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What Are We Really Trying to Achieve? Australian Environmental Meta-Policy Objectives since 1970

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Abstract

This paper examines the narrative of the highest level of Australian environmental policy (meta-policy) in the period from 1970. It argues that the narrative pivots around the adoption of Ecologically Sustainable Development (ESD) as the goal of national environmental policy in the early 1990s. Before that time, the meta-policy narrative concerns the protection of special places and the development of an overarching policy goal. Once such a goal was adopted in the form of ESD, the narrative concerns the efforts of governments, not only to interpret ESD but also to avoid it, by adopting a number of 'pseudo-sustainability formulations'. This was to avoid the difficult trade-offs arising from the ecological constraints inherent in applying ESD.

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Introduction

The question that prompted this paper is: ‘why after more than 40 years of policy effort, does the condition of the Australian environment appear to have declined rather than improved?’ Of course, many individual policies and programs have been successful. Urban air quality is a good example. National standards have been set and urban air quality has improved, despite increased population and increased economic activity.¹ Yet the overall picture includes a number of issues of significant concern. The most recent Australian State of the Environment Report highlighted these:

Effective environmental management requires adequate information.

...

As the driest inhabitable continent, Australia is particularly vulnerable to climate change.

...

Pressures of past human activities and recent droughts are affecting our inland water systems...Meeting our water needs will be a critical challenge.

...

Australia’s land environment is threatened by widespread pressures.

...

Our unique biodiversity is in decline, and new approaches will be needed to prevent accelerating decline in many species.²

As these problems have been addressed by environmental policies for over 40 years, there is a *prima facie* case for a finding of significant policy failure. To borrow a legal maxim, *res ipsa loquitur*: the facts speak for themselves.

There are many possible reasons for policy failure. The most obvious candidate is that the environment is a so-called ‘wicked problem’, defying resolution through its sheer complexity, information deficit and intersection with vested interests.³ This paper considers less obvious but nevertheless significant possible reasons for policy failure. Could it be that ‘we’, society, were not clear about what we were trying to achieve, and broadly how to achieve it, particularly over time? Alternatively, could it be that we started with clear goals and objectives, but lost our way when the going got tough? One leading commentator reached a conclusion of this kind some time ago, describing Australian environmental policy as characterised by ‘policy adhocery and amnesia’.⁴

It is of course a lesson from ‘Policy 101’ that the first steps in addressing any policy issue are to identify the problem, envisage a world in which the problem is solved, and then to select appropriate policy tools to bring this world into being.⁵ Could it be that, in Australian national environmental policy-making, this was not done, or perhaps was not possible? It would be useful at least to rule out the possibility that national environmental policy has been, as it were, falling at the first hurdle.

The paper examines only policies at the national level; that is, policies of the Commonwealth alone, or joint Commonwealth-State policies.⁶ It does this for reasons of scope and because environmental

¹ State of the Environment 2011 Committee, *Australia state of the environment 2011. Independent report to the Australian Government Minister for Sustainability, Environment, Population and Communities* (Department of Sustainability, Environment, Population and Communities, Canberra, 2011) 10. For detail concerning the current updating of air quality standards, see ‘Notice of Intention to Vary the National Environment Protection (Ambient Air Quality) Measure’, given pursuant to s.20 of the National Environment Protection Council Act (Cth) and corresponding State and Territory Acts, Commonwealth, *Gazette* C2014G00770, 13 May 2014.

² *Ibid* 2–4.

³ For a general discussion of the wicked policy problem in an Australian government context, see Australian Public Service Commission, *Tackling Wicked Problems: A Public Policy Perspective* (Australian Public Service Commission, Canberra, 2007).

⁴ S Dovers, ‘Institutionalising Ecologically Sustainable Development: Promises, Problems and Prospects’ in K J Walker and K Crowley (eds), *Australian Environmental Policy 2* (UNSW Press, 1999) 206.

⁵ See for example, Howlett, Ramesh and Perl’s description of the policy cycle as applying the logic of applied problem-solving: Michael Howlett, M Ramesh and Anthony Perl, *Studying Public Policy: Policy Cycles and Policy Subsystems* (Oxford University Press, 3rd ed, 2009) 9–14. For a more detailed and environment-specific framework for the analysis and prescription of environmental policy, see Stephen Dovers and Karen Hussey, *Environment and Sustainability: a policy handbook* (Federation Press, 2nd ed, 2013) especially at 74–81.

⁶ In this paper, ‘States’ is used as a shorthand term for ‘States and Territories’.

problems have, since 1972, been accepted as being global, and requiring individual national and collective international action.^{7 8}

The paper seeks to isolate the overall *meta-policy narrative* of each government about what the big environmental problems are and how they should be solved. Analysis is confined to the highest level of formal policy statements, such as the Governor-General's Speech opening Parliament, Ministerial Statements, or the objects clauses of legislation. These statements are the most likely to have had careful and whole-of-government deliberation, typically by Cabinet, and therefore carry the greatest policy weight. The analysis is from 1970, when the Commonwealth first assumed an ongoing national role in environmental policy.

Because the paper focuses on meta-policy narrative, it does not seek to evaluate all environmental measures taken by each government, nor to analyse the associated politics, although it does refer to some of these for context. Also, although not evaluating policy measures, it does occasionally draw adverse inference where government simply fails to make a credible effort to achieve a stated policy goal. Such failure indicates that, rather than genuinely pursuing a stated goal, government has adopted a token or 'placebo' policy aimed at political rather than policy objectives.

So that the reader may note the significance of the wording of various policy formulations as they appear, it is necessary to foreshadow the paper's conclusions. The paper argues that the environmental meta-policy narrative pivots around the national adoption of the principle and goal of Ecologically Sustainable Development (ESD) in the *Intergovernmental Agreement on the Environment* (IGAE) and the *National Strategy for Ecologically Sustainable Development* (NSES) in 1992.⁹ Before that point, the narrative is essentially one of an increasing understanding of the need to balance development imperatives with environmental protection, and how to strike such a balance. After that point, the narrative is largely about the efforts of governments to interpret and apply, and frequently to avoid, ESD which aims, as the NSES so elegantly puts it, 'to meet the needs of Australians today, while conserving our ecosystems for the benefit of future generations.'¹⁰ These difficulties arise because to do intergenerational equity requires difficult and ongoing trade-off decisions about what demands can be made on ecosystems by development today without militating against the conservation of those ecosystems for the benefit of future generations.¹¹ In other words, ESD imposes constraints on growth.

The paper also argues that governments have often avoided these trade-offs by using 'pseudo-formulations' of sustainability that imply that constraints do not exist. As a consequence, the goal becomes unclear, because the resulting formulations are either relativistic or involve internal contradictions, seeking in effect to 'have one's cake and eat it too'. These pseudo-formulations are:

1. The 'moving towards' formulation, which talks of moving towards ESD. The implication is that it is sufficient for decisions to generate outcomes that degrade ecosystems to a lesser degree than would occur under a counterfactual 'business as usual' scenario, but without placing such decisions on a path to a point where no degradation occurs, as ESD requires.
2. The 'both/and' formulation, which implies that society can have both development and conservation of ecological function, *without* making trade-offs to stay within ESD-derived resource constraints.¹²

⁷ The Commonwealth acknowledged this in its first formal policy statement: see Commonwealth, *Australian Environment: Commonwealth Policy and Achievements*, Ministerial Statement, Parliamentary Debates, House of Representatives, 24 May 1972, 2970 (Peter Howson). In the same year, the *Declaration of the United Nations Conference on the Human Environment* (Stockholm Declaration) proclaimed the global nature of environmental problems: United Nations Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment*, A/CONF 48/14 and Corr 1, chap I (15 June 1972), endorsed by GA Res 2994, UN GAOR, XXVII sess, 2112th plen mtg, (15 December 1972).

⁸ Although State policies are out of scope, this does not mean that they have not been influential, both directly, within the state itself, and indirectly, in influencing national approaches.

⁹ Council of Australian Governments (COAG), *Intergovernmental Agreement on the Environment* (COAG, 1992), s 3; *National Strategy for Ecologically Sustainable Development* (Australian Government Publishing Service, Canberra, 1992)

¹⁰ *National Strategy for Ecologically Sustainable Development* (Australian Government Publishing Service, Canberra, 1992) 6.

¹¹ See for example World Commission on Sustainable Development (the Brundtland Commission), *Our Common Future* (Oxford University Press 1987) 52: 'Sustainable development ... requires a change in the content of growth, to make it less material- and energy-intensive and more equitable in its impact. These changes are required ... to maintain the stock of ecological capital ...'

