

THE RELATIONSHIP BETWEEN REGULATION AND GOVERNANCE: EXAMINING GREEN-TAPE REDUCTION REFORM IN QUEENSLAND

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ABSTRACT

This paper examines amendments to the environmental regulatory framework in Queensland and environmental governance. Amendments to the *Environmental Protection Act 1994* (Qld), the *Vegetation Management Act 1999* (Qld), *Nature Conservation Act 1992* (Qld) and the repeal of the *Clean Energy Act 2008* (Qld) indicate significant policy shifts in environmental governance and raise concern as to the intersection between science and governance and the relationship between regulation and good environmental governance. In conclusion it is suggested that good environmental governance is not necessarily streamlined green-tape reduction but rather requires an integrated long-term approach to regulation.

I. INTRODUCTION

When a state's planning laws can be so easily gutted, when they fail to deliver what powerful groups want, communities, environmentalists and proponents of good governance confront a stark choice between democratic formalism and authoritarian practice.¹

This paper investigates significant amendments to the environmental regulation framework in Queensland. These reforms, predominantly introduced by the current Liberal National Party (LNP) government, were designed primarily to facilitate the economic advancement of the resources, agriculture, construction and tourism economies. The paper then considers the relationship between regulation reform and governance, and examines the interface between science and policy in establishing good environmental governance.

Part II examines the Green-tape Reduction Project. With significant amendments having been made to the *Environmental Protection Act 1994* (Qld) (EPA), the Project aims to promote the commercial economic environment in Queensland by reducing the number of environmental assessment hurdles for developers while maintaining environmental standards in Queensland.

Part III investigates the repealing of the *Clean Energy Act 2008* (Qld), enacted to reduce the regulatory cost on business. Part IV considers the changes to the *Vegetation Management Act 1999* (Qld) and corresponding changes to the Native Vegetation Framework, and the significant implications for native vegetation management and protection. Part V then examines amendments to the *Nature Conservation Act 1992* (Qld) and the changes made to National Park and reserve management and regulation.

The significant changes to environmental regulation in Queensland, which appear to have been motivated primarily by economic considerations, raise questions as to the relationship between regulation and governance and in particular, good environmental governance. Part VI

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1 Fred Gale, 'Tasmania's Tamar Valley Pulp Mill: A Comparison of Planning Processes Using a Good Environmental Governance Framework' (2008) 67(3) *The Australian Journal of Public Administration* 261, 274.

examines characteristics of good environmental governance, in particular the role of scientific analysis and information in informing regulation and policy creation.

In conclusion, Part VII suggests that good governance is not necessarily streamlined green-tape reduction but rather requires an integrated long-term approach to regulation, decision-making and policy creation. A failure to predicate environmental governance on a holistically interdependent and interconnected paradigm can detrimentally affect both approaches to governing. Short-sighted and parochial approaches to environmental protection will ultimately compromise future access to natural resources² and cause unacceptable environmental change.

II. THE QUEENSLAND GREENTAPE REDUCTION PROJECT

The current Queensland government boasts that the rate of decision making in relation to mining projects in the State is almost three times higher than that of the previous government.³ The LNP government has facilitated this increase by undertaking the *Greentape Reduction Project*, originally introduced by the former Queensland Labor Government. This project is designed to remove regulatory requirements under the *Environmental Protection Act 1994* (Qld) and to reduce costs for industry and government while upholding environmental standards for the community.⁴ As part of the project, the government passed *The Environmental Protection (Greentape Reduction) and other Legislation Amendment Act 2012* (Greentape Reduction Act), which amended the *Environmental Protection Act 1994* (EPA).

In introducing this legislation into Parliament, the Minister for Environment and Heritage Protection, the Hon AC Powell, stated:

The green-tape reduction project commenced in 2010 with the aim to reform the licensing application and assessment processes under the *Environmental Protection Act 1994* to reduce costs for industry and government while upholding environmental standards for the community ... It is a coordinated package of legislation, business processes and information systems reform that has been developed in close consultation with industry.⁵

And it has been, in general, very well received by the resources industry.⁶ Initiatives of this reform include developing licensing that is proportionate to the risk of the activity, providing flexible operational approvals for environmental activities, streamlining the process for resources approvals and improving information quality.⁷

The Greentape Reduction discussion paper stated that the project will not sacrifice environmental standards but will allow greater emphasis on serious environmental consequence activities.⁸ Licensing approvals now have three different application types that are based on the risk the environmentally relevant activities (ERAs) pose to the environment.⁹ The three different application types are standard, variation and site-specific, and are intended to correspond to the risk the ERAs pose to the environment.¹⁰ Assessment processes are no longer required for lower risk ERAs if an applicant for an environmental authority complies with eligibility criteria.¹¹

2 Julian Cribb, *The Coming Famine* (2011); Jared Diamond, *Collapse* (2005).

3 Jeff Seoney, 'Coordinator-General completes assessment of Galilee Coal project' (Media Statement, 9 August 2013) <<http://statements.qld.gov.au/Statement/2013/8/9/coordinator-general-completes-assessment-of-galilee-coal-project>>.

