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Water governance in Queensland – implications for Wild Rivers declarations in the Lake Eyre Basin

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Introduction

Governance is often mistaken to mean decision-making solely by governments. Today, water governance refers to transparency of processes, clearly defined responsibilities and accountabilities, and multi-level and multi-party participation in decision-making. Internationally, it is accepted that the process of making decisions needs to be broadly inclusive of public institutions but also the private sector, stakeholders, the general community and marginalised groups. Good governance stresses the importance of hearing many voices, particularly those often not previously heard.

This emphasis on effective public participation is not new – it is an internationally accepted principle for management of natural resources. At its core, those directly affected by decisions or development initiatives (stakeholders) should have the opportunity to influence and meaningfully contribute to decisions. Australia's National Water Initiative 2004 endorsed public participation as a priority principle in water planning (Council of Australian Governments 2004a). While the type of engagement under the National Water Initiative was open to interpretation, the objectives of public participation are undisputed: it provides confidence in reform processes and ensures openness and transparency. Public participation constrains arbitrary decision-making by requiring the decision-maker, the executive or the Minister or his or her delegate, to consider the views of the community. In Queensland, the *Water Act 2000* and *Wild Rivers Act 2005* (now repealed) both contain processes to implement public participation in water governance and management.

Three principles of governance relate to the current debate over the Lake Eyre Basin rivers (Fig. 21.1). The first is getting the voices of the community heard, particularly those of the Aboriginal community, the Traditional Owners of the land (see Chapters 8 and 9). The second is the principle of transparency – how decisions get made, the data used, the information underpinning the decision, the 'trade offs' made (see Chapter 18), effective documentation, and public availability of the reasons for the decision. The third principle, not often talked about in Australia because we often take it for granted, is the upholding of the rule of law. A key aspect is that law should not change at someone's whim or fancy. There should be a stable legal framework that citizens understand and can utilise to plan the community's affairs, while allowing for adaptive management. Such change should be managed well and based on transparent reasons that are acceptable to the broad community.

Fig. 21.1. Concern over the future of rivers of the Lake Eyre Basin, including their waterholes (such as Pulchera waterhole here on the Mulligan River in the Georgina River catchment) and floodplains has an ongoing presence, particularly in relation to water resource management and most recently, mining development and exploration (photo, A. Emmott).

I address the legal context of the debate over the Wild Rivers declarations over the three main river systems in the Lake Eyre Basin: Cooper Creek, the Georgina River and Diamantina River (the Western Rivers; Fig. 21.1). I examine the main strengths and weaknesses of their management regimes in relation to land and water. I also review how the views communicated by people were considered, and examine some of the options available. I contrast this with the lack of transparency in water management decisions in the Lower Balonne system, Queensland in the 1980s and 1990s, which have affected environmental health and livelihoods in that region (see Chapters 14 and 15).

Significant legislative and policy documents

Important water law and policy developments have occurred at the national and state levels, over the last 25 years: 1989–2014 (Table 21.1; see Chapters 7 and 20). This has paralleled the initiatives of the Lake Eyre Basin community to manage and protect the Basin's land and water resources. The Queensland department responsible for water management has changed many times over this period. In 1989, it was the Queensland Water Commission, but the water portfolio came under the authority of the Department of Environment and Resource Management in 2012. After the 2012 state election, river management responsibilities changed – wild rivers and environmental protection responsibilities went to the Department of Environmental and Heritage Protection while water planning, including environmental flow responsibilities were with the newly formed Department of Natural Resources and Mines. For simplicity, I refer to the relevant water agency as 'the Department'.

Table 21.1. Chronology of significant legislation, policy documents, and community action events in the Lake Eyre Basin.