¹² The Brundtland Commission described the task as changing the quality of growth and without basing decisions on the 'realities of the stock of capital that maintains [development]': Brundtland Commission, above n 10.

3. The ‘balancing’ formulation, which refers only to balancing environment and growth without reference to how the balancing is undertaken (by operating within ecological constraints).
4. The ‘growth with’ formulation, which implies a hierarchy: a primary objective of maximising growth, and a secondary objective of maximising environment protection, without affecting growth.
5. The ‘having regard to’ formulation, found in statutory schemes, under which decision-makers have regard to ESD, but are not required in their final decision to make the trade-offs that ESD requires.
6. The final formulation is the ‘sustainability gloss’. With appropriate contextual clarity, ‘sustainability’ can be a synonym for ESD, because one implements ESD to achieve sustainability. However, the term is often used in passing as a means of glossing over the need for trade-offs.

The only formulation that unambiguously contemplates the trade-offs is direct reference to ESD as adopted, something that becomes increasingly uncommon after 2000.

Meta-Policy Narratives

Gorton and McMahon Governments (1970-1972)

The Gorton Government went to the 1970 half-senate election with a commitment to establish an Office of the Environment within the Prime Minister’s Department, the Prime Minister citing mounting and justified concern in Australia at the risks of environmental pollution.¹³ However, the new McMahon Government quickly decided to move further, establishing a dedicated environment portfolio in May 1971.

In 1972 Minister Howson made a Ministerial Statement to Parliament, *Australian Environment: Commonwealth Policy and Achievements*.¹⁴ The statement was modest in its measures, stressing limited Commonwealth powers in an area seen as primarily the responsibility of the States. It recited the recent establishment of the Australian Environment Council, a council of Commonwealth and State environment ministers, and announced a new requirement for ‘impact statements’ to inform Cabinet decisions with environmental implications.

Yet the statement was significant in its early articulation of a number of principles that have underpinned, to a greater or lesser degree, the Commonwealth’s approach to the environment ever since. Two of the most important are the ‘polluter pays’ principle and the principle of harmonising international environmental standards to avoid trade distortions, both then-recently promulgated by the OECD, which Australia had just joined.¹⁵ This principle of avoiding trade distortions, or ‘unhealthy competition based on different standards’, would also be applied domestically.¹⁶

In terms of roles and responsibilities, the statement recognised that environmental concerns are a national problem requiring Commonwealth leadership; this extended beyond a policy role to public advocacy.¹⁷ And because environmental problems were not confined by State boundaries, the Commonwealth should contribute to solutions by ‘act[ing] within its own powers as necessary’¹⁸ – presumably a reference to acting where the states could not, for example regulating imports on biosecurity grounds. Finally, the Commonwealth should lead national action in response to ‘specific international situations’.¹⁹

The statement also recognised that environmental issues are not just a set of problems with common themes, but manifestations of an overarching challenge:

¹³ J Gorton, *Senate Campaign Opening Speech by the Prime Minister* (Liberal Party of Australia, Canberra, 1970) 10.

¹⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 24 May 1972, 2970 (P Howson, Minister for the Environment, Aborigines and the Arts).

¹⁵ *Ibid* 2972–3.

¹⁶ See s 3(b) *National Environment Protection Council Act 1994* (Cth) and corresponding State provisions.

¹⁷ This was expressed in the statement as ‘leadership researching the problem’.

¹⁸ Howson, above n 13, 2971–2.

¹⁹ *Ibid*.

So far as the Commonwealth is concerned the question is one of devising a pattern of national development in which environmental objectives go hand in hand with economic, social and cultural goals. Our philosophy is directed to this end—to devising and developing such a pattern in co-operation with the States, with local government, with business and industry and the community as a whole.²⁰

Indeed:

The threat to man's environment is world-wide. It makes no distinctions. There is much to be gained, therefore, by Australia sharing its problems and the search for solutions with others.²¹

Howson's ministerial statement was, as he himself recognised, more significant than it first appeared.²²

Whitlam Government (1972-1975)

Surprisingly for a government with a strong commitment to the environment, the Whitlam Government did not articulate its policy narrative comprehensively; its narrative is principally to be inferred from its significant legislative legacy.

The Governor-General's Speech on the opening of the Parliament contains the best high-level articulation of the Government's environmental philosophy:

[My Government] is, however, deeply conscious that economic growth and material well-being no longer reflect the whole aspirations and expectation of the Australian community, and that prosperity alone is no longer exactly equated with true progress.

...

In planning for this generation, my Government intends to protect the rights and national inheritance of future generations of Australians.²³

The 1973 policy statement, *A National Approach to Water Resources Management*, is the Government's only comprehensive environment policy statement. It advocates balancing economic, social and environmental objectives, along with user- and polluter-pays principles.²⁴ In support of such balancing the policy advocated 'multi-objective assessment', which in turn required long-term domestic, industry and environmental needs to be taken into account, along with social needs such as recreation. Decision-processes should be both well informed by comprehensive and regionally-arranged data, and participatory in nature.

The bulk of the Whitlam meta-policy narrative is to be inferred from four significant environmental laws: the *Environment Protection (Impact of Proposals) Act 1974* (EPIP Act); the *National Parks and Wildlife Conservation Act 1975*; the *Great Barrier Reef Marine Park Act 1975*; and the *Australian Heritage Commission Act 1975*. The EPIP Act made environmental impact assessment a statutory process, while together the other acts provided for the cataloguing of places of significance in the natural and cultural environment on the Register of the National Estate (and, to a limited extent, their conservation) and for the establishment of federal national parks.²⁵

²⁰ Ibid 2978.

²¹ Ibid 2979.

²² In his published diaries, Howson commented in his entry for the day of the Statement that 'This morning I felt a little apprehensive that our own statement was going to be dwarfed by the Labor policy on the environment. As the weeks have gone by, they've realized what minor powers are available to them to carry out what they might like to do, and therefore our own statement has grown quite a lot in importance. Altogether it was a much stronger statement in retrospect than it appeared in prospect and has gone over well.' (Peter Howson, *The Life of Politics* (Viking Press, Melbourne, 1984) 873.)

²³ Commonwealth, *Parliamentary Debates*, Senate, 27 February 1973 13. The Governor-General's Speech at the opening of the 29th Parliament on 9 July 1974 contained consistent, but more abbreviated, statement – see Commonwealth, *Parliamentary Debates*, Senate, 9 July 1974, 10.

²⁴ Commonwealth, *A National Approach to Water Resources Management, A Statement of Australian Government Policy the Minister for the Environment and Conservation, the Hon Moss Cass MP*, Parl Paper No 222, (1974).

²⁵ The Great Barrier Reef Marine Park is a national park in the broad sense of the term. Note that the Government added a global dimension to its policy of identifying and listing the most important places that had natural and cultural values by becoming the fifth country to sign the World Heritage Convention in 1974: Department of Environment, *Annual Report for Period July 1974 to June 1975* (Australian Government Publishing Service, Canberra, 1975) 12.

In his second reading speech on the Australian Heritage Commission Bill, Minister Uren articulated the philosophy of the National Estate as to:

beat the bulldozer mentality ... We will work with all who want to protect those parts of our heritage that have been created by man or nature and are unique or are things of beauty...²⁶

These measures emphasised quality of life,²⁷ that the natural and cultural endowment of the nation, the National Estate, should be identified and conserved for present and future generations. There was also a narrative of protecting the environment from threats, though the EPIP Act gave little guidance as to what 'environment protection' required.²⁸ The Whitlam Government saw the environment principally through a lens of inherent values and perhaps thought that knowledge of what was required to protect those values was also inherent.

