Wild Law in Australia: Practice and Possibilities

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Nature's Intrinsic Value

- Intrinsic value refers to the ethical value or worth that an object has in itself or for its own sake. In this sense an object with intrinsic value may be regarded as an end in itself and therefore at least capable of having the right to be itself.

- Interestingly, the term 'intrinsic' is used in Australian environmental legislation, at both state and federal levels.

Nature's Intrinsic Value

- At the federal level, the *Antarctic Treaty (Environment Protection) Act 1980* (Cth) states that 'the intrinsic value of Antarctica … shall be [a] fundamental consideration… in the planning and conduct of all activities in the Antarctic Treaty area.'

- The *Convention on Biological Diversity* [1993] ATS 32, a treaty that has entered into force in Australia, provides that the contracting parties must be 'conscious of the intrinsic value of biological diversity.'

Nature's Intrinsic Value

- In South Australia, the *Natural Resources Management Act 2004* (SA) s 7(1)(a) objects include 'recognis[ing] and protect[ing] the intrinsic value of natural resources.'

- In Queensland, the *Nature Conservation Act 1992* (Qld).s 8(2)(d)(ii) gives the meaning of 'nature' to include 'intrinsic or scientific value.'

Restorative Justice

- Restorative justice is one of the fundamental ideas behind Wild Law.

- In *Should Trees Have Standing?* Professor Stone recognised that for nature to have rights, a judgement in its favour would benefit the natural object and not merely punish the wrongdoer.

Restorative Justice

- In *Native Vegetation Council v Wandel* Mr Wandel constructed a dam wall across a creek on his property which resulted in the flooding of 25.5ha of the property and the clearance of copious native vegetation.

- Under s 31B of the *Native Vegetation Act 1991* the South Australian Environment Rerouces and Development Court ordered that Mr Wandel 'undertake a staged drainage and reduction of the dam and area of flooded vegetation' and 'undertake to nurture and protect the rehabilitation and regeneration of vegetation within the cleared area … until the revegetation of the area becomes self sustaining.'

Restorative Justice

- In South Australia the *Marine Parks Act 2007* also allows for reparation orders under s40(1). The Minister may issue a reparation order requiring the person to, 'take specified action … to make good any resulting harm to the marine park; or make a payment or payments into an approved account for the reasonable costs incurred, or to be incurred, in taking action to make good any resulting harm to the marine park.

- In Queensland the *Marine Parks Act* 2004 s 109 also allows for 'Restoration of the Environment.'

But! The Plot Grows Thicker . . .

- So, while these are very encouraging signs of Wild Law already in Australian law, there are many examples of where current environmental legislation does not protect the environment.

- Here are examples where very special and unique areas have not been afforded enough protection by current environmental laws, both at state and federal levels.

The Desalination Plant at Port Stanvac, South Australia

The Desalination Plant at Port Stanvac, South Australia

- It is clear that the desalination project is contrary to important State and Federal legislation.

- In particular the *Environment Protection (Water Quality) Policy 2003* (SA) s 14(2) which states that where waste is discharged into marine waters the mixing zone must not have a radius exceeding 100m, (100m x 100m = 1ha). In an estuary (such as Gulf St Vincent) the mixing zone must be even smaller, that is not exceeding 20m.

