

# **Review of Allocation and management of Tasmania's Freshwater Resources**

## **Environmental Defenders Office (TAS) Submission**

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### **Summary of Submission**

1. The new Water Legislation should be consistent with the Land Use Planning & Approvals Act and the Environmental Management & Pollution Control Act by aiming for important criteria which include:
  - transparency of decision making; and
  - accountability of decision makers to the general public.
2. The State Policies and Projects Act is the mechanism for enforcement of the State Policy on Water Quality Management. The water legislation must complement it so that the Policy can be enforced by third parties against private individuals as well as Councils and government bodies
3. The water legislation should be based on promotion of the sustainable development of the natural and physical resources for water and the maintenance of the ecological processes and genetic diversity, consistent with the Objectives of the RMPS.
4. If water rights are to be allocated and traded, this must be done within the framework of the RMPS

and the primary focus must be long term, say 20 - 50 years. The process must be consistent with the RMPS objectives and State Policies and include public participation, transparency of decision making and accountability of decision makers to the general public.

5. The supply of water should continue to be a public service by recognising the central role for government in the provision of services which are focussed long term for the benefit of our community and the ecosystems that support our water supply.
6. COAG Water Reform Framework (Information Paper No. 4): The two most important generic milestones are Environment and Water Quality, and Public Consultation and Education, and should be listed first and second. Both the Edwards and Nixon reports recommended that public education in the RMPS process was a precondition for its success. This applies equally to Water Law reform.
7. COAG Water Reform Framework (Information Paper 4): One of the hallmarks of progress on key issues of integrated natural resources management would be to bring the *Forest Practices Act* within the Resource Management Planning System as outlined above.
8. Water Costs & Pricing (Information Papers 9 & 10): Emphasis should not be on the efficient use of water but the fair and equitable use of water over a long term period with the objectives of the RMPS for sustainable development being at the forefront. First priority must be on positive rewards for the sustainable use and development of surface and ground water resources, whether in water recycling, uses of grey water, water supply, dry toilets, sustainable agricultural and forestry practices etc.
9. Water Costs & Pricing (Information Papers 9 & 10): The model of the beneficiary should " pay will be most costly for the natural environment.
10. Farm Dams: Environmental impact assessment for construction of instream farm dams would be most equitably brought in line with the *Land Use Planning & Approvals Act* (LUPAA) or a similar model, with a right of appeal of both the farmer and third parties to the Resource Management and Planning Appeal Tribunal.
11. Farm Dams: The legislation should provide that all farm dam applications should be first referred for assessment to the FDWG which could refer on to the Board of Environmental Management if necessary. Appeals against decisions of the FDWG would be to the RMPAT, as part of the LUPAA.

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## Introduction - Basic Premise

Your outline paper states " we would not be here without water". This is consistent with the "World Scientists' Warning to Humanity" released on 18 November 1992 and signed by more than 1,600 senior scientists from 71 countries including over half of all Nobel Prize winners. Extracts are as follows:

"Human beings and the natural world are on a collision course. Human activities inflict harsh and often irreversible damage on the environment and on critical resources. If not checked, many of our current practices put at serious risk the future that we wish for human society in the plant and animal kingdoms, and may so alter the living world that it will be unable to sustain life in the manner that we know. Fundamental changes are urgent if we are to avoid the collision our present course will bring about...

No more than one or a few decades remain before the chance to avert the threats we now confront will be lost and the prospects for humanity are measurably diminished. We, the undersigned, senior members of the world scientific community, hereby warn all humanity of what lies ahead. A great change in our stewardship of the earth and life on it is required, if vast human misery is to be avoided in our global home on this planet is not to be irretrievably mutilated."<sup>1</sup>

Henry Kendall, a Nobel Laureate and Chairman of the Union of Concerned Scientists who supported the document, remarked that: "This degree of consensus is truly unprecedented. There is an exceptional degree of

agreement within the Scientific Community that natural systems can no longer absorb the burden of current human practices. The depth and breadth of authority to support the Warning should give great cause who question the validity of threats to our environment."<sup>2</sup>

Tasmania is not immune to the forecasts of the Concerned Scientists and must play its part in both protecting ecosystems and being an example of good management, consistent with our " clean and green image , and the objectives of the Resource Management Planning System (RMPS).

