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Why the Great Barrier Reef should have legal standing



Friday saw the announcement that the Great Barrier Reef Marine Park Authority ('GBRMPA') had [approved dumping of dredging spoil](#) within the boundaries of the marine park. This followed the Commonwealth's go-ahead for the construction of the world's biggest coal terminal at Abbot Point, off Bowen, to facilitate mining in Queensland's coal-rich Bowen Basin.

The decisions were made in the context of the [Great Barrier Reef](#)

[Marine Park Act](#) which, under [s2A \(1\)](#) apparently aims to:

provide for the long term protection and conservation of the environment, biodiversity, and heritage values of the Great Barrier Reef Region.

Despite the Minister's assurances that the decisions have been made based on 'the science' and the dumping will be subject to [rigorous conditions](#), the very fact of the decisions by both the Commonwealth government and GBRMPA call into question the real intent of the Act.

Queensland is in the 'coal business'

The context for the Abbot Point decision is made against a so-called federal [budget emergency](#). Likewise, the [Queensland economy has been reported to be 'bleak'](#), though more recently it has been [presented as buoyant](#) perhaps because of the government's 'economic management'. The government's stand on the economy is illustrated by [Premier Campbell Newman's comments](#) that halting port and industry development along Queensland's coast to protect the Great Barrier Reef is not an option.

"We will protect the environment but we are not going to see the economic future of Queensland shut down," Mr Newman said.

Later he added: "We are in the coal business. If you want decent hospitals, schools and police on the beat we all need to understand that."

In the interests of winding back 'green tape' apparently to facilitate business operation, both the state and federal governments are focussed on eliminating environmental safeguards. The coal industry in particular is taking advantage of this approach to expand operations.

The problem is that the State - and the Commonwealth - is not business, it is government. And even if it were, its shortsightedness in either ignoring or devaluing environment in its economic calculus is hardly sustainable.

About Me



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I lecture in land law at James Cook University and I write and think about the nature of

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Environment and development

In meeting its primary purpose (above), the *Great Barrier Reef Marine Park Act 1975* (Cth) has [further objects](#).

- to allow ecologically sustainable use of the Great Barrier Reef Region for purposes including:
 - public enjoyment and appreciation;
 - public education about and understanding of the Region;
 - recreational, economic and cultural activities;
 - research in relation to the natural, social, economic and cultural systems and value of the Great Barrier Reef Region;
- encourage engagement in the protection and management of the Great Barrier Reef Region by interested persons and groups, including Queensland and local governments, communities, Indigenous persons, business and
- assist in meeting Australia's international responsibilities in relation to the environment and protection of world heritage (especially Australia's responsibilities under the World Heritage Convention).

While economic activities are mentioned here, the overall context of this is within the purposes of enjoyment, recreation and research. The Queensland government's stated position is clearly at odds with these purposes, as is the approval by the Commonwealth and the Authority for dumping within the Region. In fact, the approval shifts the purpose of the Act and the very nature of the Park and its Region to one focussed on development, rather than one focussed on conservation.

In managing the marine park, the Authority must act consistently with:

- (a) the objects of this Act in section 2A;
- (b) the principles of ecologically sustainable use; and
- (c) the protection of the world heritage values of the Great Barrier Reef World Heritage Area.

Approval for dumping of dredge spoil hardly seems to accord with the objects of the Act; [fails to accord](#) with principles of [ecologically sustainable use](#); and fails to protect world heritage values - particularly as the [Reef's World Heritage status is presently under threat](#).

The [Authority's own press release](#) states that:

Abbot Point is better placed than other ports along the Great Barrier Reef coastline to undertake expansion as the capital and maintenance dredging required will be significantly less than what would be required in other areas.

This seems to indicate that the Authority itself is focussed on *development* - seeking to allow port expansion, and adopting the least worst option - rather than on the conservation and heritage value of the environment itself. This prioritises development over environment - and this is the preserve of other legislation, such as the [Mineral Resources Act 1989 \(Qld\)](#) whose aim is to 'encourage and facilitate prospecting and exploring for and mining of minerals.'

Who stands for the Reef?

This calls into question how the Reef can be protected. Clearly the federal Minister for the Environment serves the interests of development and the Queensland government has already indicated its prioritisation of business interests. Likewise, the Authority appears not to have acted in accordance with the objects of its own Act.

In 1972, American academic Christopher Stone wrote a submission for a court case seeking protection of a wilderness area. He argued that the environment itself should have standing to sue to protect itself. His submission has become an iconic book [Should Trees](#)

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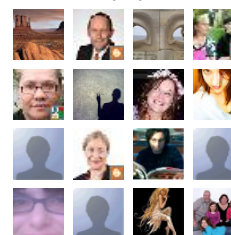
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Have Standing? - Toward Legal Rights for Natural Objects. While the submissions were not accepted in the case, Stone's ideas have slowly taken root. In 2008, the [Ecuadorian Constitution](#) embedded the rights of nature in its text.

...nature in all its life forms has the *right to exist, persist, maintain and regenerate its vital cycles*. And we - the people - have the legal authority to enforce these rights on behalf of ecosystems.

In 2012, [New Zealand](#) recognised the legal standing of the [Whanganui River](#) after over a century of campaigning by traditional owners.

The importance of standing for nature is that the values ostensibly upheld by environmental statutes can be enforced in the interests of the ecosystem itself. Without such standing, the environment is simply a resource ripe for exploitation without regard for its intrinsic worth and with disregard for our common future. While our system of government may provide a Minister for Environment, this role can only operate within the parameters afforded by the politics of the day. Such a role does not stand for the environment itself.

For those who might ridicule such a proposition, Stone points out that the law recognises many other fictitious entities as legal persons. A corporation is not a person, yet has standing to sue in its interest. A government is not a person, yet has standing to sue. Likewise a deceased estate. There is no reason therefore why an ecosystem should not be represented on its own account.

The [Environmental Defenders Office \(North Qld\)](#) has announced its intention to seek recognition for the legal standing of the Reef. In light of the poor protection afforded to the Reef thus far, this is what is needed to uphold the principles of the government's own legislation - long-term management, precautionary principle, inter-generational equity and conservation - where our government and public authorities have failed.

You can donate to the EDO (NQ) [here](#).

*Photo by myheimu on Flickr <http://www.fotopedia.com/items/flickr-7995249943>

Posted by Kate Galloway at [10:28](#)

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