

NATIONAL CONSERVATION STRATEGY FOR AUSTRALIA

Draft Report on Canberra Conference

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Background

In May 1980, the Federal Government announced that it had adopted the principles of the World Conservation Strategy which had been developed under the auspices of the United Nations. The World Strategy requires specific adaptation to and implementation in each individual country and to this end the Federal Government, in co-operation with the States and the Northern Territory, proposed to develop a National Conservation Strategy for Australia (which in accordance with good bureaucratic practice is labelled NCSA).

After two and a half years' work behind the scenes, the result of these co-operative efforts was a document entitled the *National Conservation Strategy for Australia* and subtitled Living Resource Conservation for Sustainable Development which was circulated by the Commonwealth Department of Home Affairs and Environment. A conference of representatives from industry, conservationist groups and government was arranged in Canberra for 10-13 June 1983 to discuss the draft strategy document and if possible to come up with a revised document which would be generally endorsed by a consensus of the conference delegates.

Relevance to Mining

On the face of it, the strategy does not have immediate relevance for mining and petroleum exploration and development as it relates only to *living* resources. This particularisation follows the World Conservation Strategy but, as various conservation representatives at the conference stressed, the strategy for living resource conservation must be seen as only the first step in the development of overall and integrated conservation strategies for Australia relating not only to living resources but also to non-renewable resources and energy.

Living resource conservation, it is stated, is specifically concerned with plants, animals and micro-organisms, and with those non-living elements of the environment on which they depend. The strategy is therefore very much concerned with mining or petroleum development which will upset the non-living elements of the environment on which living resources depend; and to this extent it is of direct relevance to mining and petroleum companies and their lawyers.

As was pointed out by a number of mining industry representatives at the conference, the concept of "sustainable development" is inappropriate in the context of the exploitation of a mining or petroleum resource which is of its very nature non-renewable. As applied to living resources, "sustainable development" was taken to mean the use of the resource at a level matched with the regeneration of the resource and the recuperation of the environment so that such use could be continued indefinitely. "Sustainable" in the context of the development or exploitation of a non-renewable resource must have a different meaning: namely, that the exploitation of that resource can be continued without causing deleterious effects on the surrounding environment which cannot be absorbed or from which the environment cannot readily recuperate.

Polarisation

It is to be regretted that from the outset many of the delegates at the conference were labelled as "developers" or "conservationists" and felt it necessary to be defiantly defensive of their position. Many propositions were put forward and statements made from both sides which quite unreasonably eschewed the balance and the consensus which the conference and the strategy were endeavouring to achieve.

This polarisation of attitudes was evident from the opening addresses. Mr Murray Wilcox Q.C., speaking as the President of the Australian Conservation Foundation, proclaimed that many people in the conservation movement regarded the draft strategy as inadequate and that it needed to set out more specific objectives and a programme for action. Mr Warren Adcock, the Chairman of the Confederation of Australian Industries' Trade Council, immediately followed with an address calling for the strategy to be confined to broad principles. He said that without industries wealth creation activities, and its creation of employment opportunities, the Australian community would be incapable of responding to calls to conserve our living resources. Having thus thrown down the gauntlet, he proclaimed that no consensus could be considered to have been reached on any question unless the majority of industry delegates at the conference were in accord with it.

In the midst of this shadow boxing, a representative of the Australian Mining Industry Council made a presentation which, while generally supporting Mr Adcock, presented the particular position of the mining industry in a more reasonable light. He made the point that the greatest impact of environmental and conservation controls falls upon primary industries which together produce more than 70% of Australia's export earnings and therefore that unrealistic restrictions and impediments to their growth will be harmful to the future of Australia. Furthermore, he said:

For the mining industry the chief obstacle is the ever-increasing closure of vast areas to mineral research and the consequent prevention of inadequate assessment of Australia's mineral resources. Allied to this is a problem for all industry, the ever-increasing labyrinth of restrictions and requirements by numerous and increasing government agencies. . . . for these reasons we strongly support the NCSA objective of eliminating decision making. Having regard to the federal structure of Australia and the division of powers prescribed by the constitution, we believe that this decision making process is best handled at the State Government level.

He ended by repeating the call for recognition of, and not mere lip-service to, the need for balance in the development of the strategy.

"Balance" became very much the catch cry — the popular buzz word as it was unfairly called by one speaker — of the conference.

Outcome

In the event, reasonableness did prevail and the conservationists and developers each backed away from their extreme positions and co-operated in producing a revised draft strategy which does demonstrate a reasonable balance between equally valid points of view. This is best exemplified by paragraph 16 of the revised strategy which states:

Conservation and development are fundamentally linked by their dependence on living resources. Both conservation and sustainable development require an attitude of stewardship, especially towards those plants, animals and micro-organisms and the non-living resources on which they depend, that could be destroyed if only short term human interests are pursued. To provide for today's needs as well as to conserve the stock of living resources for tomorrow, both conservation and development are necessary.

In developing this general philosophy, neither the conservationist nor the developer party had the final say. Indeed, a strong modifying influence was exercised by various groups and individuals in the middle, not least of all the representatives of government (both Federal and State). Also, a considerable unanimity emerged amongst pastoralists, agriculturalists and soil conservationists all of whom had a common interest in the development of proper land management techniques in rural areas. Indeed, in the rural sector, it was most apparent that conservation and sustainable development are really two sides of the same coin.