4 Queensland Department of Environment and Heritage Protection, *Background and consultation* (4 July 2013) Queensland Government <<http://www.ehp.qld.gov.au/management/greentape/background.html>>.

5 Queensland, *Parliamentary Debates* Legislative Assembly, 29 May 2012, 195 (AC Powell, Minister for Environment and Heritage Protection).

6 See for example Queensland Resources Council, *State of the Sector* (June 2012) available online: <http://qrc.org.au/_dbase_upl/SOS_June2012_web.pdf>.

7 Department of Environment and Resource Management, 'Greentape Reduction – Reforming licensing under the Environmental Protection Act 1994' (Discussion Paper and Regulatory Assessment Statement, State of Queensland, 2011) 10–36.

8 Ibid 1.

9 Explanatory Notes, *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012* (Qld) 2.

10 *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Qld) s 8.

11 *Environmental Protection Act 1994* (Qld) s 122; inserted by *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Qld) s 8.

Such an applicant is automatically given standard conditions upon application. If an operator cannot meet all the standard conditions, they may make a variation application to change some of the conditions.¹² That application is assessed only on the basis of the variation.¹³ If an ERA does not fit the eligibility criteria for standard conditions the applicant will be required to make a site-specific application.¹⁴

Mine application and approval has also been facilitated by the Streamlining Approvals Project, which was established in conjunction with the Greentape Reduction project. The *Mines Legislation (Streamlining) Amendment Act 2012* was enacted with the aim of modernising and streamlining mine approvals.

The *Mineral Resources Act 1989* was amended to allow the Minister for Mines and Natural Resources to approve mining leases, to reduce approval timeframes and to eliminate what the Queensland Resources Council described as a ‘tick and flick process that provides no additional assessment prior to approval or refusal’¹⁵ by the Governor in Council.¹⁶

III. REPEAL OF THE *CLEAN ENERGY ACT 2008* (QLD) BY THE *ENERGY AND WATER LEGISLATION AMENDMENT ACT 2013* (QLD) (EWAB)

Following a review of the operation of the Smart Energy Savings Program (SESP) the Queensland Government announced that the SESP would be discontinued to reduce the regulatory burden on Queensland businesses. Consistent with the platform of green-tape reduction, the government repealed the SESP’s enabling legislation, the *Clean Energy Act 2008* (CEA).¹⁷

The explanatory notes to EWAB state:

The SESP was intended to encourage firms to understand their energy use and identify and implement cost-effective energy management strategies. However, in the current policy and regulatory context, there are sufficient drivers for businesses to undertake energy management activities. The Energy and Water Legislation Amendment Bill 2013 will cease all requirements under the SESP.¹⁸

Reduction of the regulatory burden was the only reason provided for the proposed repeal of the *Clean Energy Act 2008* (Qld). The explanatory memorandum to EWAB stated that ‘[c]essation of the SESP will remove the costs associated with SESP compliance for government, making resources available for other government business.’¹⁹ It was stated that consistency of EWAB with legislation of other jurisdictions was not applicable, as EWAB was specific to Queensland and not uniform or complementary to the legislation of the Commonwealth or another State.²⁰ However, the CEA was more than just an administrative scheme for registering Smart Energy Savings. The requisite energy savings plans mandated performance criteria for participating businesses and required participating businesses to include a copy of a report about their energy audits and the requisite efficiency and conservation measures they intended to implement.²¹

Costs incurred by the government in the administration of the SESP were associated with the registration and the review of companies for compliance purposes. However, the *Legislative*

12 *Environmental Protection Act 1994* (Qld) s 123; inserted by *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Qld) s 8.

13 Explanatory Notes, *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012* (Qld) 2.

14 *Environmental Protection Act 1994* (Qld) s 124; inserted by *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Qld) s 8.

15 M Roche, CEO of Queensland Resources Council, quoted in Julie Anne Tarr, ‘Regulating the coal industry – striking the balance between commercial and public interests: A Queensland case study (2013) 41 *Australian Business Law Review* 84, 87.

