

Environmental law needs to be more than just symbolism.

Background

The Animal Justice Party (AJP) seeks environmental protection laws to ensure that human activities do not destroy the planetary systems on which we critically depend.

Current laws and institutions designed to protect Australia's natural environment are weak and complicated. Our legal system views nature as human property, and environmental regulations merely limit the amount of damage we may cause to it. Environmental protection is the responsibility of our state and federal governments but neither do particularly well in stopping the destruction.

The current model

Environmental law reform has been sporadic and reactive, creating a legal system which is ill-equipped to protect the environment or handle the growing issues of the 21st century. Our most important national environmental law, the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) is already a relic, and fails to even mention climate change.

New South Wales and Queensland are currently deforestation hotspots,¹ with environmental legislation amended to suit the government of the day. State legislation is ineffective in tackling national issues, and the EPBC Act is only² triggered when a federally protected animal, plant or location is affected. Federal Environment Ministers have historically approved over 95% of all projects³ despite their negative impacts on the environment. At the state level projects are similarly approved by senior politicians rather than independent authorities. It appears that these decision-makers have a conflict of interest in making environmentally sound decisions when these may be politically inconvenient. The legal standing held by some

NGOs to challenge a bad decision under the EPBC Act is an expensive and reactive means of protecting the environment, and only applies when federal interests are impacted. Conservative politicians have attempted to remove this community power⁴ in a bid to further reduce scrutiny of their decisions.

Calls for law reform and new agencies

Our current laws and institutions are not able to manage today's systemic environmental problems. The State of the Environmental Report 2016 explains that the pressures negatively impacting the environment are "climate change, land-use change, habitat fragmentation and degradation, and invasive species"⁵. Current environmental problems are cumulative and are poorly managed by laws dealing with decisions on a case-by-case basis only, without any holistic view of the problem. Meanwhile, key challenges for government that compound the problem include a lack of: national policy, inter-agency cooperation, data, and resources.

The Places You Love Alliance, comprising highly respected environmental protection NGOs, has called for new federal environmental laws recommended by the Australian Panel of Experts on Environmental Law (APEEL) which would greatly expand the federal government's reach and responsibility. The Alliance argues that this change is urgent⁶; eighty-five-percent of all rivers have been artificially modified; a 4C rise by 2100 is predicted; half of all wetlands have been lost; and half of the Great Barrier Reef coral cover is gone. APEEL released an overview paper⁷ and blueprint⁸ for the future of environmental law. It argues that the federal government must take the lead on environmental protection to meet Australia's international obligations, citing the success of similar reforms in other sectors. The blueprint includes new environmental bodies independent of political influences.

¹<https://www.theguardian.com/environment/2018/mar/05/global-deforestation-hotspot-3m-hectares-of-australian-forest-to-be-lost-in-15-years>

²<https://theconversation.com/why-arent-australias-environment-laws-preventing-widespread-land-clearing-92924>

³<https://www.theguardian.com/environment/2015/aug/12/australia-has-denied-environmental-approval-to-just-11-projects-since-2000>

⁴<https://theconversation.com/turnbull-wants-to-change-australias-environment-act-heres-what-we-stand-to-lose-67696>

⁵<https://soe.environment.gov.au/theme/overview>

⁶<http://www.placesyoulove.org/australiawelove/>

⁷https://static1.squarespace.com/static/56401dfde4b090fd5510d622/t/58f99ce7579fb3435965bb11/1492753641256/APEEL_Future_of_Australian_Environmental_Laws_Overview.pdf

⁸<https://static1.squarespace.com/static/56401dfde4b090fd5510d622/t/59bb6fe3f43b55b154728d29/1505456149104/APEEL+Blueprint+for+environmental+laws.pdf>



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These include a new Commonwealth Environment Commission (CEC) to write programs, strategies and environmental standards, including plans for bioregions⁹, and local implementation. The CEC would also coordinate and fund research and data collection for a nationally consistent approach to environmental protection. By introducing the CEC, we can ensure that planning decisions are evidence-based and rational.

In our vision for a new legal system, at a national level the CEPA would ensure that the environment is protected while state Independent Animal Protection Agencies (IAPA) would ensure the bodily security of individual animals (see our Animal Law policy). But can we do even better?

Earth jurisprudence: protecting the Rights of Nature

Jurisprudence is the theory, philosophy and ethics of law and legal systems. Increasingly, environmental groups, governments and the United Nations are discussing Earth jurisprudence as new system of governance necessary to avoid a planetary catastrophe. The Australian Earth Laws Alliance¹⁰ explains that “the Earth community should be recognised as having the right to exist, thrive and continue its evolutionary journey into the future.” The “rights” we speak of would not confer any additional value onto nature but would simply recognise what is inherent. Earth jurisprudence recognises that we are not separate to nature, that nature is not subject to ownership, and that we must protect the environment for all sentient animals who depend on it, including us. It also encourages community participation in environmental protection, with citizens and environmental organisations having more influence in planning and powers to litigate. This approach makes environmental protection a democratic responsibility.

Such laws already exist in various parts of the world, as there is a shift away from anthropocentric (human-centred) systems. In 2008, Ecuador introduced a new constitution protecting the Rights of Nature, including the right to be restored¹¹. Similar laws were passed in Bolivia in 2010. In New Zealand, the rights of the Whanganui River was recognised through legal personhood¹². The new law ensures that the river is protected for the benefit of the ecological community; legal guardians of the river can seek remedies to protect and re-

store it and no one can claim ownership or possession of it.

Laws recognising the rights of nature (and the individual animals who share our planet) are vital to ensure that we as a species live within our ecological impact now and into the future.

Policy

The AJP advocates for a new way of thinking about and relating to nature. Scientists can measure human disturbances in the ecosystem with a precision never dreamed of in the past. How should our legal system respond to news that reactive nitrogen levels are increasing, or carbon dioxide? Or that we risk running out of antimony or indium? We have a legal system which has evolved regulating the actions of people and, more recently organisations, but we are trying to use it to influence global outcomes which may be complex and largely unknown functions of individual and corporate activity.

Key Objectives

1. Introduce new federal environmental laws which adequately deal with climate change, land clearing and other crucial issues.
2. Establish a Commonwealth Environment Commission (CEC) with the power to implement bioregional plans, programs, strategies and environmental standards.
3. Establish a Commonwealth Environmental Protection Agency (CEPA) with adequate resources to monitor, enforce and prosecute offenders.
4. Increase citizen participation in environmental decisions, especially community groups and environmental protection organisations, and enshrine their ability to litigate on behalf of nature.
5. Legally recognise the inherent Rights of Nature, including the right to survive and be restored, and pursue the most appropriate means of protecting these rights (for the rights of individual animals, see our Animal Law policy).
6. Challenge the cultural, economic and legal conceptions of nature and animals as property to be owned by humans and educate the public to live within our ecological limits.

⁹http://webadmin.communitycreative.com.au/uploads/rangelands-regional-plan/IBRA%20bioregions%20map_Dec13.pdf

¹⁰<https://www.earthlaws.org.au/what-is-earth-jurisprudence/rights-of-nature/>

¹¹https://www.earthlaws.org.au/wp-content/uploads/2016/07/RON_Vilcabamba-Ecuador-Case-complete.pdf

¹²<https://www.theguardian.com/world/2017/mar/16/new-zealand-river-granted-same-legal-rights-as-human-being>



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