

Overview and Critique of “A New Generation of National Environmental Laws”

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Introduction

This document aims to provide a detailed overview and critique of “A New Generation of National Environmental Laws” by authors writing for the Places You Love Alliance. This will include a detailed breakdown of the areas where the authors believe national environmental strategy to be failing, the reforms suggested by the authors to rectify these failings, and a critique of the efficacy of such reforms.

The article makes the case that factors including a combination of poor policy, lack of enforcement of existing environmental law, and the lack of a sufficient environmental protection strategy has led to an unsustainable amount of land clearing, habitat and biodiversity loss, and pollution. The authors postulate a series of solutions to these issues while utilising case studies to make suggestions regarding environmental reform and to highlight how faults with current approaches to environmental protection have led to undesirable outcomes.

Overview and critique of key tenets for environmental reform

The authors begin by bringing attention to the fact that our latest major piece of large-scale environmental protection legislation, the Environmental Protection and Biodiversity Conservation Act (EPBC), was enacted over twenty years ago during a time when risks to the environment were not understood in as much detail as they are now. This highlights the need for effective governmental reform with a strong focus on working alongside independent scientific bodies and the community for current rates of environmental degradation to be effectively reversed in a timely manner. The authors place emphasis on the importance of an environmental reform framework centred on the core principles of being comprehensive, adequate, and responsible, with a particular focus on the five key tenets of strong national leadership, a central role for community involvement, working alongside trusted institutions, strong environmental outcomes, and resilience in the face of climate change (A new Generation of Environmental Law, 2022).

The article discusses national leadership first, which is perhaps the most critical area in need of attention. This is due to effective leadership at the Local, State, and Federal level regarding climate change and environmental protection involving the other four tenets discussed above while formulating an environmental strategy. Currently, Australia’s leadership system distributes responsibility across federation with no specific body being responsible for coordinating environmental protection efforts (A new Generation of Environmental Law, 2022). This, coupled with a lack of consistent monitoring and reporting between government organisations, often leads to a disorganised approach to environmental decision-making and increased costs for businesses attempting to comply with their obligations to several regulatory regimes subject to regular change. The authors state that leadership bodies ought to develop the necessary reforms to deliver further accountability for environmental remediation indicators, the development of national goals, standards and reporting, protection for National Environmental Matters, and a higher degree of coordination between regulatory regimes. The lack of meaningful, effective legislation to protect Australia’s native flora and fauna over the past 20 years at all government levels is evidence that swift and significant changes to the manner of national leadership approaches and enforces its environmental strategy are required.

It is important to note that in some instances, leadership across various levels of government has facilitated and nominally enforces sound monitoring and reporting practices in important areas of environmental protection when necessary. For example, the ANZECC water quality standards provide a comprehensive overview of the general requirements for river health on a national level (ANZG, 2018), while local councils such as the Blue Mountains City Council will use virtually the same overarching framework with the acceptable ranges for certain indicators being slightly different on the basis that an area as small as a local council area requires more specific environmental processes indicative of health than an area as large as the entire country (Blue Mountains City Council, 2021). Both local and federal frameworks assess aspects of water quality such as water chemistry, to what extent heavy metals and other contaminants are present if at all, the physical condition of the river

and surrounding riverbank, and the biodiversity of macroinvertebrate assemblages and which macroinvertebrate species are present (a common indicator of water quality the world over as they respond to fluctuations in water quality in real-time and are exceptionally common) (, and compare these to a pre-set standard or range to determine if river health indicators fall within an acceptable range. Tests of river health indicators such as the ones above are usually conducted annually to assess for signs of degradation (Bunn, Davies, & Mosisch, 1999). The above does not invalidate the need for reform in many areas of leadership; indeed, in many local areas the environmental indicators used by the ANZECC guidelines do not meet the standards set out by the guidelines, indicating a lack of the actions required by leadership organisations to keep river health within acceptable parameters. However, it does indicate that some aspects of current leadership approaches may require more reform than others to achieve positive environmental outcomes.

