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## **GLOBALIZATION AND WATER RESOURCES MANAGEMENT: THE CHANGING VALUE OF WATER**

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### **DEMOCRATISING DOWNUNDER: THE ROLE OF THE COMMUNITY IN WATER RESOURCE DECISIONMAKING IN AUSTRALIA**

Maria Penelope Comino\*

**ABSTRACT:** Since the Council of Australian Governments signed a landmark water resources policy in 1994, the Australian water management framework has been undergoing major reforms. These reforms have significant implications for the management of the water resources of the earth's driest continent. This paper will focus on recent reforms to the legal and policy framework for water management in the State of New South Wales, Australia's most populous State. It will review the scope and likely success of the reforms from the viewpoint of the citizen, and implications for civil society more generally. This will include consideration of the citizen's role particularly in water management planning and highlight dilemmas faced: integration with other natural resource management and with economic concerns, and conflict management.

**KEY TERMS:** legal and policy framework, community, integration, natural resource management

#### **INTRODUCTION**

“Over the past decade, a compelling body of evidence has emerged that Australia's catchment systems are facing enormous and ongoing threats from human activities. It is not overstating the matter to say that the ecologically sustainable use of Australia's catchment systems is the most pressing contemporary public policy issue facing the community.” (HoR Standing Committee 2000:1)

This report of the House of Representatives Standing Committee on Environment and Heritage into catchment management in Australia, and similar reports are raising the profile of debate and interest in natural resource management issues in Australia, particularly in light of the economic implications of managing these resources unsustainably. The strength of Australia's governance is therefore coming under close scrutiny in respect of its capacity to address these problems and to manage the landscape and its natural resources sustainably. For this reason, it is useful to consider the role of the community in water resource decision making, and how it is seeking to connect with broader natural resource management.

Even a cursory glance shows that although the problems are grave, the decisionmaking frameworks are still evolving and being applied at a varying pace across the seven State and two territory jurisdictions. In assessing the strengths of those frameworks, it is important to recognise that the key legal and policy frameworks within which decisions for managing these resources are made, exist substantially at the State level. The frameworks at the Commonwealth level have begun to assume greater authority in more recent years by tying funding entitlements to performance against Commonwealth criteria. However, overall those frameworks have tended to rely on a cooperative approach across the States, without strong central direction, and have been contingent on the particular political cohesion existing between the national and state governments at any time.

\* Maria Penelope Comino is an environmental lawyer working for the Healthy Rivers Commission of New South Wales. She has specialised in environmental legal practice for the last ten years, and has focussed particularly on community participation issues. The views expressed in this paper are views of the author and do not represent views of the Commission or the NSW Government.

## NATIONAL DIRECTIONS

The Water Resources Policy signed off by the Council of Australian Governments in February, 1994 was a significant landmark in the development and implementation of water resources policy in Australia. It derived from a broader agenda for micro-economic reform 'to support higher economic and employment growth on a sustainable basis' (COAG 1994:1), including through the application of competition principles.

Under the policy, It was agreed to implement a strategic framework to achieve an efficient and sustainable water industry. Reflecting the economic reform agenda, central elements of the framework relate to pricing of urban and rural water services, the specification of water entitlements, including provision for environmental allocations, and establishment of water trading arrangements. In addition, the framework requires institutional reform and support for environmental initiatives relating to wastewater use and landcare practices.

The stated objective of institutional reform is to ensure administrative arrangements deliver an integrated approach to natural resource management and include processes 'to consult with representatives of local government and the wider community in individual catchments'. (COAG 1994:23) State and Territory governments have continued to report against COAG as part of their obligations under the agreement and as a basis for the Commonwealth assessing their continuing entitlements to significant grants payable under the agreement.

In addition to this policy framework, the Commonwealth Government has also exerted influence on land and water management through the allocation of funding under its natural heritage trust fund. The program is not supported by a legal framework and since its establishment in 1996, has been the primary source of funding for natural resource management activities carried out by community groups.

The Commonwealth Government now has a stronger legal framework for the consideration of environmental issues through the *Environment Protection and Biodiversity Conservation Act 1999*. However, the Act does not reflect a comprehensive approach to improved management of land and water resources at the landscape scale. Rather it is focussed on establishing environmental impact assessment and approval processes in respect of specified matters of national environmental significance: world heritage, wetlands of international importance, listed threatened species and communities, listed migratory species, protection from nuclear action and the marine environment.