Year	Legislation, policy documents and community action
1989	*Water Resources Act* (Qld) enacted.
1994	Council of Australian Governments (COAG) Water Reform Framework provided national policy support for ecologically sustainable development in water, including environmental allocations, and tradeable water entitlements. Proposal to list South Australian parts of the Lake Eyre Basin for World Heritage status.
1995	A consortium of cotton growers proposed to irrigate from Currareva on Cooper Creek in the Channel Country, requiring an average of 42 000 ML per year. The newly formed Cooper's Creek Protection Group and the Barcoo Shire Council opposed this proposal.
1996	Locals and scientists held scientific workshop at Windorah; other scientific conferences at Perth, Western Australia and Berri, South Australia recommend against irrigation.
1998	The Lake Eyre Basin Coordinating Group integrated partnership approach adopted, with two cross-border catchment committees in the Cooper Creek and Georgina–Diamantina catchment committees. Draft Water Management Plan for Cooper Creek proposed allocation of 22 500 ML per annum from the Thomson and Barcoo Rivers, allowing for irrigation. This was again opposed by sections of the local community.
2000	Cooper Creek Water Management Plan prohibited irrigation under 1989 *Water Resources Act*. This prohibition continued under a new *Water Act 2000* (Qld). Litigation commenced by Currareva consortium against Queensland Government was dismissed: Currareva Partnership v Welford (2000).
2001	*Lake Eyre Basin Intergovernmental Agreement Act 2001* passed and provided for Lake Eyre Basin Ministerial Forum, Secretariat, the Scientific Assessment Panel, and the Community Advisory Committee. Biennial Aboriginal forums planned (see Chapter 7).
2004	National Water Initiative continued nationwide reform agenda. For the first time jurisdictions had to consider Indigenous interests in water planning, and environmental allocations were to receive similar security as consumptive entitlements. *Water Resource Plan (Georgina-Diamantina) (2004)* finalised (Queensland Department of Natural Resources and Mines 2004).
2005	Queensland enacted *Wild Rivers Act 2005* to provide preservation of natural features and ecological functions of rivers in natural or near natural condition. The enactment of this Act resulted from an election promise by the Beattie Labor Government (1998–2007) and has been controversial, disputed by some Aboriginal communities in the Cape York Peninsula.
2009–2010	Queensland Government discussed wild river issues for Lake Eyre Basin in response to community interest. Stakeholder forum organised by local community. Consultation paper released 2010, and Lake Eyre Basin Wild Rivers Advisory Panel formed to provide stakeholder input to Minister and the Department.
2011	Six meetings of Wild Rivers Advisory Panel held in 2011. Widespread support for Wild River declarations in Cooper Creek and Georgina and Diamantina catchments. Tibooburra Declaration at the 4th LEB Aboriginal Forum attended by 40 Aboriginal participants, 35 non-Aboriginal invitees (scientists, historians, officers from government and non-government organisations) resoundingly supported Lake Eyre Basin Wild River declarations (see Chapter 8). Wild Rivers declarations for Cooper Creek and Georgina–Diamantina in December 2011 prohibited development of large-scale irrigation and open cut mining close to major creeks and rivers. *Water Resource Plan (Cooper Creek) 2011* finalised (Queensland Department of Natural Resources and Mines 2011).
2012	Liberal National Government (2012–15), under Premier Newman, elected with substantial majority. An election promise was to abolish the *Wild Rivers Act 2005* for all of Queensland, while for the Queensland Lake Eyre Basin rivers systems (referred to as Western Rivers by the Newman Government), the intention was to develop an alternative management framework for better balance.
2014	*Wild Rivers Act 2005* abolished.

A range of relevant legislative enactments, policy documents and significant community responses were pivotal for the management of the Lake Eyre Basin rivers (Table 21.1), including the 1994–95 proposal to list for World Heritage status (see Chapter 7); a proposal to grow cotton in the Channel Country that triggered strong community opposition (see Chapter 17); growing recognition of Indigenous interests and rights in land and water (see Chapter 8); protection of environmental water through new legislation in 2000 and 2005; and specific protection of floodplains and rivers of the Channel Country in 2011. There were key events relevant to environmental protection of the rivers in the Queensland part of the Lake Eyre Basin over more than two decades (Table 21.1). For many years water legislation in Queensland did not explicitly consider ecosystem needs (Grant and Papadakis 2004), until the state government responded to water policy reform by the Council of Australian Governments (COAG).