Legislation and Regulation

This was only a small section of the draft strategy but obviously the one of greatest interest to lawyers. There were three paragraphs under this heading in the draft being discussed at the conference under the general heading Priority National Actions, being the section of the strategy which set out actions recommended to be taken by government and non-government bodies.

The first of these paragraphs dealt with environmental standards and codes. In its original form it stated that:

Further develop and publish environmental standards, codes of practice and guidelines.

This was changed to read:

Through a process of consultation with conservation, industry and other interested groups, further develop and publish environmental standards, codes of practice and guidelines for the purpose of better implementing the goals as set out in the NCSA. In certain circumstances it may be appropriate for industry to develop and publish voluntary codes of practice.

This unfortunately exemplifies a general aspect of the conference: that is, with so many diverse groups represented no simple statement would satisfy everybody and had to be heavily qualified and padded by surrounding words leading, in many circumstances, to obfuscation and loss of emphasis.

The second paragraph dealt with environmental legislation and in its original form stated:

Work towards a nationally uniform approach to conservation and environment protection legislation through Commonwealth/State consultation to avoid unnecessary delays and duplication created by differing procedures.

There was much discussion about this. The State representatives strenuously resisted any suggestion that there should be Australia wide Commonwealth legislation or even separately adopted uniform legislation and generally the industry representatives supported this. Certainly, the representatives of various industries expressed a distaste for a centrally administered system of environmental control, preferring to deal with Local and State authorities. In any event, the paragraph was changed to read:

Through a process of consultation between States and the Commonwealth, work towards a nationally consistent approach to conservation and environment management to be obtained by legislation in accordance with the goals of the NCSA.

The third paragraph concerned objectives in legislation. It was originally stated in the following, unnecessarily broad terms:

Include statements of objectives in legislation, to show more clearly the intention of parliaments.

This was changed to read:

Incorporate a statement of relevant conservation and development objectives in legislation involving the environment.

In addition, further paragraphs were proposed as follows:

Encourage the provision of explanatory information to assist in the understanding of environmental legislation.

Allow access to the Courts (standing) to interested persons and organisations to ensure compliance with environmental laws.

Encourage governments to examine existing legislation which may promote activities inconsistent with the NCSA having regard for other relevant priorities.

The question of locus standi was a particularly contentious one. Mr Wilcox expressing the conservationists' view strongly supported rights for citizens, whether or not they were directly effected by a proposal, to have standing before the courts to challenge compliance with relevant environmental legislation. This had been foreshadowed by the Minister for Home Affairs and Environment, Mr Barry Cohen, in his opening address to the conference in which he stated that:

Participation is vital to success in the continuing efforts to safeguard the environment. With this in mind, we plan to reform the law of standing to ensure effective access to the courts in matters of major public interest.

The Minister's position was attacked in a media statement put out by the Confederation of Australian Industry in which it said that the question of standing was still under review by the Australian Law Reform Commission and its report should not be pre-empted. Various other spokesman for the industry vehemently resisted the idea of granting standing for any person to challenge a development proposal on environmental grounds. Reference was made to the U.S. experience where standing for individuals to sue had led to very high costs and no opportunity for compromise. The view was expressed that the executive and administrative sections of government are better equipped to determine environmental issues than the courts.

On the general topic of environmental legislation, debate was also joined on the question of the value and effectiveness of the Environmental Planning Act of New South Wales. Mr Wilcox for the conservationists held this legislation up as a desirable model which could be emulated in other States. A representative of the New South Wales Department of Industrial Development and Decentralisation also referred to the extensive environmental protection legislation already existing in New South Wales which was said to be "more than adequate to achieve a balanced approach to development and conservation and already impose sufficient constraints on development". Industry representatives nonetheless decried the Act saying that there had been considerable problems in its implementation and, in particular, that s.94 had led to huge costs for companies proposing development.

Conclusion

A conservation strategy, even if it is adopted at the highest political level, does not itself solve any of the frightening environmental problems facing the world. Indeed, as one speaker expressed it, the fundamental problem is the continuing and alarming growth in world population (presently 4,000 million and expected to be 6,000 million by the year 2000 A.D.) which needs to be fed and housed and clothed. Neither the World Conservation Strategy or the National Conservation Strategy for Australia makes more than passing reference to the population explosion — which arguably is the basis of the environmental problem.

Even in Australia, where the population is at least under control and the environmental problems are (one hopes) manageable because we have the wealth and resources to deal with them, the promulgation of the National Conservation Strategy will have no effect in itself unless it is followed up with positive legislative or administrative action. If it is pigeonholed by the politicians, it will no doubt be judged in the future as just another set of pious platitudes. If on the other hand it is accepted by the politicians as a genuine consensus of views from a representative body of interested groups within the community, and implemented, it may well prove to be the blueprint for balanced development and conservation which it purports to be.

Even if the strategy is killed at the political level which could well happen because of jealous guarding of constitutional powers, Federal/State rivalries or disputes over funding, the conference which discussed it must be judged as a success in that it brought together decision makers and opinion leaders from across the community and gave them the opportunity to listen to one another's views on this vital matter.

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