Most recently, the the Council of Australian Governments announced the development of a further policy framework. In November, the Council agreed "that the issues of salinity, particularly dryland salinity, and deteriorating water quality are of major national significance and are appropriately handled through a national action plan." (COAG 2000:1) The Commonwealth and the States are currently working on the detail for implementing the National Salinity Action Plan and the expenditure of \$1.4 billion over the next seven years to support that implementation.

In light of these directions, it is useful to consider some of the specific mechanisms to involve the community in water resource management decision making that can begin to take on the broader needs and challenges of improved natural resource management.

## NEW SOUTH WALES: A CASE STUDY

In comparison with other parts of Australia, New South Wales has a positive history in providing for public involvement in environmental decision-making processes. Significant provisions were included in the State's innovative planning and assessment legislation introduced in 1979: *Environmental Planning and Assessment Act 1979*. Over time, public participation provisions have been incorporated into other environmental and natural resource management legislation.

The typical scope of those provisions has been to provide for public input, for example, into the development of environmental planning instruments, environmental policy instruments, such as protection of the environment policies under the *Protection of the Environment Operations Act 1997* and regional native vegetation management plans under the *Native Vegetation Conservation Act 1997*. There has also been provision for the

making of submissions in respect of particular development applications and appeal rights to the Land and Environment Court in respect of some categories of applications. Again, other legislation has gradually incorporated provision for public involvement in the different approval processes though this has not been universal and does not usually attract the same rights as under the environmental assessment legislation.

Up until 2000, the State's water legislation, the *Water Act 1912*, provided for input by interested persons, in decision-making processes on some categories of water licence applications. There was also provision for appeal to a land board and subsequently to the Land and Environment Court. Many of the provisions were designed to allow consideration to be given to the needs of adjoining landowners and water users, with limited consideration given to environmental impacts.

Although the *Water Act 1912* did not provide for plan making processes, plan-making was undertaken which included opportunities for community involvement. In contrast to other areas of environmental decision-making, legislative change in water resource management has predominantly followed rather than led, significant policy change. The administrative changes that occurred before the introduction of the *Water Management Act 2000*, were, in large part, precipitated by the need to comply with the COAG Water Resources Policy. Similarly, the introduction and implementation of the new Act demonstrate compliance with the COAG agenda entitling delivery of the next installment of grant moneys.

#### Water Reform Program

In 1995, the Government introduced a water reform program that was designed to address many of the issues raised by the COAG water resources policy, that was expanded by further initiatives in 1997. The latter included a clearer basis for water use including provision for environmental needs. Importantly, the Government's reform program incorporated a perspective on the public's involvement in water resource decision-making processes that reflected a clear broadening of views. It went beyond previous practice and beyond the concept of 'consultation' referred to in the water resources policy.

One example of the new approach is demonstrated by the establishment of the Healthy Rivers Commission that provides an opportunity for public involvement in the development of integrated natural resource management strategies for a catchment rather than in respect of particular resource allocation decisions or resource planning processes. The Commission provides independent advice to the Government on the key strategies for addressing river health. The Government identifies the priority catchments into which the Commission is to conduct its investigations. The Commission considers environmental, social and economic needs, and make recommendations for Government decision. To date, it has carried out investigations into a range of river systems each of different socio-economic character: rural, semi-rural, urban and water supply.

The Commission uses a range of participation processes to engage the public in the development of strategies that will address water resource management as part of an integrated view of the particular environmental, social and economic catchment system. That of course, includes influences beyond the catchment system. It uses the traditional tools of public hearings at which members of the public can make oral presentations, and provides opportunities for the public to respond to discussion papers, draft strategies, and draft reports. It also facilitates roundtable discussions and workshops amongst agency and community participants to identify impediments and develop strategies. It engages independent expert panels to integrate scientific views on river health and management issues.

Commission reports act as a useful public record of Government practice and management initiatives against which future performance can be assessed. Moreover, Government decisions on Commission recommendations are incorporated into Statements of Joint Intent recording agency commitments, including timeframes and lead responsibilities, for implementation of key strategies and actions for improved river system management. The Commission is also assigned responsibility for audit of agency implementation of those strategies two years after the original Government decision on its recommendations.

A catchment view on natural resource management issues, such as that provided by the Commission, is not new. The *Catchment Management Act 1989* gives legislative recognition to the policy of 'total catchment management' directed to the integration of land and water management. However, that Act reflects a different

approach to community involvement. The Act's objects are to be given effect by the establishment of a network catchment management committees and catchment management trusts, "linking the Government and the community" and confers revenue raising powers on trusts. The composition of the committees is prescribed by the Act.