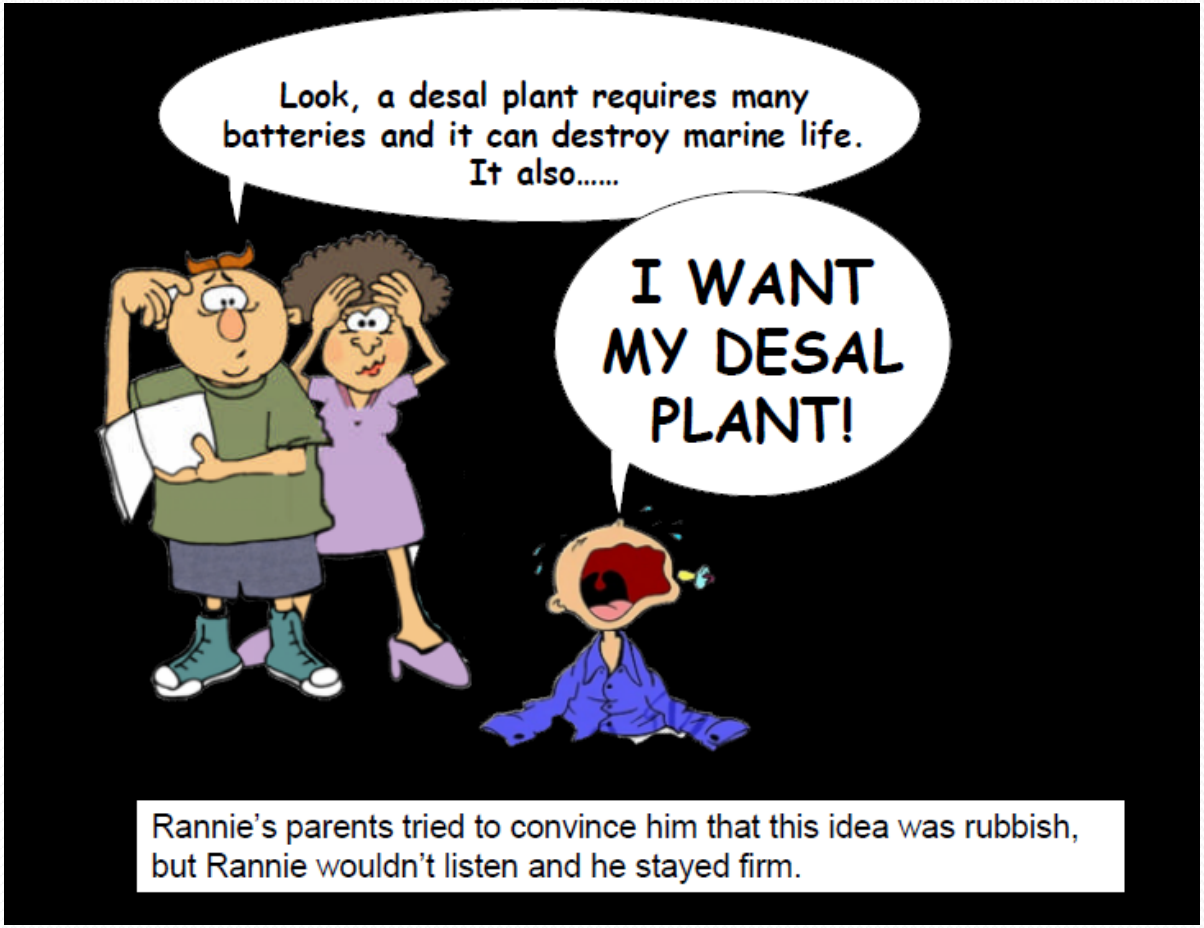
The Desalination Plant at Port Stanvac, South Australia

- Dr Käempf of Flinders University explains that if the minimum dilution is set at 50:1 according to the EIS, then the mixing zone will expand to areas of ~500ha during dodge tides!

- However the desalination plant at Port Stanvac has been approved pursuant to the major projects provisions of the *Development Act 1993* (SA) s48(2)(b)(i). The *Development Act* allows for public consultation but regrettably not any appeal of the decision.