Fraser Government (1975-1982)

The Government came to power on a principle of a shared duty of governments and the whole community to conserve and protect the environment; striking a balance between conservation and economic growth; and cooperation with the States.²⁹ In his speech opening the 30th Parliament, the Governor-General said:

The Government is conscious of the need to protect and improve the nature of the environment. To provide a coherent national approach to pollution control, the Government will discuss national environmental standards and criteria with the States...legislation will be introduced.³⁰

This approach of balancing environment and development imperatives is illustrated by three major development decisions. In 1976, following an inquiry, the Government made a significant decision to block sand mining on Fraser Island and to list the island on the Register of the National Estate for its outstanding social, aesthetic and scientific values.³¹ In 1977, following two inquiries, it decided to allow uranium mining in the Northern Territory, but subject to extensive safeguards, including a dedicated statutory monitoring regime, due to the sensitive location of the Ranger mine within an area of high conservation values that it subsequently established as Kakadu National Park.³² At the end of its term the Government opposed the Gordon below Franklin dam in Tasmania, but would not legislate to prevent it, on federalist grounds.³³

On policy more generally, the government's 'coherent national approach' to pollution did not eventuate, but Fraser did launch the World Conservation Strategy (WCS) in Australia in March 1980 and later announced that all Australian governments had adopted one of its principal recommendations, that every country should prepare its own national conservation strategy (NCS).³⁴ This was a significant initiative, not only because it initiated Australia's first national statement on environmental policy objectives, but because the Government's intention was that the national policy conform to the principal objectives of the WCS, which were visionary: maintaining essential ecological processes and life support systems; preserving genetic diversity, and ensuring 'sustainable utilisation' of species and ecosystems.³⁵

²⁶ Ibid, 2146.

²⁷ See also E G Whitlam, *It's Time for Leadership*, text of policy speech delivered at Blacktown Civic Centre, 13 November 1972 (Australian Labor Party, Canberra, 1972).

²⁸ The definition of the environment in s 3 of the *Environment Protection (Impact of Proposals) Act 1974* (Cth) was very broad: "environment" includes all aspects of the surroundings of man, whether affecting him as an individual or in his social groupings'.

²⁹ Liberal and National Country Parties, *Environment and Conservation Policy* (Liberal Party Federal Secretariat, Canberra, 1975) 1–2.

³⁰ Commonwealth, *Parliamentary Debates*, Senate, 17 February 1976, 11.

³¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 10 November 1976, 2549.

³² See Commonwealth of Australia, *Ranger Uranium Environmental Inquiry Second Report*, (Australian Government Publishing Service, Canberra 1978); *Environment Protection (Alligator Rivers Region) Act 1977* (Cth); 'Australian Uranium Policy Ministerial Statement', *Parliamentary Debates*, House of Representatives, 25 August 1977, 645 (Malcolm Fraser, Prime Minister).

³³ Commonwealth, *Parliamentary Debates*, House of Representatives, 14 December 1982, especially at 3411 (Tom McVeigh, Minister for Home Affairs and Environment, 'South West Tasmania, Discussion of Matter of Public Importance'). Note that the Government did attempt to stop the dam by inducement; however, its offer to Tasmania of \$500 m not to proceed was not accepted.

³⁴ Commonwealth, *Parliamentary Debates*, Senate, 26 March 1981, 862 (answer to 'Question No. 248').

³⁵ Department of Home Affairs and Environment, *Annual Report 1980-81* (Australian Government Publishing Service, Canberra, 1981) 20.

This was the first occasion on which the language of sustainability entered the policy lexicon, seven years before the concept would be defined formally.³⁶

The Fraser Government was generally true to its policy narrative of balancing conservation and growth. However, it had yet to articulate the principles for doing so, which meant that it was not clear why high environmental values should prevail over sand-mining or (in principle at least) hydro-electricity production, but not uranium mining.³⁷ The decision to develop the NCS was significant in indicating momentum towards national consistency of policy and in presaging the emergence of sustainable development principles.

Hawke Government (1983-1991)

Reflecting the prominent role the Franklin Dam issue played in the election, the Hawke Government's first bill was to prevent the dam's construction.³⁸ The subsequent High Court decision upholding the validity of this legislation³⁹ was a watershed, not only for Australian federalism, but also for environment policy, in effect validating the new Government's 'national responsibility' policy set out in the Governor-General's Speech opening Parliament in 1983:

My new Government has been elected with a very clear mandate from the people of Australia to protect the Australian environment. My Government is convinced that it would be a gross dereliction of its Constitutional responsibility were it to fail to carry out the clear wishes of the overwhelming majority of the Australian people.

The national Government is obliged to protect Australia's natural and cultural heritage, including the South-West Tasmanian wilderness.⁴⁰

Hawke continued Fraser's initiative of developing the NCS, with extensive stakeholder engagement. However, the final strategy received only qualified endorsement from some states and even the Commonwealth, as sponsor, was willing only to implement the identified priority national actions:

...in cooperation with development and conservation interests, taking account of Australia's federal, constitutional, legislative and administrative framework and the general economic climate. The Government is now giving consideration to ways in which it can help implement the strategy.⁴¹

The strategy was not implemented on a coordinated or programmatic basis, despite Hawke's statement that:

[t]he real significance of the strategy proposed by the Conference [that developed it] will be measured not so much by the words it contains but by the actions it generates ...⁴²

Although the NCS sank without trace, the shift in policy thinking that it presaged, from place-based protection to a framework in which to balance competing values, was gathering momentum. The

³⁶ See John McCormick, *Reclaiming Paradise: The Global Environment Movement* (Indiana University Press, 1989), 166.

³⁷ Even though the Fraser Government did not stop the Franklin Dam the point here is that it sought to do so on the basis that the environmental values should prevail.

³⁸ World Heritage Properties Conservation Bill 1983 (Cth). The proposed dam was actually on the Gordon River, below the Franklin, but is generally known as the Franklin Dam.

³⁹ *Tasmania v Commonwealth* (1983) 158 CLR 1. For more on the implications of the decision for the scope of Commonwealth powers, see Leslie Zines, *The High Court and the Constitution* (The Federation Press, 5th ed, 2008) Chapter 13.

⁴⁰ Commonwealth, *Parliamentary Debates*, Senate, 21 April 1983, 12.

⁴¹ *Ibid*, quoting but not identifying a Government statement.

⁴² R Hawke, 'Foreword', in Australia, Department of Home Affairs and Environment, *A National Conservation Strategy for Australia: living resource conservation for sustainable development: Proposed by a Conference Held in Canberra in June 1983* (AGPS, Canberra, 1984). A subsequent report by the National Conservation Strategy for Australia Interim Consultative Committee, *National Conservation Strategy for Australia: Final Report to the Minister for Arts Heritage and Environment* (National Conservation Strategy for Australia Interim Consultative Committee, Canberra, 1985) was tabled in Parliament, along with the Report of the Working Group on Rainforest Conservation, together with a written Ministerial Statement addressing both reports. The report by the Interim Consultative Committee noted at 47 that 'As yet there has been little evidence of specific application of the strategy by governments...'. The ministerial statement was more upbeat, saying that the Minister was 'look[ing] forward to examination of the reports by the Government, taking account of the comments received ...' but the subsequent two Commonwealth environment department annual reports do not report on its implementation or mention it among matters discussed by ministerial councils.

publication by the United Nations in 1987 of *Our Common Future* (the Brundtland report) was catalytic in generating a 'second wave' of global environmental concern⁴³ and led to a major policy focus on the balancing concept of 'sustainable development' (SD), defined as '...meeting the needs of the present without compromising the ability of future generations to meet their own needs'.⁴⁴

Domestically, this phenomenon, along with the political tensions that emerged through place-based controversies such as the wet tropics in Queensland,⁴⁵ helped spawn two significant developments in the late 1980s. The first was a serious attempt to channel these forces through a Resource Assessment Commission (RAC), a quasi-judicial body that would assess and advise government on entire industries, regions or issues.⁴⁶ The second was a major policy statement by the Prime Minister in 1989, *Our Country, Our Future*.⁴⁷

The *Resource Assessment Act 1989* established the RAC as an independent body to inquire into and report on environmental, cultural, social, industrial, economic and other aspects of resources and their uses. The RAC would conduct public inquiries when given a reference by Government and was required to be guided by three policy principles in resolving competing resource use claims, principles that also guided Commonwealth ministers.⁴⁸ The principles were:

...first, there should be an integrated approach to conservation and development by taking both aspects into account at an early stage; secondly, resource use decisions should seek to optimise the net benefits to the community from the nation's resources, having regard to efficiency of resource use, environmental considerations, and an equitable distribution of the return on resources; and thirdly, Commonwealth decisions, policies and management regimes may provide for additional uses that are compatible with the primary purpose values of the area, recognising that in some cases both conservation and development interests can be accommodated concurrently or sequentially, and in other cases choices must be made between alternative uses or combinations of uses.⁴⁹

The Government would struggle to use the RAC as a vehicle for channelling these principles into politically-acceptable decisions. One of only three reports it produced, into a proposed gold mine at Coronation Hill in the proposed stage III of Kakadu National Park, would play a part in Hawke's downfall.⁵⁰ The Keating Government subsequently abolished the RAC.