16 *Mines Legislation (Streamlining) Amendment Act 2012* (Qld) ss 47–74 (amending the *Mineral Resources Act 1989*).

17 *Energy and Water Legislation Amendment Act 2013* (Qld) s 34.

18 Explanatory Notes, *Energy And Water Legislation Amendment Act 2013* (Qld) 1.

19 *Ibid* 4.

20 *Ibid* 5.

21 *Clean Energy Act 2008* (Qld) s 16(3) as repealed by the *Energy And Water Legislation Amendment Act 2013* (Qld) s 336.

Standards Act 1992 defines costs as including burdens and disadvantages and direct and indirect economic, environmental and social costs.²² Thus the costs to the Queensland community from this reduction in green tape must consider not only the direct cost savings from the repeal of the CEA obligations but also the greater indirect economic, environmental and social costs. Energy efficiency has been widely recognised as one of the lowest-cost solutions to reducing energy costs and greenhouse gas emissions. This is particularly important to businesses.

The CEA was Queensland's response to the national commitment to the Kyoto Protocol obligations²³ requiring greenhouse gas emission reductions by 2020.²⁴ The removal of the CEA in relation to this commitment was justified by reference to the Federal Government's introduction of a Carbon Tax, thereby meeting the obligations under the Kyoto protocol.²⁵

Australia is the twelfth largest world consumer of electricity, at 225 billion kilowatts per annum,²⁶ with coal-fired power plants generating 75 per cent of Australia's total electricity. Due to Australia's reliance on coal and gas for energy, Australia is also the highest emitter of greenhouse gases per capita of any OECD country, and among the highest in the world.²⁷ Australia is also one of the countries most at risk from climate change, according to the Stern Review on the Economics of Climate Change released in 2006.²⁸ Arguably, the alleged economic cost benefits resulting from repealing the CEA will be far outweighed by the continuing rise in indirect costs from climate change. It makes not only economic sense for large energy consumers to be required to enact SESP's – it also makes environmental and social sense.

These amendments must raise concerns about the current deregulatory thrust in respect of the environment and appropriate environmental governance, in particular, the lack of adherence to international treaty obligations when the threat from climate change was the very impetus for the original enactments. While states are only legislatively obligated to international environmental targets when there is an inter-governmental agreement, the Commonwealth's executive discretion may be limited more directly. For example the Commonwealth has an onus not to act inconsistently with the Rio Convention under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act).²⁹ This of course does not fetter the legislative capacity of the Commonwealth, but it reflects the need for consideration of a global interconnected approach to the maintenance of biodiversity. It is submitted that while the repeal of the *Clean Energy Act 2008* is consistent with the doctrine of parliamentary supremacy, the High Court has raised potential for legal argument in *Spencer v The Commonwealth*³⁰ (*Spencer*) with respect to bilateral agreements between states and the Commonwealth in response to international environmental obligations. In *Spencer*, the High Court acknowledged a bilateral agreement between the Commonwealth and New South Wales³¹ as a recitation of New South Wales' commitment to the 'conservation, rehabilitation and protection of significant native vegetation and ecological communities against land clearance and resource degradation' with the Commonwealth and the State to work as 'joint investment partners' in natural resource management activities.³² A similar agreement was signed between the Commonwealth and

22 *Legislative Standards Act 1992* (Qld) s 2.

23 The Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) is an international treaty that sets binding obligations on industrialised countries to reduce emissions of greenhouse gases.

24 The Doha amendment from December 2012 provided for developed nations to commit to greater reduction measures in order to provide some intermediate relief to developing nations.

25 Energy and Water Legislation Amendment Bill 2013 Explanatory Memorandum, 1.

26 The World Bank and the International Energy Agency listed Australia's electricity consumption per capita in 2010 at 10285kw, almost twice the UK figures but less than the US and Canadian consumption.

27 Ross Garnaut, *The Garnaut Climate Change Review* (2008) 153–4.

28 Nicholas Stern, *The Stern Review on the Economics of Climate Change* (Cambridge University Press 2007).

29 Section 139 of the EPBC Act states: 'In deciding whether or not to approve for the purposes of a subsection of section 18 or section 18A the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with: (a) Australia's obligations under: (i) the Biodiversity Convention.'

30 [2010] HCA 28.

31 Bilateral Agreement between the Commonwealth of Australia and the State of New South Wales to Deliver the Extension of the Natural Heritage Trust, 14 August 2003.

32 *Spencer v The Commonwealth* [2010] HCA 28 at [7].

