the Minister for Environment and Conservation;
- provision of incentives and assistance to landholders in relation to the preservation, enhancement and management of native vegetation;
- encouragement of research into the management of native vegetation; and
- encouragement of the re-establishment of native vegetation.

2.61 Under the Act, all property owners, in matters not covered by an exemption, are required to submit a proposal to the NVC seeking approval to clear vegetation. In deciding whether to consent to an application to clear native vegetation, the NVC must refer to the Principles of Clearance which relate to the biological significance of the vegetation and whether clearance may cause or contribute to soil or water degradation. In its deliberations on clearance applications, the NVC also considers practical aspects of farm management and it may consent to clearance under specified conditions.

2.62 The Act provides for the establishment of Heritage Agreements over areas of native vegetation on private land. In general Heritage Agreements include the following provisions:

- the owner maintains the land as an area dedicated to the conservation of native vegetation and native fauna on the land; and
- the Minister releases the owner from the payment of rates and taxes on that land and may construct fences to bound that land.

2.63 The landholder retains legal ownership of the land under a Heritage Agreement. A Heritage Agreement is registered on the title of the land and passes on to, and is binding on, any subsequent owners for the term of the agreement. Agreements are generally written in perpetuity.[60]

Western Australia

2.64 In Western Australia (WA), the *Environmental Protection Act 1986* (the Act) directly affect native vegetation management. The Act applies to all land in WA, including rural land; urban land; Crown land; roadside vegetation; pastoral leases; land the subject of a mining lease; and land the subject of public works. Native vegetation means indigenous aquatic or terrestrial vegetation, and includes dead vegetation.

2.65 Clearing of native vegetation is not permitted unless:

- a permit to clear has been issued; or
- the activity is of a kind that is exempt from the clearing laws.

2.66 Under the Act, ten clearing principles must be observed when deciding to grant, or refuse, a permit. The principles include that native vegetation should not be cleared if:

- it comprises a high level of biological diversity;
- it comprises the whole or a part of, or is necessary for the maintenance of, a significant habitat for fauna indigenous to Western Australia;
- it comprises the whole or a part of, or is necessary for the maintenance of a threatened ecological community;
- it is significant as a remnant of native vegetation in an area that has been extensively cleared; and
- the clearing of the vegetation is likely to cause appreciable land degradation.[61]

2.67 Conditions on permits may be imposed to prevent, control, abate or mitigate environmental harm or to offset the loss of the cleared vegetation.[62] Clearing is not generally permitted where the biodiversity values, land conservation and water protection roles of native vegetation would be significantly affected.

2.68 Exempt activities include clearing that is caused by the grazing of stock on land held under a pastoral lease.

Tasmania

2.69 In Tasmania, land clearing controls apply to all land, both public and private, and to forest vegetation and threatened non-forest vegetation communities. There are no controls under the *Forest Practices Act 1985* (the Act) on clearing of non-forest vegetation that is not threatened.

2.70 The Act requires of landholders a certified forest practices plan to authorise land clearing to clear trees or to clear and convert threatened non-forest native vegetation. However, under the FP Act, clearing and conversion of threatened native vegetation is not permitted unless under exceptional circumstances.[63]

2.71 Exemptions from the requirement to have a Forest Practices Plan to authorise land clearing include small scale clearing of up to one hectare per property per year provided that the land is not considered 'vulnerable' and time volumes removed or cleared do not exceed 100 tonnes.

Northern Territory

2.72 In the Northern Territory (NT), the *Pastoral Land Act* constrains vegetation clearance for the purpose of agricultural activities other than those related to the primary purpose of pastoral land, that is, pastoralism.[64]

2.73 The *Planning Act 1999* regulates the planning, control and development of land. Permits may be approved for the clearing of native vegetation and may include a schedule of conditions. The NT Land Clearing Guidelines (2010)[65] establish standards for native vegetation clearing. The guidelines recognise that decisions to clear native vegetation are significant because clearing will lead to at least some change in landscape function. The guidelines seek to manage clearing in a way that promotes the greatest possible net benefit from use of land cleared of native vegetation. The guidelines are recognised formally under the *Planning Act 1999* and referenced in the Northern Territory Planning Scheme.

Australian Capital Territory

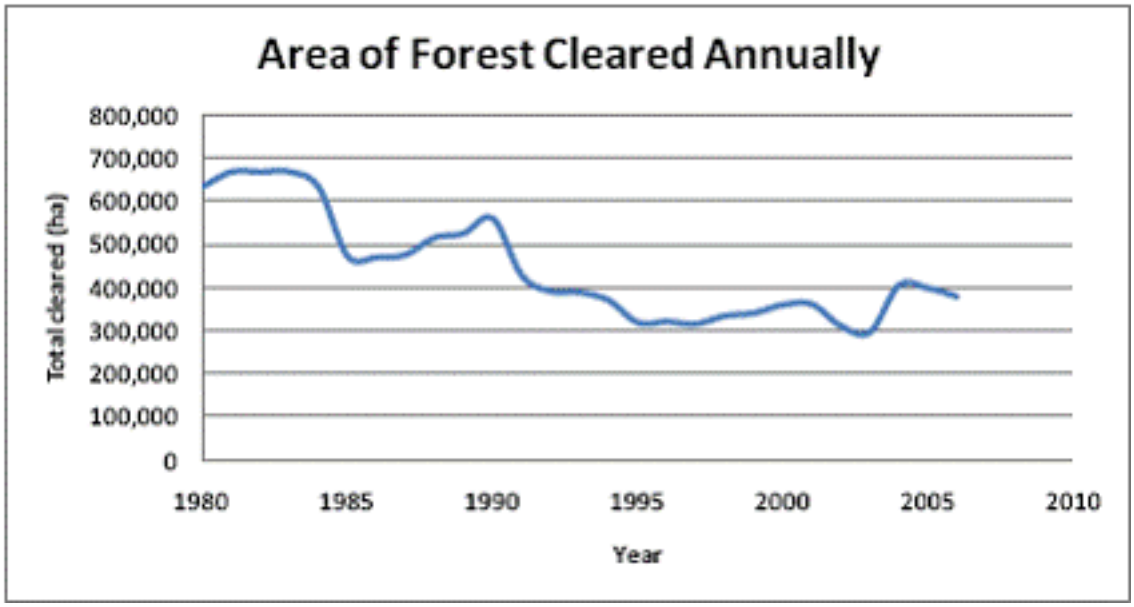
2.74 Native vegetation in the Australian Capital Territory is controlled by the *Land (Planning and Environment) Act 1991* and the *Nature Conservation Act 1980.*[66]

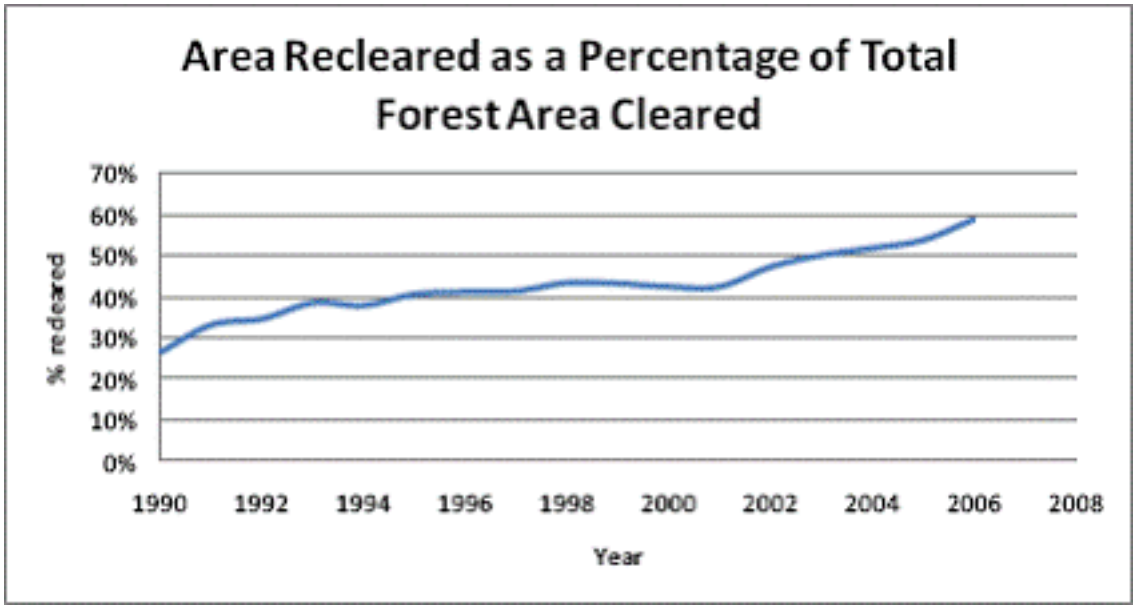
Land clearing and deforestation

2.75 The Kyoto Protocol rules define deforestation as 'the direct human-induced conversion of forested land to non-forested land' in relation to land that was forest on 1 January 1990. According to DCCEE, the Australian definition of a forest for the purposes of Kyoto Protocol accounting specifies a 'minimum area of 0.2 hectares, with at least twenty per cent tree crown cover and the potential to reach a height of maturity of at least two metres'.[67] DCCEE noted that:

Deforestation occurs when forest cover is deliberately removed and the land use changes to pasture, cropping or other uses. Deforestation represents a subset of total land clearing activity.[68]

2.76 DCCEE provided the following graphs illustrating the trend in deforestation activity across Australia. The total area of forest cleared annually includes first-time transition of forested land to other land use and clearing of regrowth on land that was previously forested (reclearing). DCCEE stated that reclearing has increased in proportion to first-time conversion since 1990.





Source: Department of Climate Change and Energy Efficiency, *Submission 235*, p. 3.

2.77 In 1992, the Commonwealth, state and territory governments signed the National Forest Policy Statement (NFPS) which provides a national policy framework for forest management and sustainable timber production on public and private land. The NSW Department of Environment, Climate Change and Water stated that the NFPS:

...seeks to achieve ecological and sustainable forest management (ESFM) and promotes the use of codes of practice to ensure a high standard of forestry operations on private land and to protect the environment.[69]

Private native forest management

2.78 Private native forestry is defined by the NSW Department of Environment, Climate Change and Water as the 'management of native vegetation on privately owned land for the purposes of obtaining forest products on a sustainable basis'.[70] According to the Australian Forest Growers, approximately 38 million hectares or almost a quarter of Australia's native forest estate including woodland, tall eucalypt forests and rainforests is privately owned.[71]

2.79 The harvesting of timber on private land for commercial purposes is regulated in every state and territory jurisdiction with the exception of South Australia and the Australian Capital Territory.[72]

2.80 In NSW, where there is an estimated 8.5 million hectares of native forests in private land, the NSW Department of Environment, Climate Change and Water held that private native forestry is important to the timber industry and to maintain environmental values including biodiversity, water and soil quality, carbon and to prevent land degradation.[73]

Deforestation and greenhouse gas emissions

2.81 In 1990, national emissions from deforestation declined from 132 million tonnes (Mt) carbon dioxide equivalent (CO_2-e) to 77 Mt CO_2-e in 2007. DCCEE noted that much of the reduction in emission from deforestation since 1990 took place before consideration of greenhouse gas emission targets.[74]

2.82 DCCEE noted that the international greenhouse gas emissions accounting framework under the Kyoto Protocol specifies which emissions sources and sinks count toward Australia's target for the first Kyoto commitment period (2008–12). Once land has been deforested, greenhouse gas emissions and removals on that land remain in the national deforestation accounts. Emissions from reclearing, if the land returned to forest following the initial land use change, are included in emissions estimates. Emissions and removals from forest harvest and regrowth where no land use change occurred are not included, in accordance with the Kyoto Protocol rules.[75]

2.83 Emissions over the first Kyoto commitment period are projected to be 49 Mt CO2-e per annum. This represents a 63 per cent decline from the 1990 level. The projections take into account the anticipated effects of recent Queensland and NSW Government vegetation management legislation reforms.

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http://www.abc.net.au/news/2016-07-07/scientists-want-tightening-of-land-clearing-laws-australia/7578922?section=environment

Scientists urge tightening of land-clearing laws in Australia

By Stephanie Smail
Posted 7 Jul 2016, 7:22pm
Thu 7 Jul 2016, 7:22pm

PHOTO: Scientists are worried about the potentially deadly impacts of habitat loss.
(Supplied: Christine Hosking)

Hundreds of high-profile scientists have issued a warning to state and territory governments to tighten land-clearing laws or risk losing precious native species.
The leading conservationists, from Australia and around the world, have issued a declaration to raise the alarm about the potentially deadly impacts of habitat loss.
The petition warned that the New South Wales Government's plans to cut clearing red tape could put more wildlife at risk.
It also expressed concern the Queensland Government's laws to protect vegetation would not pass.
"If we start to relax rules about the clearing of natural vegetation, we are going to lose species, there's no doubt about it," University of Melbourne ecologist Brendan Wintle said.
He has joined hundreds of other scientists in Brisbane this week, presenting research about the impact of habitat loss on native species.
University of Queensland Associate Professor Martine Maron said science was "perhaps being a little sidelined from public debates".
"I think it's just too important an issue to the future of Australia and indeed the world. We're talking about World Heritage matters," she said.
'We want to talk about the science'
The declaration said Australia was one of the world's worst deforestation offenders and called for national reporting of vegetation clearing, better offsets where clearing could not be avoided and restoration of over-cleared landscapes.
Queensland farm lobby group Agforce chief executive Charles Burke argued the status quo was sustainable.
"We want to talk about the science, we want to make sure we stick to the facts and make sure it's not caught up in, sometimes, the conservation rhetoric," he said.
New South Wales Environment Minister Mark Speakman said he was confident with the checks and balances in the new system.
"Yes, it is true that, taken in isolation, any habitat loss is a step backward. But we're aiming for a system that more than compensates for any site-specific habitat loss," he said.
"Our approach involves a massive amount of public investment in new private land conservation.
"Biodiversity's been going backward in New South Wales and farmers have had to deal with excessively restrictive laws. We need a fresh approach."

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http://www.abc.net.au/news/2016-07-05/mining-considered-on-land-bought-by-qld-government/7570228?WT.mc_id=newsmail

Mining considered on Cape York station bought by Queensland Government to protect reef

7.30 Exclusive by the National Reporting Team's Mark Willacy
Updated 5 Jul 2016, 8:27pm
Tue 5 Jul 2016, 8:27pm

The Queensland Department of Natural Resources is considering two controversial applications to mine a river on a sprawling Cape York cattle station, the ABC can reveal.

Key points:

- The applications are to excavate for gold and tin ore in the West Normanby River
- Conservationists describe the plan as "the left hand not knowing what the right hand is doing"
- Conservationists want in-stream mining banned

This is despite the same cattle station being bought last month by the state's environment department in an effort to ensure conservation of the Great Barrier Reef.

The apparent contradiction — one department potentially approving mining, with another department seeking to protect the environment — has been described by conservationists as "the left hand not knowing what the right hand is doing".

The applications propose the excavation of gold and tin ore in the West Normanby River on Springvale Station, which was bought last month by the state for $7 million.

The West Normanby joins the eastern branch of the river before flowing out into Princess Charlotte Bay and the Great Barrier Reef Marine Park.

The Australian Conservation Foundation's Andrew Picone said in-stream mining was from a bygone era and should be banned, especially in reef catchments like the Normanby.

"You do the mining in the dry season, but as soon as the wet season hits, everything is picked up and sent down the river, and down into the lagoons in Lakefield National Park and then out into the Great Barrier Reef in the marine park," he said.

PHOTO: An example of gully erosion at Springvale Station in the upper Normanby basin. (Supplied: Kerry Trapnell)

Jeff Shellberg, a geomorphologist with the Australian Rivers Institute, said just a single alluvial or in-stream mine could create thousands of tonnes of fine sediment a year.

"Basically bulldozers and excavators are brought into the channel, dig up the channel bed, the trees and armour layer of the river are removed and they're trying to access sediment and gold trapped in the sediment in the river bed," said Dr Shellberg.

Local farmer, councillor behind one mine application

Last month the Queensland Government announced it had bought Springvale Station because it was the most eroded property on Cape York, contributing 30-40 per cent of the gully sediment in the Normanby catchment.

"If by buying this property we can drive down sediment at the rate scientists say we can, I think that will be money very well spent," said Environment Minister Steven Miles at the time.

Do you know more about this story? Email investigations@abc.net.au

The purchase was slammed by former local mayor Graham Elmes who grew up on Springvale Station.

Now a state councillor for Agforce, Mr Elmes said the $7 million spent on the property was a "waste of taxpayers' money" and an "absolute joke".

"By the time the sediment gets from there to the Great Barrier Reef there's nothing left of it," he told ABC Radio Far North Queensland last month.

The ABC has since discovered that Mr Elmes and his wife are behind one of the applications to mine the West Normanby on Springvale Station for gold and tin, through their company Isabella Mining Pty Ltd.

7.30 asked Mr Elmes why he had not disclosed that he was seeking to mine on Springvale when criticising the state's purchase of the station.

"Mining has been going on in the area for the last 100 years," he said.

"We have regulations in place to make sure you're not contaminating the river, so we work 100 per cent to those regulations.

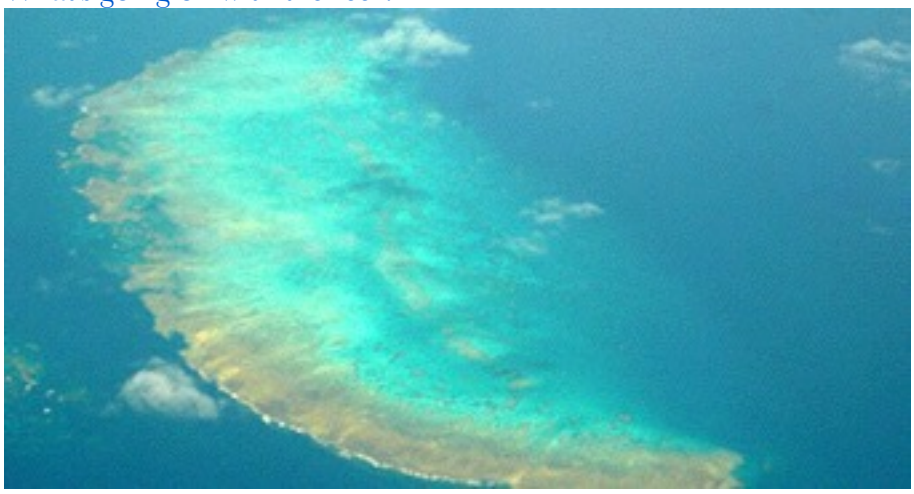
"As you take the material out you return the material from where it's come from and you don't let dirty water get into the main stream of your river."

PHOTO: Kings Plains station is downstream from Springvale. (Supplied: Kerry Trapnell)

Tim Hughes is a director of the independent and not-for-profit South Endeavour Trust, which has bought Kings Plains station downstream of Springvale.
The station is run both as a grazing enterprise and a nature reserve, with extensive work being done to stem sediment flowing from the property, down the Normanby system and onto the reef.
Mr Hughes wants the applications to mine on Springvale refused.

"Why are taxpayers giving us money to reduce sediment? Giving other people money to reduce sediment?" he asked.

"Why are hundreds of millions of dollars being spent on reducing sediment if we're actually providing for other people to create sediment for very, very small private gain and no public benefit? I don't understand it."
Mining applications subject to 'rigorous' assesment
The Department of Natural Resources and Mines told the ABC the in-stream mining applications on Springvale Station were going through a "rigorous and transparent" assessment process.
"This process determines whether applications meet strict environmental, public interest, appropriate land use, compensation, native title and technical requirements," a department spokesman said.
The department is also considering a third in-stream mining application for the Laura River further to the west. The Laura empties into the Normanby River which flows into Princess Charlotte Bay in the reef catchment.
What's going on with the reef?



Take a look at some of the recent news on the Great Barrier Reef as as it becomes the subject of a major federal election funding announcement.

"We get barramundi, catfish in [the river], and freshwater crayfish, turtles," said traditional owner Roy Banjo.
"There are heaps of cultural sites in the area. Where they're planning to mine there are some artefacts there."
"This mining is essentially a third-world kind of country practice operating in a first-world country," said Dr Shellberg of the Australian River Institute.
"Many other countries have banned this kind of mining because of its direct impact on river health and downstream ecosystems."

The ABC contacted the North Queensland Miners Association which represents alluvial miners, but it declined to comment on the applications to mine the West Normanby and Laura Rivers.

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http://www.echo.net.au/2016/07/bairds-biodiversity-laws/

Baird's biodiversity laws for big agribusiness

The public has given a huge thumbs down to the Baird government's plans to weaken environmental controls and accelerate land clearing.

At last count, 5,465 people lodged a submission opposing the package, [1] more than the total number of submissions (for and against) lodged in response to the highly controversial draft Planning Bill in 2013, which failed to pass the parliament. [2]

Submissions on the draft Biodiversity Conservation Bill and the Local Land Services Amendment Bill closed on Tuesday last week after a brief eight-week public comment period.

This is a massive community response that eclipses even the community backlash against the Coalition government's proposed changes to planning laws in 2013, when community opposition rendered passage of the bill impossible.

This shows there is very strong community opposition to Mr Baird's plans to weaken environmental protections and accelerate land clearing for the benefit of developers and big agribusiness.

In the interests of transparency and accountability, we call on the government to make the submissions public as soon as possible.

Our analysis of submissions opposing the bills found the top concerns were: • Loss of wildlife, soil health, water quality, and more salinity as a result of weaker laws.

• The lack of 'no-go zones' where high-quality wildlife habitat is protected from land clearing.

• The broadening of 'self-assessable' codes that let landholders clear trees with little oversight.

• The wider use of 'biodiversity offsets' that let landholders clear trees if they pay money into a fund.

• The removal of a legal requirement to show that land clearing would 'maintain or improve biodiversity' before approval is given.

People are convinced Premier Baird's plans are bad for our threatened wildlife and the communities that rely on healthy soils, waterways and bushland for their survival.

These views are strongly supported by leading scientists and the whole of the conservation movement in NSW. [3]

Given the well-informed concerns of the scientific community and the strength of community opposition, Mr Baird should withdraw his flawed package.

He should either give Local Land Services the resources to work with farmers to make the Native Vegetation Act work better, or go back to the drawing board and develop effective protections for nature within a strong framework for sustainable agriculture in NSW.

Scrapping the Native Vegetation Act and Threatened Species Conservation Act will not help nature in NSW. It would simply further the short-term financial interests of big agribusiness and property developers at the expense of wildlife and communities.

Kate Smolski , Nature Conservation Council CEO

References:

[1] Planning Bill (2013) 4,926 submissions. http://apo.org.au/files/Resource/nsw_white_paper_feedback_report_2013.pdf, p10.

[2] This was the total number of submissions made by supporters of the Stand Up For Nature alliance, which has been campaigning to retain strong land-clearing controls. It is

likely many more submissions opposing the governments proposed changes have been made by people who have not informed SUFN. The government has not yet made public all the submissions received from all sides of the debate.
[3] Wentworth Group of Concerned Scientists warns Baird's biodiversity laws will "increase the rate of species extinctions" http://www.nature.org.au/news/2016/06/wentworth-group-warns-new-laws-will-increase-the-rate-of-species-extinctions/

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http://www.abc.net.au/news/2016-07-06/new-fracking-laws-begin-in-northern-territory/7571978

New fracking laws begin in Northern Territory despite environmental concerns

By James Oaten
Posted 6 Jul 2016, 7:09am
Wed 6 Jul 2016, 7:09am

PHOTO: Some fear fracking will damage the environment in the NT.
RELATED STORY: Bill Shorten supports NT Labor's fracking moratorium
RELATED STORY: Environmentalists question independence of CSIRO researcher into fracking
RELATED STORY: Gas exploration company tries to ease fracking concerns

The Northern Territory's new fracking laws come into effect today but the Government is still investigating options for installing an independent person to oversee applications from energy companies.
The new legislation is an attempt to appease critics that are concerned the controversial method of extracting gas and oil is environmentally dangerous, as the Opposition Labor Party continues to push for a moratorium on the practice.
A cornerstone of the new policy is that fracking companies must convince the Government the risk of environmental damage is "acceptable" and "as low as reasonably practicable".

"One of the major changes to the regulations taking effect today is a move from the Government telling companies how to construct or develop their projects," Department of Mines chief executive Ron Kelly said.
"We've moved to a process where we tell companies what they need to achieve and then it's up to the company to come up with a plan or a process or construction technique that we assess as acceptable.
"An example of that will be ensuring an aquifer will not be contaminated."
During a debate in Parliament, concern was raised that the process lacked transparency, leading to the Minister for Mines and Energy Dave Tollner promising an independent "third umpire".
"In the budget there was the announcement of a chief scientist role in the Northern Territory," Mr Kelly said.
"We're looking at how we can utilise services of that entity as well in overseeing the governance and implementation of our processes here."
Disagreement over need for minimum standards
The Government said it made a "deliberate" move to not prescribe minimum standards but rather to assess each proposal on its merits.
"Whatever we put in as a minimum standard now is what companies will adhere to," Mr Kelly said.
"What we are trying to encourage here is continued improvement and best practice of the operations and the proposed construction techniques."
But independent Member for Nelson Gerry Wood said that did not provide enough certainty and called for a minimum set of standards.
"The integrity of the wellhead is one of the most important things in relation to protecting the environment," Mr Wood said.
"Some of the regulations in Western Australia in relation to oil and gas ... there is a set of guidelines with a clear background to those guidelines.
"Let's set a high standard, if companies can go to a higher standard that's well and good."