Strong opposition during 1995–98 to a proposal for large-scale irrigation in the Cooper Creek area by cotton farmers (see Chapter 17), known as the Currareva Partnership, played a significant role in highlighting community concern regarding ecosystem protection and environmental flows (see Chapter 7). Realising the strength of the concern, the state government prohibited large-scale irrigation in the region when it finalised the Cooper Creek Water Management Plan in 2000 (see Chapter 17). The proponents filed an application in the Supreme Court for judicial review of the decision of the Minister for Natural Resources to make the *Water Management Plan (Cooper Creek) 2000*. The court dismissed the application for judicial review, as the decision under challenge was a legislative matter and did not fall within the scope of section 20, *Judicial Review Act 1991* (Qld), the plan determined the law in a binding manner and was of general application (Currareva Partnership v Welford 2000).

At a high level, the states of Queensland and South Australia, together with the Commonwealth Government, entered into a Heads of Agreement in 1997 to protect the national and international values of the Lake Eyre Basin. All three jurisdictions passed legislation in 2001 (Table 21.1; see Chapter 7), forming new collaborative institutions to manage transboundary decision-making in the Basin.

While many laws apply to land, water and the natural environment, I focus on the two most important management regimes in Queensland relevant to the Western Rivers catchments: (1) the water planning regime under the *Water Act 2000*, and (2) the Wild Rivers declarations under the *Wild Rivers Act 2005.* Unless otherwise specified, my analysis of policy and law is current to 1 January 2017. Until 2000, the primary focus of Queensland's water legislation was the development of the state's water resources (Grant and Papadakis 2004). In response to the 1994 COAG agreement to a National Water Reform Framework (Council of Australian Governments 2004b), the *Water Resources Act 1989* (Qld) was replaced by the *Water Act 2000* (Qld), which changed the focus to how water was allocated and managed in the state. Since 2000, water resource plans provide for sustainable use, mainly through clearly defining the consumptive take of water, specifying water users' entitlements, identifying the ecological assets in a catchment and their water needs to maintain them in a healthy state, and providing for the management of environmental flows.

Water plans, formerly called Water Resource Plans, specify general and environmental outcomes. For example, the *Cooper Creek Water Resource Plan 2011* (Queensland Department

Table 21.2. Strengths and weaknesses of water planning under the *Water Resources Act 2000* and wild river declarations under the *Wild Rivers Act 2005*.

	Water planning	Wild River declarations
Strengths	Water plans are binding on government, water users and the broad community. Under the *Water Act 2000* (Qld), plans have a 10-year life, and are required to be reviewed. The statutory planning process initially allowed for participation of the community through mandatory reference panels. However, these provisions have been diluted and the participatory process is now at the discretion of the Minister. Plans must provide for environmental flows and water security objectives. This can provide for quite detailed rules on the management of stream flows when water is most needed for ecosystems. Plans must be based on the best available science.	They were statutory instruments that did not lapse after 10 years. However, there was a five-year reporting period when legislation could be amended. One of the few pieces of legislation that could actually take precedence over and limit mining and petroleum and gas legislation. Other laws, including the *Water Act 2000*, were generally subordinate to the *State Development and Public Works Organisation Act 1971* (Qld). Declarations provided for very targeted protection. The boundaries could be drawn around High Preservation Areas and Specialised Floodplain Areas.
Weaknesses	May just entrench the status quo of water resource development. Does not adequately include wetlands, and floodplains, specific environmental assets, or wider catchment issues, such as water quality and clearing, other than to provide water.	Lack of statutory provisions for participation of the public in the process; therefore participation was at administrative discretion. Perceived as 'locking up' resources' because it could stop water and floodplain development. The level of detail could be daunting for the general public.

of Natural Resources and Mines 2011) provides for outcomes, including the maintenance of ecological integrity and natural function of the riverine systems, and maintaining connectivity of waterholes. Even so, beyond limiting take and providing water to an environmental asset, there are limited specific catchment-wide protection mechanisms available under the water planning framework for environmental protection.