Hawke's *Our Country, Our Future* statement in 1989 was comprehensive and announced significant new policy and programs. On policy, the Commonwealth adopted ESD as the Australian variant of SD:

The task is to ensure that we meet the needs of the present without compromising the ability of future generations to meet their needs.

...

Ecologically sustainable development means economic growth that does not jeopardise the future productive base. Renewable resources are managed so that they are not permanently depleted.

...

The Australian Government is committed to the principle of ecologically sustainable development.⁵¹

The statement also reiterated the polluter pays principle and the shared responsibility principle, requiring individuals, informed by Governments, to make responsible choices, and cooperative action between governments federally and internationally.⁵² It proposed the development of 'agreed national minimum

⁴³ The 'first wave' is constituted by the pollution-centred concerns that led, among other things, to the United Nations convening of the *United Nations Conference on the Human Environment* in Stockholm, 1972 (see above, n 8).

⁴⁴ World Commission on Environment and Development, *Our Common Future* (Oxford University Press, 1987) 43. (The Chairman of the Commission was Gro Harlem Brundtland.)

⁴⁵ Now the *Wet Tropics of Queensland World Heritage Area*.

⁴⁶ *Resource Assessment Commission Act 1988* (Cth). See also R Hawke, 'Government's New Approach to Conservation and Resource Development', Prime Minister's Media Release, 18 November 1988.

⁴⁷ R Hawke, *Our Country, Our Future, Statement on the Environment* (AGPS, 1989).

⁴⁸ *Resource Assessment Commission Act 1989* (Cth) s 7 and sch 1.

⁴⁹ Commonwealth, Parliamentary Debates, House of Representatives, 3 May 1989, 1822 (John Kerin, Minister for Primary Industries and Energy).

⁵⁰ See Phillip Toyne and Simon Balderstone, *The Environment*, in Susan Ryan and Troy Bramston (eds), *The Hawke Government A Critical Retrospective* (Pluto Press, North Melbourne, 2003) 178–180.

⁵¹ Hawke, above n 54, 4. Perhaps the key difference between ESD and SD is that, as a domestic policy, ESD does not engage with intra-generational equity *between* nations, an element that was central in the international context.

⁵² *Ibid* 7–8.

environmental standards' on air and water quality as well as noise and committed itself to the integration of environmental considerations into economic decisions and improved environmental information systems.⁵³ It also proposed a new consultative group with States and a new forum with stakeholders to discuss environmental concerns.⁵⁴ The Government made its first, if limited, foray into climate change policy, announcing research funding and a commitment to developing a national approach; it also announced support for water pricing policies that would 'encourage efficient water use and help prevent environmental degradation', thereby adding 'user-pays' to 'polluter pays'.⁵⁵

Most significant among the programs announced were those addressing land degradation: the *Decade of Landcare*, backed by significant Commonwealth funding, and the *One Billion Trees Program* aimed to plant that number of trees by 2000.⁵⁶

Hawke also initiated, under the broader 'New Federalism' banner, several comprehensive processes that would, under Keating, become major national environmental strategies. As part of this initiative, at a Special Premiers' Conference in 1990, the States endorsed a Commonwealth 'interim planning target' to reduce greenhouse emissions.⁵⁷

The Hawke Government presided over a major transition in Australian environmental policy narrative. Its bottom-up, special place-based, intervention in the South West Wilderness would be reprised in the Lemnathyme and Southern Forests (1987) and in the Queensland wet tropics (1988), but by the end of the decade, the overarching objective of Commonwealth environmental policy emerged as economic growth that does not jeopardise the environmentally-productive base.

Keating Government (1991-1996)

Keating inherited and finalised Hawke's national cooperative environmental initiatives. The IGAE, the NSESD, the National Greenhouse Response Strategy (NGRS) and the National Forest Policy Statement were all adopted by the Council of Australian Governments in 1992.⁵⁸ This was a big year for environment, with the UN Commission on Environment and Development (UNCED) meeting in Rio de Janeiro and producing the Rio Declaration and the Agenda 21 action plan, along with 3 major conventions on climate change, biodiversity and desertification respectively, and the Statement of Forest Principles.⁵⁹ Keating also made a statement on the environment, *Australia's Environment: a Natural Asset*; the statement announced modest funding for a range of new and existing initiatives but perhaps the most significant initiative was the establishment of a National Reserves System.⁶⁰

The IGAE dealt with Commonwealth-State cooperation including agreement on the principles of environmental policy, and provided for the establishment of a new national institution, the National Environment Protection Authority to develop national standards.⁶¹ The IGAE set out five principles of environmental policy: the integration of environmental, social and equitable considerations into decision-making processes (integration principle); that lack of full scientific certainty should not be used as a

⁵³ Ibid 10–11.

⁵⁴ Ibid 13.

⁵⁵ Ibid 45.

⁵⁶ Ibid 42–43.

⁵⁷ The interim planning targets were to stabilise emissions of greenhouse gases at 1988 levels by 2000 and to reduce them by 20% by 2005: Department of the Arts, Sport, Environment, Tourism and Territories, *Annual Report 1990–91* (Australian Government Publishing Service, Canberra, 1991) 124. The target was later qualified by COAG in endorsing the National Greenhouse Response Strategy: see *Keating Government*, below.

⁵⁸ The IGAE was also reproduced as a schedule to the *National Environment Protection Council Act 1994* (Cth) and corresponding state Acts (these Acts are still in force).

⁵⁹ *United Nations Framework Convention on Climate Change*, opened for signature 9 May 1992, 1760 UNTS 79, (entered into force 21 March 1994); *Convention on Biological Diversity*, opened for signature 5 June 1992, 1771 UNTS 107, (entered into force 29 December 1993); *United Nations convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa*, opened for signature 14 October 1994, 1954 UNTS 3, (entered into force 26 December 1996); 'Non-Legally Binding Authoritative Statement of Principles for a Global Consensus of the Management, Conservation and Sustainable Development of all Types of Forests' annex III to *Report of the United Nations Conference on Environment and Development*, GA Res, UN GAOR, 47th sess, 93rd plen mtg, Agenda Item, 79, UN Doc A/RES/47/190; A/CONF.151/26, annex III, (16 March 1993).

⁶⁰ Paul Keating, Prime Minister, *Australia's Environment: a Natural Asset, Statement on the Environment* (Australian Government Publishing Service, Canberra, 1992) 21.

⁶¹ The body was subsequently established as a Council: see *National Environment Protection Council Act 1994* (Cth) and corresponding State and Territory Acts.

reason for postponing measures to prevent environmental degradation (precautionary principle); maintaining the health, biodiversity and productivity of the environment for future generations (intergenerational equity); that conservation of biodiversity and ecological integrity should be a fundamental consideration in decision-making (biodiversity conservation principle); and the promotion of improved valuation, pricing and incentive mechanisms (valuation principle).⁶²

In short, governments agreed that society could have both growth and environment protection provided decisions were guided by principles designed to maintain ecological integrity for future generations.⁶³ These principles would find their way into numerous Commonwealth and state laws, though, as Bates has pointed out, these laws ‘tend to treat sustainability as part of a procedure for, rather than as a focus or an outcome of, decision-making’.⁶⁴ This was the ‘have regard to’ pseudo-sustainability formulation.

The NSESD was more direct:

The Goal is:

Development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.

The Core Objectives are:

- to enhance individual and community well-being and welfare by following a path of economic development that safeguards the welfare of future generations
- to provide for equity within and between generations
- to protect biological diversity and maintain essential ecological processes and life-support systems⁶⁵

However, the Council of Australian Governments’ (COAG) communiqué ‘noted that implementation would be subject to budgetary priorities and constraints in individual jurisdictions.’⁶⁶

The NGRS concentrated on ‘no regrets’ actions – those with no net cost - and excluded those with net adverse economic impacts nationally or on Australia’s trade competitiveness.⁶⁷ COAG endorsed the strategy on the proviso that Australia would not proceed with response measures that would have net adverse economic impacts in the absence of similar action by major greenhouse gas producing countries.⁶⁸ While this latter qualification was no doubt adopted out of concern that the Australian economy might be disadvantaged, it further complicated (as it has ever since) the domestic ESD objective of *inter*-generational equity by making it subject to the international SD objective of *intra*-generational equity, principally between, but also within, countries. A subsequent report on the implementation of the NGRS found that progress had been ‘uneven’.⁶⁹

The National Forest Policy Statement adopted 11 broad national goals based around maintaining an extensive and permanent forest estate, managed in an ecologically sustainable manner, for both conservation and production values.⁷⁰

In opening the 37th Parliament in 1993, the Governor-General said:

⁶² See IGAE, cls 3.4, 3.5.