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### **Linkages with the COAG Agreement (Information Paper 3)**

We note with concern that the driving force for this reform appears to be the Council of Australian Governments (COAG) National Competition Policy and related Reforms Agreement. You note in discussion in Information Paper 3 that this Agreement commits states and territories to implementation of the strategic framework for efficient and sustainable reform of the Australian Water Industry. The notion of efficiency seems diametrically opposed to achieving an effective and holistic catchment management approach to natural resources management which arrests degradation (we presume of soil, air, water and ecosystem resources).

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### **The Resource Management Planning System (Information Paper 2)**

Information Paper 2 refers to the key conditions for achieving integration and desirable environmental, economic and social outcomes as:

a competitive enterprise economy; effective laws and policies; information; and social participation.

It unfortunately omits two most crucial conditions:

- transparency of decision making; and
- accountability of decision makers to the general public.

It is these conditions that set LUPAA and the *Environmental Management and Pollution Control Act* (EMPCA) apart from the *Living Marine Resources Management* and the *Marine Farming Planning Acts*. With respect to the last two, there are no mechanisms or review by third parties which are fundamental to transparency of decision making and accountability of decision makers. All too frequently, short term expedient decisions are made at the expense of the environment with no regard to the Concerned Scientists' Warning above. So, for example, it is inconsistent to have a system of private timber reserves and clearance of land for agricultural purposes which are destroying the habitat of threatened species such as the Giant Freshwater Cray (*Astacopsis gouldii*). Tasmania, with its clean and green image, can and must do far better than this. Otherwise we risk tinkering with the rigging while the ship sinks.

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## **Catchment Management and Water Law Reform:**

### **Bringing forestry and agricultural practises into line with the Resource Management and Planning System**

The new Water Legislation will only be effective if it and other key legislation including the *Forest Practices, Inland Fisheries, Living Marine Resources* and *Marine Farming Planning Acts* are brought within the appeal structure (including third party appeal rights) of the Resource Management and Planning Appeals Tribunal via LUPAA. This will allow for decisions to be made fairly and expeditiously so that they are acceptable to the wider community.

The *State Policies and Projects Act* is the mechanism for enforcement of the State Policy on Water Quality Management. However, it only applies to Councils and government bodies; enforcement of breaches of State Policy by third parties is difficult if not impossible. This creates frustration in the community and a sense that there is no public consultation, no transparency of decision making and that decision makers are not accountable to the general public.

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### **The COAG Water Reform Framework (information paper no. 4)**

The supply of water should continue to be a public service. That is, it should recognise the central role for government in the provision of services which are focussed long term for the benefit of our community and the life that supports it (refer to World Scientists' statement above). A commercial focus for water services, emphasis on cost recovery, best practise, all focus on process; they ignore the end result, eloquently stated in your outline paper "we would not be here without water," i.e., the environmental and social good.

Water Rights allocation and trade: this must be done within the framework of the RMPS and the primary focus must be long term, say 20 - 50 years. The process must be consistent with the RMPS objectives, viz, public participation, transparency of decision making and accountability of decision makers to the general public. The COAG Competition Payments total \$80million and may well be long term be an expensive price to pay for adopting a commercial focus for our water services. If we degrade our water resources we risk losing a significant part of our tourist industry, and accepting the \$80mil may therefore be robbing Peter to pay Paul.

The two most important generic milestones are listed last, ie. Environment and Water Quality, and Public Consultation and Education. They should be listed first and second. Both the Edwards and Nixon reports recommended that public education in the RMPS process was a precondition for its success. This applies equally to Water Law reform.

One of the hallmarks of progress on key issues of integrated natural resources management would be to bring the *Forest Practices Act* within the Resource Management Planning System as outlined above. Public participation and public scrutiny of the process with ability for third party appeal rights, is required for it to work effectively.

