

***The Reluctant Nation: Environment, law and politics in Australia***  
(1994, Sydney, ABC Books)

**By Phillip Toyne**

Reviewed by Jeff Giddings\*

Phillip Toyne's book provides a very useful starting point for developing an interest in law and the environment. Significant Australian environmental issues of the past 20 years are covered, from Fraser Island and the Franklin River to Coronation Hill and the McArthur River Mine. The book consists of 8 case studies, all relating to conservation areas in either Queensland, Tasmania or the Northern Territory, together with introductory and concluding chapters.

The book is based on materials prepared for a course of seminars given by Toyne at the Australian National University in 1993. While the material is, for the main part, very interesting, the book would have benefited from greater attention being paid to discerning and considering the common threads running through the various case studies. Despite this minor shortcoming, I found the book, with its special insights arising from Toyne's work as Director of the Australian Conservation Foundation, to be a most useful outline of the legal and political aspects of environmental decision making in Australia.

Toyne starts with the image of a green turtle needing to make sense of Australia's constitutional arrangements as it swims from international waters towards an island on the Great Barrier Reef to lay its eggs. From international waters to Australia's exclusive economic zone then into Australia's national waters before reaching the Marine Park which is the joint responsibility of the Federal and Queensland Governments. Having made it to the island and climbing past the low water mark, the turtle is then subject to the jurisdiction of Queensland.

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The turtle example sets the scene for one of the major themes of the book, the significant difficulties for Australian environmental decision making caused by our federal system of government. Toyne highlights the complexity of Australian environmental regulation by way of a comparison with New Zealand. Australia has 290 statutes dealing with nature conservation while New Zealand has 27. Australia has 168 statutes dealing with resource allocation while New Zealand has 8.

Toyne by no means advocates a reduction in environmental regulation, rather, he is concerned with greater coordination to ensure a comprehensive approach is taken promoting uniformity of coverage and avoidance of duplication. The concluding chapter is devoted to Toyne's concerns about the consequences for the environment of the 'New Federalism' arrangements advocated by then Prime Minister, Bob Hawke, during the early 1990s and now largely implemented by both Federal and State Governments. A range of criticisms are made of the 1992 Intergovernmental Agreement on the Environment (IGAE), focussing on the reversal of the recent trend towards greater Federal Government involvement and the return of decision making powers to the States.

The streamlining of governmental regulation under 'New Federalism' is criticised as likely to result in a decrease in environmental monitoring, with opportunities for States to choose to comply with either their own or the Federal Government's monitoring requirements rather than both. The problems of such a 'lowest common denominator' approach are exacerbated by the ability of State Governments to opt out of participating in certain elements of these arrangements. In this regard, Toyne refers to the Western Australian Government's decision to withdraw from those sections of the IGAE which relate to the National Environment Protection Authority, the Ministerial Council body established in 1993.

Several of the case studies raise important issues in relation to the role of Aboriginal communities in environmental regulation and planning. Chapters are devoted to each of Uluru National Park, Coronation Hill and the McArthur River Mine. The Uluru chapter would have benefited from a greater outline of the political struggle to have Uluru handed over to their traditional owners in the face of assertions by the Northern Territory Government that 'The Rock belongs to all Australians'. Toyne could have

brought special insights to this given his involvement as a lawyer retained by the Pitjantjatjara Council to assist with the handover negotiations.<sup>1</sup>

Two chapters in particular highlight the intense political struggles surrounding these major environmental policy decisions. They are the chapters on the process for determination of World Heritage listing of the Lemonthyme-Southern Forests in Tasmania and the developments which culminated in the Hawke Government's decision to prevent mining at Coronation Hill in Kakadu National Park. Of course, at the time of these events, Toyne was the Director of the Australian Conservation Foundation and was heavily involved in the lobbying of the Federal Government on both issues.