Mr Wood said he would continue to work with the Government on the issue, including the promise of an independent inspector to review agreements and mine integrity.
"By having someone independent that will remove any criticisms that [fracking agreements] might be in-house," he said.
"Because people do have concerns and a lot of those concerns are genuine then we've got to make sure things are done correctly and independently."
The new laws will also require the publication of a fracking company's environmental management plan.

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http://www.weeklytimesnow.com.au/news/national/darling-river-set-to-flow-again/news-story/92061a10c63571291616cc2f9afde759?utm_source=Weekly%20Times%20Now&utm_medium=email&utm_campaign=editorial

Dry times: A lunch meeting organised for Greens leader Richard Di Natale was held on the dried-up bed of the Darling River at Tolarno station, at Menindee, NSW, in May. Picture: Adam Yip

Darling River to flow again

CHRIS McLENNAN, The Weekly Times
July 5, 2016 10:17am

WATER will soon flow again in one of Australia's most fabled rivers, the Darling.
Queensland and northern NSW floodwaters are now expected to reach the also dust-dry Menindee Lakes, south of Broken Hill, by next month.
Authorities now expect about 100 gigalitres of floodwater will reach Menindee.
Excited Riverina residents have been tracking progress of the flows down the parched system on social media.
The Darling has been dry for more than six months because of drought and a disastrous decision to drain the shallow Menindee Lakes in 2012 and 2013 to create environmental flows in the Murray River.
Increasing use of irrigation water upstream of Bourke, particularly the massive cotton plantations at Cubbie Station, are also blamed for draining the river.
The crisis saw NSW Premier Mike Baird last month promise to build a 270-kilometre pipeline from Wentworth, on the Victorian border, to Broken Hill at an estimated cost of $400 million.
The NSW Government yesterday confirmed flows heading south down the Barwon-Darling system would provide relief for lower Darling irrigators.

DPI Water deputy director-general Gavin Hanlon said these flows represent the best inflows into the Menindee Lakes system in about three years.
“While we won’t know the precise volumes for a number of weeks, it is expected that at least 100,000 megalitres will reach Menindee,” Mr Hanlon said.

“Flows will be restored to the parched Lower Darling River as soon as practicable, to provide urgent relief for landholders currently doing it tough.
“These flows will provide landholders with domestic and stock water supplies and will replenish the block banks downstream of Pooncarie to support permanent plantings.
“It is expected that the first water will begin to reach Menindee late this week, and that releases to the Lower Darling can safely commence by mid July.
“It is likely an initial pulse will be released followed by lower flows extending well into spring.”
Mr Hanlon said the benefits of widespread rain were being felt right across NSW.
“It is also good news for Broken Hill because it means that surface water supplies can be extended for another year,” Mr Hanlon said.

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http://www.smh.com.au/environment/nsw-landclearing-laws-a-failure-after-even-farmers-come-out-in-opposition-20160628-gptf2v.html

JUNE 28 2016

NSW land-clearing laws 'a failure' after even farmers come out in opposition

Peter Hannam

The Baird government's plan to loosen land-clearing laws in the state may struggle to get through Parliament, with the Shooters, Fishers and Farmers Party indicating they will heed opposition to the new bill from farmers.
NSW Farmers, the industry's peak body, has demanded "drastic changes" to the draft biodiversity bill before it would give its support to cut "red tape" further.

Man on horse crosses Harbour Bridge

Traffic held up in Sydney by farmer seeking to raise awareness about possible changes to land clearing laws in NSW. Vision: Seven Network.
Farmers are angry the draft mapping provided to them to assess whether they could clear native vegetation is proving to be "totally inappropriate and inaccurate", NSW Farmers president Derek Schoen said.
The cost of proofing the maps could run into tens of thousands of dollars on big properties and "would make the exercise unviable", Mr Schoen said.

NSW is keen not to follow Queensland's surge in land clearing after that state eased its laws. Photo: Bill Laurance

"We're ending up with a bill that's even more complex than the previous one," he said, referring to the Native Vegetation and Threatened Species acts the government wants to replace.

Robert Brown, a Shooters, Fishers and Farmers Party MP, said his party's two members would hold off supporting any new bill. "We'll be taking advice from NSW Farmers," he said.

Labor and the Greens oppose the changes, warning the new bill could give farmers too much freedom to clear land, putting threatened biodiversity under further strain. Public submissions closed on Tuesday.

Kate Smolski, chief executive of the Nature Conservation Council, said the draft biodiversity laws were "in tatters".

The NSW government's bid to ease land-clearing laws are under fire even from the farmers' lobby group.

"Now nobody supports this deeply flawed package – not the scientists, not the conservationists, and not even the NSW Farmers, the very lobby group these laws were designed to appease," she said. "This has been an utter failure."

Niall Blair, Minister for Primary Industries, Lands and Water, said the government remains committed to "lasting, transformative reform ... [that] restores the balance between our farming sector and the environment".

"I urge farmers to back a change that has innovation, financial backing, and government commitment to deliver for the future generations of farmers to be able to operate with freedom and a public endorsement as the custodians of the environment," Mr Blair said.

Mehreen Faruqi, Greens environment spokeswoman, said the government had "made a rod for its own back in attempting to appease the NSW Farmers Association who it seems will not accept any environmental protections in NSW, no matter how small".

"Premier Baird must stop fuelling the false premise that environmental protections hurt farmers, listen to the science and stand up to anti-environment extremists in his party," Ms Faruqi said. "We need to end this race to the bottom before it's too late."

Mr Schoen said his group was not "walking away" from the package but wanted farmers' concerns to be reflected in the final bills. These included worries that inspectors would be given "more powers than a policeman" to enter properties, and the unfair onus on farmers to protect biodiversity.

"We're expected to carry the can of those offsets [for clearing land] and manage them for the community," he said. "It's a double whammy."

The government had set the sector a goal of increasing farm output by 30 per cent by 2020 but continued to constrain productivity gains, he said.

Jeff Angel, director of the Total Environment Centre, said the government had opened the way for NSW to head "down the Queensland path" to broadscale land clearing.

"The government needs to make a choice – maintain current environmental laws that protect soil, water, biodiversity and agricultural sustainability or follow the bulldozers clearing tens of thousands of hectares and killing threatened species," Mr Angel said.

"By agreeing to abolish the existing land-clearing controls, Premier Baird opened the door to extremists in the National Party and farming community," he said. "He should think again."

The Nature Conservation Council said it delivered some 4000 submissions on Tuesday from supporters opposed to the proposed changes.

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http://www.abc.net.au/news/2016-06-27/maules-creek-farmer-left-in-limbo-by-nsw-mine-deal/7544518?WT.mc_id=newsmail

Maules Creek farmer left in lurch by NSW Government's mine deal

Australian Story By Jennifer Feller

Updated 27 Jun 2016, 6:26am
Mon 27 Jun 2016, 6:26am

'Limbo Land' - Monday 27 June 8pm ABC TV

Life changed dramatically for the Murphy family when exploration for an open-cut coal mine began right next door to their property at Maules Creek, NSW.
Now that the mine is operating, Pat Murphy claims that he and his family are being affected by noise, dust and blast fumes. He says he wants to move, but that State government regulations have left him in limbo.
Monday 8pm ABCTV http://www.abc.net.au/austory/...

Maules Creek farmer Pat Murphy has criticised the NSW Government's decision to approve an open cut coal mine next door to his property without adequately protecting him.
Key points:

- Mr Murphy says living next to mine has been "a nightmare"
- Would like to relocate, but only real option to sell to mine operator Whitehaven Coal
- Property excluded from enforceable noise, dust limits

Mr Murphy says his family's life has been turned upside down since construction began on the Maules Creek mine in 2014.
Speaking to Australian Story, he said: "Living next to a mine is a nightmare. It's absolutely gut wrenching to realise that I've been stuck in limbo for six years now, since the mine was first announced."

"My family has had to place its life on hold."

Mr Murphy would like to relocate, but said there was little interest in a property located next to a mine.
He said his only real option was to sell to the mine operator, Whitehaven Coal, but he had no bargaining power.
However, by staying on his property, Mr Murphy said he was exposing his family to health risks.
"At the beginning of construction the dust, whilst it was bad, it was nothing like later on as the mine advanced — the dust gradually got worse and worse."
His wife Renee Murphy said noise from the mine was an ongoing issue.
"You know you can't go to sleep at night because of the constant rumble, you can just hear it in the background."

PHOTO: Farmer Pat Murphy says his life has been turned upside down by the mine. (ABC: Jennifer Feller)

Murphys have lack of legal remedies

Mr Murphy said the mine's project approval excluded his property in terms of enforceable noise and dust limits.

"I asked the NSW Department of Planning what they were going to do about the noise from the mine," he said.

"They told me they knew when the project was approved that the noise was going to be excessive and that's the reason they put no noise restrictions in place, instead they gave me voluntary acquisition rights, meaning the right to ask the mine to buy my property.

"Effectively, that was my only option."

PHOTO: Pat and Renee Murphy and their children. (ABC: Jennifer Feller)

Sue Higginson, principal solicitor at the Environmental Defenders Office, is advising Mr Murphy.

She said, unlike his neighbours who had dust and noise limits attached to their properties, Mr Murphy's legal options were few.

"There is no specific actual measure that Pat can go to the courts and hold Whitehaven to account over. Pat has fallen through the cracks when it comes to enforceable limits," she said.

Ms Higginson said if the Government knew that Pat Murphy would be affected, it should have required that his property be purchased before the mine was approved.
"By not putting specific limits for noise and dust on Mr Murphy's property, the Government has authorised the interference with his rights to the quiet enjoyment of his land," she said.
Paul Flynn, CEO of Whitehaven Coal, told Australian Story there was confusion over the issue and said the mine was accountable to Mr Murphy.
"Pat Murphy's properties and all the surrounding properties in the area around the mine have noise and air quality limits applied," he said.
"The requirement for noise and dust as they apply to the mine apply to Pat Murphy's property. And so he gets the benefit as does the rest of the community."
Ms Higginson disagrees, maintaining that Mr Murphy is legally disadvantaged by not having enforceable noise and dust limits on his property.
EPA inspected Maules Creek after dust complaints
The former manager of the Environmental Protection Authority's (EPA) Armidale regional office, Simon Smith, inspected the Maules Creek mine last year after complaints about dust. He was critical of its operations.
"They'd spent too much time trying to get the mine up and established rather than concentrating on the environmental controls and I thought they could do better," he said.
But Mr Flynn has defended the mine's record.
"I'm certainly happy to stand by the track record of the company in terms of compliance since the mine was constructed a short time ago," he said.
"Can we improve? Of course, we should always focus on continuous improvement."
Acquisition policy 'like blackmail': former EPA manager
Ms Higginson said the voluntary acquisition option the Government had given Mr Murphy in place of noise and dust limits was problematic.
"He doesn't have the confidence at this point to trigger the voluntary acquisition process, remembering the final arbiter of the voluntary acquisition process is the NSW Government, the very entity that put him in this position," she said.

PHOTO: The Maules Creek mine has been the subject of numerous protests. (ABC News: Johannah McOwan; file photo)

Mr Smith was critical of the process.

"I've heard that a lot of people aren't happy with the acquisition policy and its outcome. A formula that results in about 1.5 times market value sounds reasonable, but to move to another enterprise is going to cost more than 1.5 times," he said.

He also believes Mr Murphy's hand is being forced.

"The explanation of not providing a limit because the noise was going to be so high ... that's forced acquisition, that's saying to someone well the noise is going to be really high and so therefore you need to go. It's like blackmail."

Mr Murphy has conducted informal negotiations with Whitehaven Coal about the sale of his property to the mine, but to date, a price acceptable to both parties has not been reached.

EPA investigating blast fume complaints

Mr Murphy and his neighbour Lochie Leitch claim that on February 5 this year, they were caught in blast fumes generated by the mine, whilst on their respective properties.

According to Mr Leitch, he was checking sheep in his paddock when he smelled the gas from the blast.

"I saw the dust and I felt pretty dizzy straight away. I hightailed it out of there," he said.

On the preceding day, his wife Sonja Leitch said she experienced blast fumes from the mine.

"I went down to let the chooks out of their house and I heard the blast go off and I looked up and I saw a big plume of grey-yellowish colour coming towards me. I could smell a slight odour sort of like rotten gas I suppose you could explain it," she said.

In relation to those accounts, Mr Flynn said: "I'm not aware of any incidents where they've been affected".

The EPA is currently investigating five blast fume complaints relating to the Maules Creek mine.

Australian Story requested an interview with NSW Planning Minister Rob Stokes but he declined, instead providing a statement.

"The NSW Government understands the impact that mines can have on neighbouring properties — especially when it comes to dust and noise," the statement said.

"In response to community concerns, the Department and Environment Protection Authority have commissioned an independent expert review of dust management and monitoring on the site, and have imposed a requirement for a mandatory noise audit.

"This is in addition to the comprehensive, real-time dust and noise monitoring program has been established around the mine, in accordance with the conditions of approval and approved air and noise quality management plans.

"The results of this monitoring demonstrate compliance with the dust limits in the approval. Compliance with noise limits will be determined once the results of the mandatory noise audit are available."

Farmer riding horse holds up Sydney Harbour Bridge traffic in anti-Government protest

Updated 23 Jun 2016, 2:55pm
Thu 23 Jun 2016, 2:55pm

PHOTO: Glenn Morris rides his horse across the Harbour Bridge this morning. (AAP: Dan Himbrechts)

A beef farmer has ridden his horse across the Sydney Harbour Bridge to protest against new legislation to increase vegetation clearing.

Glenn Morris rode his horse down lane 8 of the expressway about 10:00am as tourists and commuters looked on.

Wearing an akubra, Mr Morris, from Inverell in north-west NSW, saddled up to protest new legislation to increase vegetation clearing, being considered by state and federal governments.

"We need vegetation on farms to protect healthy soils and rivers, and yet the State Government plans to allow important native vegetation to be cleared more easily," Mr Morris said in a statement.

The stunt caused traffic delays on the Cahill Expressway, the Transport Management Centre confirmed.

The centre's Kristen Forbes said traffic flow has since returned to normal.

PHOTO: The anti-Government protest caused traffic delays on the Cahill Expressway. (AAP: Dan Himbrechts)

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https://www.claytonutz.com/knowledge/2016/may/land-holder-rights-in-mining-exploration-broader-than-expected-according-to-nsw-court

26 MAY 2016

Land holder rights in mining exploration broader than expected, according to NSW Court

BY NICK THOMAS, REBECCA DAVIE

This decision may affect the way access arrangements are interpreted, especially whether they cover all relevant "significant improvements".

A recent decision by the Chief Judge of the NSW Land and Environment Court has expanded what many people previously thought was the scope for land owner resistance to mining exploration and operations.
In its decision in Martin v Hume Coal Pty Ltd [2016] NSWLEC 51, the Court provided a broad definition of "significant improvements" on land, which trigger land owner consent rights for mining and coal seam gas exploration and operations.
The decision could have serious consequences for existing and proposed mining and CSG activities.

Exploration rights and land owner consent

The Mining Act 1992 (NSW) does not allow the holder of an exploration licence to exercise any of the rights conferred by the licence over the surface of that part of the land covered by the licence which lies within a prescribed distance of a dwelling-house (that is a principal

place of residence) or garden on that land, or on which there is a "significant improvement", unless the licence holder obtains the written consent of the land owner (or, in the case of a dwelling house, that of the occupant). There is a similar requirement for CSG exploration licence holders in the Petroleum (Onshore) Act 1991 (NSW).

Usually, the licence holder and land owner work out whether there is anything on the land which gives the land owner a consent right and, if so, what may be done on the land which is subject to that right, when they negotiate the land access arrangement which a land owner needs under the Mining Act or the Petroleum (Onshore) Act in order to access the surface of the land. If they cannot reach agreement, they can have the matter determined by an arbitrator or the Court.

The term "significant improvement" is defined under the Mining Act as "any substantial building, dam, reservoir, contour bank, graded bank, levee, water disposal area, soil conservation work or other valuable work or structure".

The potential breadth of the catch-all category "other valuable work or structure" has given rise to some difficult negotiations and a number of disputes between land owners and exploration licence holders. A review by Bret Walker SC in 2014 recommended changes to the definition to clarify the position, and some changes were made by an amending Act in 2015, but they have not yet come into force.

A dispute about "significant improvements"

In this case, Hume Coal and several land owners could not resolve their differences about which parts of the land were subject to the need for land owner consent, owing to a disagreement on what were "significant improvements". The land owners applied to the Court for a ruling on specific works and structures on their land.

A Commissioner of the Court decided that either the works and structures could not be "significant improvements" under the Mining Act definition, or the rights which Hume Coal proposed to exercise over the land on which those works and structures were located were not rights under the exploration licence but instead were access rights under the proposed access arrangement - and so she was not required to determine whether or not the works and structures were "significant improvements".

The Chief Judge of the Court, however, overturned that decision.

A broader view of "significant improvements"

Justice Preston applied previous case law to conclude that each of the works and structures in dispute **could be** "significant improvements".

His key findings, which will re-shape thinking on land owner consent rights, are that:

- the specific types of improvement in this case could be "significant improvements", when many stakeholders have concluded previously that they could not;
- the land owner consent requirement for land on which there is a "significant improvement" applies not only to prospecting activities on the land owner's land, but also applies to access rights on that land; and
- a "significant improvement" can trigger a land owner consent requirement if it is in place any time before the exploration licence holder proposes to use the land on which it has been placed (even if that time is after access arrangements have been agreed).

Justice Preston did not decide that any particular works or structures in this case were in fact "significant improvements" – he ordered that the case be remitted to the Commissioner to make that determination, noting that it is a "question of fact and degree" in each case. We have outlined below the types of works and structures which he considered, and the key reasons he gave for saying that they could be "significant improvements":

- **Paddocks with improved pastures (including lucerne):** paddocks which are the product of sufficient labour done to or on the land so as to make them a "work" or

a "structure" that is both "substantial" and "valuable" can be "significant improvements".

Equestrian cross-country event course: the course is the physical result of labour done on land, and is therefore a "valuable work" (rather than a "use of land"). It could be a "significant improvement" if the labour gave rise to works or structures which were "substantial" and "valuable" enough. The use of the works and structures can indicate that they are valuable.

Irrigation pipes: these should be considered as part of a reticulation system, not as separate components. While a "significant improvement" must be "on the land", this does not necessarily require it all to be on the surface of the land.

Cattle laneways: the laneways in this case could be "significant improvements". The need for land owner consent could be triggered even if the exploration licence holder only proposes to travel (and not "prospect") along those laneways.

Formed roads and driveways: similar reasoning as applied to the cattle laneways applies here.

Fences: not all fences will be substantial and/or valuable so as to make them "significant improvements". It will depend on factors such as the nature, extent and other features of each fence, as well as the property on which the fence is erected and the purpose of the fence on the property.

What does this mean for mining and CSG operators?

The Court's decision will not affect the validity and enforceability of existing access arrangements under the Mining and or the Petroleum Onshore Act. However, it may affect the way in which those arrangements are interpreted, especially whether they cover all relevant "significant improvements".

Exploration licence holders should revisit their proposed access arrangements (and consider revisiting their existing access arrangements), to check whether those arrangements capture all works and structures on the land which might be "significant improvements".

Mining and petroleum lease applicants also should revisit their proposals, because the Mining Act and the Petroleum Onshore Act impose land owner consent requirements for leases over "significant improvements".

All mining and CSG explorers and operators should review the legislative changes which were made in late 2015, and look out for a future commencement date.

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09 MAY 2013

Coal mine extension case has a rich seam of key lessons for environmental lawyers

BY ANDREW POULOS

Where a proposed development has clear and significant impacts on various aspects of the environment it is essential that the mitigation measures proposed can adequately deal with those impacts.

A recent decision not to allow the extension of a coal mine attracted much press, but the decision in Bulga Milbrodale Progress Association Inc v Minister for Planning and Infrastructure and Warkworth Mining Limited [2013] NSWLEC 48 is significant for reasons other than the immediate news value.

The case is significant for what it said about:

where a proposed development has clear and significant impacts on various aspects of the environment it is essential that the mitigation measures proposed can adequately deal with those impacts. Key impacts on biodiversity, noise, dust and social matters could not be adequately mitigated; and

assessing the impacts and the mitigation measures the Court had reference to the principles of ESD.

The proposed extension to the mine

The owners of the existing open cut Warkworth mine sought an extension. The mine operates under a development consent issued in May2003. This contained a number of conditions including conditions requiring conservation of areas of native vegetation and landforms to the north, west and south of the mine designated non-disturbance areas and habitat management areas.

The Project application sought to discharge the obligations under the 2003 development consent to permanently protect certain areas by about half.

Bulga Milbrodale Progress Association Inc commenced proceedings in the Land and Environment Court against the decision of the delegate of the Minister for Planning and Infrastructure, the Planning and Assessment Commission to grant approval under Part3A of the Environmental Planning and Assessment Act 1979 (**Planning Act**).

The appeal commenced by Bulga is known as an "objector" appeal in the Court's Class1 jurisdiction. The entitlement for an objector appeal arises only if certain matters are satisfied. One of these is that but for the operation of Part3A, the Project would be classified as a "designated development" (thus requiring an EIS) and subject to the provisions of Part4 of the Planning Act. Since the repeal of Part3A of the Planning Act objector appeals still exist in respect of State significant development, but not for State significant infrastructure.

The Court's jurisdiction in Class1 matters is a merit review jurisdiction in which the Court exercises all of the functions and discretions of the Minister in respect of the Warkworth project application. In making its decision, the Court is to have regard to any other Act, the circumstances of the case and the public interest (section39(4) of the Land and Environment Court Act 1979).

What did the Court have to determine?

In the context of determining whether or not to grant approval to the Part3A application, the Court considered the:

impacts on biological diversity, including on endangered ecological communities (**EECs**);

noise impacts and dust emissions on the residents;

social impacts of the community of Bulga; and

economic issues.

What are the statutory matters for consideration?

The Court held that the matters to be taken into account when determining whether to approve or disapprove the Project are not only those matters expressly stated in sections75**J**(1) and (2) of the Planning Act, but also those matters which, by implication from the subject matter, scope and purpose of the Planning Act are required to be considered.

Identifying the relevant implied matters is to be assessed by looking at the objects of the Planning Act. It found:

1. the principles of ecologically sustainable development (**ESD**) are a matter to be taken into account as aspect of the consideration of the "public interest"; and

2. public interest includes community responses regarding the Project for which approval is sought, however, a fear or concern without rational or justified foundation is not a matter which, by itself, can be considered as an amenity or social impact.

The Court's power to attach conditions

In terms of the Court's power to attach conditions to an approval it was held that an approval permitting the carrying out of the Project the subject of the application for approval could not have attached a condition **regulating a different project on different land** not the subject of the application for approval.

Significant adverse impacts on biological diversity

The Court held that the Project would be likely to have a significant adverse impact on biological diversity including on four EECs. Those impacts would not be mitigated by the Project, nor would biodiversity offset and other compensatory measures proposed be likely to compensate for the significant biological diversity impacts. In this regard, the Court noted:

1. Around 30% of the main part of the Warkworth Sands Woodlands EEC would be cleared and mined for the Project – a significant amount. It was also noted that a number of areas of EEC were not within conservation reserves or national parks increasing the significance of the loss caused by the Project. In fact, the Court found that the Warkworth Woodlands EEC satisfied the criteria to be listed as critically endangered under the both the Threatened Species Conservation Act 1995 and the Federal Environment Protection Biodiversity Conservation Act 1999 ; and
2. the permanent protection of another EEC (as required in the 2003 development consent) would be impossible as it was within the proposed mine extension.

The Court held that there was no avoidance of impacts on EECs and that there were no avoidance measures adopted by Warkworth to reduce the real risk of extinction of the WSW EEC in the medium term. Importantly, the Court stated:

"There is no priority afforded to mineral resource exploitation over other uses of land, including nature conservation. There must be an assessment of all of the different, and often competing, environmental, social and economic factors in order to determine what is the preferable decision as to the use of land. Warkworth's economic analysis is a tool to assist in the decision-making process, but it is not a substitute or determinative ….. The question of whether there can be avoidance of impacts on components on biological diversity, including on the WSW EEC, is part of the fact finding and consideration of the relevant matters regarding environmental impacts of the Project, which occur earlier in the process of decision-making, and should not be answered by the later tasks of weighting and balancing all of the relevant matters (environmental, social and economic) to be considered by the Court as decision-maker in arriving at the preferable decision."