In contrast, the focus of *Wild Rivers Act 2005* and Wild River declarations was on the preservation of natural values, including natural ecosystem values, as well as assets (floodplains, wetlands and the river) on rivers assessed to have natural values worthy of protection (see Chapter 20). The water planning and wild river management frameworks have relative strengths and weaknesses (Table 21.2). Both Acts may be overridden or amended by later legislation to provide for infrastructure or for any other purpose.

The *Wild Rivers Act 2005*

Now repealed, the *Wild Rivers Act 2005* (Qld) was a significant improvement for the protection of riverine landscapes. Although its introduction was met with controversy in the Cape York Peninsula in the Lake Eyre Basin, implementation of the Act was welcomed by the Lake Eyre Basin community (Table 21.1; see Chapter 8).

The responsible Minister could propose any part of Queensland for consideration as a wild river area. A Wild Rivers declaration was a statutory instrument that described the wild river and its catchment area, wild river requirements, and circumstances in which parts of the Wild Rivers Code or other development assessment code apply.

The natural values that Wild Rivers declarations sought to protect were:

- hydrological processes, meaning unimpeded runoff, stream flow, aquifer and spring recharge
- geomorphic processes, meaning free movement of sediments along the river system to allow for stable beds and banks and sediment delivery to estuaries and floodplains
- water of sufficient physical, chemical and biological quality to meet human and ecological needs
- intact riparian function along stream banks, for food and habitat for native animals, and
- areas of sufficient natural habitat within and along river systems for wildlife corridors.

The formal declaration process began with a notice of intent, accompanied by a moratorium on any application for water entitlements or licences or new works on the river or the floodplain that could interfere with the natural flow of water. This was followed by a period of community consultation. There were no specific statutory provisions as to how consultation would occur. In 2011 amendments, the Minister was given the power to establish an Indigenous reference group to advise on matters relating to the declaration, or the management of the wild river area. Matters of advice could include proposals for development in the wild river area, or proposed wild river area (*Wild Rivers Act 2005*, section 47A). The Minister would consider the results of community consultation, all properly made public submissions, and if an Indigenous reference group was established, advice from that group. Although mining tenures would generally not operate in High Preservation Areas and Special Floodplain Areas, under the Wild Rivers declarations, the protection of the Wild Rivers areas did not extend to mining leases issued under or any projects declared as significant under the *State Development and Public Works Organisation Act 1971* (Qld).

Declarations could be amended through a legislative process defined in the *Wild Rivers Act 2005*. For example, the declaration for the Cooper Creek was amended in May 2013 to provide for safety and efficiency for petroleum and gas operations. Operational works are now allowed in a flood channel, or below or at bed level of the flood channel, if considered reasonable. Among the amendments, this included increasing temporary accommodation for workforce from 2240 m^2 to 1 ha and 30 to 60 people. Also, the size of multi-well sites could increase from 3 to up to 5 ha, with no restriction on the number of well heads on the one site, fuel storage and compression facilities. Further, pipelines could be built in High Preservation Areas, after assessment under the *Environmental Protection Act 1994*, and operational works allowed within a flood channel provided no barriers to flood flows are created.

Although much of the protection of the *Wild Rivers Act 2005* and the declaration in the Cooper Creek remained, the changes passed by the Liberal National Government (2012–15) appeared to provide more for operational efficiency and less for operational safety of gas and

oil operators, and may have significant ecological impacts on the flood channels in terms of affecting flows (see Chapter 22).

Regulating floodplain flows in the Lower Balonne River, Queensland

Much of the concern about the future of the Lake Eyre Basin rivers stems from the experiences of rapid development in the Murray–Darling Basin, affecting livelihoods (see Chapters 14–16) and ecosystems (Kingsford 2000), including the most recent development on the Condamine–Balonne river catchment. The Condamine River flows into the Balonne River to supply the Lower Balonne water management area, a braided network of rivers (Bokhara, Birrie, Culgoa and Narran Rivers; see Chapter 14). Small flows stay in defined channels, but medium to large flows spill out of channels to flood large areas of the floodplain. From 1989 to 2004, there were significant tensions over the harvesting of floodplain flows for consumptive use (see Chapter 15).