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## **Rights of Access to Water in Tasmania**

The most important water users are the animals and plants and the landforms, which create and rely on water for their continuing existence. All other commercial water users' rights are on a different dimension and are subservient to these. Beyond the natural and physical environment is the general community, and their rights of access are paramount over those of the commercial water users.

We commend the statement that " property rights regime should not be implemented in a catchment until a comprehensive planning system is in place which fully described the resource and establishes a framework for consumptive and environmental uses . Unfortunately the principles do not further the Objectives of the RMPS (see Information Paper 2) or sustainable development. The first principle should be promotion of the sustainable development of the natural and physical resources for water and the maintenance of the ecological processes and genetic diversity

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## **Property Rights and Water**

We agree that management of the States' water resources would be wisely vested in a single authority with a coordinated and integration approach to development, monitoring and allocation and management.

We agree that the new water legislation must provide a system for defining property rights in water which gives first priority to those animals and plants living in the catchment, and the catchment itself, without which we will not have the supply or quantity or quality of water. Formal allocation of water for environmental processes should be maintaining the health of the catchment rather than merely being confined to the river environment. The COAG approach to ensure a "sustainable balance" between the environment and other uses is in conflict with the principle objective of the RMPS for sustainable development of natural and physical resources and maintenance of ecological processes and genetic diversity.

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## **Trading in property rights in water**

It is a misnomer to allow users to transfer their property right when the primary users, ie. the animals and plants and the natural environment are not taken into account. Trading of irrigation rights between irrigators, if properly supervised within the RMPS objectives would be acceptable, but the broad scale trading in water rights will unnecessarily prejudice the natural environment and also longer term environmental quality

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## **Water Costs and Pricing (information papers 9 & 10)**

Emphasis should not be on the efficient use of water but the fair and equitable use of water over a long term period with the objectives of the RMPS for sustainable development being at the forefront. We acknowledge

that the current arrangements must be improved, but we are concerned that first priority must be on positive rewards for the sustainable use and development of surface and ground water resources, whether in water recycling, uses of grey water, water supply, dry toilets etc.

The model of the beneficiary should "pay" will be most costly for the natural environment. It is artificial and ecologically unsustainable as well as anti-democratic to divide the public and private users of water in such an artificial way. How do the animals and plants pay? There has been no demonstration or justification as to how the COAG model will further the sustainable development of our water resources within the objectives of the RMPS. The model of water costs and pricing that assumes that all costs of managing the resource can be itemised and accounted for is fatuous and a red herring. The model will inevitably lead to a push for privatisation of our water supply just as is has it states such as South Australia and Victoria with dubious public and environmental benefits. Again this model does not take into account the long term environmental and public good, or the ecological processes which sustain our water supplies.

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## **Construction and Operation of farm dams and weirs**

We commend this inclusion in the legislation. Environmental impact assessment for construction of instream farm dams would be most equitably brought in line with the LUPAA or a similar model, with a right of appeal of both the farmer and third parties to the Resource Management and Planning Appeal Tribunal. From our experience, public participation, transparency of decision making, accountability of decision makers to the general public would be satisfied by this process. This is particularly important where dams may interfere with aquatic habitats and/or threatened species, or on the other hand, where a farmer has no right of appeal against a decision not to allow a dam, which leads to a perception of injustice. Farm dams can be a source of enduring conflict between people and have the ability to completely destroy ecosystems and watercourses.

We applaud the inter-agency Farm Dam Working Group to oversee the process. All farm dam applications should be referred to it for assessment by the FDWG, which refer on to the Board of Environmental Management if necessary. Appeals against FDWG decisions would be to the RMPAT, as part of LUPAA. This should be written into the water legislation.

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## **Conclusion**

Thank you for the thoughtful series of papers. We hope that our comments have been of use.

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## **References**

1. David Suzuki, *The Sacred Balance: Rediscovering our Place in Nature*, Allen and Unwin, 1997. (Suzuki states that the warning went on to list the crises in the atmosphere, water resources, the oceans, soil, the forests, biodiversity in human population: pp 4-5).
2. Suzuki, *op cit*

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