The efficacy of the offsets

The Court examined the seven areas of existing vegetation communities which were proposed to be conserved in perpetuity as direct offsets and determined that the offset package did not adequately compensate for the Project's significant impacts on affected EECs, nor would the direct offsets provide sufficient, measurable conversation gain for the particular components of biological biodiversity impacted by the Project, particularly the affected EECs.

Noise and dust impacts

One of the key issues in respect of noise was that the noise impacts were considered for both Warkworth and Mount Thorley mines. Each mine is separately owned and has its own separate consent with different noise criteria for residents in Bulga.

Warkworth submitted that the combined approach was justified because of the high number of residents that become entitled to request mitigation or land acquisition than would otherwise be the case for Warkworth alone on the 2003 consent, and noise levels are expected to drop once the operations at Mount Thorley cease.

The legal difficulty confronted by the Court is that it is required to assess the likely noise impacts of the mine that is the subject of the present application and any conditions imposed

on a project approval must relate to that project and be capable of implementation by whomever is carrying out the activities authorised by the approval.
A condition imposed on an approval granted in the proceedings could not purport to impose obligations on the operator of a separate mine (Mt Thorley) that is subject to its own consent. It is unlikely that any such condition would have sufficient nexus with the Project that is the subject of the present proceedings so as to satisfy the relevant legal test which require that the conditions of consent fairly and reasonably relate to the Project. Furthermore, any approval granted to Warkworth for the proposed extension could not require or preclude the operator of Mount Thorley seeking approval to alter its operations or to extend its operations past the expected cessation of that mine in 2017.
The Court concluded that the noise criteria proposed in the conditions of the Project Approval were not appropriate. The noise impacts of the Project on the residents of Bulga would be intrusive and adversely affect their reasonable use, enjoyment and amenity of the village and the surrounding countryside. The noise mitigation strategies were unlikely to reduce noise impacts to levels that would be acceptable and, indeed, could result in greater social impacts.
Furthermore, in relation to equity issues the Court stated that "the costs resulting from the residual impacts will be borne by the residents of Bulga who are the noise receivers, but the benefits of the Project will be enjoyed by others, including Warkworth. The burdened residents of Bulga will not be compensated effectively by Warkworth. There will not be full internalisation by Warkworth of the external costs of the Project, occasioned by its noise impacts, on the Bulga residents".

Dust and air quality

The Court held that combining the air quality criteria for Warkworth and Mount Thorley mines is of doubtful legal validity but in any event it is likely to be difficult to monitor and enforce compliance and as with the noise impacts, no confident conclusion can be reached that the air quality impacts of the Project will be acceptable in practice and with complying with the proposed conditions of approval.

Social impacts

The Court examined the positive and negative social impacts and concluded that "the Project's impacts in terms of noise, dust and visual impacts and the adverse change in the composition of the community by reason of the acquisition of noise and air quality affected properties, are likely to cause adverse social impacts on individuals and the community of Bulga. The Project's impacts would exacerbate the loss of sense of place, and materially and adversely change the sense of community, of the residents of Bulga and the surrounding countryside".

Economic impacts

A decision-maker should consciously address the principles of ESD in dealing with any application or a project under the former Part3A of the Planning Act.
The Court was not satisfied that the economic benefits of the Project outweighed the environmental, social and other costs. In regard to the Input-Output cost analysis the Court found that it only looked at economic impacts, not environmental or social impacts. The Court found that neither the Benefit Costs Analysis (**BCA**) and the Choice Modelling considered adequately or give sufficient weight to the principles of ESD. With respect of intergenerational equity (which involves people within present generation having equal rights to benefit from the exploitation of resources as well as from the enjoyment of a clean and health environment), the BCA and Choice Modelling failed to consider adequately the burdens that would be imposed on some entities, including the people of Bulga and the components of biological diversity in the Bulga environment, and on the ability of those

entities to live in and enjoy a clean and healthy environment. This failure limited the utility of the economic analyses.

Conclusion

The case will be studied closely by many in the environment and planning field for the guidance it gives on the Court's role in reviewing these decisions.

It is also significant to note that the decision to approve may also have been challenged on the basis that it was manifestly unreasonable. This is because the impacts of the proposed development were so significant and that the mitigation measures were insufficient to deal with those impacts that a Court may well have considered that no reasonable decision-maker could have come to the decision that the Minister came to in respect of the Warkworth mine project.

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JUNE 12 2016

NSW farmers stepping up tree felling even before land-clearing laws loosened

Peter Hannam

The state's farmers have lopped paddock trees at an accelerating rate in the past 18 months even before a new land-clearing law eases controls further, government data shows.

The new figures, which reveal the rate of clearing of paddock trees has more than doubled since November 2014, come as the Wentworth Group of Concerned Scientists wrote to all MPs to call for a reversal of "retrograde changes" planned in the new Biodiversity Conservation act.

Farmers have been cutting down paddock trees at an increasing rate. Photo: Scott Hartvigsen
NSW farmers used a new self-assessment code to remove 21,716 paddock trees – or more than 50 a day – over the past year and a half.
The rate, at an average of about 50 per day, was 140 per cent more than the average over the previous seven years, data from the Office of Environment and Heritage showed. Paddock trees, judged to be single or small patches of trees, make up 40 per cent of remaining woodland cover, OEH says.
Satellite monitoring by OEH would probably have detected even more clearing but the public has been left in the dark because the O'Farrell-Baird governments had failed to release a native vegetation report since 2013, Mehreen Faruqi, the Greens environment spokeswoman, said.
The Greens had also sought information on the number of applications OEH received and what if any compliance of the self-assessment codes they conducted, Dr Faruqi said.

"If almost 22,000 trees can be removed under the existing law, then it will be a disaster when new laws that further facilitate land clearing are brought in," she said, adding the latest tree-felling numbers were "the tip of the iceberg".

A spokeswoman for Niall Blair, Minister for Primary Industries, did not address the scale of tree clearing on farms, but said "the proposed Biodiversity Conservation package aims to reverse the decline of biodiversity in NSW because the current system isn't working".
"The NSW Government is currently seeking feedback on the draft reforms and stakeholders including environmental groups and farmers are encouraged to put forward a submission before June 28," she said.
Labor's environment spokeswoman, Penny Sharpe, said the figures "ring alarm bells on how far the current biodiversity laws have already been watered down".

"If these laws proceed in their current form, there will be a return to land clearing on a scale unseen for decades in NSW with catastrophic impacts on native animals, soil, water and greenhouse gas emissions," Ms Sharpe said.

'Weaker protections'

The Wentworth Group was also scathing of the new proposals, warning that "key elements [of the new act] will substantially weaken existing protections" contained within the Native Vegetation and Threaten Species acts which will be replaced by the new Biodiversity Conservation act.
The group's criticism carries additional weight because one of the signatories to the letter is Professor Hugh Possingham, a member of the Biodiversity Review Panel that reviewed the existing legislation.
The proposed law contains three major flaws including a weaker set of codes that would permit more broadscale land-clearing, a lack of mapping of areas of high conservation value, and its $240 million plan to reward private landholders protecting native vegetation on their properties may end up as "a taxpayer subsidy to farmers to degrade land", the group said.
"The watering down of laws to stop broadscale clearing is driven by a small handful of property owners who believe they have the right to do whatever they wish, irrespective of the long-term damage this might cause to the rest of society," the scientists said.
Mark Speakman, environment minister, said he had noted the scientists' concerns.

"There are a range of diverse views on the proposed reforms," he said. "The draft reforms are designed to protect biodiversity and create the best possible outcomes for the environmental future of NSW."

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http://www.smh.com.au/nsw/land-clearing-bill-not-enough-according-to-farmers-20160506-gont8w

MAY 7 2016

Land clearing bill not enough, according to farmers

Stephen Jeffery

Monaro farmers say more fine-tuning is needed to ensure the NSW government's planned overhaul of land clearing laws allows them to clear invasive pests.
The state government this week unveiled a draft bill Environment Minister Mark Speakman described as striking a balance between improved environmental outcomes and cutting red tape for farmers.

Proposed NSW laws would change the system of land clearing regulation for farmers. Photo: Andrew Quilty

If passed, it will replace the Native Vegetation Act and relax the laws surrounding land clearing, creating a self-regulatory framework for farmers.
Maps will be developed dividing the state's land into three categories: exempt areas, regulated areas requiring approval before native vegetation can be cleared, and patches governed by other laws.
Four codes will also govern different levels of land clearing, ranging from low-level maintenance for building fences up to large-scale farm planning.
NSW Farmers Native Vegetation Working Group chairman Mitchell Clapham said the bill would affect native grasslands more than any other area in the Monaro region.

However, he said the Office of Environment and Heritage used a "flawed" proxy relying on the level of soil disturbance or cultivation to determine whether or not an area was of high conservation value.
"In areas where you have exotic or invasive weeds that are marching across the landscape, and they may well be coming across in a native pasture that has never been disturbed," he said. "That will come up in the OEH's model as of high conservation value, when it's nothing of the sort."

The association will hold a public meeting in Cooma on May 18 to discuss the bill, but Mr Clapham said only "boots on the ground" could ensure areas were correctly classified.
The government has attempted to offset the relaxed laws with $240 million over five years to encourage private land conservation, as well as a $100 million "Save Our Species" fund.
Biodiversity offsetting "deals" could also be struck between farmers and authorities, while the former would also have the opportunity to instead pay through a Biodiversity Conservation Fund for additional land clearing privileges.
Mr Speakman said the laws would not follow Queensland's example, where a similar change in legislation led to the clearance of 300,000 hectares of bushland in a single financial year.
"We have tough measures to protect endangered ecological communities supported by Commonwealth protections that will conserve our biodiversity for future generations," he said.
In the ACT, native vegetation is covered by a range of Commonwealth and territory laws.
Clearing native flora is permitted for routine agricultural practices, but only if it affects the minimum extent necessary to perform the work.
The NSW proposal has drawn criticism from conservation groups, who claim it will lead to mass land clearing.
Nature Conservation Council chief executive Kate Smolski said the bill, if left unaltered, did not leave enough safeguards for environmental protection.
"It is unacceptable to trade binding legal protections for funding promises that are not enforceable by law," she said.
"A funding promise is worthless without a legislative guarantee."

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http://www.abc.net.au/news/2016-08-19/queensland-parliament-tree-clearing-laws-fail-unesco-fears/7765214

Queensland tree clearing laws fail to pass Parliament in blow to minority Labor Government

By Gail Burke
Updated about 11 hours ago
Fri 19 Aug 2016, 7:35am

PHOTO: Latest figures showed that 296,000 hectares of woody vegetation was cleared in 2014-15. (Jon Coghill)
RELATED STORY: Queensland Government pushes for change as tree clearing increases
RELATED STORY: Hundreds rally ahead of marathon debate over Queensland's tree-clearing laws
RELATED STORY: Independent MP offered apparent sweetener for tree clearing law support
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The minority Palaszczuk Government has failed to get enough support from the crossbenchers to pass its toughened tree clearing laws, a defeat which it says will put the Great Barrier Reef at risk of losing its World Heritage listing.
It is the first time the Labor Government, elected 18 months ago, has failed to get its own bill through the house.
The reforms would have reversed the onus of proof to require landholders to prove they had not illegally bulldozed their land.
It was an election commitment after the former Liberal National Party relaxed the rules.
After a fiery debate spanning two nights, former Labor MP turned independent Billy Gordon voted with the Opposition and the two Katter's Australian Party MPs late last night to block the move - 44 to 42.
The Government had offered Mr Gordon a last-minute apparent sweetener, a deal to review Indigenous land development.
However, he said the laws did not strike the necessary balance between Indigenous economic development, protecting the environment and supporting farmers.
Queensland 'not up to saving reef'
Deputy Premier Jackie Trad said laws were vital to ensure UNESCO did not list the reef "in danger".

> "It shows that the Queensland Parliament as it is, with a hung parliament, is not up to the challenge of enacting laws that will save the Great Barrier Reef," she said.

Ms Trad said the Government would continue to use administrative powers to crack down on tree clearing.
"Clearing in Queensland is happening at an unsustainable rate now; almost 300,000 was cleared in the last financial year," she said.
"That is almost back to the same level as Labor inherited back when we first started trying to protect native vegetation from broadscale tree clearing."
Ms Trad said last night's vote was a vote to protect the Great Barrier Reef.
"It was a disappointing result and more than anything it damages this incredible world icon," she said.
"Now we need to explain to the global community that while the LNP have abandoned the reef plan. The Palaszczuk Government remains 100 per cent committed.
"Understandably some stakeholders will urge the World Heritage Committee to reconsider the decision of 2015 not to de-list the Great Barrier Reef from the World Heritage List."
Vote will not jeopardise reef: LNP
The Opposition's Natural Resources spokesman, Andrew Cripps, said common sense had prevailed.
"I am very pleased that the deliberate scare mongering and misinformation that was distributed by Labor ... did not cut through with ... the critical members of the crossbench, whose votes were very decisive in the final result," he said.

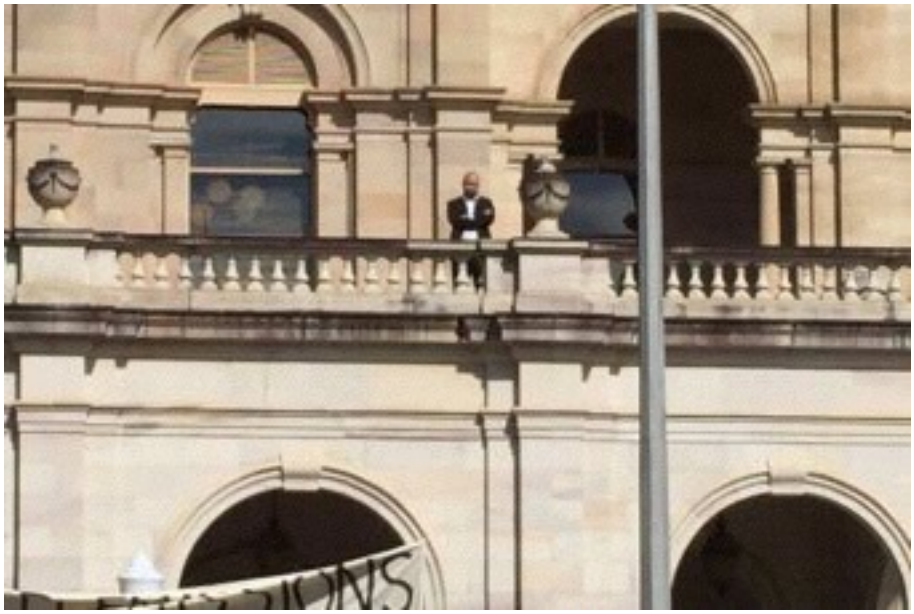

PHOTO: Mr Gordon watched supporters of the laws rally outside Parliament on Wednesday. (ABC : Chris O'Brien)

"I'm confident if objective sincere analysis of Queensland's vegetation management framework is put forward to UNESCO, and not with rose coloured glasses, then they should be confident there is a rigorous framework in place for the protection of Queensland's native vegetation and the framework that we have does not contribute adversly to the health of the Great Barrier Reef, in particular water quality outcomes. "

Environment Minister Steven Miles said thousands of jobs could be lost if the reef is de-listed when UNESCO next meets.

"Studies show World Heritage listing can increase tourism by about 25 per cent," he said. "Now, there hasn't been a lot of de-listings, so it's hard to tell what the exact influence will be ... if we were to lose that World Heritage status it would say to people that maybe the reef isn't that special anymore."

He said Labor was committed to changing the laws and would make it an issue at the next election.

"The tragedy here is that it could be 18 months before we have new land clearing laws in place, and in the meantime something like 450,000 hectares of forests in Queensland will be cleared," he said.

From other news sites:

- **The Courier-Mail:** Tree-clearing laws: Billy Gordon cuts down Labor
- **Brisbane Times:** Queensland government looks to UNESCO as tree clearing laws stumped
- **Queensland Country Life:** Trad says new tree laws are a moral obligation to future generations

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https://theconversation.com/land-clearing-in-queensland-triples-after-policy-ping-pong-38279

Land clearing in Queensland triples after policy ping pong

March 18, 2015 12.44pm AEDT

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Disclosure statements:

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Jonathan Rhodes receives funding from the Australian Research Council, Australian Commonwealth Government and the Queensland Government.

Recent increases in land clearing threaten Queensland's biodiversity. Bill Laurance

In 2013, a group of 26 senior scientists in Queensland (including ourselves) expressed serious concern that proposed changes to vegetation protection laws would mean a return to large-scale land clearing. The loss of these protections followed a Ministerial announcement in early 2012 that investigations into and prosecutions of illegal clearing would be halted.
Our statement of concern pointed out that tens of thousands of hectares of Queensland's woodland and forests were being lost every year, even before the vegetation protections were wound back. Just two years later, it appears we must now measure the annual losses in hundreds of thousands of hectares.
Last month, early figures were reported suggesting that 275,000 hectares were cleared from Queensland in the last financial year – a tripling of land clearing rates since 2010.

The re-acceleration of land-clearing in Queensland puts Australia on the world stage. Bill Laurance

Land clearing is the main cause of biodiversity loss. It also exacerbates erosion and salinity, reduces water quality, worsens the impacts of drought, and contributes significantly to carbon emissions. Indeed, vegetation protection laws enabled Australia to meet its Kyoto Protocol target for emissions reductions.

Australia already has alarmingly high rates of land clearing. And Queensland is responsible for more land clearing each year than any other state. So, the re-acceleration of land clearing in Queensland puts the state on the world stage – and not in a good way.

Playing policy ping-pong

How did we get to a situation where land clearing rates in a country like Australia—wealthy, developed and once a global conservation leader—are increasing, rather than declining? Regulation and enforcement play an important role.

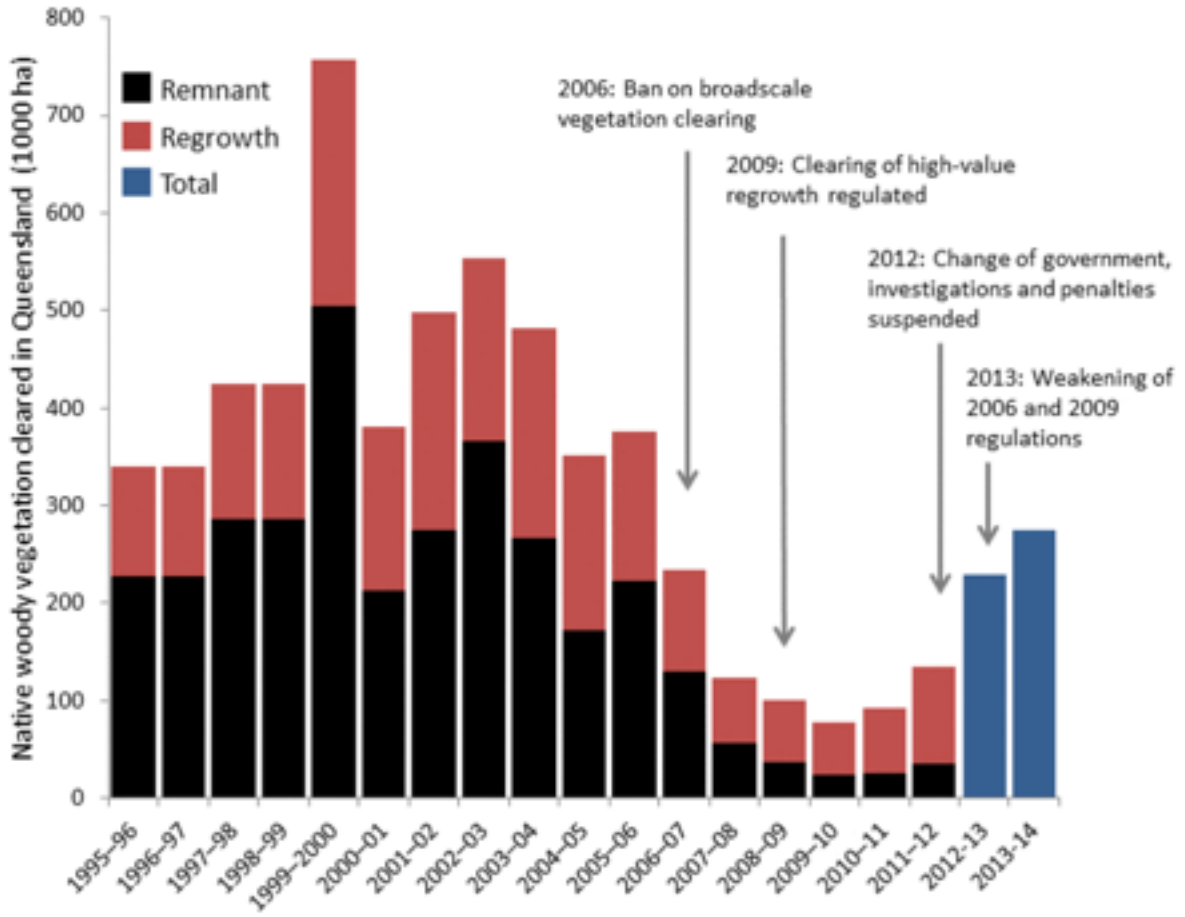
Deforestation-related legislation in Queensland started with an amendment to the Land Act in 1994. Over the next 18 years, governments across the political spectrum progressively strengthened protection of native vegetation.

High rates of deforestation persisted until the Vegetation Management Act was amended and broadscale clearing of remnant (old-growth) forest and woodland was phased out by 2006. But many ecosystems had already been so heavily cleared that their recovery would depend on retaining older (more than 20 years old) regrowth vegetation.

Protection of both this old regrowth of endangered ecosystems, and the protective regrowth along watercourses, was introduced in 2009. Queensland finally had an enforceable system to regulate the clearing of almost all native vegetation. The result was a dramatically lowered loss rate during 2006-2011.

But in 2012, a newly elected Liberal-National government rapidly set about watering down many aspects of environmental legislation. The Vegetation Management Framework Amendment Act 2013 brought back broadscale land clearing for agriculture, and the protections for high-value regrowth on freehold and indigenous land were removed.

Now, a minority Labor government has been elected, amidst promises to reinstate environmental protections. But a recent ministerial announcement appears to signal some backpedalling.



History of vegetation clearing in Queensland showing recently-reported increased clearing rates in blue from http://www.queenslandcountrylife.com.au/news/agriculture/general/healthcare/drought-drives-mulga-hunger/2724451.aspx. data: SLATS/Queensland Country Life

Why should we worry?

Until the full reports from the Statewide Landcover and Trees Study are released, we cannot know how much of the recent land clearing consists of remnant and high-value regrowth habitat, or how much was legal. However, last year, a single approval allowed the clearing of 28,000 hectares of remnant habitat. That single loss on its own exceeds the annual loss of remnant vegetation statewide in the two years prior to 2012.

There are many reasons to be concerned about the long-term impacts of increased deforestation. These include dire consequences for our unique biodiversity. There are 778 species listed as "Vulnerable" or "Endangered" in Queensland. Loss of habitat is a major threat to most of them. In addition, 45% of Queensland's ecosystems are threatened because of land clearing.

To give just one well-known example, the current population trend of Queensland's Koalas would see them disappear from parts of the state within a decade. Maintaining sufficient habitat is critical. Koalas rely on the forest and woodland that is left to survive droughts, stay safe from ground-based predators and cars, and to have enough food.

Loss of koala habitat increases their vulnerability to other threats, such as cars. Graham van der Wielen, CC BY-NC-SA

The same challenges are faced by numerous other species. When habitat is permanently removed, the animals that lived there die – or move elsewhere to displace others.
The consequences of further deforestation for stream and river health and atmospheric carbon levels are similarly worrying.
In attempts to redress the damage done by past habitat loss, landholders across the country have been working for decades to replant trees and restore land. A national program seeks to plant 20 million trees over four years at a public cost of A$50 million. But this is dwarfed by the 50 million-plus trees lost to clearing in just one year, in one state - Queensland.
Weakening of habitat protections was rationalised by its proponents as achieving a better "balance". But for most vegetation communities, the ecosystem services that they perform, and the threatened species they contain, the balance was tipped long ago. We're in danger of "balancing" our rare ecosystems and species into extinction.

Queensland land clearing is undermining Australia's environmental progress

February 22, 2016 6.04am AEDT

Land clearing rates in Queensland tripled since 2010. Martin Taylor, Author provided

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Disclosure statement

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Bob Pressey receives funding from the Australian Research Council and the National Environmental Science Program. He is a scientific advisor to WWF-Australia and member of the North Queensland Conservation Council.

Carla P. Catterall receives funding from the Australian Research Council and other nonprofit sources. Her research group investigates how changes to land and forest cover interact with wild plants and animals. She is a past president of the Ecological Society of Australia and has affiliation with various ecological, conservation, and ornithological societies.

