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# National Council of Women Australia

WATER LAW & HOW WE ARE GOING TO HANDLE WATER AS A  
NATION

Keynote address by Professor Jennifer McKay,  
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**Professor McKay provided a challenge, stating that women who are "in and stand for Australia" have a role to promote sustainable use of water, which by definition, includes inter-generational equity. That is, our planning and utilisation of the resource must account for our children, all the ensuing future populations of Australia. Future management must incorporate access to and availability of the resource to all, irrespective of social position and income levels. She emphasised the importance when reaching decisions on any development, to ensure proper and in-depth integration of environmental concerns. The environment and use of water must be managed as a "common" - an important community resource for the common good of all.**

Complexity of water law

Water law and the management of water in Australia has, as the community has trended more to capitalism, to move away from management as a common. This was illustrated by results of research completed by graduate students of the University of SA. They found 14 distinctly legally different water supply businesses across Australia, some of which are totally private and others either corporations or government owned.

The number of water supply businesses operating across Australia is quite staggering. For example, New South Wales has 79 Water Supply Boards, Queensland 115, Tasmania 32 and Victoria 24. It was interesting to note survey questionnaire results across the CEO's of all the water supply businesses. When asked about being able to achieve sustainable water management, the majority of

responses fell below a score of 8 on a scale of one to ten (the highest). Using the same scale, in responding to the statement, "There is a huge amount of trust between this [their water supply business] and the State Government", most responses from water businesses were below a score of six.

#### Background to complexity of water law

The disparity of water resource management in Australia has resulted from our legal history, where from 1788 to 1901 State colonial laws, introspective to the particular colony, shaped attitudes, management and the resultant laws. From Federation in 1901, Sections 96 and 100 of the Constitution prohibited the Commonwealth from interfering in certain State matters, including water use and management. Treaties powers commenced in 1983, when Federal powers were exercised in the Tasmanian, Franklin River dam case. The Murray Darling Basin Commission was formed under these powers, although given limited controls, and Environmentally Sustainable Development principles have been expoused by the Commonwealth. From 1994 - 2007 has seen power still residing within the States, but significantly improved Commonwealth influence in relation to reforms of development and utilisation of natural resources, particularly via incentives recommended by the Council of Australian Governments is occurring. Section 51(20) of the Constitution has provided for Trade Practices powers, regional delivery and National Water Initiatives.

#### Water law in the future

Until the Commonwealth is in a position to have more direct power in relation to applying uniformity, equity and sustainable use and management of our water resources, States need to ensure rigorous management. Support in doing so should and is being provided by the Commonwealth. Currently there is variation between States. For example, States should be encouraged and supported in changing and developing uniform laws in relation to reducing water allocations to users. Licences should be required for allocations not only from reservoirs and streams, but for storage of water in catchment filled dams. This to ensure that the ability of the catchment to provide runoff, which varies with environmental conditions, is not exceeded with some "users" - landholders, irrigators and public waterway ecosystems, having inadequate supplies. For example, storage dam licensing applies conditionally in Victoria, but not in some other States.

In order to facilitate collective decision making for policies, laws and outcomes resulting in sustainable management of our resources by institutions, McKay has proposed a detailed framework. She also mentioned the improvements which have and are occurring to management under the Water (Amendment) Act 2008. History and explanation of the amendments and current developments can be found within the following website <http://www.environment.gov.au/water/australia/water-act/index.html>.

Current and already operative improvements under new laws

Most notable in relation to the Murray Darling Basin is the new inter-government Agreement, where the Murray Darling Basin Authority using improved regulations, including those for water charging and market rules, is now able to establish a sustainable "cap" on surface and groundwater extractions. The Commonwealth is now a legislated "water holder", and via the Department of the Environment, Water, Heritage and the Arts, will acquire and manage the Commonwealth's environmental water.



Within the States, the Commonwealth is providing funds for irrigation modernisation for improved water use efficiency and water test facilities. For example, replacing the old form of water measurement from channels to farm - the Dethridge Wheel, which has proven to be inaccurate to the extent of 30 percent - with new instrumentation which is required to measure to within five percent accuracy.

A wider area for women's input

Professor McKay explained how it was now necessary for regional bodies to demonstrate that developmental plans adhered to key natural resource management criteria, underpinned by scientific analysis of natural resource conditions. Further, it was expected all key stakeholders are engaged in planning and implementation. This is where she saw women taking an increasingly important role, also ensuring a human rights based approach. Our horizons need to extend, not only from regional to state level and from states to federal

levels within Australia, but also internationally. The purpose being to promote global fairness in natural resource and particularly water management and use. NCWA is in a position to do just this with it's international connections via the International Council of Women.

In closing a most informative address, Jennifer McKay acknowledged the funding and support provided for her counterparts and graduate students, by ARC, CRC for Irrigation Futures, International Water Management Institute, Australian Centre for International Agricultural Research, The School of Commerce, Division of Business of University of Adelaide and the invaluable work completed by several Researchers.

#### References

For past addresses by Professor McKay and a significant bibliography on related subject matter go to [http://www.unisa.edu.au/waterpolicylaw/projects/public\\_talks.asp](http://www.unisa.edu.au/waterpolicylaw/projects/public_talks.asp) "Water Law and Our Nation" contains the slides used for the above address to NCWA.

Mary & Jim Allinson 29/09/2009