Queensland governments.³³ Although the *Spencer* decision related to possible grounds for infringement of the constitutional protection for compulsory acquisition of property, it is tendered that by analogy, the executive agreements were premised on state legislative enactments forthcoming to enable the Commonwealth to meet its international commitments to the Rio Convention. The repeal of the CEA therefore undermines the original basis for its enactment in meeting obligations under the Kyoto Protocol.

IV. CHANGES TO THE VEGETATION MANAGEMENT FRAMEWORK

The *Vegetation Management Framework Amendment Act 2013* (Qld) was enacted with the aim of streamlining vegetation management in Queensland by amending the Vegetation Management Framework under the *Vegetation Management Act 1999* (Qld), *Sustainable Planning Act 2009* (Qld) and corresponding regulations. The legislation aimed to reduce the regulatory burden on landholders who wished to undertake routine vegetation management activities, support the resources, agriculture, construction and tourism economy (the ‘four pillar economy’) and to maintain protection and management of Queensland’s native vegetation resources.³⁴ The changes allow for the clearing of high-value regrowth vegetation on agricultural land, on freehold and Indigenous land without permits. Regrowth regulations will continue for leasehold land for agriculture and along watercourses in priority reef catchments. The amendments allow for farmers and landholders to assess land clearing activities themselves in accordance with a mapped code.³⁵ Landholders will be able to undertake vegetation clearing without the need for a permit. The changes also create new clearing purposes for ‘high value agriculture clearing’, ‘irrigated high value agriculture clearing’ and ‘necessary environmental clearing’.³⁶ Vegetation mapping will be simplified under the reforms by creating an overarching regulated vegetation management map.³⁷ The section 60B sentencing guide under the VMA has also been removed, as have the enforcement and compliance provisions, such as the ‘reversal of the onus of proof’ under VMA s67A, the reinstating the ‘mistake of fact’ defence under the Criminal Code and the privilege in respect of self-incrimination should information requested be refused.³⁸ The interaction between the VMA and *Wild Rivers Act 2005* (Qld) has also been removed.³⁹

The amendments were introduced with the objective of achieving the government’s goal of doubling food production in Queensland by 2040.⁴⁰ The government intends that impacts on key environmental values, such as essential habitat for threatened species, will be avoided or minimised with an estimated 1.3 million hectares of remnant vegetation being mapped as essential habitat for the cassowary, Mahogany glider and koala.⁴¹

However, while the Minister for Natural Resources has stated that the changes to the vegetation management laws would not allow for indiscriminate land clearing to occur,⁴² the World Wildlife Fund is of the view that areas of regrowth up to 40 years old will be able to be cleared, thus impacting upon endangered ecosystems. It also estimates that around 2 million hectares of native vegetation face increased risk of clearing due to such changes to the legislation.⁴³

33 Bilateral Agreement between the Commonwealth of Australia and the State of Queensland to deliver the Natural Heritage Trust in Queensland, 2004.

34 Explanatory Notes, Vegetation Management Framework Amendment Bill 2013 (Qld) 1.

35 Ibid 2.

36 Ibid 1.

37 Ibid 2.

38 Ibid 2.

39 Ibid 2.

40 Department of Agriculture, Fisheries and Forestry, Strategic Plan 2012–2016 (Queensland Government). Available online: <http://www.daff.qld.gov.au/__data/assets/pdf_file/0006/51567/DAFF-strategic-plan-2012-16.pdf>.

41 Department of Natural Resources and Mines, *Vegetation Management reforms* (29 July 2013) Queensland Government <<http://www.nrm.qld.gov.au/vegetation/reforms.html>>.

42 Andrew Cripps, ‘State Government restores balance to vegetation management laws’ (Media Statement, 10 September 2012).

43 Martin FJ Taylor, Bushland at risk of renewed clearing in Queensland (WWF Australia, May 2013).

A group of Queensland scientists is concerned that the changes will wreak devastating habitat and species loss. The Group of Concerned Scientists states that land clearing is the greatest current threat to Australia's biodiversity, and posits that such amendments will impact upon the high conservation regrowth of such species as the Brigalow tree, which is nationally endangered and currently on the threatened species list.⁴⁴ Further, contrary to political rhetoric surrounding the former unamended 'radical green' Vegetation Management Framework,⁴⁵ Queensland already clears far more native bushland annually than any other state in Australia. Approximately 80,000 hectares of Queensland's native vegetation are cleared each year, a third of which is mature remnant bushland.⁴⁶ The Group of Concerned Scientists has indicated that that, for every 100 hectares of native woodlands cleared, approximately 2000 birds, 15,000 reptiles and 500 native mammals are destroyed as a direct result.⁴⁷ Land clearing also affects water quality for river systems, increases dryland salinity, and is a major cause of greenhouse gas emissions.⁴⁸ Furthermore, land clearing has future economic consequences. The changes to the Vegetation Management Framework do not consider the future rehabilitation expense. Restoration costs more than \$20,000 per hectare, and many millions are spent restoring lost ecosystems every year in Australia. Queensland scientists have stated that the protection of high-value regrowth is the most cost-effective way to restore habitat.⁴⁹