Clive McAlpine receives funding from The Australian Research Council

Hugh Possingham receives funding from The Australian Research Council, The Australian federal environment department and a variety of other sources through The University of Queensland. He has a 20% position at Imperial College London. He is affiliated with Bush Heritage Australia (Board of Directors) and The Wentworth Group (Founding Member). He provides pro bono advice to a wide variety of organisations. He is currently on an independent advisory panel assisting the state of NSW with their biodiversity legislation.

James Watson receives funding from the Australian Research Council. He is the Director of Science and Research Initiative at the Wildlife Conservation Society.
Jonathan Rhodes receives funding from the Australian Research Council, the Queensland Government, the New South Wales Government and the Australian Government.
Kerrie Wilson receives funding from the Australian Research Council, the National Environmental Science Program and philanthropic bodies.
Marc Hockings receives funding from the Australian Research Council, the New South Wales Government, the International Union for the Conservation on Nature and various international organisations.

Land clearing has returned to Queensland in a big way. After we expressed concern that policy changes since 2012 would lead to a resurgence in clearing of native vegetation, this outcome was confirmed by government figures released late last year.
It is now clear that land clearing is accelerating in Queensland. The new data confirm that 296,000 hectares of bushland was cleared in 2013-14 – three times as much as in 2008-09 – mainly for conversion to pastures. These losses do not include the well-publicised clearing permitted by the government of nearly 900 square kilometres at two properties, Olive Vale and Strathmore, which commenced in 2015.

AUGUST 18 2016 - 9:06PM

Queensland government looks to UNESCO as tree clearing laws stumped

Amy Remeikis

The Queensland Government is understood to be seeking to meet with UNESCO representatives, as it deals with the fall-out from its first major legislative defeat in the hung parliament, over laws it had promised the world heritage governing body would be in place to protect the Great Barrier Reef.
The Queensland Government's submission to the UNESCO committee looking at whether to list the reef, which is worth billions of dollars to the Queensland economy, as 'in danger' included a commitment to crack down on land clearing within the reef catchment, in an attempt to limit sediment run off.

Jackie Trad, Deputy Premier of Queensland, right, and Cameron Dick, Queensland Minister for Health at a protest this week of about 150 people who support reforming tree clearing laws. Photo: Andree Withey/ABC

But the legislation, which had been an election promise, to reinstate the laws the LNP had loosened to give landholders more control when it came to clearing native vegetation, faced strong opposition from farmers, agricultural lobby groups, the LNP, indigenous groups and in the end, the independents which the government needed to pass it.

After first believing it had Billy Gordon's vote, having made a commitment to explore the development and sustainability future of the Cape York, the Cook MP announced during the debate he would not be supporting the laws. The loss of his vote instantly lost the minority government the fight, with the LNP having already secured the Katter Party vote, bringing their numbers to the magic number of 45.

RELATED CONTENT

MP Billy Gordon fells Qld vegetation laws

Habitat loss threatens Qld species further

It became clear on Wednesday night the laws might not pass, prompting the government to begin investigating actions it could take with UNESCO, the federal government and within this term of parliament to meet its obligations.

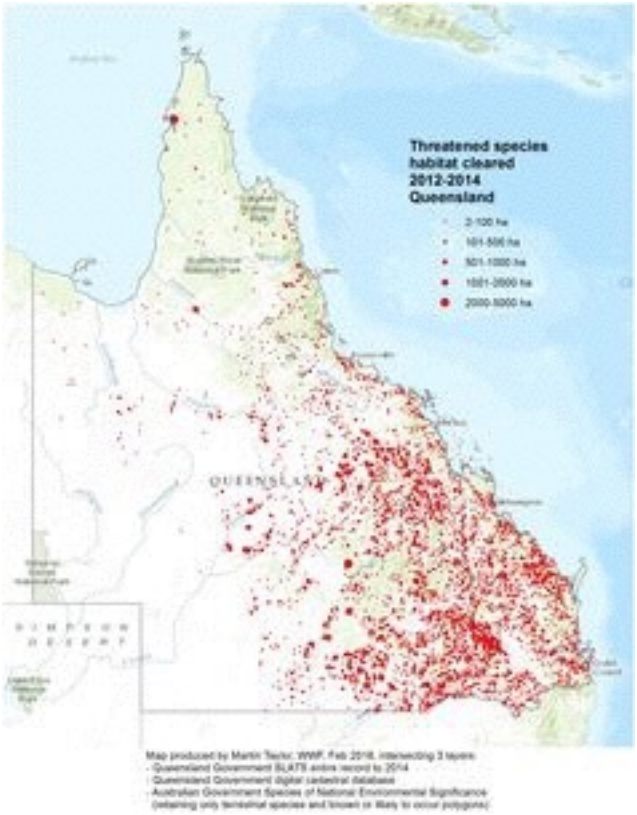
Labor plans on using the laws to boost its green credentials at the state election. But Deputy Premier Jackie Trad said the government would not be abandoning its commitment to the Reef 2050 plan.

"First and foremost we want to protect the reef and the jobs it supports. There are 69,000 jobs and $6 billion dollars at stake if we don't act," she said.

"While the LNP have abandoned the reef plan, the Palaszczuk government remains 100 per cent committed. This has been Labor Party policy for more than a decade and I can assure Queenslanders that if we are not successful tonight we remain committed to protecting native vegetation and saving the reef.

"We will also implement all of the other commitments we made in the reef plan and will do what we can to limit land clearing in Queensland."

The government is understood to be weighing up its next move.



Map showing the amount of habitat for threatened species cleared between 2012 and 2014. WWF

Alarmingly, the data show that clearing in catchments that drain onto the Great Barrier Reef increased dramatically, and constituted 35% of total clearing across Queensland in 2013-14. The loss of native vegetation cover in such regions is one of the major drivers of the deteriorating water quality in the reef's lagoon, which threatens seagrass, coral reefs, and other marine ecosystems.

The increases in land clearing are across the board. They include losses of over 100,000 hectares of old-growth habitats, as well as the destruction of "high-value regrowth" – the advanced regeneration of endangered ecosystems.

These ecosystems have already been reduced to less than 10% of their original extent, and their recovery relies on allowing this regrowth to mature.

Alarmingly, our analysis of where the recent clearing has occurred reveals that even "of concern" and "endangered" remnant ecosystems are being lost at much higher rates now than before.

While this level of vegetation loss and damage continues apace, Australia's environmental programs will fall well short of achieving their aims.

Nutrient and sediment runoff, exacerbated by land clearing, is one of the major ongoing threats to the Great Barrier Reef. Great Barrier Reef image from www.shutterstock.com

Neutralising our environmental programs

Land clearing affects all Australians, not just Queenslanders. Australia spends hundreds of millions of dollars each year trying to redress past environmental damage from land clearing. Tens of thousands of volunteers dedicate their time, money and land to the effort.

But despite undeniable local benefits of such programs, their contribution to national environmental goals is undone, sometimes many times over, by the damage being done in Queensland.

Take the federal government's 20 million trees program. At a cost of A$50 million, it aims to replace 20 million trees by 2020 to redress some of the damage from past land clearing.

Yet just one year of increased land clearing in Queensland has already removed many more trees than will be painstakingly planted during the entire program.

The Australian government's Emissions Reduction Fund (ERF) is paying billions of dollars to reduce carbon emissions from industry. But the carbon released from Queensland's land clearing in 2012-2014 alone is estimated at 63 million tonnes, far more than was purchased under the first round of the ERF (at a cost to taxpayers of A$660 million).

Species cannot recover if their habitat is being destroyed faster than it is being restored. But under Caring for our Country and Biodiversity Fund grants, the extent of tree planting to restore habitat across Australia reported since 2013 is just over 42,000 hectares - an order of magnitude less than what was cleared in Queensland alone in just two years.

And it will be many decades before these new plantings will provide anything like the environmental benefits of mature native vegetation.

Glossy black-cockatoos are one of the species threatened by Queensland land clearing. David Cook/Flickr, CC BY-NC

Land clearing between 2012 and 2014 in Queensland is estimated to have wiped out more than 40,000 hectares of koala habitat, as well as habitat for over 200 other threatened species. Clearing, along with drought (which is also made worse by clearing), is the major cause of an 50% decline in koalas of south-west and central Queensland since 1996.

The loss of remnant habitat, especially from forests along waterways, means more habitat fragmentation. This is a further threat to many species of wildlife, and it hampers our ability to adapt to a rapidly changing climate.

The federal government has committed hundreds of millions of dollars to improve reef water quality. Yet ongoing land clearing in reef-draining catchments will reverse many of the gains these programs aim to achieve. Last year, Queensland's Auditor-General reported that stronger legislation would be essential to reducing harmful catchment runoff to the Great Barrier Reef.

Prevention is better than cure

We live in an era of tightening carbon budgets, declining land-production capacity and rapidly deteriorating biodiversity, including in iconic places such as Great Barrier Reef. The evidence is clear that we cannot continue to degrade our environment without severe consequences.

It is far more efficient to prevent environmental damage than to try to reverse it later.

Koalas have declined 50% in Queensland over the past 15-20 years. Mike Locke/Flickr, CC BY-ND

For example, the cost of stabilising river-banks following deforestation can range from A $16,000 to A$5 million per kilometre. Natural ecosystems contribute enormously to the economy in ways that are often unrecognised.

We are running up a large environmental debt that will eventually have to be paid by all Australians, one way or another.

And some damage, like the loss of a species, is irreversible.

Previous native vegetation laws had successfully reduced land clearing, but were reversed in 2013 by the former Newman government.

The current Palaszczuk government in Queensland has repeated its election promise to re-strengthen native vegetation protections. The amendment bill is due to be introduced to parliament within weeks.

But the minority government relies on the votes of cross-benchers to pass its legislation–so for now, the future of some of Australia's most precious environmental assets remains uncertain.

EDO Qld.
Environmental Defenders Office
Using the law to protect our environment.

19 August 2016

Queensland Parliament fails to pass land clearing Bill

The Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016 was defeated last night in Parliament by two votes.

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https://techliberation.com/2010/12/19/regulatory-capture-what-the-experts-have-found/

Regulatory Capture: What the Experts Have Found

by ADAM THIERER *on* DECEMBER 19, 2010 · 6 COMMENTS
[*Note: This post is updated regularly as I discover relevant old or new material.*]

"Regulatory capture" occurs when special interests co-opt policymakers or political bodies — regulatory agencies, in particular — to further their own ends. Capture theory is closely related to the "rent-seeking" and "political failure" theories developed by the public choice school of economics. Another term for regulatory capture is "client politics," which according to James Q. Wilson, "occurs when most or all of the benefits of a program go to some single, reasonably small interest (and industry, profession, or locality) but most or all of the costs will be borne by a large number of people (for example, all taxpayers)." (James Q. Wilson, *Bureaucracy*, 1989, at 76).

While capture theory cannot explain all regulatory policies or developments, it does provide an explanation for the actions of political actors with dismaying regularity. Because regulatory capture theory conflicts mightily with romanticized notions of "independent" regulatory agencies or "scientific" bureaucracy, it often evokes a visceral reaction and a fair bit of denialism. (See, for example, the reaction of *New Republic's* Jonathan Chait to Will Wilkinson's recent *Economist* column about the prevalence of corporatism in our modern political system.) Yet, countless studies have shown that regulatory capture has

been at work in various arenas: transportation and telecommunications; energy and environmental policy; farming and financial services; and many others.

Call for more Indigenous people to help manage homelands

By Jane Bardon
Updated 14 Jul 2016, 11:22am
Thu 14 Jul 2016, 11:22am

PHOTO: The Waanyi and Garawa clans have signed an agreement parts of the Gulf country. (ABC News: Jane Bardon)

Scientists are urging the Federal Government to help more Indigenous people move back into their homelands, to help improve the management of some of Australia's most pristine landscapes and biodiversity hotspots.

On the Northern Territory-Queensland border, the Commonwealth has declared support for the latest in a network of Indigenous Protected Areas (IPAs), which make up 40 per cent of Australia's Reserve System.

The Ganalanga Mindibirrina IPA covers 11,000 square kilometres of the Nicholson River Basin, monsoon forests, spinifex grasslands and black soil plains deep in the southern Gulf of Carpentaria.

Ecologist and Research Fellow Sean Kerins from the Australian National University (ANU) helped to broker the deal with the Commonwealth along with the Northern Land Council.

He is calling on the Federal Government to do more to protect the area from wildfire, feral animals and weeds than its current commitment of funding five Indigenous ranger jobs.

"It's just so important to remember that the fire work is being done on behalf of all Australians in terms of reducing greenhouse gas emissions," Dr Kerins said.

PHOTO: Waanyi traditional owners want more ranger jobs created for their young people. (ABC News: Jane Bardon)

He said Aboriginal people were happy to partner with the Federal Government.
The clans who own the land and traditionally lived on it, in tiny outstation communities, are the Waanyi and Garawa.
Waanyi traditional owner Iris Hogan has been involved in the clans' long struggle to get their land included in Australia's reserve system.

"People are coming back into the land and today's a very special day," she said.

Over decades most of her people left the land, as the Federal and Northern Territory governments defunded local schools and jobs programs.
Iris Hogan stayed on and said she hoped more families will be financially supported to return from the towns they currently live in, including Doomadgee in Queensland, and Borroloola and Tennant Creek in the Northern Territory.
"We're really hoping to get some more funding so we can have fencing and have our cattle and vegetable garden or whatever to live out here," she said.
As people who had hunted and controlled wildfires moved off the landscape, feral animals moved in, damaging biodiversity and sacred sites.

PHOTO: There have been calls for more women to help protect sacred sites. (ABC News: Jane Bardon)

Traditional owners established a small ranger program which has made some improvements to biodiversity, since wildfires burnt out 16,000 square kilometres and neighbouring cattle stations in the early 2000s.

Waanyi traditional owner Topsy Green wants that expanded to offer opportunities to the clans' young women to help protect sacred waterholes which are being fouled by feral cattle, pigs and horses.

"We've got our fire rangers, the guys, but we want more ladies to join in the fire rangers, so they can protect our sacred sites, women's sites," she said.

Ms Hogan also wants more jobs to draw young people away from the problems of the towns they live in.

"We've lost nearly half of our generation to petrol sniffing, drunkenness," Ms Hogan said. "Half of our generation is killed, murdered because of drunks, and we want to bring them home now where they've got their right mind and living culturally and respecting culture and elders."

Some of the young Waanyi and Garawa women who returned to the area for the declaration celebration were given a chance to get involved in biodiversity studies being run by Bush Heritage Australia and the Australian National University.

Ms Green's granddaughter Kaitlyn Green said getting involved in trapping and identifying lizards had opened her eyes to the beauty of her family's country and its animals.

"When I was back home I wasn't very interested in lizards but I've found very different lizards out here, which I've never seen before," Ms Green said.

"I'd like to have a full-time job doing this, I really like it."

Ecologist Terry Mahney from Charles Darwin University said more surveys were needed to map the area's populations of threatened and vulnerable species, and design management programs for them.

"There's a range of species which are threatened, that could be here including Carpentaria grass wrens, Carpentaria rock rats," he said.

PHOTO: The Ganalanga Mindibirrina IPA covers 11,000 square kilometres. (ABC News: Jane Bardon)

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http://www.ntnews.com.au/news/northern-territory/traditional-owners-in-katherine-and-ngukurr-regions-threaten-legal-action-over-gas-exploration-deal/news-story/d175983549558c538d1ce5f8fc42e98e

Traditional owners in Katherine and Ngukurr regions threaten legal action over gas exploration deal

ZACH HOPE, NT News
June 28, 2016 3:34pm

TRADITIONAL owners in the Katherine and Ngukurr regions are threatening legal action to halt a historic and much-heralded gas exploration deal involving Gina Rinehart's mining companies.

The NT News can reveal traditional owners from the Alawa, Kelweyi and Mangarrayi land trusts will today use a scheduled Northern Land Council meeting to demand a review of the agreement and accuse the NLC of failing to properly consult.

NLC chief executive Joe Morrison rejected the accusation as the work of environmentalists fostering a "rising tide of confusion" among traditional owners.

Northern Land Council CEO Joe Morrison.

The exploration deal for Hancock Prospecting's Jacaranda Minerals and Minerals Australia over more than 6500sq km of Aboriginal-owned land in the McArthur Basin was announced in March last year as the first gas exploration permit on NLC-managed Aboriginal land.
It was promoted by the NT Government as a win for jobs and the economy, and as a breakthrough in co-operation between traditional owners, mining companies, government and the NLC. But traditional owners soon after began calls for a review of the consultation and demanded copies of the deal they signed.
"We are in agreement that the process and risks of onshore shale gas fracking and the scope of work plan was not explained to us. We believe there has been a failure to undertake proper consultation," read the most recent of several letters signed by traditional owners and sent to the NLC and Chief Minister Adam Giles since April last year.
Northern Territory Frack Free Alliance spokeswoman Lauren Mellor said traditional owners and members of the land trusts were refused copies of the agreement.
She said 350 people were now under legal representation in a bid to have the deal reviewed. She said it had the potential to reach the High Court.
The NLC yesterday maintained consultation had been extensive between 2010 and 2013, and included presentations from the miners and explanations of processes.
"The NLC are concerned the traditional owners' informed consent is being muddied by third parties who have got vested interests," Mr Morrison said. "If any of those third parties have got concerns ... they should approach the NLC and not traditional owners."

Talking Point: Cultural voice for Tasmania's World Heritage

EMMA LEE and FIONA HAMILTON, Mercury
July 16, 2016 12:02am

UNESCO'S World Heritage Committee has given its support to the federal and state government decisions that the Tasmanian Wilderness World Heritage Area country is to be jointly managed with Aboriginal people, stating that the agreement is "exemplary".

The World Heritage Committee, in its annual meeting in Turkey, has required that a detailed cultural values assessment be undertaken over the next two years and that Tasmanian Aboriginal people be heavily involved in the Tourism Master Plan. However, the time gap between the cultural values assessment and the application of those findings for a Tourism Master Plan needs to be addressed.

What is of particular concern, and noted by the World Heritage Committee at the same meeting in regards to Canada's First Nations people, is the trend towards "Disneyfication" and the distortion of genuine traditions by contemporary groups for "therapeutic purposes" masquerading as tourism.

We see these ideals already taking shape in TWWHA country and surrounding protected areas, such as the Tarkine. The recent proposal for a $150 million Cradle Mountain tourism development in TWWHA country has not involved our people, leaving one to wonder at the proponents' timing before official joint management under the new Plan of Management. Similarly, the election pledge by the Greens for tourism and increasing TWWHA country boundaries has made clear that our people are to be used as things for wilderness branding. These groups and proponents value our heritage as unspeaking items, but will not acknowledge our people as active participants in caring for country. We are not concrete lawn ornaments to be moved about at the whim of non-indigenous tourism proponents, but a culture of people connected to an extraordinary 40,000 years of history.

There are several international and national charters, such as the United Nations Declaration on the Rights of Indigenous Peoples, which specifically state that we, as indigenous people, own our intellectual property, including language and culture.

TWWHA country and the Tarkine are not imagined places for a branding exercise that can be flogged off to salve elite, privileged tourism.

We will not populate their postcard images and key-ring ornaments for mass consumption. Joint management does not mean we are here to pimp a wilderness brand, or any other brand that does not respect our right to decide, manage and declare our cultural badging and promotion.

The World Heritage Committee's decision has made clear the new Plan of Management for TWWHA country is not an end point, but the start of our participation in promoting the area's cultural outstanding universal values.

For example, the committee has recommended that TWWHA country has a dual name to recognise that wilderness is not the only a promotional brand. The committee also states that it is our right to "seize employment and income opportunities" under the Tourism Master Plan.

We want to conserve our culture and country, and we want to promote enduring relationships with our tourism partners. However, in the absence of the updated cultural values assessment, we must not be left behind and at the mercy of elite wilderness views that exclude us and our neighbours from working together to build regional development in TWWHA country.

In resetting the relationship with our people, the Tasmanian Government has decided that there are far bigger brands than wilderness alone that will make our state the most attractive place to visit.

Equity, inclusion, participation, regional development and sustainable, shared futures are a superior badge of quality to lead our tourism and conservation initiatives, rather than the pathetic attempts to appropriate our culture and people as wilderness mascots.

With the ongoing support of government, and the safety of the World Heritage Committee watching tourism decisions, our regions will do just fine in defining the cultural branding that promote our unique place and people.

Emma Lee is the spokeswoman for melythina tiakana warrana Aboriginal Corporation, and Fiona Hamilton is principal of Cultural Business Innovation Tasmania.

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http://www.lexology.com/library/detail.aspx?g=24a992e3-a50a-43c8-b455-50863fb3db57&utm_source=Lexology+Daily+Newsfeed&utm_medium=HTML+email&utm_campaign=Australian+IHL+subscriber+daily+feed&utm_content=Lexology+Daily+Newsfeed+2016-08-05&utm_term=

Water rights and trading in Australia

King & Wood Mallesons
Australia August 3 2016

Water access rights are core assets for many agribusinesses. In the Australian Water Markets Report 2012-2013, the National Water Commission estimated that the value of water entitlements in the Murray-Darling Basin (MDB) is approximately $13 billion. Trading in water has become commonplace, not only for water users but increasingly for speculators or companies whose core business is not water or land related. With more than a decade of trading under our belt, in this article we look at the benefits and challenges of trading water and what we might expect the regulators to do next.

What's happened so far?

Since 1994, all state governments have reformed their water laws to separate water rights from the land, to implement water allocations and entitlements and to put in place trading rules within the context of water resource management plans.

Water entitlements are rights to an ongoing share of the total amount of water available in a water resource or system. Water allocations are the actual amount of water available under water entitlements in a given season. During the year, water is allocated against entitlements by state governments in response to factors such as changes in rainfall and storage levels. Allocations for the environment are also created to support the health and longevity of rivers and groundwater basins. Both water entitlements and water allocations are tradable, with the number of trades in water allocations in the MDB being around 5 times the number of trades in water entitlements.

For the last decade, water reform in the MDB has been a key priority of the Commonwealth Government. Often referred to as the "food bowl" of Australia, the MDB is jointly managed by the Commonwealth, New South Wales, Queensland and South Australian Governments along with the independent MDB Authority through the Basin Plan 2012. New South Wales, Queensland and South Australia remain responsible for managing water resources within their jurisdictions, but have agreed to implement the Commonwealth MDB Plan, including its new cap, by 1 July 2019.

Progressive reforms in the MDB water trading market have improved its operation and increased trade, making it one of the most sophisticated water markets in the world. Improved trading rules, a central online access point for comparing water products and the development of an MDB compliance strategy have all contributed to its success. With the release of the Government's White Paper on developing water resources in Northern Australia over the next two decades, we can be sure that there is more reform to come.

Has water trading been beneficial?

With additional water resources being required to serve a growing population, food production must compete with other sectors such as manufacturing and energy generation for water allocation.

The idea behind water trading is that the creation of a price signal encourages the most efficient water use, improving the resilience of the agricultural industry to drought and shifts in commodity supply and demand. A recent survey of participants suggests that the experience of water trading in the MDB has been a largely positive one – with individual farmers and large corporates alike believing that the market has allowed people to find the highest value for their water, so that each megalitre produces the most earning capacity for the industry.

Studies have found that the ability to trade water has allowed irrigation industries to maintain income during times of drought. There is evidence of other economic benefits as well, such as allowing farmers to improve their security and commercial certainty and some (although unquantified) environmental benefits (such as flow management and buy-backs of water entitlements for environmental purposes).

What's the downside?

Despite the success of water trading, there are lingering barriers to its effective operation. One issue is the high administrative cost of participation, made harder by the overlapping rules and regulations of the various states involved.

There is also a perceived lack of confidence among some that water allocations are being effectively enforced. Some people query whether the New South Wales Department of Primary Industry Water (DPI Water), the state water regulator, has the resources needed to stop people illegally extracting water, thus avoiding the need to purchase allocations. DPI Water is aware of these concerns and has concentrated greater effort recently on compliance technology in particular, installing improved metering on licenced water extraction sites.

Another key concern is the accurate measurement of extractions. The age, lack of proper maintenance and installation of many water meters mean they have questionable accuracy, with one study suggesting an average of 2.2% under-reading of volume extracted. If this were confirmed and acted upon by the regulator, DPI Water estimates that it could see up to a $21 million write-down in the value of the water trading market. Perhaps unsurprisingly, increased accuracy of water metering is largely supported by water allocation users.

According to Dr Cameron Holley, other concerns relate to the unequal operation of different water markets across Australia, different levels of investment in water efficiency infrastructure between regions and the uncertain environmental impacts of the regime.

Where to from here?

Better public access and searchability of water rights registers are areas in need of improvement. Improved compliance measures and a greater focus on the accuracy of meters would also assist the long-term viability of the water trading market. The anticipated commencement of the Commonwealth trading rules in 2019 will bring greater certainty about the future, but for now, the water market is showing signs of good health and presents an interesting, portfolio-diversifying investment opportunity for both land based and non-land based industries.