⁶³ The large body of literature on the meaning of sustainable development (and to a lesser extent within Australia, ESD) is beyond the scope of this paper. Among many sources, the reader is referred to Eric Neumayer, *Weak versus Strong Sustainability: Exploring the Limits of Two Opposing Paradigms* (Edward Elgar, 3rd ed, 2010); John Pezzey, *Sustainable development concepts: an economic analysis* (World Bank, 1992); Stephen R Dovers and John W Handmer, ‘Contradictions in Sustainability’ (1993) 20 *Environmental Conservation* 217.

⁶⁴ Gerry Bates, *Environmental Law in Australia* (Lexis Nexis Butterworths Australia 7th ed, 2010) 211. And see for example *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 136. Moreover, as Macintosh points out, the problem is magnified in some cases by Acts referring to ESD but failing to define it adequately: Andrew Macintosh, ‘The impact of ESD on Australia’s environmental institutions’, *Australasian Journal of Environmental Management* (2015) <<http://dx.doi.org/10.1080/14486563.2014.999724>> 9–10.

⁶⁵ Council of Australian Governments, *National Strategy for Ecologically Sustainable Development* (Australian Government Publishing Service, 1992) 6.

⁶⁶ COAG, *Communiqué*, 7 December 1992, http://www.archive.coag.gov.au/coag_meeting_outcomes/archive.cfm. (accessed on 28 January 2015).

⁶⁷ Council of Australian Governments, *National Greenhouse Response Strategy* (Australian Government Publishing Service, 1992) 11, 12.

⁶⁸ COAG, above n 72.

⁶⁹ National Greenhouse Advisory Panel, *Report on the National Greenhouse Response Strategy* (Environment Australia, 1996) 13.

⁷⁰ See COAG, *National Forest Policy Statement: A New Focus for Australia’s Forests* (COAG, 2nd ed, Canberra, 1995) 4–5.

The environment is now of mainstream concern throughout the Australian community. The Government will continue to promote the conservation and enhancement of our natural, rural and urban environment in moving towards a more ecologically sustainable society.⁷¹

This is the first point at which a pseudo-sustainability formulation is used, though later measures would revert to more absolute language: in 1994, in agreeing to a strategic framework on water resource policy, COAG adopted an objective to 'arrest widespread natural resource degradation in all jurisdictions ...' and 'to achieve an efficient and sustainable water industry ...'; the goal of the National Biodiversity Strategy, adopted in 1995 was 'to protect biological diversity and maintain ecological processes and systems.'⁷²

No sooner had they been adopted than there was a general falling-away of enthusiasm for implementing the major agreements of the Keating period. The NSESD and other national strategies were allowed to wither on the vine. The overview to the first and only triennial report to COAG on the IGAE would acknowledge, understatedly, 'varying degrees of progress'.⁷³ It is as if, having finally agreed on an overarching objective, governments recoiled from their creations, realising that unpalatable decisions would be required. As a result, the 1996 State of the Environment Report concluded that:

Despite the adoption in 1992 of the National Strategy for Ecologically Sustainable Development and the emergence of the National Strategy for the Conservation of Australia's Biodiversity, there is little evidence that these strategies affect decision-making in any but the most perfunctory way.⁷⁴

Howard Government (1996-2007)

The incoming Howard took a new approach to environmental policy, with investment as its centrepiece. In his 1996 budget-related statement, *Investing in Our Natural Heritage*, Environment Minister Hill referred to findings of the *1996 State of the Environment Report* and said:

That report identified the greatest failure of Australia in attempting to deal with its environmental problems as the use of 'piecemeal efforts that treat symptoms rather than underlying causes.'

It called for a comprehensive, systematic approach which integrates different aspects of the overall solution. The government has developed such an approach.

We also found a responsible, long term funding base – the visionary Natural Heritage Trust ...⁷⁵

There was however oscillation in the meta-policy narrative between references to ESD and pseudo-formulations. In the Governor General's speech opening Parliament in 1996, environmental issues had been positioned more as of regional concern, under the heading 'Regional Australia',⁷⁶ while the preamble to the *Natural Heritage Trust of Australia Act 1997* in the following year adopted much stronger and more general language, talking of a 'national crisis':

The Parliament of Australia recognises the need for urgent action to redress the current decline, and to prevent further decline, in the quality of Australia's natural environment.

There is a national crisis in land and water degradation and in the loss of biodiversity.

There is a need to conserve Australia's environmental infrastructure, to reverse the decline in Australia's natural environment and to improve the management of Australia's natural resources.

There is a need for the Commonwealth to provide national leadership and work in partnership with all levels of government and the whole community, recognising, among other things, that many environmental issues and problems are not limited by State and Territory borders.

⁷¹ *Parliamentary Debates*, Senate, 4 May 1993, 7.

⁷² COAG *Communiqué*, 25 February 1994, Attachment A. (available at <http://www.archive.coag.gov.au/coag_meeting_outcomes/1994-02-25/docs/attachment_a.cfm>, accessed on 9 February 2015); COAG *National Strategy for the Conservation of Australia's Biodiversity*, 1995, 10, (< <http://www.environment.gov.au/archive/biodiversity/publications/strategy/index.html>>, accessed on 9 February 2015).

⁷³ Intergovernmental Committee on Ecologically Sustainable Development, 'Report to The Council of Australian Governments on The Review of the Intergovernmental Agreement on the Environment' (1995).

⁷⁴ State of the Environment Advisory Council, *Australia: State of the Environment Report 1996* (CSIRO Publishing, 1996) 10-28.

⁷⁵ Commonwealth, *Investing in Our Natural Heritage: Statement by Senator the Honourable Robert Hill Minister for the Environment 20 August 1996*, Parl Paper No 91, (1996), 1.

⁷⁶ Commonwealth, *Parliamentary Debates*, Senate, 30 April 1996, 5.

There is a need to integrate the objectives of environmental protection, sustainable agriculture and natural resources management consistent with the principles of ecologically sustainable development.⁷⁷

At the same time, the Prime Minister was using both the 'both/and' formulation and the 'balance' pseudo-sustainability formulations concerning the National Oceans Policy:

- We want coastal waters...clean enough to...safely enjoy swimming and surfing;
- our offshore petroleum and gas industries need sufficient freedom to invest...and so stimulate economic growth;
- we want to ensure that the unique biodiversity of our oceans is conserved for future generations;
- ... fishers are facing the challenge of environmentally sustainable catches;
- we want confidence that the Great Barrier Reef will remain one of the natural wonders of the world.⁷⁸

He went on to use the 'balancing' pseudo-sustainability formulation: '[t]his Government believes one can reconcile the environment and development. There can be a balance ...'⁷⁹ Yet the Governor-General's Speech on opening of the subsequent Parliament in 1998 returned to a broader goal of ESD: 'The government remains committed to the ecologically sustainable development of our natural resources for the benefit of all Australians.'⁸⁰

On one topic, the policy narrative was much more defensive, because the tension was not between competing domestic priorities of environment and development, but between Australian development and that of other countries (ie *intra*-generational equity). This narrative was that environmental problems would not be solved at the expense of the Australian economy. In a ministerial statement on climate change, Prime Minister Howard said:

From the start, we have made it plain that Australia would not accept an unfair share of the burden. We have rejected and will continue to reject mandatory uniform targets which advantage many developed countries to the distinct disadvantage of Australia.⁸¹

In the 2004 Energy White Paper, this policy narrative took a positive form: 'Australia is committed to a prosperous economy with a lower greenhouse signature.'⁸² If there was to be no burden on the economy, the implication was that greenhouse reductions would most likely come from technological innovation.⁸³

The Howard Government also had a different approach to its predecessor on federal cooperation. The 1997 *COAG Heads of agreement on Commonwealth and State roles and responsibilities for the Environment*, while focused particularly on EIA and couched in language of desired amendments to the IGAE, in fact supplanted it.⁸⁴ The Heads of Agreement was a much more practical document, emphasising efficiency as the goal of cooperation and defining the Commonwealth's role in terms of responsibility for 'matters of national environmental significance'. The object was more to cooperate by slicing the pie of responsibilities along a clear line, rather than to harmonise policy approaches.

⁷⁷ *Natural Heritage Trust of Australia Act 1997* (Cth), Preamble.