These amendments must raise concerns about the current deregulatory thrust in respect of the environment and appropriate environmental governance, in particular, when the threat to loss of biodiversity and the threat from climate change provided the very impetus for the original enactment.

V. TOURISM DEVELOPMENT AND THE *NATURE CONSERVATION ACT 1992 (QLD)*

The Queensland Government has also made amendments to the *Nature Conservation Act 1992 (Qld)* (NCA).⁵⁰ The *Nature Conservation and Other Legislation Amendment Act 2013* amended the NCA allowing for ecotourism facilities to be developed in National Parks⁵¹ as well as Cape York Peninsula Aboriginal Land⁵² and indigenous joint management areas.⁵³

The *Nature Conservation and Other Legislation Amendment Act (No. 2) 2013* amended the current objective of the *Nature Conservation Act 1992 (Qld)* to provide for recreation and commercial uses in protected areas.⁵⁴ The current government has stated that the current object of the NCA does not reflect the Government's commitment to achieving recreational and commercial outcomes in the management of protected areas and aims to increase access to National Parks, decrease red-tape and streamline legislative processes.⁵⁵ The *Nature Conservation and Other Legislation Amendment Act (No. 2) 2013* also reduced the number of protected area tenure classes with national park, national park (scientific) and national park

44 Natalie Bochenski, 'Land Clearing will devastate Queensland: Scientists' *Brisbane Times* (online) 13 May 2013 <<http://www.brisbanetimes.com.au/queensland/land-clearing-will-devastate-queensland-scientists-20130512-2jg2h.html#ixzz2f107B400>>.

45 Andrew Cripps, 'WWF wrong on vegetation reforms' (Media Statement, 30 April 2013).

46 Concerned Queensland Scientists, 'Public Statement of Concern from Queensland Scientists' (Press Release, 13 May 2013) <<http://concernedqldscientists.wordpress.com/press-release-2/>>.

47 Ibid.

48 Ibid.

49 Concerned Queensland Scientists, above n 46. This also applies globally; it has been estimated that the cost of buying all of the world's biodiversity hotspots outright would be some US\$100 billion – far less than the amount spent on government bailouts in 2009 to rescue financial systems during the GFC. See: A Balmford and T Whitten, 'Who should pay for tropical conservation, and how could the costs be met?' (2003) 37 *Oryx* 238; J Ghazoul 'Bailing out creatures great and small' (2009) 323 *Science* 460.

50 *Nature Conservation and Other Legislation Amendment Act 2013 (Qld)*; *The Nature Conservation and Other Legislation Amendment Act (No. 2) 2013 (Qld)*.

51 *Nature Conservation Act 1992 (Qld)* s 35A.

52 *Nature Conservation Act 1992 (Qld)* s 42AE.

53 *Nature Conservation Act 1992 (Qld)* s 42AO.

54 Explanatory Notes, *Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013 (Qld)* 2.

55 Ibid 1–2.

(recovery) combined into one tenure class of ‘national park’. Conservation park and resources reserve tenures were combined into a one tenure class called ‘regional park’. The tenure classes of Wilderness area, World Heritage management area and international agreement area were abolished.

As a result of amending the tenure classes the *Nature Conservation and Other Legislation Amendment Act (No. 2) 2013* has set to revise the management principles for the protected areas. With regard to National Parks the management principles have been expanded to provide for educational, recreational and ecotourism opportunities.⁵⁶ With regards to regional parks the management principles are largely informed by the repealed conservation park and resources reserve tenures. This will allow for commercial use of natural resources in the newly classified ‘regional parks’.⁵⁷ The *Nature Conservation and Other Legislation Amendment Act (No. 2) 2013* also extends civil immunity coverage for liability for death, personal injury, property damage or economic loss to the State, the Minister, the Chief Executive or any employee or volunteer of the relevant department managing the land.⁵⁸ The Act further removes the requirement for two specified mandatory periods of public consultation for the making of conservation plans under the NCA. Conservation plans are to accord with the making, review and any amendment to the regulations under the NCA.⁵⁹