Toyne's chapter on the Lemonthyme-Southern Forests outlines the establishment of a 3-person independent inquiry to determine what parts, if any, of the Forests were of a quality worthy of nomination for World Heritage listing. Two members of the inquiry found that only 8% of the area in question warranted such nomination while the other member, the only member having previous familiarity with World Heritage, found the entire area should be nominated together with further adjacent areas. Subsequently, a political deal was made between the Federal and Tasmanian Governments which saw 30% of the Lemonthyme-Southern Forests nominated in return for various undertakings limiting future unilateral action by the Federal Government on Tasmanian conservation issues. The deal left no-one satisfied and the entire episode was obviously a major catalyst for the establishment of the Resources Assessment Commission (RAC).

The RAC is described by Toyne as the brainchild of then Primary Industries Minister, John Kerin. The RAC's origins lie in the extremely complicated politics of environmental decision making and the antagonism generated within the Federal Labor Government by decisions on issues like the Lemonthyme-Southern Forests, the North Queensland Wet Tropics and the proposed pulp mill at Wesley Vale in Tasmania. Surely,

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<sup>1</sup> For more information regarding Toyne's work with Aboriginal communities in Central Australia, first as a teacher and then as a lawyer, see J.Faine, *Lawyers in the Alice: Aboriginals and Whitefellas' Law*, Sydney, Federation Press, 1993, 106-120.

reasoned Kerin, it would be better to have an independent body make the decisions on these contentious developments which regularly saw Labor Party supporters such as trade unionists and conservationists pitted against each other with the government in a no-win situation.

Toyne sees the Coronation Hill issue as the beginning of the end for the Resources Assessment Commission (RAC). The perceived utility of the independent RAC-style approach took a serious nosedive when its Coronation Hill recommendations failed to help the Federal Government to avoid a very difficult internal debate on the issue. The decision not to allow mining clearly had a profound effect on the battle for the Prime Ministership between Bob Hawke and Paul Keating. A majority of Federal Cabinet supported mining access to the area, despite the RAC report. However, Cabinet considered the issue shortly after Keating's first and unsuccessful leadership challenge and his departure from Cabinet. "Even those who disagreed, and who desperately wanted the mine to proceed, realised that they could not vote their shakily affirmed leader down." The decision was described at the time as "another nail in Bob Hawke's coffin, and he paid dearly for forcing through the decision, .... losing much Cabinet and Caucus support as a result."

Toyne also illustrates the decline in the profile of environmental issues at Federal Government level since Keating became Prime Minister in late 1991. Despite this, events which have occurred since publication of the book, such as those surrounding the recent woodchip export licence renewals with logging trucks blockading Parliament House in Canberra, illustrate the ongoing political significance of environmental decision making.

Toyne manages to capture very well the sense of ongoing difficulties with environmental policy making in Australia, very often involving disagreements between Federal and State or Territory Governments. In the chapter on the Wesley Vale pulp mill proposal, he observes:

"After all the campaigns and the thousands of hours spent by Government and their various inquiries to try to resolve these deeply entrenched conflicts, they remain. If anything they appear increasingly driven by a refusal to look at a whole industry approach to forests which will seriously examine

environment economics and employment from a national interest point of view.”

Toyne argues persuasively that the way forward for regulation of the environment in Australia is the establishment of an effective Federal Environment Protection Authority (EPA) with responsibility for issues including hazardous waste management, pesticide use, air and water quality, chemicals notification and regulation of bio-technology and genetic engineering. Here he relies heavily on a joint Australian Conservation Foundation-Greenpeace proposal from 1991. Such an Authority would be more effective than the Ministerial Council-style National Environmental Protection Authority provided for in the Intergovernmental Agreement on the Environment.

Toyne is clear that there is a need for the Federal Government to take a stronger approach to environmental policy but is equally clear that political considerations mean it is unlikely that this will occur without agreement from the States. As he states, “the missing element in any attempt to establish a national approach to environment management is the will to do it, not the power to do it.”