Implementation has not realised the Act's bold and broad objects. Catchment management committees have predominantly fulfilled a community educative role and promoted the implementation of total catchment management policies and programs but have been inadequately equipped and resourced to co-ordinate the natural resource management activities of public authorities, groups and individuals. The mechanism is poorly matched to the scale of the task at hand. Significantly, the approach does not recognise the need for a clear mechanism either to persuade public authorities of the need for improved individual performance and integrated implementation of programs or to resolve the inevitable conflicts that arise between public authorities where there is overlap, threatened or real, in responsibilities, or between the claims of different interest groups.

It is also important to note there are significant opportunities for public involvement in water resource decision making relating to the COAG agenda on pricing reforms. These include public inquiry processes undertaken by the Independent Pricing and Regulatory Tribunal *Independent Pricing and Regulatory Tribunal Act 1992*.

#### A New Approach: Community Government Partnership

In fulfilling its obligations under the COAG agreement, the Government has sought to improve upon the community involvement approaches of the past. As we have seen, it has done this by providing for establishment of the Healthy Rivers Commission and implementation processes that reinforce the outcomes of its public processes. More recently, it has formalised a policy of "Community/Government Partnerships.

This approach has been defined in the following terms: "The participation of the community in natural resource management in partnership with government is now a central and fundamental feature of NSW Government water management practices... This new partnership represents a fundamental shift in responsibility away from government to consensus community decision-making." (MC1999:27)

Again, the vehicle for implementation of this new approach is by committee, a water management committee. "The most significant factor in the new partnership is that where there is consensus in the water management committee and the plan (or sections of the plan) is agreed to by the relevant Ministers, the Government is obliged to implement the water management arrangements in various river and groundwater systems." (MC1999:27)

The new *Water Management Act 2000*, which commenced in part on 1 January, 2001, now entrenches this approach to public involvement. One of the Act's objects is: "to recognise the role of the community, as a partner with government, in resolving issues relating to the management of water sources". (s3:2000)

The Act establishes water management committees for declared water management areas whose responsibilities include preparation of a draft water management plan for the area. (s14:2000) The committees are to comprise representatives that represent interests from environment protection groups, water user groups, local councils, catchment management boards and trusts, and Aboriginal persons, and a member of staff of the Department, and a person nominated by the Environment Minister. (s13(1):2000) One member is to be appointed as an independent chair and the Minister may appoint other persons to represent interests the Minister considers require representation. (s13:2000)

The Minister may direct a committee to prepare a draft management plan that includes provisions relating to water sharing, water source protection, drainage management and floodplain management, and any terms of reference provided. (s15:2000) The Act specifies the procedure to be followed for making the plan which includes public exhibition once the Minister is satisfied that the plan is suitable for exhibition. (s38:2000) The committee is to resubmit the draft management plan to the Minister after it has considered submissions on the plan, together with comments on the submissions. The Minister has to consult with the committee before making any alterations to the draft plan. (s40:2000) The Minister can then make the plan with those alterations or require re-exhibition.

(s41:2000) There is also power for the Minister to make a water management plan for those matters not dealt with by an existing water management plan. (s50:2000) Once made, the plan is to have effect for ten years. (s43:2000)

Other functions of the water management committee include: review of a water management plan for the water management area; investigate such matters affecting the management of the water management area as the Minister refers to it for investigation; report to the Minister on such matters affecting the management of the water management area as the Minister refers to it for report; and advise the Minister on such matters affecting the management of the water management area as the Minister refers to it for advice. (s14:2000) The Minister may also direct the committee to review any implementation program related to a water management plan, on any aspect of water management. (s15:2000)

These provisions are to be implemented having regard to the overall purpose of enabling the community to act in partnership with the Government in water resource decision making. However, they reflect the usual approach that the Minister will determine the scope of committee activities, for example by identifying the terms of reference for preparation of a draft management plan, and the matters to be investigated, reported on, or on which to advise.

The nature of the relationship between the Government and the community will depend on the spirit in which a Minister exercises the powers and no doubt vary from one region to another. However, there are at least two issues which undermine the potential effectiveness of the Act in providing meaningful community involvement and contributions towards improved water resource decision making.

A preliminary issue, is that it would be desirable in an effective partnership arrangement to provide a mechanism for the committee to take the initiative to refer a matter for committee consideration, within reasonable parameters.

