



fact sheet

knowledge for managing Australian landscapes

Evolution, Revolution, Devolution? An analysis of the legal and administrative arrangements for catchment and water planning in NSW and SA.

*Research project number UW04 of the Social and Institutional Research Program of Land & Water Australia.
Completed: May 2005.*

Background

Land use planning concerned with the management of new land uses has a long history in Australia. Water and catchment planning concerned with the management of existing and on-going uses of natural resources is relatively new. In contrast to the approach with land use planning the involvement of the community in decisions about natural resources through planning is a relatively recent development. The introduction of catchment and water planning is one part of much wider reform in the approach to the management of natural resources.

Project Objectives

There has been substantial legal reform in natural resource management over the last 15 or more years. This research was concerned with examining the new legal arrangements for catchment and

water planning. Legislation was analysed to assess the extent to which the principles of ecologically sustainable development had been incorporated into planning processes. Land use, water and catchment plans were then examined to assess the extent to which reform had flowed into practice.

Approach to the Project

This was a socio-legal study, that is, the study of law within its social context. A case study methodology was used to examine the implementation of the law. A general theoretical framework was developed and used to analyse the content of the law and its application within a specific catchment. The idea is that very specific findings can be generalized to this theoretical framework and provide insight into the strengths and weaknesses of the approach at a broader level.



Key findings

The literature on sustainability was reviewed in order to draw out the key concepts, which should be incorporated in law to give effect to the more general principle. These were framed as a set of elements that should form the substance of a legal framework for environmental planning that is concerned with operationalising the broad principles of sustainability. These elements include priority to the environment, intra- and inter-generational equity, precaution, integration of sectoral aspects of natural resource management as well as of social, environmental and economic information into decision making, adaptive management and public participation. These concepts can be incorporated into law through mandatory provisions and structured processes. The examination of legislation in NSW and SA revealed that indeed many of these concepts had made their way into the planning processes. It was shown that natural resources law had moved a long way from a simple requirement to take ESD into account when making decision.

It was revealed that catchment and water planning was concerned with both setting 'management' priorities and generating 'rules' in relation to access to natural resources. Planning in this context can be viewed as both a process and a product. The question of the effect of this on the quality and acceptability of regulation was also considered from a theoretical perspective.

While in general terms the diffusion of a model of natural resource planning across Australia can be discerned, there are significant differences between the States. In NSW an interest group approach to community participation was employed. In SA an expertise based approach was evident. In NSW implementation of plans was undertaken by the respective agencies whereas in SA catchment boards both prepare and implement plans. A finding, unfortunately consistent to both case studies, was that integration between water and catchment plans and landuse plans was very poor.

The examination of the implementation of the law at catchment level revealed that the promise was not always reflected in practice. For example, the specific priority given to the environment in the

NSW legislation appeared to be undermined by decision- making at the local level by stakeholder based committees. In contrast the apparently weaker statutory priority to the environment in the South Australian legislation in practice got greater weight in the one-step removed 'expertise' based committee process. There is a need to balance different aspects of the legislation and consider its effect as a whole.

Recommendations

On-going examination of the implementation of law is important to ensure that it is appropriately designed and resourced to meet the specific objectives for which it is promulgated.

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