Little Rannie had a Wish
By D. Schreiner

Little Rannie had a Wish



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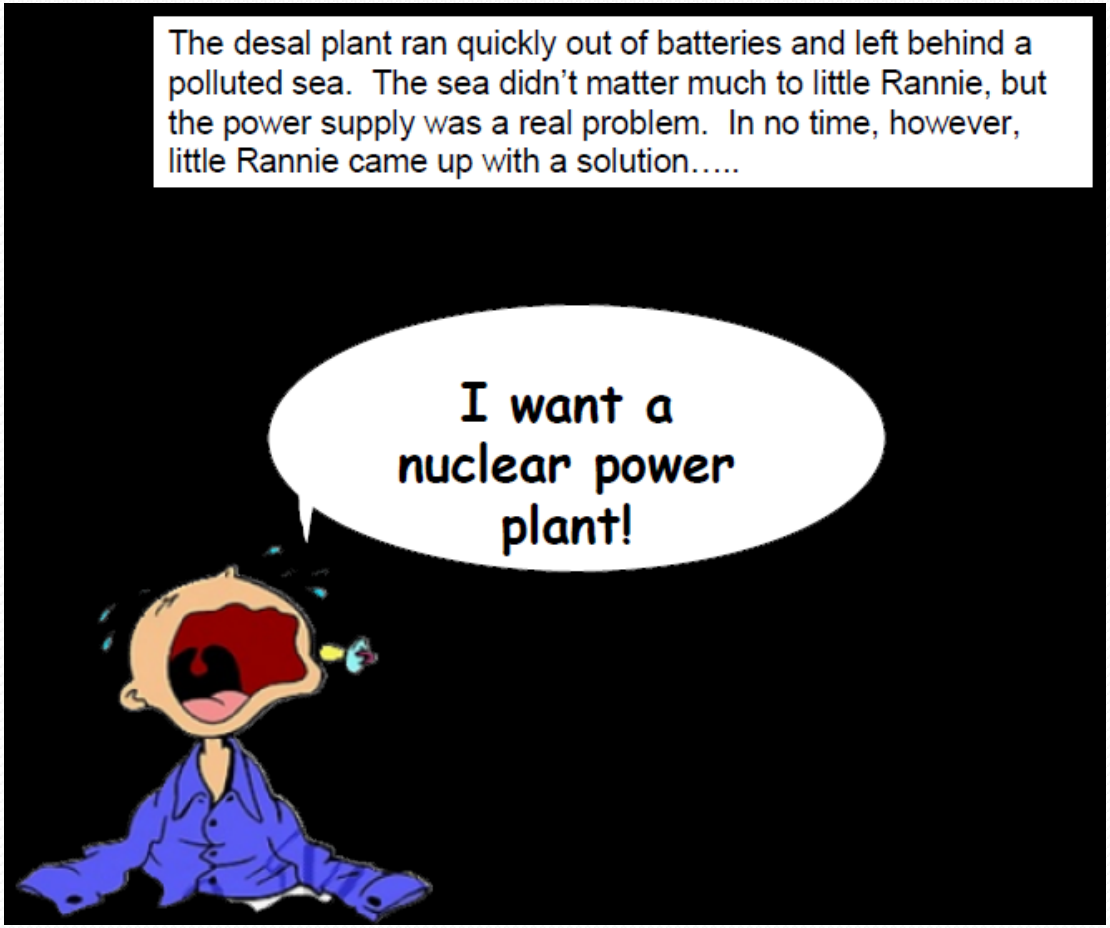

The Pulp Mill at Bell Bay, Tasmania

The Pulp Mill at Bell Bay in Tasmania

- In *The Wilderness Society Inc . v The Hon. Malcolm Turnbull* , the Wilderness Society sought judicial review of two administrative decisions made by the Minister for the Environment and Water Resources under the *Environmental Protection and Biodiversity Conservation Act* (EPBC Act) *1999* (Cth) ss 75(2B) and 87(5) to approve a proposal by Gunns Limited to build and operate a pulp mill at Bell Bay in Tasmania.

- A second case was brought by Lawyers for Forests (LFF). *Lawyers for Forests Inc v Minister for the Environment, Heritage and the Arts* also challenged a decision made by the Minister for the Environment, Heritage and the Arts under s 133 of the *Environmental Protection and Biodiversity Conservation Act* to approve the proposal.

Wilderness Society Inc . v The Hon. Malcolm Turnbull

- The Court held, 'this proceeding does not involve any judgment by the Court on whether it is appropriate or not that a pulp mill be constructed at Bell Bay.'

- Marshall J explains that the 'pulp mill at Bell Bay in northern Tasmania has generated a great deal of controversy. It is not the task of this Court to resolve that controversy. The Court's task is to determine the application.'

Failing to see the Forest for the Trees??

http://www.sauer-thompson.com/archives/opinion/002365.php

Conclusion

- While there is some encouraging evidence of wild law already in our legal system, the fact still remains that nature and non-human animals are treated as property and allowed to be owned and exploited by humans.

- Bridging the gap between science, law and policy is an important step.

- Any ‘movement’ which advocates rights to a new entity starts with a social conscience and need for change. Legislation tends to follow.