King & Wood Mallesons - Debra Townsend and Odette Adams

http://rightnow.org.au/opinion-3/the-right-to-a-good-environment/

The Right to a Good Environment

BY BRIDGET LEWIS

By Bridget Lewis. *This article is part of our August theme, which focuses on the environment and human rights. Read more articles on this theme.*

The idea of a human right to an environment of a particular quality has gained traction over recent years with academics and NGOs alike. It has been employed to bolster demands for greater action by governments on environmental issues, including climate change, and is often referred to in terms which suggest its existence, content and applicability are beyond doubt. Yet an examination of human rights law indicates that the enforceability of such a right is far from clear cut, particularly in countries like Australia, which are not part of the major regional human rights regimes.

All persons have the right to a secure, healthy and ecologically sound environment

One of the earliest formulations of the right appeared in the concluding document of the UN Conference on the Human Environment, held in Stockholm in 1972. Principle 1 of the *Stockholm Declaration* stated that:

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.

The next major step came in 1994, with the publication of the UN *Draft Principles on Human Rights and Environment*, which proclaimed that "all persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible."

Since then, references to the right have appeared in a range of international instruments, regional treaties and national constitutions, although the definitions of the right vary broadly

from one document to the next. The *African Charter on Human and Peoples' Rights* states that "All peoples shall have the right to a general satisfactory environment favourable to their development." The *San Salvador Protocol to the American Convention on Human Rights* guarantees that "Everyone shall have the right to live in a healthy environment and to have access to basic public services." The *Aarhus Convention*, to which 46 European states are parties, provides that:

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

In addition to these regional treaties the right has been included in one form or another in a growing number of national constitutions. A recent survey I conducted found that 59 national constitutions guarantee a right to a good environment in some form, while 104 constitutions impose an obligation on governments to protect the environment.

Despite the apparent widespread acceptance of the right, there is no broadly applicable multilateral treaty which guarantees it, and therefore no law which would extend the right to Australia. Further, proposals to have the right declared in international law confront a number of theoretical and practical challenges, meaning that any further development of the law in this area faces a bumpy road at best.

One of the chief criticisms of a proposed right to an environment of a particular quality lies in the difficulty of defining the scope of the right with adequate precision. The brief overview given above demonstrates just some of the variety in existing formulations of the right, and there are many more to be found in the various non-binding international legal instruments and national constitutions. Scholars who have advocated for greater recognition of the right refer variously to a right to a good environment, a decent environment, a secure environment, a clean environment, a healthy environment, a healthful environment or an ecologically balanced environment, to name just a few. Each of these formulations is open to interpretation, leaving the precise scope and content of the proposed right quite unsettled.

The fate of the right to an environment of a particular quality will rest on the will of states and their citizens to acknowledge … the significant role that the environment plays in facilitating the enjoyment of all human rights

The problem of defining the right is linked closely to the question of what the right is intended to achieve. Human rights law already recognises the importance of a healthy environment to the enjoyment of a wide range of our fundamental rights, including the rights to health, food, water and to life itself, as well as the rights of Indigenous communities. Further, there have been cases overseas where human rights tribunals have held that environmental harm amounts to a violation of human rights. The environmental dimensions of existing human rights are reasonably well-defined and understood, and a number of leading scholars have argued that introducing a new right to a good environment which merely restates or duplicates existing protections would be redundant. Proclaiming a new and arguably unnecessary right in this context would risk undermining the existing human rights framework. So presumably the new right is intended to guarantee something beyond that which is already protected by human rights law – that is, a right to a good environment *per se*, independent other human needs. However, this raises the problem of identifying what the appropriate standards are for a "good environment", and how to balance that objective against other human rights, including the right to development.

Another definitional problem relates to identifying who the appropriate rights-holders and duty-bearers would be. This is particularly evident when one considers that much of the

environmental degradation which is taking place today will impact more severely on future generations, raising the question of whether human rights obligations can be owed to individuals not yet born. Further, environmental damage caused by pollution or global warming is frequently cumulative and trans-boundary in nature, presenting challenges to the traditionally state-centric system of human rights where duties are owed by states towards their citizens or those within their jurisdiction. As well as raising questions about who bears the responsibility for protecting the right to a good environment, there are also significant challenges for enforcing the right, since questions of causation and proof are frequently complex, particularly in the context of environmental harm caused by greenhouse gas emissions.

One significant criticism of the idea of a human right to an environment of a particular quality is that the right inappropriately constructs the environment as something which exists for the benefit of humans, rather than something which of inherent value. It has been argued that this prioritises humans' interest in the environment above the rights of other species or ecosystems, and perpetuates the attitude which has been at the root of much of the environmental degradation we have seen to date. The counterpoint to this argument comes from human rights purists, who argue that unless a "good environment" is defined by reference to human interests then it cannot properly be called a "human" right. This conceptual difficulty is unlikely to be resolved any time soon, and it highlights the fact that, while human rights and environmental protection are arguably mutually supportive objectives with much common ground to be explored, they nonetheless emerge from very different theoretical foundations.

Ultimately, the fate of the right to an environment of a particular quality will rest on the will of states and their citizens to acknowledge the intrinsic value of the environment to all human beings, and the significant role that the environment plays in facilitating the enjoyment of all human rights. A clearly-defined and practically enforceable right in a multilateral human rights treaty may be a long way off. Howeverthe incremental growth of the right through regional instruments and national constitutions suggests there is potential to explore the relationship between human rights and environmental protection, and for the two disciplines to find ways to support each other in achieving their respective goals.

Bridget Lewis is a Lecturer at the Queensland University of Technology Law School. Her main area of research is international human rights law, with a particular focus on environmental human rights. She is currently completing a doctoral degree on the topic of the human right to a good environment, its status in international human rights law and its implications for climate change migration and adaptation strategies.

http://ewater.org.au/h2othinking/?q=2011/07/cultural-value-water

THE CULTURAL VALUE OF WATER

Aboriginal fish trap by Jacqui Badland

"We (Aboriginal people) come from the land and we belong to the land" (Anonymous comment from 'Feedback from Murray Lower Darling Rivers Indigenous Nations (MLDRIN) information session' on the Basin Plan, Oct 2010, Murray Darling Basin Authority).

As the driest inhabited continent, the rivers of Australia have been the focal point of life for up to 60,000 years, playing an important role in Aboriginal social life and identity. By changing how, when, and where rivers flow, water resource development has affected the way Aboriginal communities interact with the landscape.
Despite this, there is little Indigenous participation in water planning and management as well as limited capacity and understanding within water agencies about rights or values. In 2009, Jackson and Robinson (Report for the Northern Australia Land and Water Science Review) explained that: 'Indigenous rights and interests in water governance and management have been neglected in Australia. This is reflected in low rates of Indigenous access to water, participation in water management institutions and Indigenous awareness of water reform objectives and processes.'
A 2010 CSIRO Scoping Study for the Murray-Darling Basin Authority looked at the effects of changes in water availability on the people of the Murray-Darling Basin (Jackson,

Moggridge and Robinson 2010). One of the main problems, they found, is a lack of baseline information. Limited knowledge exists around how water is used or valued by Indigenous people and, hence, how to explicitly consider the water requirements of indigenous people who are likely to be competing with other water users.

There is diversity in how water is used and valued by indigenous people across the basins of Australia. There are multiple and interrelated interests and sources of attachment to rivers, water and the environment.

For Indigenous people, water is an intricate part of the landscape that holds vast social, cultural and economic importance; its value is intangible. It is not easy to marry this with the quantitatively-focused western style of natural resource management which tends to separate components of the landscape into 'silos'.

A two-way approach is needed.

Wagiman Traditional Owners researching the Daly Catchment. Image by Michael Douglas,TRaCK CERF

Institutional challenges

The National Water Initiative in 2004 was the first Australian water policy to recognise the special nature of Indigenous interests in water and Native Title rights to its use. The second biennial assessment of the NWI in 2009 did find, however, that it was still "rare for Indigenous water requirements to be explicitly included in water sharing plans" and that it "…appears often to be implicitly assumed that these objectives, where considered at all, can be met by rules-based environmental water provisions."

The North Australian Indigenous Land and Sea Management Alliance (NAILSMA), has weighed in on this lack of progress, commenting that: "Although the NWI has made an effort to incorporate Indigenous interests, there has been little progress in addressing Indigenous water requirements in allocation plans. NWI provisions…are very flexible and there is a risk that Indigenous objectives could be sidelined by other competing priorities."

In effect, the policy framework is in place but the 'infrastructure' to support the realisation of this is poorly developed (Jackson, 2009).

The next steps

The third biennial assessment of the NWI is due in mid 2011 and the National Water Commission has now established an advisory body; 'First People's Water Engagement Council'. Its members, including the CSIRO's first Indigenous Water Research Specialist Bradley Moggridge, will be working to better incorporate Indigenous views and interests into

water planning. The council is also providing oversight to the 'Indigenous water characteristics' project for the NWC which will develop a series of think pieces and options papers throughout the year.

Case studies

It is still early days in the formal recognition of Indigenous water rights. Native title law recognises non-exclusive rights for water for personal and domestic purposes (Jackson et al 2010) but the difficulty of obtaining Native Title is a major limitation. In the Murray-Darling Basin, for example, Aboriginal people have ownership or rights over just 0.2 per cent of the land, despite making up almost four per cent of the population (HREOC Report, 2008). Aboriginal people have a wealth of knowledge around managing water resources within the Australian landscape and have much to offer in land and water planning and management. There are emerging examples across Australia that are providing valuable insight.

The Narri Narri Tribal Council and the Murrumbidgee Cultural Access Licence

The Narri Narri Tribal Council is a not-for-profit Indigenous environmental conservation organisation managing 11,300 ha along the Murrumbidgee River near Hay, NSW. Itswork, as described by Jackson, Moggridge and Robinson (2010, CSIRO), has seen $1.2 million worth of cultural site protection, revegetation, bank stabilisation and water efficiency completed since 2000. This includes preservation of the culturally significant Toogimbie wetlands.

The council uses utilise native title holder provisions under the Murrumbidgee Water Sharing Plan and obtains water through several licences, including a Cultural Access Licence which is a high security allocation for cultural and recreational use.

Despite the clear public good, memberspay an estimated $16,000/year for water; $30/ML for pumping, plus licence and other fees (Jackson, Tan, Altman, 2009). A lot of time and effort also goes into working within the regulatory system with its administrative complexities. To subsidise this cost, Council leases several general security irrigation licences to a neighbouring farmer.

A portion of the allocation for the Cultural Access Licence, which cannot be carried over, remains unused each year. Jackson, Moggridge and Robinson (CSIRO, 2010) attribute this to: the availability of infrastructure, the cost and administrative complexity around accessing water, and a lack of awareness of this program in the wider Indigenous community.

"When we do have access to cultural flows (in NSW); how can we get the water out of the river to utilize it?" commented one participant at the MLDRIN Basin Plan information session (Oct 2010). "You need infrastructure/pumps etc.; where can we access funds to build infrastructure to remove the water if we do get licences? Most communities wouldn't have the funds to purchase pumps; it's not just about getting water licences, it's also about how you physically access it and use it."

The NSW Office of Water is developing a new model for the Cultural Access licence that considers the issues around access and cost. The Murrumbidgee CMA is also reviewing a proposal for better engaging Aboriginal people in the water allocation process. This would seek to improve the links between the allocation of 'cultural' and 'environmental' water, and the transparency of prioritisation and management decisions.

The North Australian Indigenous Land and Sea Management Alliance (NAILSMA)

NAILSMA has been working with the Australian government on two key water initiatives that work in parallel: the Indigenous Water Policy Group (IWPG) and the Indigenous Community Water Facilitator Network (ICWFN).

The Indigenous Water Policy Group (IWPG) is an initiative funded by the National Water Commission that aims to deliver Indigenous community interests in legal rights and water

markets. This is backed by an 'Indigenous Community Water Facilitator Network' program employing regionally based 'facilitators' for communicating with, training, educating and engaging Indigenous people in the management of tropical rivers.

Indigenous Partnerships Program

An Indigenous Partnerships Project emerged in 2006 from the Living Murray Initiative as joint project between the Murray Lower Darling Rivers Indigenous Nations and the Murray-Darling Basin Authority (then the Murray-Darling Basin Commission). The aim was to facilitate Aboriginal people's input in environmental management plans for each of the Murray icon sites.

The Partnerships project has seen local indigenous facilitators placed at each of the Murray icon sites and the roll-out of 'cultural mapping' exercises. Cultural mapping - or 'use-and-occupancy mapping' - is a technique based on a Canadian method that combines oral history records with land use and occupancy mapping. MLDRIN is using this to monitor and evaluate impacts (Jackson, Moggridge and Robinson 2010).

Neil Ward, responsible for managing the Indigenous Partnerships Program with the MDBA, explains its use (Jackson et al 2010):

'….It was thought that, in a practical way, use-and-occupancy mapping could firmly establish indigenous people in the contemporary landscape by documenting in tangible terms the many ways in which indigenous communities currently use the land….The potential for use-and-occupancy mapping to help indigenous leaders articulate how they would like to see land and water managed to meet their future social, environmental, spiritual and economic aspirations was also recognised….'

In 2008, Ward provided further insight into the value of this tool: "An Indigenous elder once told me that a reconciled Australia will only come out of respect for each other's cultures. I am optimistic that Use and Occupancy mapping can play a role in developing mutual understanding and respect as well as being an excellent tool for Indigenous communities in negotiating management of natural resources in the Murray-Darling Basin." ('Connections' newsletter, August, 08, Issue 14, CSU, Institute for Land, Water and Society: www.csu.edu.au/research/ilws)

In 2009, the Northern Basin Aboriginal Nations (NBAN) was established in Moree as a confederation of 21 Nations in the northern part of the Murray Darling Basin. Like MLDRIN, NBAN advocate for the right of Indigenous people to be part of the water market and of natural resource management decisions within the Basin.

"Water issues are important issues for us. We are interested in how water allocation and water markets are going to roll out over the country. ..When we hear different processes from the State Government, the Federal Government, and NAILSMA, Traditional owners get confused – it divides us….We have our own way of engaging with each other. We need government people who understand indigenous processes. They need to come and learn from our process. Once they have learnt and tapped into that, then they can do things the right way: going out on country, listening to old people's stories…." (17/3/2011).

A Water Story collected as part of the Indigenous Community Water Facilitator Network (NAILSMA). Ron Archer, a Djungan Elder, commenting in the Upper Mitchell River Traditional Owner's submission to the National Water Commission.

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The Limitations of Indigenous water rights in the Proposed Murray Darling Basin Plan

BY LIZ MACPHERSON

By Liz Macpherson. *This article is part of our August theme, which focuses on the environment and human rights. Read more articles on this theme.*

In August 2012 the Murray Darling Basin Authority released a third altered draft of its *Proposed Basin Plan (Basin Plan)*. The *Basin Plan* was prepared by the Authority under the *Water Act 2007 (Cth)* as part of an attempt to coordinate an approach to the particular challenges of Basin water management, including environmental degradation and resource over-allocation across the Murray Darling Basin States (Queensland, South Australia, NSW and Victoria). The plan sets a sustainable diversion limit which caps the overall quantity of water that may be taken from the Basin and it also sets out binding requirements for water resource plans (WSPs). WSPs, implemented under various state water laws, define allowable water diversion levels, set out the arrangements for sharing the water available for consumptive use among competing users, and establish rules to deal with environmental objectives. State Basin Ministers are providing final comments to the Commonwealth Minister on the *Basin Plan*

during August, after which time he may request further changes or approve the plan and present it to parliament.

…governments have not been quick to enact legislation and create policies that allocate water use rights to Indigenous people.

The *Basin Plan* begins with an acknowledgement of the cultural, social, environmental, spiritual and economic connection Traditional Owners and their Nations in the Murray Darling Basin have to their lands and waters. It also records that 70,000 Indigenous people and more than 40 Indigenous nations across the Basin use its water resources for cultural, social, environmental, spiritual and economic purposes; Indigenous economic interests being trading, hunting, gathering food and other items for use that alleviate the need to purchase similar items and the use of water to support businesses in industries such as pastoralism and horticulture.

…it was not until 2004 that Australian water policy made mention of Indigenous water uses. While the breadth of Indigenous water use in the Murray Darling Basin is acknowledged in the *Basin Plan*, the substantive provisions setting out the Indigenous values and uses to be provided for in WSPs are much more limited. Clause 9.52 of the *Basin Plan* provides that a WSP must identify the objectives of Indigenous people in relation to water resource management and the outcomes for water resource management desired by Indigenous people, while at the same time determining that Indigenous water values and uses are merely "social, spiritual and cultural". Regardless of what Indigenous people themselves may currently or prospectively desire, and seemingly at odds with the recorded Indigenous water uses in the Basin, the *Basin Plan* does not require (and arguably removes the potential for) WSPs to facilitate Indigenous economic or commercial uses in the Murray Darling Basin. This obvious limitation is despite the fact that clause 9.54 of the *Basin Plan* requires WSPs to be prepared with regard to the views of Indigenous people with respect to "cultural flows". The Murray Lower Darling Rivers Indigenous Nations and Northern Murray–Darling Basin Aboriginal Nations agreed definition of cultural flows covers:

Water entitlements that are legally and beneficially owned by the Indigenous Nations and are of a sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social and economic conditions of those Indigenous Nations. This is our inherent right.

Indigenous groups from other parts of Australia have been explicit about their claims for water use rights to satisfy social, cultural, ecological and economic needs.

The *Basin Plan* also appears to assume that Indigenous water uses will be non-consumptive. Clause 9.53 sets out a number of matters which Indigenous people should be consulted on by state water resource planners. These include native title water rights and cultural heritage as well as "risks to Indigenous values and Indigenous uses arising from the use and management of the water resources of the water resource plan area". The wording of this clause suggests that Indigenous water uses are not themselves a case of "use and management", but rather in-stream or conservation interests that may be affected by the consumptive water use of others.

Recognition of exclusive water ownership rights, or water rights that support cultural and economic water use, is not contemplated.

The assumption that Indigenous water uses are inherently non-economic and non-consumptive is supported by the *Water Act*'s characterisation of Indigenous issues in the context of the *Basin Plan* as "social, cultural, indigenous and other public benefit issues" as opposed to the "consumptive and other economic uses of Basin water resources" (s 21(4)). This casting of Indigenous water rights as non-economic and non-consumptive is more widespread; it is a symptom of the current limited status of Indigenous water rights in Australian water law and policy and native title law and legislation generally.

Australian law and policy, in its current state, provides very little scope for allocation of water use rights to Indigenous people. Despite the door being opened for native title rights to water in 1992 with the *Mabo* decision, it was not until 2004 that Australian water policy made mention of Indigenous water uses. Under the national water planning framework (the *2004 Intergovernmental Agreement on a National Water Initiative (NWI)*) Australian States agreed to provide Indigenous access to water resources under state water legislation through planning processes that ensure Indigenous representation in water planning where possible and incorporate Indigenous social, spiritual and customary objectives in WSPs. They also agreed to take account of the possible existence of native title rights to water in water planning processes, although only water allocated to native title holders for traditional cultural purposes are to be accounted for.

The limited conception of Indigenous water use rights in the NWI reflects the limited nature of native title rights with respect to water. The Australian Human Rights Commission's *Native Title Report 2008* acknowledges that "the status of Indigenous water rights, particularly native title water rights, remains unresolved and limits Indigenous people's access and allocation to water resources". Native title rights to water are difficult to establish (with the onus of proving native title resting on the claimant), and are limited in their content. In order to establish a native title right to water a claimant must describe in detail the traditional laws and customs establishing their water rights and prove the substantial maintenance of the connection of those traditional laws and customs to the particular water.

Indigenous people have been maginalised from their economic resource base and have a right to be included in the economic benefits derived from water resource management.

Even if a native title right to water can be established, the content of the right recognised by native title is frozen to a standard determined under pre-sovereignty traditional laws and customs, usually non-exclusive usufructuary rights for non-economic personal, domestic, social, cultural, religious or spiritual uses. Recognition of exclusive water ownership rights, or water rights that support cultural *and* economic water use, is not contemplated. The assumption that native title holders are only entitled to in-stream rights of a traditional cultural nature is also reflected in section 211 of the *Native Title Act 1993 (Cth) (NTA)* which preserves the right of native title holders to fish, hunt or engage in traditional cultural activities with respect to water, which are non-consumptive uses that are "as of right", meaning they do not require a water use right.

Where native title rights to water can be established, they may be extinguished or suspended to the extent they are inconsistent with acts validated under the future acts provisions of the NTA, leaving only limited procedural rights. In particular, under sections 24HA and 44H, state water resources legislation and water use rights granted under it prevail over native title rights which are suspended to the extent of any inconsistency with compensation payable. Section 24HA, therefore, also reinforces the restriction of native title rights to in-stream traditional cultural uses which will not be inconsistent with consumptive water use rights held by other water users.

…there is a real risk that there may simply be no water left to allocate water use rights to Indigenous people and groups in the future.

Because of the emphasis in the *NWI* on state water legislation and policy reflecting only the social, spiritual and customary Indigenous uses of water, together with the limited and uncertain nature of native title rights to water, governments have not been quick to enact legislation and create policies that allocate water use rights to Indigenous people. It is rare to see WSPs that specifically address Indigenous water uses, on the assumption that environmental flows (or non-consumptive limits on extraction by other users) will serve as a "surrogate" mechanism to meet Indigenous social, cultural or spiritual requirements. In some

situations, "as of right" domestic and stock water use entitlements are considered sufficient to address any consumptive Indigenous water use. If the *Basin Plan* is finalised in its current form, the emphasis on Indigenous water use rights being only social, cultural and spiritual (and never economic or consumptive) will be encouraged to continue in the Murray Darling Basin in much the same way.

However, there are a number of situations in which Australian legislation does provide for Indigenous water use rights for consumptive economic purposes. Regulations made under the *Water Management Act 2000 (NSW)* provide for Aboriginal cultural, community development and commercial access licenses without needing to first establish native title. Although, possibly as a reflection of the lack of water available for allocation to consumptive uses within the Murray Darling Basin, commercial access licenses apply only in coastal regions, and no commercial licenses have been allocated to date. Section 27 of the *Cape York Peninsula Heritage Act 2007 (Qld)* requires water reserves to be established in wild river declared areas or WSPs in Cape York for the purpose of helping Indigenous communities to achieve economic and social aspirations. Indigenous water reserves for commercial and cultural Indigenous water use have also been included in Northern Australian WSPs although these policy innovations do not have corresponding legislative requirements. Even so, Indigenous-specific water allocations are estimated at less than 0.01 per cent of current Australian water diversions, according to the forthcoming article "Trends in the recognition of Indigenous water needs in Australian water reform" by Sue Jackson and Marcia Langton.

A range of Indigenous water rights commentators, in particular Sue Jackson, Jon Altman, Marcia Langton, Lee Godden and Mahala Gunther, have been actively critical of the restriction of Indigenous water use rights in water planning frameworks (and specifically via native title) at the expense of consumptive, economic interests (as well as the exclusion of Indigenous groups from environmental planning processes). Sue Jackson and Marcia Langton point out that Indigenous people have a large stake in water resource management due to their customary relationships with water, substantial and growing land base (at least in northern Australia), and economic disadvantage. In relation to the Murray Darling Basin, Monica Morgan, Lisa Stelein and Jessica Weir claim that Indigenous people have been maginalised from their economic resource base and have a right to be included in the economic benefits derived from water resource management. They specifically call for the allocation of water use rights that enable inclusion of Indigenous people in the water trading environment for economic development opportunities or for achieving cultural and environmental objectives (aside from co-management rights, environmental and cultural flows).

Even considering the limited nature of Indigenous water use rights encouraged by the *NWI*, the National Water Commission noted in its 2011 review on implementation that the full intent of state commitments on Indigenous interests in water has not yet been achieved. Many WSPs do not consider Indigenous cultural values and economic development, leaving the cultural and economic expectations of Indigenous Australians as an unmet demand on the water system. WSPs that do mention Indigenous water use refer often to native title as if there is only one basis for Indigenous water rights at law. These documents ignore the potential for alternative legal mechanisms to provide broader scope for allocation of Indigenous water use rights. But the limitations built into the doctrine of native title should not be the only benchmark for the engagement of water law and policy with Indigenous people. The Human Rights Commission in its *Native Title Report 2008* encouraged Australian governments and Indigenous people to take advantage of current revisions of legislation dealing with water, the environment, native title, cultural heritage and climate change to

include provisions that provide for, and protect, Indigenous access to water, including for economic and sustainable development.

…the restriction of Indigenous water use rights to in-stream cultural interests is increasingly considered nonsensical and outdated.