An issue requiring greater attention is the intention to rely on a consensus based approach to the development of draft water management plans by committees. The Act specifies the composition of the committee and their functions but does not recognise the need or provide for any dispute resolution process. The range of interests represented on the committees is diverse and it will be difficult to achieve a true reconciliation of those interests in a committee process unless adequate dispute resolution processes are available, and even though the Minister will be able to induce a resolution by the threat of preparation of his or her own plan. In those areas where there are genuinely protracted water use issues that require changed but staged management approaches, any plans developed are likely to be compromised and not attract the full commitment of affected users and community members even where the Minister has provided positive direction. That will have serious consequences for the water reform process and water resource decision making in the long term.

The importance of this issue can be gauged by referencing examples of water or natural resource management plan making processes in different parts of the State. For example, three years after introduction of the native vegetation conservation legislation, only a few plans have been developed and those developed are modest attempts.

The need for fair processes is obviously well established in respect of the balancing of interests on individual development or water use proposals. Now with greater emphasis on, and the recognised importance of strategic assessments that will affect and circumscribe natural resource use and management into the future, it is necessary to provide for an appropriate conflict resolution process for water management plan making processes. This should not be as elaborate as the current processes established for individual approval processes. However, there would no doubt be some common aspects.

Discussion here has focussed on the current arrangements for the development of water management plans. However, the needs of that process should also be considered in the context of the overall goal of integrated natural resource management. This is a critical aspect of the COAG water resource policy reforms and is incorporated into the *Water Management Act 2000*: “to integrate the management of water sources with the management of other aspects of the environment, including the land, its soil, its native vegetation and its native fauna”. (s3:2000)

Current proposals for reform of the plan making processes under the State's land use planning system are timely as they attempt to develop an approach to this issue. For example, it is proposed to directly import the provisions of the various natural resource plans into a regional strategy that is to be the key instrument for guiding development and resource use in a region. How the plans are to be integrated is still being considered. Moreover, the proposals have highlighted the importance of the process for development of the plans where there are varied interest representatives. The specific proposals include establishment of a regional forum, comprised of business, community, and governmental interests that will review the development of the regional strategy. They do not extend to provision of a dispute resolution process for reconciling the interests on the forum. However, these proposals are still being debated, and should be finalised later this year.

#### WHY MORE IS NEEDED: FOR CITIZENS AND THE ENVIRONMENT

It is clear that the community/Government partnership approach embodied in the new water management legislation fulfills and even goes beyond the intent of the public consultation provisions of the COAG water resources policy. However, a key question will be whether these new processes will be able to adjust and meet needs recognised in the policy but which continue to assume greater importance as environmental problems become more pressing. These include the recurring issues of institutional reform directed to ensuring the integration of water resource management with other natural resource and catchment management, and robust participation in those processes.

It is therefore useful to return to where we began: the report of the House of Representatives Standing Committee on Environment and Heritage into catchment management. It reinforces the goals of the Water Resources Policy of delivery of an integrated approach to natural resource management. However, its recommendations require much more substantial administrative reform including, apart from establishment of a national catchment body, the establishment of catchment management authorities as the basic administrative element of each catchment. (113:2000) The committee justifies its recommendations on the basis they would establish mechanisms that would have a better chance of co-ordinating programs and policies on a catchment scale, and recognise the limits of the existing system where state agencies and local government are able to thwart initiatives of existing catchment management committees. Importantly, the recommendations are premised on the need to implement institutional arrangements that empower communities. Although the processes for public involvement and public participation are not detailed, its approach would support the need for fair and robust processes for resolving conflict between interest groups at the river and catchment level and between levels of decision making which are likely to be critical to their success.

Both current policy and arrangements and these new proposals therefore highlight the need to ensure that committee processes for natural resource plan making do not ignore or seek to avoid issues of conflict but include provision for adequate dispute resolution processes, even where there is no specific legislative base to do so. The need to provide more than stakeholder representation and discussion is clear.

This issue goes beyond costs concerns in providing those processes that of course have to be addressed. Rather, it is about facilitating access to and meaningful participation in, decision making processes that affect natural resource management and that ensures any trading off between interests, for example by environmental interests against economic interests, is explicit. Only in this way will there be fulfillment of the object of the new *Water Management Act 2000* of recognising the role of the community, as a partner with government, in *resolving* issues relating to the management of water sources". (s3:2000)

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