The article then discusses the importance of community involvement. Environmental planning over the past few decades has often been characterised by shutting the community out and preferential treatment of stakeholder groups that do not represent the community's desires (Collignon, Athukorala, Senanayake and Khan, 2015). This has led to the corrosion of public trust in their representatives. To restore this trust, government institutions will need to introduce reforms that increase community engagement in the environmental decision-making process and broader environmental remediation outcomes on a local, regional, and national level. It will also involve timely access to information allowing the community to participate in decision making in an informed manner, and the right to participate in decision making before the decisions happen. It also involves maintaining the right to question and challenge decisions, and the ability to hold the final decisionmakers accountable (A new Generation of Environmental Law, 2022). Increased community engagement in environmental decision-making is a fundamentally desirable outcome, as it will allow decision makers to draw upon a much larger knowledge base and make more informed decisions with a higher likelihood of delivering desirable environmental outcomes. It is also likely to decrease rates of corruption in environmental decision making as external groups with a financial incentive to bring about detrimental environmental outcomes will hold less influence over decision-makers.

The authors then discuss the need for independent and trusted institutions to have a place of significance in the environmental decision-making process. They highlight the fact that any effective planning relies on high-quality, independently gathered advice. The authors state that political interference has diminished the effectiveness of Australia's environmental institutions and reduced public trust in these institutions by politicising environmental decision making, worsening Australia's biodiversity levels and habitat loss and putting further strain on endangered species (Collignon, Athukorala, Senanayake and Khan, 2015). It is crucial to restore environmental institutions to the position of independence they once had by minimising government interference in how the organisations operate. In addition to reversing the stagnation and devaluation of these institutions, thereby allowing them to operate from a much stronger position, doing so will restore the public's trust in government and make it simpler to achieve beneficial environmental outcomes. It is essential these institutions still maintain a working relationship with government bodies to ensure best possible outcomes. It is crucial that independent environmental organisations provide clear, science-based criteria for decision-making, ensure that the decision-making process and the outcomes of decisions are made in a robust, timely manner made available to the public. There is a lot of potential for interaction between independent scientific bodies and the community; citizen science initiatives driven by these groups will allow for larger datasets to be gathered while driving community involvement in environmental outcomes.

The next key tenet the authors discuss is delivering environmental outcomes. They suggest the best way to do this is by building up existing environmental protections, delivering upon our environmental obligations as members of international climate agreements, and focusing on ensuring that cultural and natural heritage are not lost. Delivering environmental outcomes includes providing comprehensive, adequate, and responsible care for intact natural landscapes, reconnecting patches of fragmented landscapes to improve gene exchange and biodiversity (Kormann et al., 2016), recovering endangered species such as the Australian Sea Lion and the Numbat, and taking urgent action to immediately end the major processes posing a threat to the environment. This will require

effective legislation that takes the scientific advances in the field of climate science and ecology that have been made in the past twenty years into account. The legislation must be sufficiently supported by independent organisations with sufficient funding to enable them to effectively carry out environmental protection.

The last major tenet authors discuss is enacting policies that ensure resilience under climate change. Australia faces numerous major challenges brought about by climate change including more frequent and intense floods, droughts, and fire events, which are likely to worsen more quickly as time progresses due to climate change worsening more quickly as it progresses (Hallegatte, 2016). For this reason, there is an urgent need to enact the necessary measures to address the challenges presented by climate change and place Australian communities in the best position to respond to these challenges while minimising loss of life, habitat, property, and cultural landmarks. The primary measures that should be adopted to achieve these goals include the Federal government enacting clear, enforceable controls on land clearing and greenhouse gas emission rates, government bodies taking sufficient action to protect existing carbon stocks, produce new carbon stocks with an emphasis on biodiversity, and introduce urban planning and community health policies that maximise the potential for a resilient response to the projected outcomes of climate change.