The current object of the NCA is the conservation of nature, which is to be achieved through an integrated and comprehensive conservation strategy for the whole of the state. The strategy focuses on information gathering and community education, the dedication, declaration and management of protected areas, protection of native wildlife and its habitat and the use of protected wildlife areas to be ecologically sustainable. The object of the NCA and strategy also allows for the recognition of Aborigines and Torres Strait Islander interests and their cooperative involvement, along with the co-operative involvement of landholders.⁶⁰ The amendments made by the *Nature Conservation and Other Legislation Amendment Act (No. 2) 2013* are incongruent with this statute. The amendments, which predominantly focus upon tourism development in National Parks and the access to resource development in protected areas, are antithetical to the conservation of nature and permanent preservation of an area’s natural condition.⁶¹ Increased tourism operations and open access to national parks can impact adversely on the integrity of a park or protected areas natural values. Indeed, environmental lawyers have suggested that the amendments to the NCA ‘erode the cardinal principle of protection of national parks’ which will have ‘severe long term negative impacts upon the ecological integrity’ of the national parks.⁶²

It is appropriate to observe that Queensland has a low percentage of land in National Parks (4.77%) and protected areas (6.8%) in comparison to other Australian states.⁶³ With over 1300 species listed as near threatened, vulnerable, endangered or extinct in the wild in Queensland as of 2013,⁶⁴ national parks provide important refuges and are more effective in species recovery and biodiversity protection than other approaches.⁶⁵ Moreover, there is little evidence that increasing tourism industry access to national parks is economically viable. Research has shown that partnerships with tourism developers have incurred high costs, have brought few visitors to the National Parks, and have generated only minimal revenue, thus effectively reducing benefits for private recreational visitors without any positive effect on conservation.⁶⁶

56 Ibid 3.

57 Ibid 3.

58 Ibid 6.

59 Ibid 8.

60 *Nature Conservation Act 1992* (Qld) s 4.

61 *Nature Conservation Act 1992* (Qld) s 17.

62 Environmental Defenders Office Queensland and North Queensland, Submission to the Nature Conservation and Other Legislation Amendment Bill 2013, 19 December 2012, 1.

63 National Parks Association of Queensland, Annual Report 2011/2012, 3.

64 *Nature Conservation (Wildlife) Regulations 2006* (Qld).

65 Martin F. J. Taylor, Paul S. Sattler, Megan Evans, Richard A. Fuller, James E. M. Watson and Hugh P. Possingham ‘What works for threatened species recovery? An empirical evaluation for Australia’ (2011) 20 *Biodiversity and Conservation* 767.

66 Ralf Buckley ‘Parks and Tourism’ (2009) 7 (6) *PLoS Biology* e100014.

In contrast, economists and scientists estimate that ecosystem services worldwide contribute twice as much to the human economy each year than all forms of human industry combined.⁶⁷ The changes to the NCA do not take into account the importance of economic costing of biodiversity. Conservation in these regions, including important biodiversity conservation, is far more valuable than tourism and recreation.⁶⁸

The lack of consideration of environmental values and processes draws attention to the environmental governance of the current LNP government. The application of a 'user pays' privatisation model to the management of National Parks represents a departure from the long established 'commons' approach to National Parks. This approach is an indication that the changes to Queensland's National Park management do not represent a long-term vision of interconnected conservation preservation and management.

VI. GOOD ENVIRONMENTAL GOVERNANCE: THE INTERFACE BETWEEN SCIENCE AND POLICY

The amendments examined above indicate a significant relaxation of Queensland's environmental management framework with the state embracing self-regulatory and self-governing frameworks for industry in the natural resource and environmental management sector.⁶⁹ This approach, while economically favourable for industry, does not necessarily equate to good governance. The concept of governance has been defined as the broader task of 'steering and coordinating the affairs of interdependent social actors based on institutionalised rule systems'.⁷⁰ As to what is good governance the World Bank states it is:

the traditions and institutions by which authority in a country is exercised for the common good. This includes (i) the process by which those in authority are selected, monitored and replaced, (ii) the capacity of the government to effectively manage its resources and implement sound policies, and (iii) the respect of citizens and the state for the institutions that govern economic and social interactions among them.⁷¹

While this definition has been criticised for doing little more than pander to liberal democracy,⁷² it does raise important questions about the 'good of the state' and flags characteristics of good governance including transparency, participation, accountability and predictability, requiring adherence to the rule of law and ensuring confidence in public institutions.