Legislative and policy change to facilitate Indigenous water use rights for a broader range of purposes (including consumptive economic water use rights) is not only in line with the claims of Indigenous Australians; such change is supported by recognition of indigenous rights to water at International law, and has precedent in other jurisdictions. Indigenous economic rights to water are recognised in the United States, Canada and New Zealand. Chile's *Indigenous Law 1993* includes recognition of the ancestral and consumptive water rights of certain indigenous communities in Chile's arid north, and facilitates their allocation as water use rights under water legislation. Even in Australia, tentative positive steps have been made in NSW and Northern Australia towards supporting economic Indigenous water use, but there is much work yet to be done. As water resources approach full allocation, unless a share of water use rights is set aside for Indigenous water uses (under native title or otherwise), there is a real risk that there may simply be no water left to allocate water use rights to Indigenous people and groups in the future. In the words of the Human Rights Commission (p 171):

…as Australia becomes increasingly scarce of water due to climate change, long periods of drought, over-allocation to industry and agricultural stakeholders, and population growth and migration, the capacity for the recognition and security of Indigenous rights to water will become increasingly important and highly competitive.

While there are a number of positive aspects of the *Basin Plan*, including Indigenous involvement and consultation in its preparation and improvements to the environmental conditions of Basin resources (a matter viewed positively by Indigenous people generally), it shows that Australia is yet to fully embrace Indigenous claims for water use rights to satisfy social, cultural, ecological and economic needs. In particular, the *Basin Plan* continues the overwhelming assumption in Australian water law and policy, and native title legislation and jurisprudence, that Indigenous water uses are merely social, spiritual and cultural and, specifically, non-consumptive and non-commercial. This is despite the fact that a range of Indigenous groups, government bodies, academics and domestic and international human rights organisations continue to lobby for broader Indigenous water use rights, including for consumptive economic purposes. It is also despite the fact that the *Basin Plan* itself acknowledges the important economic uses Indigenous people make of water resources in the Murray Darling Basin.

Decisions about water sharing within the Murray Darling Basin are not easy, and consumptive economic water use rights for Indigenous people in the context of full resource allocation might be seen by some as a threat to the consumptive water use of other users. Yet the restriction of Indigenous water use rights to in-stream cultural interests is increasingly considered nonsensical and outdated. If the *Basin Plan* is finalised as currently drafted, it is destined to become yet another missed opportunity to provide a meaningful allocation of water use rights to Indigenous people.

Liz Macpherson is researching a PhD at the Melbourne Law School's Centre for Resources, Energy and Environmental Law on Indigenous water rights in the context of Chilean and Australian water markets, and is a recipient of the University of Melbourne Human Rights Scholarship. She is a practicing lawyer specialising in Indigenous land and resource rights and environmental law. Her experience includes representing Maori iwi and hapu in their claims before New Zealand's Waitangi Tribunal, and she is currently Principal Lawyer, Aboriginal Affairs with the Victorian State Government. All opinions are her own.

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http://www.mldrin.org.au/first-nations-water-summit-calls-urgent-action/

First Nations' water summit calls for urgent action

Posted by MLDRIN on August 11, 2016

Delegates of 46 Sovereign First Nations have called on all levels of government to urgently address the impacts on their culture, heritage and wellbeing arising from the management of water resources in the Murray Darling Basin.

A Joint Gathering of the Murray Lower Darling Rivers Indigenous Nations (MLDRIN) and the Northern Basin Aboriginal Nations (NBAN) was held in Canberra on the 9th and 10th August, to coincide with the UN International Day of the World's Indigenous People.

The Delegates released a Water Statement, calling for urgent action on key reforms needed to recognise First Nation's rights and interests in water.

MLDRIN and NBAN are peak bodies representing Sovereign First Nations on water management across the Murray Darling Basin.

Delegates of MLDRIN and NBAN, alongside State government representatives gathered in Canberra

"This Gathering and Water Statement highlights the strong, united voice of First Nations and the importance of water to our culture, Country and livelihoods," said Nari Nari man and MLDRIN Acting Chairperson Rene Woods.

"Our members have rights and responsibilities to care for the waterways of the Basin and build sustainable livelihoods that support our communities. Yet, on a daily basis, we witness the degradation of our rivers from over-extraction, pollution, over-regulation and management that favours powerful interests and lobby groups," Rene Woods said.

"First Nations along the Darling River have recently highlighted their grave concerns about the impact of extraction and poor management on their cultural identity. This is just one example of the impacts faced by our membership on a daily basis. If our rivers die, the very fabric of these ancient cultures is at risk," said NBAN Chairperson Fred Hooper.

"We are encouraged by the support shown by the Murray Darling Basin Authority and State agencies, who are recognising the need to address our rights and interests," Rene Woods said.

"We are calling on all Basin governments to work with our organisations to build momentum towards a world-leading First Nations water framework for Australia," Fred Hooper said.

To read the Water Statement follow this link.

Contacts:

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http://www.mldrin.org.au/wp-content/uploads/2013/06/FN_Water_Statement_2016.pdf

Sovereign First Nations of the Murray Darling Basin Water Statement 2016

Delegates for 46 Sovereign First Nations of the Murray Darling Basin, who gathered in Canberra, ACT on the 9th and 10th August 2016:

Reaffirm the deep significance of water, waterways and water dependent ecosystems to our communities,

• as a defining element of our cultural identity, traditions, lore, customs and beliefs

• as a source of wellbeing for Country and people.

Stress that our Nations are witnessing the daily impacts of an inequitable water allocation framework, which has marginalised and disregarded Sovereign First Nations people's rights, values and interests.

Recognise that tireless advocacy by Sovereign First Nations and their allies has driven some important progress towards greater recognition of First Nations water rights, through reform in water policy at a State and Federal level.

Note that we are at a critical time in the implementation of the Murray Darling Basin Plan and the recognition of Sovereign First Nations' rights to shape water policy and to enjoy the beneficial use of water resources.

Recognise that implementation of the Basin Plan does not signal the end of our Sovereign First Nations work, but rather the beginning. We have a vision to sustain and build momentum to develop a world-leading First Nations' water rights framework.

Highlight that NBAN and MLDRIN are committed to securing cultural rights and interests in the landscape of the Murray Darling Basin for the interests of our future generations in order to leave an everlasting legacy for the Sovereign First Nations that we represent.

The Sovereign First Nations of the Murray Darling Basin call on all Basin jurisdictions to:

• Urgently address the continuing threats to our wellbeing, cultural identity, heritage, ecological knowledge and spirituality from over-allocation and defective management of the rivers and waterways of the Murray Darling Basin; and to:

• Support the Northern Basin Aboriginal Nations (NBAN) and Murray Lower Darling Rivers Indigenous Nations (MLDRIN) to empower Sovereign First Nations to: fulfil our cultural responsibilities- under our lore, to care for Country, contribute to best-practice water management and secure sustainable livelihoods.

• Commit to ongoing funding and support for MLDRIN and NBAN, in light of the considerable ongoing work required to meet policy requirements including

o development and accreditation of Water Resource Plans,

o ongoing development of environmental watering priorities

o The Northern Basin Review and SDL adjustment mechanism

• Commit adequate and secure funding for Basin governments to develop effective, innovative and equitable programs for engagement that build relationships and capacity and generate lasting benefits for Sovereign First Nations

• Develop Water Resource Plans (under the Basin Plan) that give effect to Traditional Owners' objectives and outcomes, informed by active engagement and the free, prior and informed consent of Sovereign First Nations.

• Commit to implement the findings of the National Cultural Flows Research Project. Work with MLDRIN and NBAN to ensure that the outcomes of the project are fully incorporated into water law and policy for the whole of the Murray Darling Basin.

• Develop a legislative and policy reform process dedicated to addressing the historic dispossession of Sovereign First Nations from our rights and interests in water.
• Collaborate with us to develop mechanisms to allow Sovereign First Nations to secure water entitlements for cultural, environmental and economic purposes and to secure our cultural economy through access to water
The Delegates reaffirmed our commitment to achieve Cultural Flows defined as:
"Water entitlements that are legally and beneficially owned by the Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, natural, environmental, social and economic conditions of those Nations. These are our inherent rights."
-MLDRIN Echuca Declaration, 2007

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http://rightnow.org.au/opinion-3/water-rights-in-the-murray-darling-basin/

Water Rights in the Murray-Darling Basin

BY WILL MOONEY

The concept of land rights is well entrenched in contemporary understandings of Indigenous people's struggle for sovereignty and respect, but how many of us understand the importance of water rights to Aboriginal communities? In 2013, the International Year of Water Cooperation, it is vital that we address the exclusion of Indigenous needs and values from modern water management systems.
Indigenous Australians have an intricate cultural connection to the rivers and waterways in their Country. Knowledge and traditional stories, shared over generations, guide careful custodianship of the ecosystems and resources that flourish alongside Australia's rivers. A growing movement of activists, academics, scientists and non-governmental organisations are bringing Indigenous rights to the forefront in water law reform processes and stimulating institutional change.
Throughout the Murray-Darling Basin water provides a vital lifeline, supporting communities and sustaining biodiversity. The cultural traditions of a diverse range of Indigenous communities are entwined with the seasonal patterns of rain, dryness, flooding and drought. Since white occupation of Southern Australia, and the alienation of large swaths of Indigenous territory, ancient traditions of caring for Country have been disrupted. Persecution, land clearing, fencing and forced removal from Country threatened to sever the links between Traditional Owners and the places, life-forms and spiritual beings that exist along their rivers. In more recent times, drought, over-allocation of water for irrigation and

climate change have further degraded waterways, creating an environmental tragedy. The sad treatment of these rivers has profound cultural consequences for Indigenous people.
Despite their extensive knowledge of natural processes and a deep connection to the life of the rivers, Indigenous people continue to be excluded from the management and decision-making processes that affect their Country. A forceful and coherent claim for Indigenous water rights has grown as a response to this calamity.
In 2001 the Murray Lower Darling Basin Indigenous Nations (MLDRIN) was formed as a representative body to advocate for the water and land rights of Traditional Owners. MLDRIN currently includes delegates from more than 20 Traditional Owner groups. North of the Murray, in Queensland and New South Wales, the Northern Basin Aboriginal Nations (NBAN) was formed in 2010 with the vision of "keeping our water spirits and our connections alive". Both these organisations have developed the concept of "Cultural Flows" to articulate the complex connections between people, rivers, ecosystems and culture.
Cultural Flows are defined as
"water entitlements that are legally and beneficially owned by the Indigenous Nations and are of a sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social and economic conditions of those Indigenous Nations. This is our inherent right." (MLDRIN Echuca Declaration).
The concept of Cultural Flows allows Indigenous communities to translate complex and holistic understandings into the language of modern water planning and management. MLDRIN and NBAN have provided a powerful argument for more meaningful engagement and the restoration of Indigenous water rights. This is a fundamental reform that challenges the way modern Australia uses and abuses its water resources.
The concept of Cultural Flows has operated as a powerful intellectual tool. There is growing public and institutional support for Indigenous water rights. Water managers and governments can no longer ignore Traditional Owners' demands for a stake in decision-making processes. The 2004 National Water Initiative (an agreement between the Federal and State Governments) spelled out specific requirements for Indigenous engagement and access to water. Some states have taken a proactive stance, with New South Wales creating special Aboriginal Cultural Access Licenses and establishing an Aboriginal Water Initiative. The Federal Murray Darling Basin Plan now also includes a strong acknowledgement of Traditional Owner rights and more detailed requirements for consultation in the development of Water Resource Plans.
To back up these policy changes, MLDRIN, NBAN and individual Nations have embarked on comprehensive research programs to document the links between waterways and cultural practices and quantify water needs for various values.

Will Mooney is a community campaigner for Friends of the Earth's Barmah-Millewa Collective
Friends of the Earth (FoE) has worked with Traditional Owner groups throughout the Murray Darling Basin to progress shared goals of environmental protection and Indigenous sovereignty. In 2007, FoE coordinated an agreement between MLDRIN and a range of other environment organisations. In recent years FoE has collaborated with Traditional Owners in progressing their claim for water rights and cultural flow. Working together, environment and Indigenous organisations can present a powerful challenge to the dominant model of water use that has degraded our rivers.

http://www.weeklytimesnow.com.au/agribusiness/water/dairy-farmer-tells-murray-darling-basin-story-to-politicians/news-story/f39934ef4717b70bd101e4687db6fbee

Dairy farmer tells Murray Darling Basin story to politicians

DALE WEBSTER, The Weekly Times
July 14, 2015 3:09pm

ABOUT 1000 people travelled to Barham last week to give senators a message to take to Canberra about the devastating effects the lack of irrigation water in the Murray Darling Basin is having on individuals, families and communities.

But it was the act of one dairy farmer, talking quietly to the politicians on the banks of the Murray River that morning, which put the problems confronting farmers on a level anyone could understand.

"A lot of the water that is up in the catchments at the moment is not owned by the farmers, it's owned by the Government," Simon Morton said as he explained to the senators why he had to pay $120,000 above his normal water costs this year to grow feed for his cattle.

"Instead of getting our entitlements out of a full bucket, the water we have access to has been halved — everything is coming out of half a bucket now.

"And from that, we only received 69 per cent of our water entitlement this year."

Mr Morton said his problems were compounded by decreased water on the temporary market, which was pushing the price up to levels that were barely affordable.

"It's a massive gamble from year to year whether you're going to make money or lose it," he said. "Nearly 30 per cent of water has been taken out of the area and projections are that another 15 per cent could go. If that happens it's just going to kill us."

Mr Morton met senators David Leyonhjelm, Sam Dastyari and John Madigan as they toured the region to see first-hand the problems facing farming communities linked to the Murray-Darling Basin Plan.

Their first stop was an irrigation property that had once been a thriving sanctuary for birdlife but was now overrun by box thorn and other weeds.

As the bus rolled past more dry and abandoned farms, the senators were talked through the consequences of increasing environmental flows at the expense of irrigation water under the plan. They heard about the damage to communities that were losing farming families as a result of the plan, and were given a history lesson on how the Murray and its mouth operated before the Snowy Mountain Irrigation Scheme was set up mid last century.

The increased chance of flooding to allow environmental flows down the river was also explained and the senators were shown land that would be inaccessible should this go ahead.

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Barham water meeting

First stop was an abandoned irrigation property that was inundated with weeds. The tour of the Barham district was with senators who were looking into the Murray Darling Basin Plan.
1 of 24

The public listens in at the Barham water meeting.
2 of 24

Peter Hazeldene of Murrabit, attended the community meeting in Barham because he believes the Murray Darling Basin Plan rollout is one of the most important issues Australia is facing.

"Communities and properties will be inundated at the levels that are being proposed," local irrigator and chairman of the Murray Valley Private Diverters John Lolicato said.
"When you start getting above 18,000 megalitres released downstream of the Yarrawonga weir you're going to increase flood risk."
At the end of the day — after the three senators had been joined by their colleagues Dio Wang and Bob Day, as well other state and federal MPs for the two-hour community meeting — Senator Leyonhjelm said it was clear what the coming senate inquiry into the plan needed to reveal.

"I don't think I have ever met anyone who doesn't care about the environment — there is no such person," he said.
"Given that this Murray-Darling Basin Plan is about the environment, the question for us to ask is whether the environment is actually getting better, is the plan hurting anyone in the process and could the river actually be getting too much water?
"I'll do my best as chair of the inquiry to get answers to those questions."
The committee for the inquiry is expected to be appointed next month.

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http://www.weeklytimesnow.com.au/agribusiness/water/murray-darling-basin-job-shock-as-water-buyback-hits-farms/news-story/1e879f02487eb52d2475e46e3aa2ce3f

Murray Darling Basin job shock as water buyback hits farms

NATALIE KOTSIOS, The Weekly Times
August 3, 2016 12:00am

UP TO 35 per cent of agricultural jobs have evaporated from communities in the Murray Darling Basin's upper reaches under the Federal Government's water clawback plan, startling new data shows.
The "horrific" figures for basin towns in Queensland and northern NSW — garnered from new research by the Murray-Darling Basin Authority — have led to renewed calls for water recovery targets to be lowered, as the socio-economic effects are fully considered.
An analysis by The Weekly Times found governments have recovered well over the minimum catchment targets in almost every basin catchment, with buybacks making up the bulk — and there's still 768.6GL to go to meet the basin-wide target of 2750GL. Industry leaders are ready to lay the boot into Federal and State governments should they ignore regional Australians suffering under the policy.

SOUTHERN SQUEEZE TIPPED TO BE SAME

"Why is it acceptable for governments to destroy and remove upwards of 30 per cent of jobs in a regional community, when it would obviously be unacceptable in Western Sydney or the key seats of Adelaide?" National Irrigators Council chair Tom Chesson asked.
"What we are finding in the north, this micro-level of study needs to be replicated in the south ... this shows the socio-economic work done at the time of creating the basin plan is rubbish and not fit for purpose," he said. The MDBA's research — which is not yet publicly available — is part of its review into the Northern Basin, which includes everything above the Murrumbidgee and Lower Darling catchments.
Should jobs be lost to gain water for the environment?

The Northern Basin — which differs greatly from the south — is to contribute 390GL to the overall 2750GL target; it's recovered 269GL so far. The MDBA will make a recommendation on whether the target should be lowered based on its review findings.
Collarenebri — in the Gwydir catchment in north west NSW, where there has been over-recovery of water — is already seeing ag job losses up to 35 per cent compared with high production years. Warren, north west of Dubbo, is experiencing ag job losses up to 15 per cent.
In Dirranbandi, in Queensland, planting is expected to be down 35 per cent, and ag job losses are already as high as 15 per cent — but, with only 40 per cent of water recovered in this region, the figure could increase.

WATER FIX IS MURRAY DARLING BASIN JOB KILLER

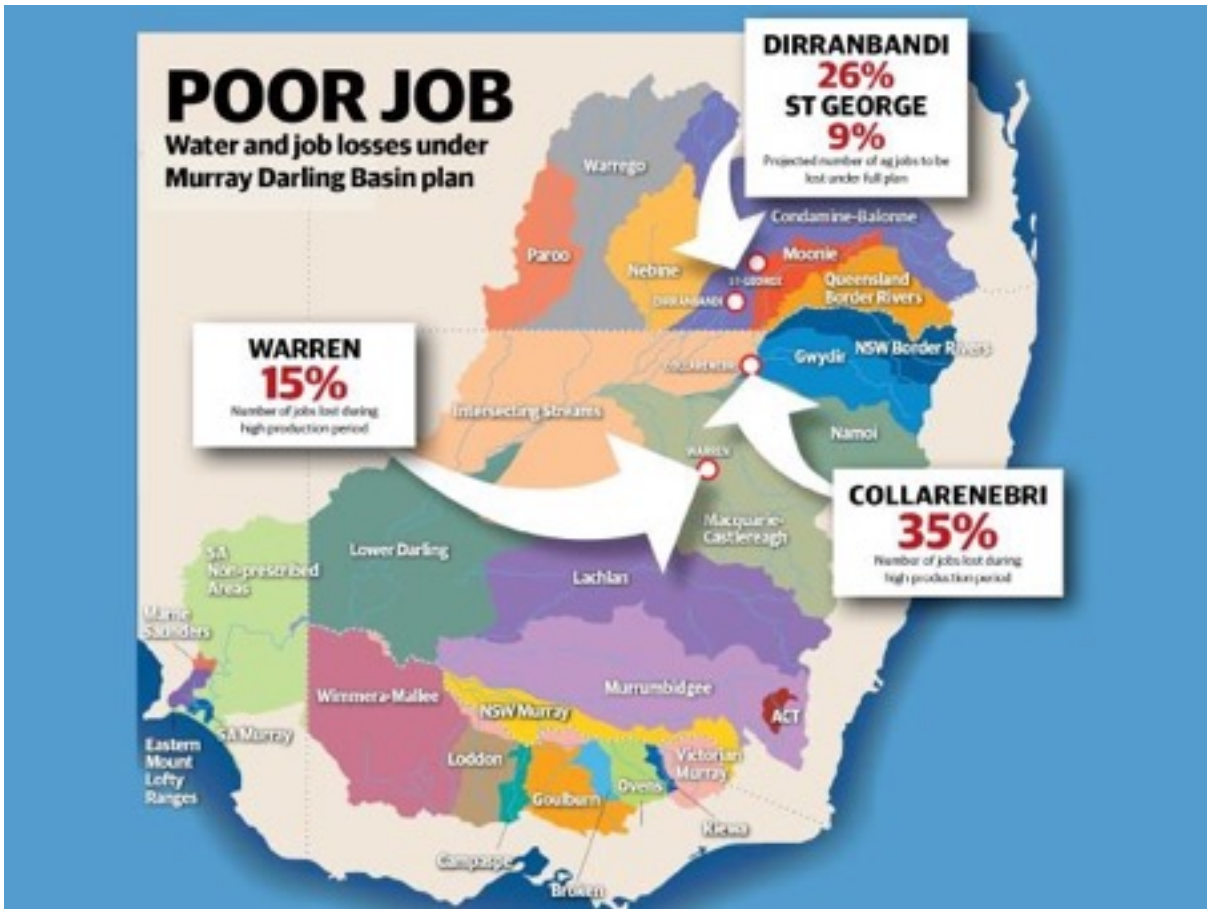
However, a four-year review, including the socio-economic effects, has been underway to see if there's a case for changing the north's target. The MDBA will soon make a recommendation on this to basin governments.

Chief executive Philip Glyde said, depending on whether more or less water was removed, future job losses in ag "ranged from 6 to 26 per cent in Dirranbandi and 2 to 9 per cent in St George".

"Of the 21 communities studied, figures indicated job losses are likely to be highest in Dirranbandi, Collarenebri and Warren," Mr Glyde said.

"All other areas are expected to experience less of an impact, with many having job losses well below 5 per cent."

Mr Glyde said a range of factors affected the employment data, such as drought and farmers' using new technology in production, but thatwater recovery "has affected some towns more than others, depending on the diversity of the local economy and how much water has been recovered".



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Cotton Australia general manager Michael Murray — who attended the meeting in Dirranbandi — said it was irrelevant whether job losses were projected at 5 or 35 per cent: any figure due to government policy was too high.

"I can't imagine any government wanting to own that sort of impact on a community," he said.

"There's a real strong argument now to say enough is enough."

Mr Murray said the review showed the environmental benefits gained from recovering the full target amount of water were "incremental", in comparison to the disastrous social and economic outcomes.

Any money to recover the remaining 121GL — which could cost up to $600 million — should instead be spent on making the most of the environmental water already obtained, he said. This could include carp control, enhancing river habitats, and thermal curtains to combat cold water pollution.

Warren Shire mayor Rex Wilson said his town was "on a knife-edge".

Warren falls in the Macquarie-Castlereagh catchment, where the recovery target was 65GL. So far, 82.5GL has been recovered, 24.6 of which is from buybacks. Although the local catchment target has been met, there are fears more water will be taken when shared recovery targets kick in from 2019.

"This thing (the basin plan) has dragged on and that uncertainty does have an impact on people's confidence and their investments," Mr Wilson said.

"The reality is we are a much quieter community than we used to be."

He did not lay all the blame on the basin plan, acknowledging dry conditions and low water allocations contributed to the region's plight.

Nor did he begrudge farmers selling their water, but stressed that over-recovery of water under the basin plan was an issue affecting the wider community.

"It's impossible to alter the seasons, but the unintended consequences of government policy is really behind our greatest concern," he said.

Mr Chesson acknowledged many basin communities were in decline before the plan, with previous water reforms and drought hitting hard.

"The question is, how can a community have resilience when they've already lost a third of their jobs?" he said.

"If they're predicting another 5, 10, 20 per cent under the plan, where's the tipping point for that community, and how can it recover?"

But Australian Conservation Foundation's Jonathan La Nauze said changing the targets would "benefit nobody in the long run — there's no jobs on a dead river".

He said taking water for irrigation upstream reduced rivers downstream, which had social consequences for areas such as the Lower Lakes.

"You only have to ask the people of Wilcannia, Pooncarie or Menindee what happens when the big pumps upstream reduce the river to a trickle," he said.

"It's a simple fact that the more water we take from the river, the more fish deaths and algal blooms we'll see".

An examination of the social-economic conditions in the southern basin is due to take place next year, as part of a full MDBA review of the plan so far.

About 1168GL of recovered water across the basin has come from buybacks, which are now capped at 1500GL. Though most catchments have exceeded their local recovery targets, all basin states still need to find more water from 2019 to meet their shared targets — water taken from anywhere within their basin waterways, and not just a local catchment.

Victorian Farmers Federation water taskforce chair Richard Anderson said the results from the north were "horrific", and showed governments needed to "hasten slowly" when it came to recovering more water, be it from the north or the south.

"We need to take a good look at the results of what we've already got and ask, do we need as much as we originally thought?" he said.

"Unless it's done properly, you're never going to convince anyone it's worth it."

University of Canberra's Jacki Schirmer said her basin research showed on and off-farm infrastructure — which has been used to recover 602GL so far — was generally met with positive responses by farmers.
A spokesman for Agriculture and Water Minister Barnaby Joyce said Mr Joyce would "consider all information on the social and economic impacts of the basin plan" when final targets are set.
"Families in and around St George, Moree, Warren, Wee Waa and all the other towns across the Basin have just as much right to have opportunities to prosper as families in our capital cities," he said.
Labor's new water spokesman Tony Burke — who signed the basin plan as minister in 2012 — said he would seek a briefing with the MDBA to learn first-hand the progress of the plan.