Overview and critique of the proposed National Sustainability Commission and National Environmental Protection Authority

The authors posit that the formation of an independent National Sustainability Commission and an independent National Environmental Protection Authority based on the key tenets discussed above are crucial steps towards effective environmental management and remediation. The responsibilities of the National Sustainability Commission would include developing enforceable conservation plans on national, regional, threat mitigation, and species levels. The Commission would also set binding standards for environmental issues such as air pollution, create a national climate and environmental health adaptation strategy, and work alongside State and Territory agencies to conduct regional planning and reporting exercises. The Commission would also be responsible for horizon scanning, environmental risk assessments, and contingency planning to mitigate the risk of likely hazards resulting from climate change. The commission could also conduct reviews of existing environmental standards, suggesting methods to strengthen the standards or the methods of enforcing the standards where necessary (A new Generation of Environmental Law, 2022).

A National Sustainability Commission would also serve the purpose of separating regulatory functions from policy and coordination. Examples from around the globe have shown that the creation of such a body leads to a more streamlined and effective planning process with significantly lower levels of confusion that arises from having one body responsible for all these functions (A new Generation of Environmental Law, 2022). In Australia, attempts at this kind of reform in the past has usually taken the form of the federal government simply moving federal approval power to the states. The resulting management strategy for issues such as biosecurity, urban planning, sustainable agriculture, and conservation management have become increasingly complex and been largely ineffective in achieving strong environmental outcomes.

There are numerous examples of detrimental environmental outcomes resulting from the current disorganised, overly complex administration that a National Sustainability Commission will take significant steps to rectify. These issues include current urban planning strategies and materials leading to an ever-worsening Urban Heat Island effect, poor conservation management strategy leading to an increasing number of species fitting the IUCN Red List's criteria for threatened, endangered, or functionally extinct, and a combination of deforestation and over irrigation of agricultural land leading to a variety of issues including increased salinity resulting from the water table rising and bringing salts up with it.

The authors argue that an independent National Sustainability Commission is a crucial component of effectively managing such issues. The Commission's suggested functions would include developing/managing Australia's environment, ensuring coordinated, integrated and strategic planning across Australia's landmass and oceans at a national and bioregional level for species and

habitat restoration and threat mitigation, and developing a national climate adaptation plan to coordinate adaptation responses across states and assist in improving Australia's resilience regarding climate change. They will also provide intervening, escalating, and overriding powers to ensure environmental plans are fully enacted, including the ability to set binding national targets for matters such as air pollution. They will develop a national set of definitions, standards, and methodologies for environmental indicators, prevent and lead responses to new harmful invasive species and identify future environmental risks, accreditation of ecologically sustainable fisheries, and publish reports on the state of the environment directly to the Parliament (A new Generation of Environmental Law, 2022). This set of suggested functions is comprehensive and if executed to its full extent is very likely to deliver upon the goal of adequately addressing the range of environmental issues Australia currently faces. An aspect of environmental protection that could be added to the functions the Commission would be to ensure that urban planners and other groups responsible for urban development are planning developments with a focus on minimising the urban heat island effect and minimising damage to the surrounding landscape and the species that rely on it as much as possible.

The primary responsibilities of the independent National Environmental Protection Authority would be to operate independently from the government to conduct transparent environmental assessments and environmental monitoring, compliance, and enforcement actions. Australia's current environmental protection system has had several key checks and balances found in transparent, accountable systems removed (A new Generation of Environmental Law, 2022). This has led to several major failures in Australia's approach to environmental protection, including key government decisions often being political, changeable, and populist giving a lack of certainty to the long-term goal of environmental protection. In addition, state government are primary decision makers on a range of environmental issues despite a large proportion of their revenues being dependent on extractive industries. There is limited community access to environmental decision-making and monitoring, thereby reducing accountability, transparency, and public investment in the decision-making process. The Federal Environment Department is also tasked with administering national environmental law while also being directly accountable to the minister of the day, providing opportunity for corruption (A new Generation of Environmental Law, 2022).

The Authority would operate separately from the government to conduct transparent environmental assessments for matters directly regulated by the Australian government and undertake monitoring, compliance, and enforcement actions. It would also make approval decisions, with the Minister retaining call-in power under strict environmental protection criteria. The processes approvals and the use of call-in powers must revolve around being transparent, accountable, and available to the public. The Authority would also be responsible for enforcing compliance with all national environmental law with appropriate power to fulfil this function (A new Generation of Environmental Law, 2022). This organisation provides some overlap with the National Sustainability Commission. This has the potential for the organisations to collaborate where needed while maintaining their independence from the government.