Irrigation in the St George area started around 1956 with water supply from the Jack Taylor Weir. The irrigation scheme was extended by the construction of the Beardmore Dam and associated works (1968–72, 81 800 ML capacity). The earliest water licences were granted to graziers to 'drought proof' their properties with small areas of irrigated pasture. In 1967, there was little actual irrigation downstream of St George, with numbers of surface water licences for water harvesting sharply increasing by 1989–90 across the state, with most coming from this region. These water harvesting licences allowed users to pump water from the river once the river reached a certain pumping threshold. There were no volumetric limits on these licences and neither was the volume of water measured or paid for beyond a nominal administration fee. This water was often pumped using a large group of pumps, capable of rapid extraction of water, and then stored in large off-river storages on the floodplain (Fig. 21.2).

The Queensland Water Commission wrote to water users in the Lower Balonne area, in about June 1989, referring to ministerial approval of applications, backdated to 1982. The Honourable Don Neal from the National Party was the Member for Balonne in the Legislative Assembly and the Minister for Water Resources and Maritime Services at the time. There was also an increase in allocations (now called 'water entitlements') granted out of regulated storage from Beardmore Dam and Jack Taylor Weir, at St George around 1989. In 1989, the National Party lost power, after 30 years in government.

Significant discretionary power to issue licences was available for the Department under the *Water Resources Act 1989* (Qld). Downstream graziers were alarmed at the increase in the approval of water licence applications because this was the water they relied on for their livelihoods (see Chapters 14 and 15). They agitated for limits on water harvesting from the Lower Balonne and, from 1991, a moratorium was placed on the issuing of further water licences in the Lower Balonne. Though the *Water Resources Act 1989* did not allow the Department authority to control access to or allocate flood water, the Department could, by *designating* the floodplain, control works that obstructed, diverted or reduced the flow of water or floodwater. In other words, the Queensland Government had the ability to control works that interfered with flows on the floodplain, once the process of designation was

Fig. 21.2. Flows in the Condamine–Balonne and associated rivers could be pumped with large water harvesting licences into extremely large off river storages, such as this on Cubbie Station with 538 800 ML of storage, enough to fill Sydney Harbour (Sydney Morning Herald 2009).

complied with. Local government also had power to control works on a floodplain under now-superseded legislation, but the Balonne Shire Council declined to do so (Tan 2000). The concept of designation was adopted from New South Wales where there had been 13 successful designations of floodplain areas. In Queensland, the object of designation was to beneficially manage floodplain flow by ensuring authorisation of only those works that had a minimum impact on other landholders.

One attempt was made to designate part of the floodplain of the Lower Balonne but, on the basis of 39 objections, the Department approved the designation with smaller boundaries than originally proposed. Stevenson, one of the owners of Cubbie Station (see Chapter 14; Fig. 21.2), applied to the Supreme Court for a declaration that the designation was invalid. In *Re Stevenson v Wenk* (1992) 1 Queensland Review 44, the court ruled that as the designation occurred without re-advertising the redrawn boundaries of the affected floodplain, the designation was invalid. The Department could have restarted the process in compliance with the court order but did not. As a result there was no effective control of floodplain works. The Department's own records over the five years 1994–99 showed that combined off-stream dam storage in the Condamine–Balonne grew fourfold from 247 000 ML in 1993–94 to 827 000 ML in mid-1999 (Queensland Department of Natural Resources 2000, p. 16).

There were two other significant court cases (1994–96) relating to resource security during Cubbie Station's development in the Lower Balonne. Cubbie held at least two licences for diversion channels from the Balonnne and Culgoa Rivers, and other water harvesting licences. It also had extensive irrigation works that were not licensed. Expecting the

Queensland Government to restart the designation process, Cubbie Station sought a declaration from the Supreme Court that its unlicensed works were 'authorised' by the *Water Resources Act 1989* (*Re Stevenson Finance Corporation* (1994)). The Department resisted the declaration because it was concerned that if the works were declared 'authorised', then they would remain lawful, even if the area was successfully designated. Both parties agreed that the works in question were not then licensed, and did not require a licence under the 1989 Act. The Supreme Court refused Cubbie's application, but granted a narrower order that the unlicensed works did not contravene the law.