LOCAL RECOVERY TARGETS
Warrego, QLD
Target : 8GL
Recovered: 8.3GL
Queensland Border Rivers, QLD
Target: 8GL
Recovered: 15.6GL
Condamine- Balonne, QLD
Target: 100GL
Recovered: 59.6GL
NSW Border Rivers, NSW
Target: 7GL
Recovered: 3.3GL
Gwydir, NSW
Target: 42GL
Recovered: 46.9GL
Macquarie-Castlereagh, NSW
Target: 65GL
Recovered: 82.5GL
Namoi, NSW
Target: 10GL
Recovered: 11.5GL
Intersecting streams, NSW
Target: 0GL
Recovered: 8.1GL
Lachlan, NSW
Target: 45GL
Recovered: 45GL
Murrumbidgee, NSW
Target: 320GL
Recovered: 374GL
Murray region, NSW
Target: 262GL
Recovered: 313.3GL
Murray region, VIC
Target: 253GL
Recovered: 397GL

Goulburn, VIC
Target: 344GL
Recovered: 364.1GL
Campaspe, VIC
Target: 18GL
Recovered: 29GL
Loddon, VIC
Target: 11GL
Recovered: 10.9GL
Wimmera-Mallee, VIC
Target: 23GL
Recovered: 22.6GL

HOW WATER RECOVERY WORKS:

The MDB is divided into the Northern and southern Basins.

LOCAL TARGET: Each catchment in the basin has a water recovery target they must achieve.
SHARED TARGET: Beginning from 2019 each half of the basin also has a shared target — extra water on top of the local catchment targets.
WATER RECOVERY TARGETS
Northern Basin: 390GL
Southern Basin: 2360GL
TOTAL: 2750GL
RECOVERY TO DATE
Northern Basin: 272GL
Southern Basin: 1709.4GL
TOTAL: 1981.4GL
Source: Murray Darling Basin Authority website, as of June 30, 2016

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http://www.weeklytimesnow.com.au/agribusiness/water/victorian-government-reviewing-murray-darling-basin-plan-effects/news-story/34041856e0d0abd6d372fa4a672036ed

Australia's biggest irrigation upgrade hits a snag

CHRIS McLENNAN, The Weekly Times
November 5, 2015 12:30pm

AUSTRALIA'S biggest irrigation modernisation scheme, the $2 billion Connections project in northern Victoria, is in trouble.
A mid-project review of the state's big ticket water savings project has recommended changes to the way the second phase of the project is delivered.
The Federal and Victorian governments today said the project would not be stopped but "reshaped".
The project began in 2007 to modernise the more than 6500km of channels delivering water to more than a million hectares across northern Victoria.
Irrigators received funding for a more efficient and automated water delivery in return for 429 gigalitres of water savings to be returned to the environment.

The upgrade includes irrigation districts from Swan Hill to Cobram.
The project was originally scheduled for completion in 2018.
Federal Water Minister Barnaby Joyce and Victorian Water Minister Lisa Neville today said the GMW Connections Project Stage 2 was a key element in upgrading water infrastructure and recovering water for the environment under the Murray Darling Basin Plan.
"The Australian Government and the Victorian Government have reviewed the project to make sure it is delivering on its intended results — including generating 204 gigalitres in genuine water savings through modernisation and rationalisation of the water supply system," Mr Joyce said.
"Disappointingly, the independent review found there are concerns about the ability of the project to deliver the agreed outcomes on time and within budget.

"The Federal Government has provided $953 million in funding for this project, and delivery of the project within the existing budget is the responsibility of the Victorian Government, through Goulburn Murray Water.
"Both the Australian and Victorian Governments will now work together to find the best way forward for this vital project, ensuring funds are used in a way that represents the best value for money.
"We also want to ensure that as many irrigators and industry representatives as possible in the Goulburn Murray Irrigation District are consulted and are able to access the benefits of the program and broader Commonwealth support for on farm irrigation efficiency activities."
Ms Neville said the review identified that "some of the original assumptions that underpinned the original business case are no longer valid" and that a reshape of the project was necessary.
"The GMW Connections Project is the most significant irrigation infrastructure upgrade in Victoria's history and will play a vital role in helping our irrigation communities adapt to the challenges posed by climate change," she said.
"The project remains a highly important initiative for the future of northern Victoria irrigators but we acknowledge there have been difficulties and delays that have caused frustration and that changes are required.
"We are not placing the project on hold but some aspects of it need to change and we will closely involve irrigators in those changes to ensure the best possible outcomes are achieved for communities in northern Victoria. I look forward to meeting with irrigators and industry groups to hear from them directly about the best future direction for the project."
Mrs Neville has requested the Victorian Department of Environment, Land, Water and Planning and Goulburn Murray Water consult with irrigators and industry groups on the future direction of the project.
In addition, GMW will hold a series of sessions with irrigators for them to gain an update on their progress in the Connections project.
Letters will soon be sent to GMW customers informing them of the details of their local sessions.
Stage Two is intended to build on the $1 billion Victorian-funded stage 1 of the project.
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Victorian Government reviewing Murray Darling Basin Plan effects

NATALIE KOTSIOS, The Weekly Times
August 17, 2016 12:00am

Murray Darling Basin towns 'missing out on funds'
Southern squeeze tipped to be same
Editorial: Water fix is Murray Darling Basin job killer

A REVIEW of the socio-economic impacts of the Murray Darling Basin Plan in Victoria is being carried out.

Victoria's Water Minister Lisa Neville confirmed this week that work had started on the assessment, which would be used to inform any recommendations for changes to water recovery targets in the state.

Murray Darling Basin Authority chief executive Phillip Glyde last week said there was a "pretty good chance" of targets in the northern half of the basin being lowered.

MDBA research — reported in The Weekly Times but still not publicly available — has shown communities in the north are experiencing agricultural job losses up to 35 per cent under the plan.

Similar socio-economic studies have yet to be done for the southern basin. The MDBA will start one in the coming year, while Victoria is also conducting its own.

It will be complete by the end of the year including public consultation.

Any changes to water recovery targets must be agreed to by all basin governments. Water ministers agreed in April to some projects in the southern basin that could reduce the amount of water required, with more to be decided upon next year.

NSW Minister for Primary Industries and Water Niall Blair said NSW "firmly believes they (the targets) can come down to a sensible level that avoids any further purchase of productive water from NSW valleys".

A spokesman for Queensland's Department of Natural Resources and Mines said while the state was committed to the plan, it "acknowledges the plan's impacts on the basin's communities".

South Australia's Water Minister Ian Hunter is waiting for the Northern Basin review to be released but "respects the independence of the MDBA in making its decision based on sound science".

"All the available evidence suggests that the Basin economy is still expected to grow under the Basin Plan," the spokesman said.

"With or without a basin plan, in the longer-term, social and economic outcomes in the basin will be driven largely by external factors, such as commodity prices, and continuing growth in productivity."

Meanwhile, the MDBA is moving ahead with long-touted plans to decentralise, beginning with new positions across the basin.

The authority will first create "regional engagement officers" as it begins looking into the best locations for regional offices.

Newly elected MP for Murray Damian Drum, who has pushed for the MDBA to relocate to Shepparton, said it was "refreshing" that the MDBA had itself made the decision to decentralise.

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"I'm heartened to hear it ... certainly for me it ramps up the possibility that we might be able to get aspects of the authority in to the regions," he said.
Mr Drum said he had not heard if Shepparton was in contention for an office but would be keen to discuss its prospects with the MDBA.
Mallee MP Andrew Broad has also been pushing for the authority to consider Mildura, given its location close to the borders of three basin states.
Mr Glyde said the MDBA was "well-advanced" in planning for another office in the southern basin.
"I hope to be able to announce this in the near future," he said.
Toowoomba has already been flagged as a possible hub for the northern basin.
The changes would however be introduced gradually to minimise disruption and the cost to the Government.

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http://www.weeklytimesnow.com.au/agribusiness/water/murray-darling-basin-towns-missing-out-on-funds/news-story/5f86efe1c5f6daf411bb6c1c7816c131

Murray Darling Basin towns 'missing out on funds'

NATALIE KOTSIOS, The Weekly Times
August 4, 2016 12:00am

Basin job shock
Southern squeeze tipped to be same
Water fix is Murray Darling Basin job killer

STRUGGLING communities in the Murray Darling Basin's north are missing out on vital funding that could help them adapt to their changing landscapes, a NSW mayor says.
Rex Wilson, mayor of Warren Shire, says despite presiding over one of the hardest hit communities under the Murray Darling Basin Plan, his council is yet to see a cent from the Federal Government's economic diversification fund.

The $72.65 million fund is allocated to the Victorian, NSW and Queensland governments, which can choose projects to support that increase job opportunities and diversification for communities that give up water under the basin plan. There have been two funding rounds so far.

Warren, north west of Dubbo, was this week projected to lose up to 35 per cent of fulltime jobs under the full basin plan — yet neither it, nor any of its Northern Basin counterparts — have received funding thus far.

BASIN JOB SHOCK

Mr Wilson said he did not begrudge individual irrigators who sold their water, but while they received compensation, the community received "zilch".

"We believe it's either an anomaly or just plain wrong that a community identified to be the most affected in the whole basin has not been successful in securing any compensation at all," he said.

"I don't want to criticise the southern basin — if they were successful, good luck to them — but that this passes any fairness test is unbelievable."

SOUTHERN SQUEEZE TIPPED TO BE SAME

The NSW Government announced 21 projects worth $18 million under the fund in May last year, all of which were in the southern Murray or Riverina regions.

University of Canberra researcher Jacki Schirmer — who has spent several years documenting communities in the Murray Darling Basin — said she raised concerns with the funding program during the Senate Inquiry into the Murray Darling Basin Plan.

"The program is meant to ameliorate the impacts of the plan but looking at where the funding went. I'm not convinced it was used in the best way," she said.

WATER FIX IS MURRAY DARLING BASIN JOB KILLER

Dr Schirmer told the inquiry in February that other issues with the fund included the complicated application processes councils were expected to follow.

"If you are a community experiencing negative impacts, you are already at a disadvantage and you do not necessarily have the resources to invest in people to write a professional report or to provide matching funding," she said.

Squeeze tipped to be same in Murray Darling Basin southern region towns

NATALIE KOTSIOS, The Weekly Times

August 3, 2016 12:00am

JOB losses, small towns on the decline, too much water recovered — they might be the results of the Murray Darling Basin Plan in Queensland and northern NSW, but Lorraine Learmonth says it could just as easily be her home at Cohuna, in Victoria's north.

While socio-economic studies have yet to be done in the basin's south, Ms Learmonth — mayor of Gannawarra Shire — says anecdotally the pressures are the same.

BASIN JOB SHOCK

"We've got a pretty resilient community, they work hard and find other opportunities, but there's definitely been a decline in some areas," she said.

Data from 2010 suggested the shire's population would decrease by up to 1700 under the plan, from a population of more than 10,000.

Today, Ms Learmonth says there are indications the population has declined by as much as 3 per cent, and agricultural jobs have dropped 34 per cent.

She does not attribute that solely to the basin plan — the once "thriving dairy area" has also faced challenges in terms of rising water prices and poor weather conditions. But, she argues, these factors are compounded by the plan to make life more difficult.
Should jobs be lost to gain water for the environment?

Gannawarra falls within the Murray region, where 397 gigalitres of water has been recovered — well over the 253GL local target. About 270GL of this came from buybacks.
Dairy Australia estimates dairy farmers sold about 120GL, many believing they would buy water on the temporary markets instead.

A report from environment consultants Aither this year showed buybacks weren't the main reason behind high water prices but contributed to price increases by about a quarter.
"Unreliable water and the rising costs has put extra stress on farmers. It all flows on to the local businesses, the local football clubs all struggle for players — it just goes through the community," Ms Learmonth said.

WATER FIX IS MURRAY DARLING BASIN JOB KILLER

University of Canberra's Jacki Schirmer — who has headed up three years of surveys in the Murray Darling Basin and will be on the Murray Darling Basin Authority's socio-economic panel when it looks into the southern basin in the next year — said buybacks tended to be good for the individual farmer but could have a negative impact on their communities.
Pinpointing how many of the negative consequences were due to the basin plan and how many were attributed to other factors, such as drought, was difficult, Dr Schirmer said, but there "definitely are small communities where a large volume of water was taken in a short amount of time, and they are struggling".
"I think some of the settings (of the plan) are probably right but I think there's others where we need to be evaluating the intended and unintended outcomes," she said.
Getting the balance right between those positives and negatives was not easy and needs more scrutiny.
"I don't think they realise what effect it's had on our communities," she said.
Getting the balance right between those positives and negatives was not easy and needed more scrutiny.
Ms Learmonth said: "I don't think they realise what effect it's had on our communities."

Channel between Finlay and Deniliquin Nov 2011 Photo Maria Riedl

Mulwala Channel with a healthy crop of willows 2011 Photo Maria Riedl

Murrumbidgee in flood

Rice flood irrigated 2011 Photo Maria Riedl

The degraded and over-allocated Murray River at Nangiloc Victoria 2008 photo Maria Riedl

The Agricultural Industry - Volume 9, 2007

Land Clearing Laws in Western Australia

Dr Joan Squelch
School of Business Law
Curtin University of Technology

Abstract

Extensive land clearing has taken place in Australia since the arrival of the European settlers. Australia ranks high in the world in terms of land clearing rates with an estimate of some 687,800 hectares of native vegetation being cleared annually in Australia. The clearing of native vegetation has contributed to a decline in biodiversity and an increase in problems such as salinity and soil erosion. In July 2004 the *Environmental Protection Act 1986* (WA) was amended to bring in more stringent and uniform controls for clearing native vegetation. The

purpose of this article is to provide an overview of the key amendments to land clearing laws and regulations in Western Australia with particular reference to the agricultural sector.

Introduction

Since the settlement of Australia, land clearing has been undertaken on a large scale. United Nations figures place Australia in the top ten land clearing countries, with Australia reportedly ranking sixth in the world in land clearing rates.[1] It is recognised that large-scale land clearing contributes significantly to greenhouse gases, salinity and soil erosion.[2] The development of agriculture, the backbone of wealth in Australia, necessitated the clearing of land, and agriculture has been the primary reason for land clearing. Whilst land clearing is arguably necessary for agricultural development, the extensiveness of land clearing is also viewed as a major cause of biodiversity loss in Australia. Over many decades land clearing for agricultural purposes has resulted in a significant loss of native vegetation. Bartel[3] writes that most of the land cleared in Australia is for agricultural purposes; an enterprise contributing to over 3% of Australia's Gross Domestic Product, and accounting for some 22% of Australia's export earnings. Although comprehensive up-to-date statistical data on land clearing in Australia is not readily available, various studies and reports provide a good indication of the extent of land clearing and its associated environmental impact, over which there is wide consensus. According to the Australian Conservation Foundation, some 687,800 hectares of native vegetation are cleared annually in Australia, and Queensland and New South Wales 'account for more than 80% of the native bush cleared in Australia'.[4] Tasmania also has a seemingly high rate of land clearance at 17,000 hectares per year, given its size.[5] According to the Department of Water, Land and Biodiversity Conservation in South Australia, less than 20% of native vegetation remains in South Australia's agricultural areas, and in some places it is less than 10%.[6] The Australian Bureau of Statistics states that the most intensive agricultural land clearance has occurred in areas where 'crops or sown pasture have been planted'.[7]

Western Australia is a major agricultural region but it is also one of the most biologically diverse areas. The Environmental Protection Authority of Western Australia ('the EPA') notes that 'Western Australia's native vegetation is unique on a world scale' and that 'clearing and consequential salinity have a devastating effect on biodiversity'. The EPA also notes that in agricultural areas 'the removal of

1 Australian Conservation Foundation, *Australian Land Clearing, A global perspective: latest facts and figures* (2001) <http://www.acfonline.org.au/uploads/res_land_clearing.pdf> at 18 November 2006.

2 A. Glanznig, 'Native vegetation clearance, habitat loss and biodiversity decline. An overview of recent native vegetation clearance in Australia and its implications for biodiversity' (Biodiversity Series Paper No. 6., 1995) <http://www.deh.gov.au/biodiversity/publications/series/paper6/index.html> at 8 November 2006.

3 R. Bartel, 'Compliance and complicity: an assessment of the success of land clearance legislation in New South Wales' (2003) 20(1) *Environmental Planning and Law Journal* 16-141.

4 Above n 1, 2.

5 Above n 1, 7.

6 Department of Water, Land and Biodiversity Conservation. South Australia <http://www.dwlbc.sa.gov.au/native/nvsa/index.html> at 24 March 2007.

7 Australian Bureau of Standards <http://www.abs.gov.au/Ausstats/abs@.nsf/94713ad445ff1425ca25682000192af2/1C36C09104A4765ACA256BDC001223FE?opendocument# > at 23 March 2007.

biodiversity has already been too much'.[8] In Western Australia, most of the native vegetation clearance has occurred in the south-west region. The Department of Environment and Conservation also claims that 'the south west of Western Australia is known as one of the world's twenty five biodiversity "hotspots" with some of the richest and most *threatened* reservoirs of plant and animal life on earth'; and that in some areas of the State, such as the Avon-Wheatbelt bioregion, 'ninety three percent of native vegetation has already been cleared'.[9] The loss of vegetation can also have a significant impact on plant and animal species. For example, in Western Australia, Saunders found that a rapid loss of species has occurred in wheat belt reserves since the clearance of vegetation 50 years ago, and in a more recent study 49% of bird species have declined since the region was developed for agriculture.[10] Protecting what remains of the State's native vegetation must, therefore, be a high priority.

8 Environmental Protection Authority. Western Australia 'Environmental Protection of Native Vegetation in Western Australia. Clearing of native vegetation, with particular reference to the agricultural area' (Position Statement No 2, 2000) <http://www.epa.wa.gov.au/docs/1032_PS2.pdf> at 17 November 2006.

9 Department of Environment and Conservation, Western Australia, Native Vegetation Protection <http://portal.environment.wa.gov.au/portal/page?_pageid=53,34373&_dad=portal&_schema=PORTAL> at 23 March 2007.

10 Above n 9.

11 Other legislation such as the *Wildlife Conservation Act 1950* (WA) and the *Town Planning and Development Act 1928* (WA) also dealt with matters concerning the clearing of vegetation.

12 Environmental Defender's Office WA (Inc), 'Regulation of land clearing: reforming the law in Western Australia' <http://www.edowa.org.au/archives/11_Regulating_land_clearing.pdf > at 17 November 2006.

Effective laws need to be in place to protect that biodiversity and curtail land clearing. The purpose of this article is to provide an overview of key amendments to land clearing laws and regulations in Western Australia with particular reference to the agricultural sector.

Land clearing legislation and regulation in Western Australia

A mixture of different laws has regulated land clearing in Western Australia, and clearing for agricultural purposes in the South West region. Prior to July 2004, the *Soil and Land Conservation Act 1845* (WA) and the *Environmental Protection Act 1986* (WA) largely controlled land clearing in Western Australia.[11] However, the Environmental Defender's Office of Western Australia (EDO) described the land clearing regulation as a 'patchwork quilt of holes' highlighting a number of limitations to the regulations that made it ineffective.[12] In particular, the EDO report noted that the maximum penalty of $2000 for unauthorised agricultural land clearing was ineffective in deterring land clearing. A further problem was that it was possible for land clearing to take place without penalty during the period in which the EPA assessed the land clearing proposal. In July 2004 amendments to the *EP Act* introduced a number of reforms to provide for stronger and more effective regulations on land clearing. Land clearing is now fully regulated by the *EP Act* and the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* ('the Regulations'), and managed by the Department of Environment and Conservation. Sections of the *Soil and Land Conservation Act 1945* (WA*)* relating to land clearing were repealed. Some of the key amendments to the legislation are discussed below.

[13] Section 51A and 3(1). It does not include vegetation in a plantation.
[14] Section 51A.
[15] Section 51C.
[16] Clearing means the destruction or removal of native vegetation, the severing or ringbarking of trunks or stem or doing any other substantial damage to native vegetation (section 51A).
[17] Sections 51H and 51I.
[18] Section 51E.
[19] Section 51E(b)(i).
[20] Section 51E(b)(ii).
[21] Section 51G.

The purpose of the *EP Act* is to provide for 'the prevention, control and abatement of pollution and environmental harm, for the conservation, preservation, protection, enhancement and management of the environment'. The protection, conservation and management of native vegetation are, therefore, a primary goal of the *EP Act*. Division 2 of the Act deals with the clearing of native vegetation. The basic principles guiding the clearing of native vegetation are set out in Schedule 5; and Schedule 6 sets out the exemptions that are generally applied to land clearing that are authorized under a separate statute.

What is protected?

Clearing native vegetation is prohibited unless a permit is obtained or it is for an exempt purpose. This applies to all land in Western Australia including rural land, pastoral leases and roadside verges. The law applies only to *native vegetation*, which is defined to mean any indigenous vegetation, living or dead, and terrestrial or aquatic.[13] Clearing is defined as any act that kills, destroys, removes or substantially damages some or all of the native vegetation in an area.[14] It is an offence for a person to clear land of native vegetation without a permit or if the clearing is not for an exempt purpose.[15]

Clearing permits

Under the *EP Act* land clearing is controlled by a permit system, which applies to private and public land.[16] A permit authorises a person to clear land, which may be subject to certain conditions and restrictions.[17] The *EP Act* provides for two types of permits, namely an *area* permit and a *purpose* permit.[18] An area permit applies to the clearing of a specified area, for example, clearing a specific area for agricultural purposes.[19] A purpose permit relates to the clearing of different areas from time to time for a purpose that is stated in the permit application, for example, for the purpose of local governments carrying out road works.[20] The duration of the permit is limited: an area permit continues for 2 years and a purpose permit for 5 years from the date the permit was granted, unless another date is specified on the permit.[21] The application process and requirements for a permit appear substantial. Applications require detailed information about the land clearing activity and supporting information such as photographs and maps. The application must also be advertised in a State newspaper for public comment. Applications and current

[22] Department of Environment and Conservation, Western Australia, <http://portal.environment.wa.gov.au/portal/page?_pageid=53,1254654&_dad=portal&_schema=PORTAL at> at 12 July 2007.
[23] Schedule 6(3).
[24] Schedule 6(6).
[25] Schedule 6(9).
[26] Schedule 6(13).
[27] Schedule 6(1).
[28] An area that is the subject of a declaration that is in force under section 51B *EP Act.*
[29] Reg 5 item 1.
[30] Reg 5 items 6, 10, 11.
[31] Reg 5 items 12, 13.
[32] Reg 5 item 5.

clearing permits are listed on the Department of Environment and Conservation's website.[22] The application process allows members of the public to make comments on the applications and lodge objections.

Exempt clearing

A potential weakness of the legislation and amendments is the extent of the exemptions that apply to clearing native vegetation and for which a permit is not required. A lengthy list of exemptions is set out in Schedule 6 of the *EP Act*. The type of exemptions mainly relate to land clearing activities that are regulated and authorised under another statute, for example, clearing that is done in accordance with a licence or approval under the *Conservation and Land Management Act 1984* (WA),[23] the *Wildlife Conservation Act 1950* (WA)[24] or the *Town Planning and Development Act 1928* (WA).[25] Clearing that is caused by the grazing of stock on land under a pastoral lease within the meaning of the *Land Administration Act 1997* (WA) is also exempt.[26] Similarly, clearing that is permitted under the *Bush Fires Act 1954* (WA) is exempt. For example, clearing for burning during a restricted time and during a prohibited time to protect buildings, haystacks and crops is permitted; provided a permit is obtained from a fire control officer.[27]

Further exemptions are provided for in Regulation 5, which sets out clearing for a prescribed purpose under section 51 of the *EP Act*. These exemptions generally refer to day-to-day activities that are meant to have a low impact on the environment. However, unlike the Schedule 6 exemptions, the exemptions under Regulation 5 do not apply in areas that are identified as 'environmentally sensitive areas'.[28] These areas have vegetation with a high conservation value and, therefore, cannot be cleared. The exemptions can be separated into 'one year per hectare exemptions' and 'other exemptions'. The former types of clearing may not exceed one hectare in a financial year. The types of activities excluded under this Regulation and which fall within the one hectare restriction include: clearing to construct a building or structure,[29] such as a shed; clearing to allow for fencing materials and new fence lines,[30] and vehicle and walking tracks – which must not be wider than necessary and does not include riparian vegetation, that is, vegetation associated with a wetland or watercourse;[31] and clearing for firewood and timber for farm and domestic use.[32] Vegetation cleared for firewood and timber, however, can only be used for the owner's personal use and cannot be commercialised.