Given the proposed scale of the two organisations, the main difficulty in ensuring their short to mid-term efficacy is likely to be securing adequate resources and funding in sufficient time, likely through extensive reform to the national budget or tax structure resulting in potential backlash from parts of the public. If they can deliver demonstrably positive environmental outcomes within the purview of their responsibilities, the Australian public is likely to highly value their achievements and be more inclined to accept their role in Australian environmental protection and remediation efforts.

Suggested Environmental Law Reform

Current Australian environmental law is almost twenty years old and addresses a small if important subset of the environmental issues Australia currently faces. More comprehensive legislation that adequately represents the advancements in environmental and ecological knowledge that have been made in the past twenty years is desperately needed to achieve the required environmental remediation outcomes. The authors argue that areas in need of further legislative oversight include Australian national parks, critical habitat for threatened species, impacts from land clearing, greenhouse gas emissions and air pollution, water resources, ecosystems and wetlands of national

significance, protection against invasive species, national biodiversity hotspots, and vulnerable ecological communities (Environmental Protection and Biodiversity Act, 1999). The authors have comprehensively highlighted several key ecological factors requiring significant focus when attempting to protect or restore a species or habitat; the IUCN red list mentions a number of these issues as major processes responsible for putting species at risk (The IUCN Red List of Threatened Species, 2022). Another area requiring further legislative oversight is fisheries bycatch – fishing equipment catching species other than those targeted. Bycatch affects numerous threatened species, such as the Australian Sea Lion and marine turtles (The IUCN Red List of Threatened Species, 2022). While there are methods in place to minimise bycatch such as establishing Marine Protected Areas (MPA's) where fishing is restricted or banned and encouraging the use of more specialised equipment, these measures are not enough, as many marine species still have bycatch listed as a primary process responsible for population decline (The IUCN Red List of Threatened Species, 2022). The degree of protection afforded to marine species in Marine Protected Areas also requires urgent revision, as several studies have shown that MPA's do not provide the adequate protection (A new Generation of Environmental Law, 2022).

Overview and Critique of Case Study 1

Case Study 1 regards the failure of the current government to adequately protect the Leadbeater's Possum and Swift Parrot. Both species are listed as Critically Endangered under the EPBC Act, meaning there is a serious risk of extinction requiring direct intervention to facilitate the protection and recovery of existing populations. The primary threat both species face is the destruction of their habitat by land clearing. This land clearing is facilitated by long-term Regional Forest Agreements (RFA's), exempting logging industries from national law and removing government oversight for the protection of threatened species found within RFA areas (A new Generation of Environmental Law, 2022). This results in a fundamental conflict of interest between a state's economic interests and their responsibility to act on environmental protection policy, with threatened species will always lose out. Such exemptions show a key flaw of the current system; the fact that such a conflict of interest still exists given the scale of this issue is unacceptable and must be rectified. Under the reforms proposed by the authors, there will be no exemptions for any sector, with logging key habitat of critically endangered species leading to prosecution.

Overview and Critique of Case Study 2

Case study 2 emphasises the amount of plastic pollution entering Australia's waterways. As plastic does not biodegrade, a crucial component of dealing with plastic pollution is minimising further plastic waste entering waterways. This will involve a ban on single-use plastics, a stronger approach to waste-management and stormwater management and monitoring, and a strong investment in clean-up efforts. Local, state, and federal governments in Australia currently work independently to manage the issue with no level of government directly responsible for developing a strategy to mitigate the issue of plastic waste or monitor the effectiveness of such a strategy. As a result, the Threat Abatement Plan for the impact of marine debris on vertebrate marine life failed (A new Generation of Environmental Law, 2022).

Microplastics have become so widespread in the environment that they have even been detected in humans, and it is suspected they could potentially become lodged in organs, severely disrupting proper function (citations). When one considers that there is potentially up to 578,000 tons of microplastic in the ocean (citation), to say nothing of larger pieces of plastic, the scale of potential damage to ocean life becomes harrowing.