Good environmental governance also necessitates recognition the interconnected relationships between people, societies and the natural world, and for these to be reflected in local, national, regional and global levels.⁷³ Environmental systems are interconnected ecologically across the planet and are, as such, global challenges as much as local: they are interdependent, complex and uncertain. Complex analysis and use of systems science is required in order to understand and to mitigate what are often non-linear and interconnected environmental problems. For example biodiversity loss and deforestation in one country has

67 R Costanza, R d'Arge, RD Groot, S Farber, M Grasso et al, 'The value of the world's ecosystem services and natural capital' (1997) 387 *Nature* 253–260; A Balmford, A Bruner, P Cooper, R Costanza, S Farber, et al, 'Economic reasons for conserving wild nature' (2002) 297 *Science* 950. National Wildlife refuges in the contiguous 48 states in the United States of America are estimated at an annual value of US\$27 billion annually.

68 Buckley, above n 68.

69 Such an approach is indicative of a neo-liberalist economic philosophy.

70 Benz A 'Einleitung: Governance – Modebegriff oder nützliches sozialwissenschaftliches Konzept?' In A Benz (ed) *Governance – Regieren in komplexen Regelsystemen: Eine Einführung* (2004) Weisbaden VS Verlag für Sozialwissenschaften, quoted in Treib, O., H. Ba'hr and G. Falkner 'Modes of Governance: A Note Towards Conceptual Clarification.' (2005) *European Governance Papers* 'No. N-05–02.

71 World Bank, quoted in Gale, above n 1, 267.

72 Michael Kirby, 'Human Rights and Good Governance: Conjoined Twins or Incompatible Strangers' (Speech delivered at the Chancellor's Human Rights Lecture, University of Melbourne, Victoria, 3 November 2004); Gale, above n 1.

73 Durwood Zaelke, Matthew Stilwell and Oran Young, 'Compliance, Rule of Law, and Good Governance: What Reason Demands: Making Law Work for Sustainable Development' in Durwood Zaelke, Donald Kaniaru, and Eva Kružíková (eds) *Making Law Work, (Volumes I and II) – Environmental Compliance and Sustainable Development* (Cameron May, 2005) 40.

led to weather systems alterations across the globe.⁷⁴ Environmental governance must be reflective of these challenges, as well as cognisant of, and responsive to, natural system limits – despite the dominant economic paradigm predicated on an assumption of continuous economic growth.⁷⁵

Therefore the incorporation of science in good governance is essential ‘primarily because we rely on a wide range of sciences to understand the effects of human–nature interactions.’⁷⁶ Commentators suggest that science can play a fundamental role in understanding the relationship and dynamics between government and society, empowering society to engage meaningfully with government and ensuring the development for scientifically rigorous government policies in order to ensure good environmental governance.⁷⁷ Science is generally considered a reputable and reliable knowledge base to support informed decisions with respect to environmental management.⁷⁸ The incorporation of science into policy and informing governance is becoming a key element of environmental governance;⁷⁹ examples at an international level include processes such as the International Panel on Climate Change IPCC and the discussion regarding the requirement for an International Mechanism of Expertise on Biodiversity.⁸⁰

The incorporation of science in good environmental governance can strengthen not only decision making and regulation and policy but also monitoring. Monitoring provides an opportunity to quantify the cost of externalities in environmentally damaging industries such as resource extraction. Externalities are the costs that are incurred in a process, but are not borne by the undertaker of the process. This information is invariably provided by various scientific disciplines – which, in the case of the mining industry, will consider the costs of externalities that occur in granting a mining permit. These include impacts such as decreased air, water and soil quality, decreased agricultural production and social costs incurred by a locality, such as those resulting from the fly-in fly out culture of mine workers, and the impact of an encroaching mine on a once economically viable town. While the mining company concerned may have committed to meeting the costs of the permit for the resource, and perhaps also rehabilitation of the area, it is unlikely to meet the full costs attributable to the mine. The monitoring process will allow for better feedback on these costs and ensure that they are borne by the resource extraction company.

The level of incorporation of science into good governance is dependent upon appropriate governance structures, and ‘factors that result in good governance can encourage integration of science.’⁸¹ Commentators argue that environmental assessment procedures under models of environmental governance is not good governance as the underlying, two-stage model of science on which environmental assessment procedures are based – scientists discover the facts and politicians make decisions – is seriously flawed. They suggest that ‘a better model for the

74 Avissar, Roni and David Werth, ‘Global hydroclimatological teleconnections resulting from tropical deforestation’ (2005) 6 *Journal of Hydrometeorology*, 134.