[33] Reg 5 item 2.
[34] Reg 5 item 3.
[35] Reg 5 item 4.
[36] Reg 5 item 15.
[37] Reg 5 item 14.
[38] Reg 5 item 4.
[39] Section 51O.
[40] Section 51P.
[41] Schedule 5(2).

Clearing exemptions that are not subject to the one hectare restriction include: clearing for the purpose of preventing 'imminent danger' to human life;[33] clearing for fire hazard reduction;[34] clearance in accordance with a code of practice;[35] the maintenance of existing cleared area around infrastructure – provided the clearing of the area was legally done within the previous 10 years;[36] and clearing to maintain existing cleared areas for pasture, cultivation or forestry – provided the land was lawfully cleared within the 10 years prior to clearing and has been used for these purposes within those 10 years.[37] Clearing may be exempt if it is done in accordance with a code of practice that is issued by the CEO of the Department of Environment and Conservation under section 122A of the *EP Act*.[38]

Assessing permit applications

The CEO of the Department of Environment and Conservation assesses applications for permits. Assessment is based on a number of factors and impacts on the environment. The CEO must take the following aspects into account: comments received by parties who have been invited to make comments on the application; any relevant town planning scheme; State planning policies (e.g. *State Environmental (Cockburn Sound) Policy 2005*); a local planning strategy; the land clearing principles in Schedule 5 of the *EP Act*; and any other matter that the CEO considers relevant.[39] The CEO must also ensure that the application is consistent with any approved policy and may not amend or grant a permit if the effect on the environment would be inconsistent with any approved policy. For example, Environmental Protection Polices established under Part III of the *EPA Act* are 'an approved policy'.[40]

Schedule 5 of the *EP Act* lists a number of principles that should guide decision-making for clearing native vegetation. According to this Schedule, native vegetation should not be cleared if:

it comprises a high level of biological diversity;

it is necessary for the maintenance of a significant habitat for indigenous fauna in Western Australia, rare fauna declared under the *Wildlife Conservation Act of 1950* (WA) or a threatened ecological community, designated as such under the Commonwealth *Environmental Protection and Biodiversity Act 1999*;[41]

it is significant as a remnant of native vegetation in an area that has been extensively cleared;

it is associated with a watercourse or wetland;

42 *EP Act*, section 4A(1). Also, *EPBC Act* s 3A(b).
43 *EP Act*, section 4A. The term 'risk-weighted consequences' has been described as 'an attempt to undertake semi-quantitative analysis, and determine the likelihood of irreparable damage or an undesired or adverse outcome arising from a particular development activity.' See G. Bates, *Environmental Law in Australia* (6th Ed, 2006) 129.
44 *Leatch v Director General of National Parks and Wildlife Services* (1993) 81 LGERA 270 at 282.
45 Section 3(2)(d) of the *Vegetation Management Act 1999* (QLD) specifically provides for the application of the precautionary principle in relation to clearing native vegetation.
46 Section 51I.
47 Section 51J.
48 Schedule 1*, EP Act 1986*.
the clearing is likely to cause considerable land degradation;

the clearing is likely to cause deterioration in the quality of surface or ground water;

the clearing is likely to cause or exacerbate the incidence of flooding; or

the clearing is likely to impact on environmental values of any adjacent of nearby conservation area, for example, a marine nature reserve or national park.

In addition to these principles, the precautionary principle should also be taken into account when making a decision about a clearing permit. Section 4A sets out the environmental principles underpinning the *EP Act*. The precautionary principle requires that 'if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation'.42 In the application of the precautionary principle, decisions should be guided by careful evaluation to avoid serious or irreversible damage and an assessment of risk-weighted consequences of various options.43 The trigger for the application of the precautionary principle is a threat of serious or irreversible environmental damage, and such a threat will depend on scientific evaluation. The second aspect of the precautionary principle is based on the premise that where 'uncertainty or ignorance exists concerning the nature or scope of environmental harm, decision-makers should be cautious'.44 Similar provisions can be found in other jurisdictions.45
The CEO of the Department of Environment and Conservation can grant or refuse an application, or grant an application subject to certain conditions. A condition may specify activities that are authorised or not authorised by the clearing permit.46 Section 51I lists things that the holders of a clearing permit can be required to do. This section provides a potentially strong mechanism for ensuring that permits are used in a responsible and accountable manner. The contravention of clearing permit conditions amounts to an offence.47 The maximum penalty for contravening a convention is $62,000 for an individual and $125,000 for a corporation, which may not be sufficient penalties to deter contraventions.48 Conditions that may be imposed include:
taking steps to prevent or minimise the likelihood of environmental harm;

establishing and maintaining vegetation on land to offset the loss of the cleared vegetation;

making monetary contributions to a fund for the purpose of establishing or maintaining vegetation;

49 Section 101A.
50 Section 101A(1).
51 Section 101A(3).
52 Section 101A(4).
53 Schedule 1, *EP Act 1986*.
54 Section 50A.
55 Section 50B.
56 Section 3A(2).
monitoring operations and environmental harm;

conducting environmental risk assessment studies;

providing reports on audits and studies; or

adhering to environmental management systems.

Appeals
Appeals against a decision to grant or refuse an application are made to the Minister for Environment.49 The applicant may lodge an appeal against the refusal to grant an application or against conditions attached to the permit. An applicant has 28 days from notification to lodge the appeal in writing setting out the grounds of the appeal.50 Third parties are also entitled to appeal. A person other than the applicant or permit holder may lodge a written appeal within 28 days against a decision to refuse a permit,51 or within 21 days if the person disagrees with the granting of a pe
Clearing offences and penalties

If a person or body corporate clears native vegetation without obtaining a permit and the clearing is not for an exempt purpose, penalties may be applied. The amendments to the *EP Act* have increased the penalties considerably, which will hopefully serve as a deterrent. The maximum penalty for unlawful clearing under section 51C is $250,000 for individuals, and $500,000 for a body corporate.[53]

Offence of environmental harm

The amendments to the *EP Act* introduced a new offence of environmental harm, with new penalties. A person who causes serious or material environmental harm, or intentionally or with criminal negligence causes serious[54] or material[55] environmental harm, commits an offence. Serious environmental harm is defined as harm that is irreversible, of a high impact or is on a wide scale; is significant or in an area of high conservation value; or of special significance; or results in actual or potential damage. Material environmental harm is defined as harm that is neither trivial nor negligible; or results in actual or potential damage.[56]

If it can be established that the environmental harm occurred as a result of land clearing, a penalty can be imposed, and in some cases imprisonment, or both. The maximum penalty for an individual who causes serious environmental harm is $250,000 or 3 years imprisonment or both, and the penalty for material environmental harm is $125,000. If serious harm was caused with intentional or criminal negligence, the

[57] Schedule 1, *EP Act 1986*.
[58] Section 51L.
[59] Section 70. Unlawful clearing is clearing that contravenes section 51C or 51J.
[60] Section 70(4)(b).
[61] Section 70(3).
[62] Section 70(5).
[63] Section 51S.
[64] Section 51S(4).

penalty is $500,000 or 5 years imprisonment or both. If an individual causes material environmental harm with intentional or criminal negligence the penalty is $250,000 or 3 years imprisonment. The maximum penalty for a body corporate that causes serious environmental harm is $500,000 and for material environmental harm it is $250,000. If body corporate causes serious harm with intentional or criminal negligence, the penalty is $1 million; and if it is material environmental harm with intentional or criminal negligence the penalty is $500,000.[57]

Monitoring and enforcement

The *EP Act* makes provision for various enforcement mechanisms. The CEO may revoke or suspend a clearing permit if the CEO is satisfied that there has been a breach of any condition attached to the

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The CEO can issue a 'vegetation conservation notice' if there are reasonable grounds to suspect that unlawful clearing is likely to take place or is taking place.[59] The vegetation conservation notice may require a person to do one or more of the following: protect existing vegetation; repair any damage; prevent erosion; re-establish and maintain vegetation on an area that has been cleared; or ensure that specified land, watercourses or wetlands are not damaged or detrimentally affected.[60] A notice may be given to the owner or occupier of the land, or any other person if the CEO determines that it is practical for such a person to comply with and implement the notice.[61] Before issuing a notice the CEO must invite the person to give a written submission as to why a notice

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The CEO can also apply to the Supreme Court for a clearing injunction to prevent a person from engaging in 'improper conduct', namely any act or omission constituting a contravention.[63] The Supreme Court may grant an injunction if it is satisfied that it is appropriate to do so, whether or not it is proved that the person intends to engage in, or continue to enga

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Some issues regarding implementation The amendments to the *EP Act* that aim to protect, control, reduce and monitor native vegetation clearing are still fairly new and it may be some time before the effects are seen. The amendments provide a unified

[65] Bartel, abo
[66] Unlike legislation in other
vegetation.
[67] Bartel, above n 3, 124. [68] Bartel, above n 3, 135.
[69] Department of Environment and Conservation. Personal Communication. It is, however, noted that most clearing isrelated to mining and petroleum activities (66%) and only 15% of approved cle
[70] Auditor General for Western Australia, 'Management of Native Vegetation Clearing' (Report 8, September 2007) <http:/

regulatory framework and perhaps the most important aspects are the increase in penalties and higher penalties for environmental harm. However, as Bartel states 'a law does not necessarily translate into practice';[65] there is no guarantee that the law will be successful. In assessing the adequacy or success of the legislation, a number of approaches may be adopted. In the first instance, the legislation may be evaluated in terms of its objectives and measurable outcomes in terms of its success in protecting native vegetation, reducing clearing and reducing the

loss of biodiversity.[66] However, reliable data of this nature does not appear to exist and would require extensive research. Environmental studies on native vegetation over a period of time may eventually provide insights into the impact of the legislation on native vegetation protection. Bartel suggests that a test to see whether rates of vegetation loss have been reduced is near impossible for most States.[67] Another means of evaluating the impact of the legislation is to examine data

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Legal land clearance The *EP Act* is aimed at protecting biodiversity and reducing land clearing. However, the Act still provides for extensive legal land clearing. Bartel[68] argues that legislation may still be unsuccessful in achieving its aims if the total amount of legal clearance is still great. Since the amendments to the *EP Act* came into operation in July 2004, a number of clearing permits have been approved and the number approved far exceeds the number declined. Some 1197 applications for a clearing have been received of which 93 were declined, 53 refused and 553 approved. In terms of permits for agricultural purposes, 254 applications have been received, 27 were withdrawn, 17 declined (not considered), 42 refused and 96 granted.[69] The Auditor General's report on land clearing notes that for the period 2005 to 2007, most clearing was related to mining and petroleum activities (66%) and only 15% of approved clearing was for agricultural purposes.[70] Although it is arguable that the application and assessment process for clearing permits is rigorous and the permits allow clearing that is necessary and which is likely to have a low environmental impact, the extent of legal land clearance may still be too high to stem the tide of native vegetation clearing. However, further research and quantitative data is needed in order to assess the effect of the legislation and whether it will achieve its objective of protecting and maintaining native vegetation. According to the State of Environment Report 2007 'comprehensive statistics on the rate of clearing of native vegetation are difficult to obtain and there are major challenges in accurately representing the data' and 'there is a need for a

2007. [72] Amendments to the regulations in 2007 now allow clearing without a permit for all mineral and petroleum exploration work that is not in an 'Environmentally Sensitive Area'. *Environmental Protection (Clearing of Native Vegetation) Amendment*

[73] [2006] SAERDC 17. [74] Compliance inspections are carried out by inspectors from the Department of Environment and Conservation. Inspectors have t

clearing permit.

[75] Above n 71.

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year'.[71]

Too many exemptions? The legislative framework for protecting native vegetation is intended to stem the flow of clearing and to regulate clearing through the permit system. However, the exemptions provided for under Schedule 6 and Regulation 5 are extensive and may reach too far in allowing for the clearing of native vegetation.[72] The fact that prescribed activities are 'exemptions' means that they are clearing activities that can be carried out without applying for a permit. This relies on self-regulation and self-assessment. This could result in clearing where landowners believe the clearing falls within an exemption. This raises the concern about what onus or duty is placed on landowners to check the exemptions. Although there are no reported cases in Western Australia regarding unlawful land clearing, the problem of self-regulation and assessment is illustrated in a South Australian case *Native Vegetation Council v Wandel.*[73] In this case the defendant cleared 59 native trees and built an earthen wall across a creek that resulted in the flooding of 22.5 hectares of native vegetation, almost all of which died as a result. The defendant claimed that he believed that cutting trees for firewood and to clear a vehicular track; and to build a dam wall all fell within the exemptions. These activities did not; and although the defendant was issued with orders to

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defendant would have the finan

Compliance and enforcement Monitoring compliance with the legislation and permits may prove challenging.[74] Western Australia is the largest state in Australia (2 525 500 square kilometres in area) with vast areas under agriculture. Ongoing monitoring is essential to identify unlawful clearing and breaches of permits and conditions. Without the necessary resources, monitoring is unlikely to be adequate; relying instead on the public to report clearing offences. Without adequate monitoring, offences will go unreported and convictions will be difficult to obtain. Inadequate compliance, monitoring and enforcement undermine the value of the legislation. According to the State of Environment Report 2007 'unauthorised (illegal) clearing continues to occur, although the scale of this problem remains unknown'.[75] Similarly the Auditor General's report on land

[77] Above n 70, 17. It is not stated what, if any, of these are related to the agricultural sector.

[78] Bartel, above n 3, 127.

[79] Bartel, above n 3, 129.

[80] J. Kehoe, 'Land clearing in Queensland' (2006) 23 *Environmental Planning and Law Journal* 148-157.

'there has been no meaningful test to see if decisions are being complied with'.[76] According to this report the Department of Environment and Conservation has received more than 550 complaints of illeg

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Judicial decisions The maximum penalty for a contravention by an individual is $500,000 and a body corporate is $1 million. High penalties are needed to deter unlawful clearing. However, how likely is it that courts will impose maximum penalties? Decisions of the courts can serve to strengthen compliance or undermine the legislation. The new regulations under the *EP Act* are yet to be tested in this regard in Western Australia, however, it has been observed in other jurisdictions that several judicial decisions have shown a very lenient approach to convictions; seldom, if ever, are maximum penalties imposed. Bartel[78] analyses a number of cases involving unlawful clearing in agricultural areas, where the combined fines were less than the maximum penalty for a single infringement. As an example, in the case of *Department of Land and Water Conservation v Orlando Farms Pty Ltd* (1998) 99 LGERA 101 the defendant, who had unlawfully cleared 1,200 hectares for dryland wheatcropping, was fined a mere $35,000; even though Lloyd J found that the clearance had caused significant environmental harm because the vegetation cleared was regionally reduced and had provided a habitat to at least one threatened species. One trend to emerge is that offenders can considerably reduce their fines by simply co-operating with officials, being very remorseful and contrite, and pleading guilty early on in the proceedings. For example, in the New South Wales case of *Director-General Department of Land and Water Conservation* v *Ranke* [1999] NSWLEC 22, the defendant's shame and good character 'served to virtually absolve the offender'; with Talbot J stating 'that judicial opprobrium would be reserved for irresponsible actions'.[79] Keho also cites an example of a high profile case in Queensland that demonstrates the court's tendency to leniency. A prominent cattle farmer, and member of a company that owns more than one million hectares in central Queensland, unlawfully cleared 11,830 hectares of land. The defendant pleaded guilty and was fined a $100,000; and no conviction was recorded and no costs were awarded. It appears that the reasoning behind the court's leniency as to costs was that the defendant pleaded guilty and was co-operative.[80] If Western Australia adopts a similar approach and exercises such leniency, it will do little to deter offenders from unlawfully clearing native vegetation. Robust judicial decisions will be

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Compensation The clearing regulations of Western Australia apply to private and public land. Therefore, they serve as a

81 Above n 80, 157.

82 Above n 80, 154.

83 New South Wales Government, *Native Vegetation Management in NSW* <http://www.nativevegetation.nsw.gov.au/fs/fs_16.shtml> at 3 April 2007.

84Queensland Government, *Natural Resources and Water* <http://www.nrw.qld.gov.au/vegetation/financial/agforward.html> at 3 April 2007.

85 S. Jenkins, *Native vegetation on farms survey 1996. A survey of farmers' attitudes to native vegetation and landcare in the wheatbelt of Western Australia* (1996) (Research Report 3/98, Agriculture Western Australia and Department of Conservation and Land Management) <http://www.environment.gov.au/land/publications/nativeveg/index.html> at 23 March 2007.

government bodies. Kehoe[81] argues that 'the imposition of any right is problematic; but the absolute restriction, especially of rights of land use, has the potential to unleash boundless opposition and resentment'. In Queensland, for instance, Kehoe states that Property Rights Australia has indicated that they may challenge the validity of the *Vegetation Management Act 1999* (Qld) in court because of concern about the interference in their land rights.[82] In Western Australia many of the farming areas are under pastoral lease. A pastoral lease, issued under the *Land Administration Act 1997* (WA), authorises a person to use crown land for the grazing of stock. A lease provides limited property rights and a clearing permit is still required for the clearing of native vegetation.

The restriction of land rights raises the question of whether compensation or financial assistance schemes should be available to provide incentives for farmers to protect native vegetation and reduce clearing. For example, the New South Wales government has developed a Native Vegetation Assistance Package to help farmers who experience financial hardship as a result of the *Native Vegetation Act 2000* (NSW) that effectively put an end to broad scale land clearing. The package is worth up to $37 million and is funded by the Environmental Trust. To be eligible for assistance, farmers must have been refused consent to clear native remnant vegetation and demonstrate financial loss.[83] Similarly in Queensland, the State government is providing $150 million over five years to assist landowners affected by land clearing legislation. The Vegetation Incentives Program worth $12 million is to support landholders who maintain and manage native vegetation on their land. An $8 million Best Management Practice Program was also available to provide financial support to landholders to improve land management practices.[84] It is possible that such financial incentives may have a positive impact on farm practices and encouraging farmers to maintain native vegetation. In a survey of farmers' attitudes to native vegetation carried out in the wheatbelt of Western Australia in 1996, many (77%) farmers indicated that better financial support would encourage farmers to replant more local vegetation and 73% indicated that financial compensation for time and materials would be an incentive to farmers to better manage and protect bushland. The participants also indicated that the introduction of greater tax incentives for land care works was the best method of providing financial support.[85] Some financial incentive is available through the use of conservation covenants.

Conservation covenants

86 Department of Environment and Conservation, *Nature Conservation Covenant Program* <http://www.naturebase.net/content/view/120/453/ > at 24 April 2007.
87 Section 31.5 provides for an income tax deduction for conservation covenants provided certain conditions are met, including the requirement that the conservation covenant is perpetual.
88 Section 41 provides that land that is used solely or principally for the conservation of native vegetation is exempt for an assessment year if the land is the subject of a conservation covenant that was in force at midnight on 30 June in the financial year before the assessment year.
Conservation covenants provide one means by which landowners can be encouraged to protect and manage native vegetation on their property. A conservation covenant is a voluntary agreement between the landowner and another party, which is noted on the land title. A conservation covenant that provides for the protection and management of native vegetation may be a positive covenant, which requires the landowner to take positive steps to protect native vegetation, or a restrictive covenant, which restricts the person's use of the land. Statutory conservation covenants are agreements between landowners and a statutory body such at the Department of Environment and Conservation. For example, under Part IVA section 30 of the *Soil and Land Conservation Act 1945* (WA) a landowner may enter into a conservation covenant with the Commissioner of Soil and Land Conservation. Conservation covenants under section 30 may be specified for a period of time or in perpetuity, and are irrevocable. They also bind their successor in title. A conservation covenant under section 30 can be used for the protection of native vegetation. Conservation covenants can also be entered into with the Department of Environment and Conservation under the covenant program. There are various incentives available to landowners who voluntarily enter into a covenant. Ongoing conservation advice is available to landowners to assist them in their conservation efforts, up to $500 is made available for the landowner to seek independent legal advice at the time of entering into the covenant, some funding is available for fencing or other management, and landowners may get rate reductions. Tax concessions are also available to landowners entering into perpetual conservation covenants.86 The main financial incentive is through tax concessions available under the *Income Tax Assessment Act 1997* (Cth)87 and land tax exemptions under the *Land Tax Assessment Act 2002* (Cth).88

Conclusion

In July 2004 amendments to the *Environmental Protection Act 1986* came into force that prohibited the clearing of native vegetation across Western Australia. The clearing of native vegetation is unlawful unless a clearing permit has been granted or the clearing falls within the exemptions under Schedule 6 or Regulation 5. A primary aim of the legislation and regulations is to protect and manage native vegetation, and to reduce clearing. The amendments brought about some significant changes, in particular, the increase in penalties for unauthorised clearing. The Department of Environment and Conservation (formerly the Department of Environment) has indicated that the changes to the legislation are necessary for protecting the remaining vegetation and sustainable land use. The Department notes that the loss of native vegetation and unsustainable agricultural practices has led to a serious decline in fauna and flora and has contributed to salinity. However, it remains to be seen whether the legislative controls will in fact bring about a

significant reduction in the clearing of native vegetation, especially in agricultural areas, and reduce the impact on biodiversity.

Victoria's Rangelands: In Recovery or in Transition?

Report from a Parks Victoria Sabbatical Project

Peter Sandell 2011

3. CREATION OF THE NEW MALLEE PARKS

Community attitudes towards reservation

At the time of the reservation of most of the remaining Victorian rangelands in 1991, a total of 31 separate grazing tenures existed over the state forest which had been converted to national park. Most of the grazing licensees accepted the decision of government with good grace, whilst a few were antagonistic and predicted that the new parks would become a

haven for vermin and weeds causing problems for neighbouring farms. There was considerable publicity at the time (refer Appendix 1).
A common theme in the local press was that “there is little worth in removing grazing cattle and sheep to encourage native tree regeneration if rabbits take their place”. Other concerns expressed were that kangaroo populations would increase and impact upon neighbouring farms, that increased grass growth would lead to increased incidence of wildfires, and that the scale of the task of managing the former grazing leases would be beyond the local agency (Department of Conservation and Environment) and would represent a major drain on the public purse. The impact of the LCC recommendations upon particular families who depended largely on their public land leases was also highlighted. Some landholder anger was directed at the new Aboriginal name that had been chosen
by the Minister (Mr Steve Crabb). After vocal local protests, this new name (Yanga-Nyawi National Park) was abandoned and the name Murray-Sunset N.P. adopted (Appendix 1).
Some more in-depth media analysis noted that the Mallee Region was not a charismatic cause for conservation and would hence struggle to attract resources. An article in the Melbourne Age of 1st August 1989 stated that there was now a new vision for the Mallee. “After a century of being seen as an agricultural opportunity, it is now recognised as the last semi-arid vegetation in south-east Australia. The CSIRO describes .... belated acknowledgement by land managers of bad past practices.
There is a new awareness of the link between tree cover and land degradation – the more you denude, the more you interfere with balanced systems”. In the same article, Tim and Brian O’Sullivan are quoted as blaming the degradation on them being “locked in a financial trap: not wanting to throw cash at land they could lose, yet risking that loss by not looking after their property”. The article also quotes the Victorian Farmers Federation; “Where will all the money come from for a million hectares, much of it in decline?”

Condition of the rangelands at the time of reservation

Concerns about the condition of the Mallee rangelands were by no means first expressed by the LCC. As noted above, the Department of Crown Lands and Survey (Memorandum of 21/12/1982) and the Soil Conservation Authority prepared periodic reports on the conditions of individual leases from the 1950s. Earlier, Zimmer (1944) reported on the lack of regeneration of Callitris sp. in the Yarrara forest prompting some regeneration experiments. He found rabbits, livestock and unsuitable soil conditions were all implicated. Allen (1983) assessed tree decline in Western N.S.W. by means of
questionnaires, canvassing for information through newspapers, and by literature review. He found widespread evidence of insidious tree decline caused by grazing animals and expressed concern that the steady decline in tree numbers would lead “to an inevitable completely treeless landscape”.
At the time of reservation in 1991, the condition of Mallee grazing licences varied widely depending on stocking practices and the level of rabbit control. Some licensees had adopted conservative stocking practices which were reflected in the relatively good condition of their licence area. Other licences were in a highly degraded condition. No detailed assessment was made of the condition of licence areas at the time of reservation, although this information may have been useful in the subsequent interpretation of differing rates of rangeland recovery.
It is not possible to characterise the condition of all of the diverse rangelands at the time of reservation. The following images are representative of areas that exhibited land degradation or other issues that would require management.

Grazing exclosure established on Sunset Pastoral licence area in 1968 and photographed here in 1989. Indicates regrowth of Slender Cypress-pine (Callitris gracilis) within the exclosure but not outside.

Cattlebush (Alectryon oleifolius) photographed on Sunset Pastoral licence area in 1990. There is no evidence of native tussock grasses in the field layer which is dominated by introduced annual weeds (Bromus spp. and Hordeum spp.) and Burr Medic (Medicago spp.).

Astrolobe Polar ship Hobart 20 August 2016

Thank you for allowing us to comment.

Maria I E Riedl

Mallee tree 18 August 2016 photo by Maria I E Riedl