

ARTICLES

THE RELUCTANT NATION - ENVIRONMENT LAW AND POLITICS IN AUSTRALIA 1994

Phillip Toyne,

Phillip Toyne's new book, *The Reluctant Nation* begins by asking the reader to imagine they are a green turtle trying to come to grips with Australia's constitutional arrangements:

'You are swimming in international waters but heading for an island on the Great Barrier Reef to lay your eggs... as you approach the reef you enter the Great Barrier Reef Marine Park which is the joint responsibility of the Commonwealth and Queensland Governments. While in the sea of the Marine Park, approaching the island, the waters are Commonwealth (unless you are within three miles of the coastline, but outside the Park in which case you are in State waters). But once you climb slowly onto the sand and over the low water mark, you come under the jurisdiction of Queensland. You would need to be a very astute turtle to work out which law is responsible for your protection because the Commonwealth and Queensland Governments have different opinions regarding the definition of low water in relation to an island on a coral reef.'

In the book Toyne examines in detail eight environmental disputes in order to develop a critique of environmental law and policy in Australia. The eight case studies are Fraser Island; the Franklin Dam; the Aboriginal ownership of Uluru National Park; the Wet Tropics; the Southern Forests of Tasmania; the Wesley Vale Pulp Mill; Coronation Hill and the McArthur River Mine. Toyne gives a lively chronological account of each dispute and incorporates into the narrative an analysis of the law and policy factors involved in each case.

The chapter on the McArthur River Mine is a highlight. Toyne examines the question of adequate environmental impact assessments and the fast tracking of development projects now advocated by both the Labour Party and the Coalition. He also uncovers some disturbing evidence about the way in which the then Federal Minister for the Environment Ros Kelly decided that no E.I.S was required under the Commonwealth EIS procedures.

As the story of the turtle indicates, the key theme running through the book is the way in which our federal arrangements have failed to deliver consistent, effective and timely environmental outcomes. Toyne acknowledges that while a number of the case studies he examines involve the Commonwealth intervening in matters of great environmental significance these high profile clashes are rare and belie the essential conservatism of successive Federal Governments.

Toyne demonstrates, through each case study, that the Commonwealth has substantial, though not plenary, power over environmental matters. He notes that the increasing number of international environmental treaties will add a range of issues within Australia in relation to which the Commonwealth will have international obligations. In this context, the key question (as far as Toyne is concerned) is why the Commonwealth has remained so reluctant to interfere with the States Rights status quo. Reading the *Reluctant Nation* the only conclusion one could come to is that this reluctance is the result of a lack of political will.

While Toyne acknowledges that co-operation with the States is highly desirable, he argues the federal arrangements developed to date have allowed the states to retain significant control and exercise it in their own self interest. As a result, the problem of achieving adequate and timely change remains immense. Toyne is highly critical of the most recent attempt to develop a co-operative approach, namely The Intergovernmental Agreement on the

Environment (IGAE). He points out the agreement not only appears to favour the states but is not even legally enforceable according to legal advice provided by the Office of General Counsel. For Toyne, the way forward is the adoption of an approach similar to that used in the United States where the States maintain their own regulatory and administrative arrangements which must meet national standards which are set by a Federal Environmental Protection Agency in consultation with major stake holders.

During his time as the Executive Director of the Australian Conservation Foundation, Toyne demonstrated an ability to remain focussed on the main game; an ability which is again clearly evident in *The Reluctant Nation*. Given that our current Prime Minister was so highly critical of the new federalism process which spawned the IGAE and that the Court Government has now withdrawn Western Australia from The National Environment Protection Council the time must surely be ripe for the Federal Government to re-examine the existing co-operative arrangements and perhaps even assert its national role in the management of the environment.

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RELEASE OF AUSTRALIA'S GREENHOUSE GAS EMISSIONS INVENTORY

On 7 September 1994 the Federal Minister for Environment Senator Faulkner released Australia's Greenhouse Gas Emissions Inventory. The inventory measures the sources and sinks of Australia's Greenhouse gas emissions for 1990 and 1988, thereby providing a picture of the net emissions of the various greenhouse gases. To allow effective comparisons to be made the different gas emissions have been reduced to carbon dioxide equivalents.

The inventory is a part of Australia's First National Communication on Greenhouse Gas Emissions, along with a report on our emissions projections. The Communication is a requirement under the Climate Change Convention and is to be lodged with the Convention Secretariat by the end of September.

Total greenhouse gas emissions in 1990 were estimated to be equivalent to 572 million tonnes of carbon dioxide. That means Australia is responsible for emitting something like 18 tonnes of carbon dioxide every second. The inventory confirms Australia's per capita emissions are in the world's top five.

Of the three main greenhouse gases carbon dioxide, methane and nitrous oxide - carbon dioxide emission accounted for almost three quarters of the total emissions. The single largest contributor to emissions is the energy sector, which produces about half of Australia's total greenhouse gas emissions. Surprisingly land clearance was the next largest source of carbon dioxide emissions; responsible for almost one quarter of all emissions. However the Federal Environment Department notes there are significant uncertainties in this estimate.

Releasing the inventory Senator Faulkner acknowledged that even taking account of current measures Australia's greenhouse gas emissions will in fact rise by seven percent (or 38 million tonnes) by the year 2000. That is with the current limited set of response measures detailed in the National Greenhouse Response Strategy Australia will not meet the emission targets established pursuant to the Climate Change Convention.