

The Constitution and the Environment

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The environment is unquestionably one of the great concerns of Australian governments in the 21st century, not just in itself but also because of how it affects other major political, economic and industrial affairs. Attacking greenhouse pollution through a tax on carbon emissions has profound implications for company profits, investments, alternative energy resources and employment. The environment is also a significant aspect of federal relations. It raises issues of international, national and local impacts that fall variously within Commonwealth, State, Territory and local government responsibility. The publication of this memorial volume in honour of George Winterton occurs at a time when the recent devastating Victorian bushfires illustrate how natural disasters can affect all levels of government.

So far as the Commonwealth Constitution¹ is concerned, however, the concept of the environment is not reflected directly in an explicit environmental head of power. This was not surprising, because the concept of environmental protection and conservation, and indeed environmental law as a separate discipline, was unknown as a generic concept when Federation of the colonies was being considered.

Looking back the past 100 years, we can ask whether the Constitution has been or will continue to be adequate in furnishing governments with the means to address constantly emerging environmental problems of global dimensions. If demonstrably inadequate to deal with these problems, should it be changed perhaps by amendment under s 128 of the Constitution? Are there other ways in which deficits in the Commonwealth's powers can be made up?

The concept of environment

To discuss these questions it is first necessary to identify the subject matter of analysis; namely the environment. The concept of environment as currently understood is broader and embraces more elements than it might

1 It will be referred to as 'the Constitution'.

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