

A CELEBRATION OF WORLD OCEANS DAY – AN AUSTRALIAN PERSPECTIVE

INTRODUCTION¹

As most of you are aware, the United Nations Educational, Scientific and Cultural Organization (“UNESCO”) recently released its State of Conservation report into Australia’s management of the Great Barrier Reef.² It was damning.

The report noted “with great concern” the potentially significant impact on the Reef’s Outstanding Universal Value resulting from the dramatic increase in the scale of littoral development currently proposed within, and affecting, the Great Barrier Reef.³ Particular scrutiny was afforded to the three proposed liquefied natural gas plants on Curtis Island, with a major associated dredging programme, and the proposed increase in the size of the Gladstone Harbour Port to service an unprecedented demand for such facilities and associated infrastructure, caused by a commensurate increase in oil and gas exploration and production, and in mining exports.⁴

The report opined that “this unprecedented scale of development affecting or potentially affecting the [Reef] poses serious concern over its long-term conservation.” In this regard, it should be noted that 45 development proposals have been lodged, 35 of which seek to be determined before the end of 2013. It is also worth observing that over the past decade, 70% of all development applications identified as potentially affecting the Reef have been approved.⁵

¹ Introductory remarks given to the National Environmental Law Association and the NSW Young Lawyers Environment and Planning Law Committee’s seminar, *A celebration of World Oceans Day: An Australian perspective*, on 7 June 2012. I am grateful for the assistance my tipstaff, Ms Louise Gates, provided me in the preparation of these remarks. All mistakes are, of course, my own.

² UNESCO, *State of Conservation of World Cultural and Natural Heritage* (1 June 2012).

³ *Ibid*, p 26.

⁴ *Ibid*, pp 22 and 23.

⁵ *Ibid*, p 23.

The report went on to conclude that while the Reef did not “currently” meet the requirements for placement on the List of World Heritage in Danger, should some of the more threatening developments proceed, the World Heritage Committee would consider this possibility.⁶ On any view an alarming, if not embarrassing, result for one of the seven natural wonders of the world.

The Queensland Premier’s response to the release of the report was telling: “we will protect the environment but we are not going to see the economic future of Queensland shut down... *we are in the coal business*. If you want decent hospitals, schools and police on the beat we all need to understand that” (emphasis added).⁷

Too bad for those Queenslanders who are ‘in the tourism business’ or ‘in the fishing business’.

Although the response to the UNESCO report was muted, the rebuke directed to the Queensland Premier from the Federal Environment Minister, Tony Burke, was more pointed. He publicly stated that we “cannot trust them with the Great Barrier Reef”.⁸ He also threatened to suspend the federal government’s bilateral agreement with Queensland on streamlining environmental approvals. This provoked the Premier to urge the Prime Minister to “curb this wayward environment minister”.⁹

Apart from their entertainment value, these tensions highlight the lamentable lack of coordination between State and federal authorities charged with managing and protecting our marine environment.

⁶ Ibid, p 25.

⁷ Patrick Caruana, “Scathing reef report doesn’t impress govts”, *Sydney Morning Herald* (online) 2 June 2012, <<http://news.smh.com.au/breaking-news-national/scathing-reef-report-doesnt-impress-govts-20120602-1zo05.html>>.

⁸ Sarah Elks, “Queensland Premier calls on PM to rein in Burke over Alpha coal mine approval”, *The Australian* (online) 5 June 2012, <<http://www.theaustralian.com.au/national-affairs/state-politics/burke-stops-clock-on-gina-rineharts-alpha-coal-mine-in-gallilee-basin/story-e6frgczx-1226384881449>>.

⁹ Ibid.

Overlapping legislative structures and insufficient funding of governmental agencies responsible for managing Australia's ocean resources are taking their toll. Valuable resources left mismanaged or poorly regulated tend towards exploitation or abject neglect.¹⁰

The reasons for this inadequate regime are, in small part, Constitutional (s 100 is the only provision dealing with water and this preserves the right of States to the reasonable use of the waters of rivers for conservation and irrigation – as the Murray Darling Basin demonstrates, this power has done little to protect our inland aquatic system) and, in large part, political.

This is because our maritime resources are valuable. In addition to tourism derived benefits, our oceans are sources of food and energy. I was surprised to learn that in 2008-2009, the estimated value of agricultural production in Australia was \$3.3 billion less than the estimated value of our marine industries.¹¹

Competing vested interests have meant that any pelagic cooperative federalism has, to date, been unachievable.

This has meant that both specific impacts such as pollution, climate change, coastal urban development, the construction and expansion of port facilities, mining, energy exploration, fishing – both commercial and recreational, shipping, aquaculture and tourism, are afforded inadequate consideration. Even less attention has been directed towards the cumulative effect of these demands on the health of our oceans.

This is hard to fathom given that, in 1998, Australia led the way in releasing a National Oceans Policy aimed at protecting its marine environment. Only too fitting for a “land girt by sea”. But 14 years on, what has actually been achieved?

To assist us in understanding the historical dimensions underpinning the present fragmented administration of our maritime environment; to discuss the current

¹⁰ Australian Government, *State of the Environment Report* (2011), pp 434-39.

¹¹ Australian Institute of Marine Science, *The AIMS Index of Marine Industry* (2010), p 5.

regulatory state of play with its concomitant strengths and weaknesses; and to provide us with a possible framework for an effective oceans policy that will be capable of meeting the environmental and economic challenges of the 21st century, it gives me great pleasure to introduce our four speakers tonight:

- **Megan Kessler** – Science Director of the NSW Environmental Defenders Office;
- **Katherine Wells** – environmental law and policy consultant;
- **Dr Sarah Waddell** – lecturer in environmental law at UNSW and international consultant on environmental law; and
- **Amanda Cornwall** – National Environmental Law Association.