⁷⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 3 March 1997, 1698–9 (John Howard, Prime Minister, Ministerial Statement, 'Australia's Oceans Policy').

⁷⁹ *Ibid* 1699.

⁸⁰ Commonwealth, *Parliamentary Debates*, Senate, 10 November 1998, 7 (Sir William Deane).

⁸¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 20 November 1997, 10921, 10923 (John Howard, Prime Minister, 'Safeguarding Our Future: Australia's Response to Climate Change', Ministerial Statement).

⁸² Australian Government, *Securing Australia's Energy Future*, (Department of Prime Minister and Cabinet, Canberra, 2004) 131.

⁸³ This approach can be seen in the Governor General's speech in 2004, where the new domestic climate change policy initiatives referred to, a low emissions technology fund and a 'solar cities' trial are both based on promoting new technology: see Commonwealth, *Parliamentary Debates*, Senate, 16 November 2004, 6.

⁸⁴ See COAG, *Heads of agreement on Commonwealth and State roles and responsibilities for the Environment* (COAG, Canberra, 1997), Preamble. COAG did not consider the IGAE again.

The subsequent *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) gave legislative effect to this division of responsibilities. Its statutory objects include promoting ESD, but refer primarily to environmental concerns. Nevertheless, despite some complexities, the better view seems to be that ESD principles are and were intended to be the guiding principles for administering the Act.⁸⁵

Water received increasing attention as the millennium drought set in, with forests and climate change also high priorities. The Governor-General's Speech opening Parliament in 2004 gave priority to water conservation, promising 'wiser stewardship':

Water is the most important conservation issue facing Australia.

...

The National Water Commission will be established as an independent statutory authority ... to advise on reform progress under the National Water Initiative and on projects, supported by the \$2 billion Australian Water Fund. The Fund will contribute to major projects for more innovative use and re-use of our water, better understanding and accounting of our water resources, and wiser stewardship of our water by communities around the country.⁸⁶

The subsequent *Inter-Governmental Agreement Concerning the National Water Initiative*, while not identifying an overarching goal or objective, recited in its preamble that '[l]ikewise, governments have a responsibility to ensure that water is allocated and used to achieve socially and economically beneficial outcomes in a manner that is environmentally sustainable.'⁸⁷ This is a variant of ESD, as the requirement for environmental sustainability would act as a constraint on actions to achieve social and economic objectives.

However, the objective is not as clear under the subsequent *National Plan for Water Security* (2007), involving major new investment along with new regulatory arrangements in the Murray-Darling Basin, was 'designed to ensure rural water use is placed on a sustainable footing within the next decade'⁸⁸ and that '[t]he Plan substantially addresses over-allocation' in the Murray-Darling.⁸⁹ Given the formal commitment to ESD in Australia, references to sustainability can generally be taken as references to ESD. However, the objects clause of the Water Act 2007,⁹⁰ a key vehicle for implementing the Plan, was unclear about this, something that would cause considerable confusion at a later point. This story is beyond scope here and has been told by Bonyhady.⁹¹ The point for current purposes is that the inclusion in the objects clause of references to 'environmental sustainability' in addition to the more usual references to ESD, along with an undefined phrase, 'in the national interest', made it unclear whether the conservation of ecosystems was a constraint on actions to achieve economic and social objectives, or an objective of equal weight to others. This is of interest not just because of its implications for the later Murray Darling Basin Plan (see below) but because it indicates a lack of policy clarity, rather than an intentional use of a pseudo-sustainability formulation.

Forest policy stands out as an area where the ESD formulation was used consistently to describe objectives. In 2002 the Government secured the passage of the *Regional Forest Agreements Act*, which included the express object of giving effect to the 1992 National Forest Policy Statement, which had used

⁸⁵ Fisher argues that, promoting ESD is one means by which the Act makes provision for the protection of the environment (D E Fisher, *Australian Environmental Law: Norms, Principles and Rules* (Thompson Reuters, 3rd ed, 2014) 198-199); while not disagreeing the author would argue that it should be the other way around, as ESD is a policy goal while protecting the environment is a means of achieving that goal. Macintosh concludes that the Act is consistent with a 'strong sustainability' interpretation, though not without difficulties arising from doing so (Andrew Macintosh, 'The impact of ESD on Australia's environmental institutions', *Australasian Journal of Environmental Management*, (<http://dx.doi.org/10.1080/14486563.2014.999724>, 2015) 10-11). The *Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, (Allan Hawke, *The Australian Environment Act: Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999* (Australian Government, 2009)), noted statements in the explanatory memorandum to the Bill for the Act as to the intention of the legislation to reflect the principles of ESD and concluded at para 1.26 that this should continue to be the case.

⁸⁶ Commonwealth, *Parliamentary Debates*, Senate, 16 November 2004, 6.

⁸⁷ COAG, *Intergovernmental Agreement on a National Water Initiative* (COAG, Canberra, 2004) preamble, para 2.

⁸⁸ John Howard, *A National Plan for Water Security* (Prime Minister, Canberra, 2007) 3.

⁸⁹ *Ibid.*

⁹⁰ *Water Act 2007* (Cth), s 3(a).

⁹¹ See Tim Bonyhady, 'Putting the environment first?' (2012) 29 *Environmental Planning and Law Journal* 316.

unqualified and objective terminology, such as maintaining ecological processes.⁹² It negotiated 10 RFAs, ironically before the Act was passed.⁹³ In opening Parliament in 2004 the Governor-General, in referring to a proposed supplementary RFA in Tasmania, said that '[s]ustainable development requires a careful balance between environmental goals and meeting the needs of local communities'; use of the word 'balance' in association with 'sustainable development' appears to acknowledge that ESD requires trade-offs.

Finally, the policy narrative can also be seen in the budget-related papers issued by successive environment ministers, which contain both general narrative and formulated program objectives or outcomes. For example, in the 2000-01 budget-related paper, Minister Hill nominated as a 'strategic direction': 'The Government is moving to integrate the principles of sustainable development into programmes across all government agencies ...'⁹⁴ In the corresponding document for 2003-04, Minister Kemp, referring to environmental problems highlighted in the *State of the Environment Report 2001*, and the *Australian Terrestrial Biodiversity Assessment 2002*, says: 'These studies underpin the Government's priorities as we seek to increase the sustainability of our resource use and management'.⁹⁵ The former implies an ESD goal, while the latter uses a pseudo-sustainability formulation.

Rudd Government (2007-2010)

The Rudd environmental policy perspective was principally concerned about climate change⁹⁶ and water, and the two were linked in the Governor-General's Speech in 2008:

The government considers that climate change represents one of Australia's greatest long-term economic and environmental challenges.

The government has committed to reducing Australia's greenhouse gas emissions by 60 per cent on 2000 levels by 2050.

...

The Commonwealth will work cooperatively with the states and territories to tackle the water crisis and respond to the impacts of climate change, including in the Murray-Darling Basin ...⁹⁷

On the recommendation of the Garnaut Climate Change Review, the Government also adopted a unilateral interim target.⁹⁸ However, its emissions trading legislation did not pass the Parliament.⁹⁹

The Water for the Future Initiative of 2008 articulated no overall objective but, rather, four water priorities: taking action on climate change (to reduce impacts on water resources); using water wisely; securing water supplies; and healthy rivers and waterways.¹⁰⁰

The *Caring for Our Country* initiative adopted a number of specific objectives (eg a 125% increase in area protected by 2013), national priorities and medium term outcomes and was followed by business plans explaining how these would be achieved.¹⁰¹ Further, in 2010, the Natural Resource Management Ministerial Council agreed to *Australia's Biodiversity Conservation Strategy 2010-2030*:

⁹² See s.3 *Regional Forest Agreements Act 2002* (Cth). See also above n 77.

⁹³ Details of the RFAs can be found on the website of the Commonwealth Department of Agriculture, <<http://www.agriculture.gov.au/forestry/australias-forests/rfa>>

⁹⁴ Robert Hill, *Investing in Our Natural and Cultural Heritage: The Commonwealth's Environmental Expenditure 2000-01*, Parl Paper No 94 (2000) 3 (ministerial statement).

⁹⁵ David Kemp, *Investing for a Sustainable Australia: Commonwealth Environmental Expenditure 2003-04*, Parl Paper No 110 (2003) v-vi (ministerial statement).

⁹⁶ Rudd's first official act was to ratify the Kyoto Protocol: Kevin Rudd, 'Ratifying the Kyoto Protocol', (media release, Prime Minister, Canberra, 3 December 2007).