75 In a paper published in *Nature*, Rockström et al identified the biophysical thresholds for 9 earth-system processes which, if exceeded, could generate unacceptable environmental change; they proposed a framework of planetary boundaries to define ‘the safe operating space for humanity with respect to the Earth system.’ These biophysical processes are: climate change; rate of biodiversity loss (terrestrial and marine); interference with the nitrogen and phosphorus cycles; stratospheric ozone depletion; ocean acidification; global fresh-water use; change in land use; chemical pollution; and atmospheric aerosol loading. See Johan Rockström et al, ‘A Safe Operating Space for Humanity’ (2009) 461(24) *Nature* 472.

76 Gale, above n 1, 272.

77 Linda Godfrey, ‘Ecosystem Governance and the Trialogue Debate: An Overview of the Trialogue Relationship and the Engagement along Interfaces’ in Anthony Turton, Hanlie Hattingh, Gillian Maree, Dirk Roux, Marius Claassen and Wilma Strydom (eds), *Governance as a Trialogue: Government-Society-Science in Transition* (Springer 2007) 325; see also P Wilderer, ‘Sustainable water resource management: the science behind the scene’ (2007) 2(1) *Sustainability Science* 1–4 regarding water resource management and the incorporation of science.

78 Godfrey, above n 77, 325–6.

79 Sybille van den Hove, ‘A Rationale for Science-Policy Interfaces’ (2007) 39 *Futures* 807, 808.

80 Convention on Biological Diversity, Report on progress of the consultative process to assess the need for, modalities of, and options for an international mechanism of scientific expertise on biodiversity. Note by the Executive Secretary, UNEP/CBD/COP/8/INF/3, 10 March 2006.

81 Edward Morgan, *Governance arrangements and the use of science in water resource management in South East Queensland; Issue Paper*, (Urban Research Program, Griffith University 2013), 4.

involvement of scientists in public policy debates is that of being participants in particular interest groups, rather than as supposedly unbiased consultants to decision-makers.⁸²

With a greater focus on public participatory governance, science funding and research directions are at risk of becoming more heavily influenced by industry and private corporate interests. It is important that governance structures are aware of such interests and have appropriate structures to ensure that the process remains objective: 'Science aspires to an ideal of serving society; as the world changes the governance of science may have to change as well.'⁸³

VII. CONCLUSION

What law does is to allow a society to choose its future. Law is made in the past, to be applied in the present, in order to make society take a particular form in the future. Law carries society's idea of its own future from the past into the future.⁸⁴

Several reports into the economic effects of climate change have recently identified the exponential risks facing communities across the globe.⁸⁵ Recent natural disasters in Queensland from flooding and from cyclones have evidenced the huge public costs associated with these risks. Australian taxpayers, nationally, were forced to contribute to the damage bill from those disasters. The off-balance sheet externalities that have been conveniently ignored by governments are surfacing with increasing recurrence and are suggested as the reason for diminishing household spending capacity, as more income is used for insurances and utilities and rising costs. Political rhetoric evincing a solution based on green-tape reduction is therefore short-sighted, and lacks a comprehensive approach to effective governing and to the real determination of costs.

Current environmental law and governance focuses on the quest for control over nature rather than the protection and understanding of the interconnected ecosystems and human society's reliance upon it. The greater majority of environmental governance is focused upon natural resource management and does little more than to govern the rate of natural resource extraction and environmental destruction. Our current global ecological crisis forces us to reconsider the culture of modernity that informs environmental governance and to consider the importance of recognising and protecting the economic, social and spiritual value of our natural environment.⁸⁶ The global, interconnected nature of environmental issues, such as climate change and biodiversity loss, transcends state boundaries and indicates that state environmental law and governance must be restructured to give more scope for global decision-making as well as local⁸⁷ to ensure a continuing 'safe operating space for humanity.'⁸⁸

82 G Stoker, *Why Politics Matters: Making Democracy Work* (Palgrave Macmillan, 2007) 139.

83 Morgan, above n 81, 5.

84 Philip Allott, 'The True Function of Law in the International Community' (1998) 5(2) *Indiana Journal of Global Legal Studies* 391, 399.

85 Stern, above n 28; Garnaut, above n 27; The Australian Academy of Science, *The Science of Climate Change* (2010); World Bank, *Turn down the heat: why a 4°C warmer world must be avoided* (World Bank, 2012).

86 Arran Gare 'Towards an Environmentalist Grand Narrative in B Gleeson and N Low (eds) *Governing for the Environment – Global Problems, Ethics and Democracy* (Palgrave 2001).

87 Stoker, above n 82, 15.

88 Rockström et al, above n 75, 472.