Under the authors' suggested reforms, the Federal Government would be responsible for the responsible management of marine pollution. The minister would have the ability to draw upon the knowledge of experts from Local and State councils to identify the best strategies for each region to address the issue. Actions recommended by the National Sustainability Commission to the Federal Government to ensure the issue of marine waste is mitigated will be made public and the decisions made by the government considering these recommendations will also be public (A new Generation of Environmental Law, 2022).

Overview and Critique of Case Study 3

Case study 3 addresses habitat loss in the context of koala populations threatened ecological communities. Eastern Australia is now considered one of 11 deforestation fronts, with 300,000 hectares of bushland being cleared annually in Queensland. Much of the land being cleared is protected by the EPBC Act and is important habitat for native species and maintaining Australia's biodiversity (A new Generation of Environmental Law, 2022).

In 2012, Queensland made changes to its land clearing laws which allowed land clearing to skyrocket to the above rates. This has put koala populations in the state at risk despite the species being protected threatened species under both State and Federal law. Brigalow woodlands were one of the most threatened ecological communities in the state and was put at further risk by government decision. 55,000 hectares of non-remnant vegetation and 12,000 hectares of remnant vegetation were proposed for clearing or already cleared in the period between 2013 and 2015 (A new Generation of Environmental Law, 2022).

Under the current system, the law fails on two main fronts; the federal government neglecting to enforce the law and because the law as it stands not dealing with cumulative impacts well, with each land clearing action below acceptable thresholds gradually adding up and leaving habitat that is critical for Australia's biodiversity and the continued survival of numerous species debilitated.

Suggested reforms will require the government to end land clearing activity and provide stronger protection for habitat critical species rely on. All levels of government will be required to meaningfully engage with policy, with the National Sustainability Commission and independent Environmental Protection Authority ensuring transparency and compliance.

Overview and Critique of Case Study 4

Case study 4 draws attention to Australian air pollution levels. Air pollution causes 3000 deaths annually, three times as many as the annual road toll, and is responsible for a wide range of severe health issues. Treating the health issues caused by air pollution is estimated to cost upwards of \$2.6 billion a year. Communities have little control over the air they breathe, relying on legislation to protect their health. However, the figures above are indicative of the results brought about by Australia's ineffective, non-binding legislation that does not reflect the needs of the communities the legislation is meant to serve (A new Generation of Environmental Law, 2022).

Under the new system, air quality standards that adequately protect human and environmental health would be set by the independent Commission, with the standards being enforced by the independent EPA. These changes must be made as soon as possible, and past inaction on the government's behalf indicates that an approach such as the one proposed by the author may be necessary to enact this change in an appropriate amount of time.

Overview and Critique of Case Study 5

Case Study 5 discusses the need for strong watchdog organisations in the context of the Murray-Darling Plan. The plan had genuine merit and laid a well-planned and sustainable path for the return of water to the region. However, in 2017, allegations of water theft were made in parts of the Murray-Darling where agri-business corporations took the water without authorisation to irrigate their crops. This shows that the intention of legislation will not be realised without the means to enforce it (A new Generation of Environmental Law, 2022). With the reforms suggested by the authors, large-scale water theft and other types of environmental exploitation will be noticed by the monitoring efforts of the Sustainability Commission and prevented by the intervention of the independent Environmental Protection Authority.

Concluding Statement

The reforms suggested by the authors fulfil all the key tenets described above, and are comprehensive, adequate, and responsible. They are highly ambitious, which they must be by necessity to effectively mitigate the numerous issues highlighted above. However, securing adequate

funding and resources for the Commission and independent Environmental Protection Authority may be difficult without other far-reaching reforms. These issues are unlikely to be overcome easily given the state of the economy and the current political climate surrounding the issue of climate change, and extensive work is required to overcome both issues. However, if these issues can be handled quickly, it is expected that the Australian landscape and the species reliant upon it are highly likely to meet important indicators of recovery.

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