⁹⁷ Commonwealth, *Parliamentary Debates*, Senate, 12 February 2008, 5.

⁹⁸ Ross Garnaut, *The Garnaut Climate Change Review* (Cambridge University Press, 2008). The unilateral interim target of 5% reduction on 2000 levels by 2020 was to be increased as high as 25 per cent if there were global agreement to achieve the 450 parts per million goal. See also the second reading speech by Minister for Climate Change and Energy Efficiency, Greg Combet, in debate on the Carbon Pollution Reduction Bill 2009 (Cth): Commonwealth, *Parliamentary Debates*, House of Representatives, 14 May 2009, 3861.

⁹⁹ The Carbon Pollution Reduction Scheme Bill was rejected by the Senate on 13 August 2009: See Commonwealth, *Parliamentary Debates*, Senate, 13 August 2009, 4832. ('Division')

¹⁰⁰ Wong, P and Garrett, P; *Budget: Climate Change, The Economy, The Environment*, (Ministerial Statement), 13 May 2008, 8, 12-15.

¹⁰¹ See Australian Government, *Caring for Our Country Outcomes 2008-2013* (Commonwealth of Australia, 2008) 5.

The vision of this Strategy is that Australia's biodiversity is healthy and resilient to threats, and valued both in its own right and for its essential contribution to our existence.¹⁰²

This strategy identified not only priorities for action, but also targets and implementation arrangements, including reports by all jurisdictions to the Ministerial Council.¹⁰³ With its linked vision priorities and targets, the biodiversity policy narrative under Rudd was much more conformable to the now rarely-mentioned sustainability goal than the relativistic terms of water policy such as 'healthy rivers'.

Gillard Government 2010-2013

As might be expected given a high commonality of membership, the environmental policy objectives of the Gillard Government were not substantially different to those of its predecessor, though there were differences, population policy being the most prominent example.¹⁰⁴ As the Rudd Government had linked water to climate change, the Gillard Government emphasised the link between biodiversity and climate change, through a National Green Corridors Plan.¹⁰⁵

The Government's major environmental policy themes were included in Governor General's speech opening Parliament:

... Australia's natural heritage is a precious gift held in trust for future generations and for the entire world.

It is the government's strong view that Australia's unique way of life must be preserved through measures to ensure a more sustainable future, by both protecting the environment and enhancing the amenity of our urban communities.

During this term of office, the government will develop the nation's first ever sustainable population strategy to examine future population needs and how population growth can be better underpinned by appropriate infrastructure and services.

Of vital importance to the government's agenda is the need to reduce the level of damaging greenhouse gas emissions, which endanger the sustainability of our planet.

...

As the world's driest inhabited continent Australia must carefully steward its precious water resources especially those of our greatest river system, the Murray-Darling.¹⁰⁶

The centrepiece of the Government's environmental policy was the *Clean Energy Future* package, built around the *Clean Energy Act 2011*, which put a price on carbon, initially fixed in the form of a carbon tax but from 2015, a floating price, set through emissions trading.¹⁰⁷ The interim emission reduction targets remained but the long-term target was increased.¹⁰⁸ The package also included measures to aid the transition to a lower carbon economy, including to soften the impact of the carbon price on emissions-intensive trade-exposed industries and low and middle income households; and to stimulate renewable energy, energy efficiency and markets in carbon sequestration ('carbon farming').¹⁰⁹

The Sustainable Population Strategy was a much more limited measure. Despite its title, it did not identify any population targets, but instead sought to ensure that changes in population were compatible

¹⁰² Natural Resource Ministerial Council, *Australia's Biodiversity Conservation Strategy 2010-2030*, (Natural Resource Ministerial Council, Canberra, 2010), 7.

¹⁰³ Ibid 64.

¹⁰⁴ This policy responded to the significant public debate generated by then Prime Minister Rudd in 2009? When he made comments supporting a 'big Australia': see for example, Julian Drape, 'PM's support for 'big Australia' confusing: Labor MP' (AAP General Newswire, 29 Nov 2009).

¹⁰⁵ See Australian Labor Party, *A Healthy Environment* (Australian Labor Party, Canberra, 2010) 11.

¹⁰⁶ Commonwealth, *Parliamentary Debates*, Senate, 28 September 2010, 7-8.

¹⁰⁷ The details are set out in a ministerial statement: Greg Combet, *Securing a Clean Energy Future: Implementing the Australian Government's Climate Change Plan*, (Department of Climate Change and Energy Efficiency, Canberra, 2012).

¹⁰⁸ The Clean Energy Act included a statutory statement, reflecting the Copenhagen Accord, that an effective response to global climate change required that the average global temperature increase by more than 2 degrees above pre-industrial levels: See United Nations Framework Convention on Climate Change *Report of the Conference of the Parties on its fifteenth session, held in Copenhagen from 7 to 19 December 2009*, FCCC/CP/2009/11/Add 1 (30 March 2010) 5 para 2; s 3 Clean Energy Act 2011. The revised long term target was an 80% reduction on 2000 levels by 2050.

¹⁰⁹ See Combet, above n 118 for details of these measures.

with 'the sustainability of our economy, communities and the environment.'¹¹⁰ The strategy included four new measures directed to this: promote suburban jobs; increase strategic (environmental) assessments under the EPBC Act in high growth areas; improve information on sustainability and promote rural living. Its policy narrative was that development could be made sustainable by ensuring that patterns of development were sustainable. By implication population *numbers* did not need to be managed; this lacks credibility because of the obvious significance of population numbers to development pressures. Further, the initiative itself lacked credibility because the scope and level of investment (\$150m over 4 years) was not proportional to such a significant ongoing policy goal.¹¹¹

The Government announced a second five-year period of funding under the *Caring for Our Country* initiative, along with strategic objectives.¹¹² It also released a *National Wildlife Corridors Plan*, with the objective of protecting the environment by improving the connectivity and resilience of ecosystems; and a Biodiversity Fund was also established under the *Clean Energy Future Package* with objectives of mitigating climate change while also protecting biodiversity, by funding the establishment, restoration or protection of biodiverse carbon stores.¹¹³

While formal water policy objectives remained broadly unchanged, there was a significant narrative development through the finalisation of the Murray Darling Basin Plan.¹¹⁴ The volume of water returned to the environment under the Plan fell 250GL short of the amount required to meet minimum 'sustainable diversion limit' identified under the Water Act by the Murray-Darling Basin Authority. The Government concluded, on the basis of (strongly disputed) legal advice that 'environmental, economic and social considerations are central to the Water Act and that the Basin Plan can appropriately take these into account'.¹¹⁵ While this meant that this 'gap' need not be closed¹¹⁶ the Government in fact used the term 'sustainability gap' and sought to close it by establishing a statutory fund to secure additional savings and efficiencies to save an extra 450GL of water beyond what was required by statutory plan.¹¹⁷ The implication was that the Government accepted an ESD objective and that trade-offs had to be made, even if this were done by the 'supplementary' means of a special fund.

Abbott Government (2013 – present)

The Abbott Government came to power with an environment policy narrative dominated by opposition to the 'carbon tax', shorthand for the Gillard Government's carbon pricing scheme, which it repealed successfully in 2014.¹¹⁸ As to the Government's environmental policy goals more generally, in opening Parliament in 2013, the Governor-General said:

The government will take direct action to reach its goal of a five per cent reduction in carbon emissions by 2020.

...

A cleaner environment helps all Australians—now and into the future. However, the best actions are practical and direct ones to improve our rivers, soils, air and farms. This can be done without a carbon tax or an emissions trading scheme.

¹¹⁰See Department of Sustainability, Environment, Water, Population and Communities, *Sustainable Australia – Sustainable Communities: A Sustainable Population Strategy for Australia*, (Department, Canberra, 2011) 28 (figure 4).

¹¹¹ The figure of \$150m is taken from Tony Burke, '\$150 million to lay the foundations for a sustainable Australia', media release, 10 May 2011 <www.environment.gov.au/minister/burke/2011/mr20110510a.html> (accessed on web.archive.org on 13 February 2015).

¹¹² See Australian Government, *One Land – Many Stories: Prospectus of Investment 2013-2014* (Department of Sustainability, Environment, Water, Population and Communities, Canberra, 2012).

¹¹³ See Australian Government, *National Wildlife Corridors Plan: A framework for landscape-scale conservation* (Department of Sustainability, Environment, Water, Population and Communities, Canberra, 2011) 3; Program Objectives for Program 1.3, 'Carbon Pollution Reduction – Land Sector Initiatives' in Australian Government, *Portfolio Budget Statements 2012-13, Budget Related Paper No. 1.18, Sustainability, Environment, Water, Population and Communities Portfolio* (Australian Government, Canberra, 2012) 42.

¹¹⁴ The Plan is required under the *Water Act 1997* (Cth), Part 2 Div 1.

¹¹⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 25 October 2010, 1306.

¹¹⁶ This was because, if environmental, economic and social objectives all had to be optimized, with none more important than the other, the there was no absolute number to be met, but only a balance to be struck.

¹¹⁷ See Burke T, 'Gillard Government delivers historic water reform', media release, 22 November 2012, archived at <http://nla.gov.au/nla.arc-122645>, accessed on 13 February 2015; see also *Water Amendment (Water for the Environment Special Account) Act 2012*.

¹¹⁸ See *Clean Energy Legislation (Carbon Tax Repeal) Act 2014* (Cth).

There will be a 15,000-strong Green Army charged with clean-up and conservation in local communities throughout Australia. The Green Army will supplement the land care efforts of councils, farmers and volunteers and work to rejuvenate our parklands and the bush.¹¹⁹

The Government's *A Plan for a Cleaner Environment* identified four pillars of environmental policy: clean air, clean land, clean water and heritage protection.¹²⁰ The objective of clean air programs was principally to meet the government's emissions reduction target.¹²¹ The clean land pillar would 'help clean up and revegetate urban environments'; it would also 'simplify environmental approvals ... while maintaining high environmental standards.'¹²² The clean water pillar 'incorporates a sustainable plan for the Murray-Darling Basin, our Water Security Plan and protection of the Great Barrier Reef'¹²³ while the heritage protection pillar sought 'to instill a new sense of pride in Australia's heritage'.¹²⁴

One narrative thread in the Abbott period is the use of more efficient and practical means to achieve environmental ends, best exemplified in the Government's commitment to meet its interim carbon mitigation target through the 'direct action' of an emissions reduction fund. Another thread, seen in the use of language such as 'help' and 'supplement' is that the Commonwealth should contribute to, rather than lead or coordinate, national efforts. This approach is also seen in the Government's abolition of the system of standing ministerial councils, including those relating to environment; instead, COAG agreed ministers could meet on an ad hoc basis if they need to discuss important areas of cooperation.¹²⁵

At the highest level of policy, the Government has used several pseudo-sustainability formulations. The environmental goals in the *Emissions Reduction Fund White Paper* of 2014 use variants of 'both/and' along with 'growth with':

A healthy environment and a healthy economy are two essential elements of the Government's vision for a strong Australia. Our ability to build a strong Australia depends on our success in lowering business costs, improving competitiveness and protecting the environment for current and future generations.¹²⁶

A somewhat different formulation has been used concerning climate change. In its 'ambition review' submitted to the UN under the Kyoto Protocol, Australia states, not that climate action should not affect growth, as might have been expected, but that action should *promote* growth:

- Australia is firmly committed to its 2020 emissions reduction target of five per cent below 2000 levels.
- ...
- Australia recognises the importance of delivering global climate action that is economically responsible and promotes global economic growth.¹²⁷

Analysis of Meta-Policy Narrative 1970 to Present

The national environmental meta-policy narrative began in the Gorton-McMahon era as one of dealing with an emerging serious problem before it got out of hand, and, in principle at least, using an economic lens to identify problematic patterns of development and economic instruments with which to manage them. In contrast, under Whitlam the primary narrative was a proactive vision of improving quality of life by conserving special environmental places as part of the National Estate.

In the Fraser period the narrative became one of balancing environmental and development concerns; however this narrative did not articulate strongly what such a balancing involved.

¹¹⁹ Commonwealth, *Parliamentary Debates*, Senate, 12 November 2013, 8.

¹²⁰ Australian Government, *A Plan for a Cleaner Environment* (Department of the Environment, Canberra, 2013) 1.

¹²¹ *Ibid* 6.

¹²² *Ibid* 10.

¹²³ *Ibid* 14.

¹²⁴ *Ibid* 18.

¹²⁵ COAG, *Communique* (COAG, Canberra, 13 December 2013). Note that a COAG Energy Council remains, as does the statutory *National Environmental Protection Council*: Department of the Prime Minister and Cabinet, *Guidance on COAG Councils* (Department of the Prime Minister and Cabinet, Canberra, 2014) paras 1.3, 2.2.1. (Note also the view of the Department of Prime Minister and Cabinet in the latter paragraph that ad hoc meetings would be expected to occur no more than once per year.)

¹²⁶ Australian Government, 'Executive Summary', *Emissions Reduction Fund White Paper* (Australian Government, Canberra, 2014) 6.

¹²⁷ Australian Government, *Ambition review under the Kyoto Protocol second commitment period and update on Australia's greenhouse gas emissions projections May 2014*, (Australian Government, Canberra, 2014).

The Hawke government articulated a new national duty to protect special places, effectively a reserve power, and acted on that duty on several occasions, but would later place more emphasis on cooperative approaches. More generally, the Hawke era was a period of policy transition; the policy dots were being joined as the Brundtland Commission developed the principle of SD and the emphasis would shift from protecting special places to developing the Australian variant of that principle, ESD. Keating would finalise that process but then move substantially away from implementation.

The Howard-era began with a commitment to ESD, with a narrative of achieving this goal by investing to restore a degraded environment, but transitioned to a pseudo-sustainability narrative about environmental protection being desirable, provided it did not burden the economy.¹²⁸

In the Rudd and Gillard periods the narrative became topic-focused, particularly on the need to avoid the dangers of climate change. Sustainability objectives remained largely in the background; as Dovers has remarked, '[o]ne reason for the decline of the sustainable development idea is the domination of public and policy debates by climate change'.¹²⁹

Under the Abbott Government there has been a major change of policy narrative. On climate change, pseudo-sustainability formulations suggest that mitigation efforts should not burden the economy. Climate change apart, the narrative implies that environment is primarily the responsibility of the States and the public; the Commonwealth should make a contribution but there is little sense that this is a cooperative effort. It would appear that sustainability concepts are neither promoted nor repudiated, but essentially ignored.

Conclusion

In his autobiography, Graham Richardson, a Labor environment minister in the late 1980s, summed up his political success in pursuing the protection of special places as 'What was right was popular.'¹³⁰ Post-ESD, the problem might be summed up as 'what was right could be unpopular'; the formula for achieving balance had been distilled but the resulting trade-offs were unpalatable.

Sometimes governments found ways to soften the pain of these trade-offs, as when the Gillard Government closed the 'sustainability gap' left by the Murray-Darling Basin Plan with a fund to purchase the extra water needed for the environment. More often, governments have clouded or avoided the trade-offs implicit in ESD, which remains the nominal objective of national environmental policy. This has been done by using the pseudo-sustainability formulations.

More recently, the narrative at a national level has narrowed to focus on climate change, and on means rather than ends. The coherence of policy objective achieved in the principle of ESD has been pushed into the background, and to a large extent lost, although it remains 'on the books'. This matters less in the case of specific issues involving quantified objectives, such as with current climate change negotiations to restrict the global temperature increase to two degrees. But it matters more generally because it takes the focus off the goal of intergenerational equity and thus away from the overall objective of reconciling economic growth with the maintenance of ecosystem integrity and ecosystem services for future generations.

At the highest level, national environmental policy has looped back to a position more limited than the one set out in the first ministerial statement in 1972. The current policy does not accept a general need for nationally-coordinated approaches and by implication does not accept that environment, overall, is a national problem. Also, given the replacement of a carbon pricing mechanism with budget-funded emissions reduction, current national policy does not support the 'polluter pays' principle; rather it is a 'beneficiary pays' approach. The major national policy frameworks of the 1990s, the IGAE and the NSESD and NEPC, have fallen mostly into disuse but not been abandoned. At a national level, it is time to ask afresh, 'What are we *really* trying to achieve?'

¹²⁸ Macintosh argues that Australian governments operate within informal boundaries to environmental policy, two of which are that policies must have no more than a limited impact on the economy and only slight budgetary impacts: Macintosh, above n 64, 6.

¹²⁹ Stephen Dovers, 'The Australian Environmental Policy Agenda', (2013) 72 *Australian Journal of Public Administration* 114, 125.

¹³⁰ G Richardson, *Whatever it Takes*, (Bantam Books, 1994) 214.

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