While litigation was proceeding for the first and second matters, Cubbie applied for and was granted a licence to build a large dam between 4.6 and 8 m high to hold ~100 000 ML of water (Fig. 21.2). At that time, a moratorium existed for licences on taking water from the Balonne river system, but it did not apply to such dams, away from the watercourse. Nearby graziers appealed the grant of a licence to the Land Court, and this was granted on the basis that the Chief Executive under the *Water Resources Act 1989* was required to hold an inquiry into environmental issues and floodplain flows before granting the licence, and this had not occurred. Stevenson, the applicant for the dam licence, filed an application under the *Judicial Review Act 1991* to quash the decision of Judge Wenck of the Land Court. Stevenson's argument followed the Department's own argument in the Land Court: that the Chief Executive had wide powers to look into matters as he or she thought fit, and there was no express duty to consider environmental issues nor was a public enquiry needed. Decisions at both the Supreme Court, and later the Court of Appeal, did not accept this: *Stevenson v Wenck* (1995). Essentially, the courts ruled that the Department had not carried out its duty to hold an inquiry into the availability and sufficiency of water, before issuing Cubbie a licence for a referable dam. This was a pyrrhic victory for objectors. Cubbie went on to build a 4.5 m dam, so that it would not fall within the height restriction for a referable dam (Tan 2000).

These landmark cases show a chequered departmental record on environmental protection. Several other factors escalated water use, including property sales, subsequent activation of 'sleeper' licences, subdivision of land resulting in splitting of licences and an increase in use, and inadequate pricing of water. The growth in consumptive use of water in the Lower Balonne area had significant adverse environmental impacts. It was estimated that the average period between floods and volume, reaching the nationally important Narran Lakes, an internationally listed wetland under the Ramsar Convention, had respectively increased and decreased by 24%, significantly reducing optimal waterbird breeding and feeding habitat by more than 50% (CSIRO 2008). Significant ecological damage to floodplains, downstream natural assets and landholders dependent on flooding are increasingly occurring (Brandis *et al.* 2011). With hindsight, the administration of water by the Department was not transparent. It had difficulty regulating and protecting floodplain ecosystems and services because the legislation did not support relevant regulations. Powerful commercial interests (i.e. the irrigation industry) resorted to litigation to delay or overturn reforms that were against their interests.

The present Queensland water planning framework was designed to redress many of these matters (see Table 21.1). Control of water use in the Lower Balonne was effectively introduced in the 2000–04 period, through the finalisation of the *Water Resource (Condamine*

and Balonne) Plan 2004 (Queensland Government 2004). However, from 1989 to 2004 the number of irrigation licences had grown and have become highly valuable assets as tradable water entitlements. The *Condamine (Lower Balonne) Resource Operation Plan 2008* (Queensland Department of Natural Resources and Mines 2008), amended in 2010 to include the Lower Balonne, now authorises water entitlements of 94 655 ML of water a year. The term 'entitlements' includes water harvesting. This example provides a powerful story of how irrigation can quickly develop, impacting on downstream environments and dependent landholders and communities (see Chapters 14 and 15). The strong support for protection of the Lake Eyre Basin rivers by communities (see Chapter 7) is widely informed by examples such as the development of the Lower Balonne.

Lake Eyre Basin communities strongly support river and floodplain protection

There have been consistent calls for the protection of the rivers of the Lake Eyre Basin by local communities, including Aboriginal communities, graziers, tour operators and environmental scientists (see Chapter 7). The Tibooburra declaration in 2011 (Table 21.1; see Chapter 8) demonstrated similar unequivocal support for the protection of the rivers of the Lake Eyre Basin by Traditional Owners, reinforced in later years.

There was widespread support from farmers and graziers for the importance and need for high-level protection of land and water in the Lake Eyre Basin, when surveyed in late 2012 by AgForce, Queensland's peak organisation for graziers and farmers (see Chapter 20). Within the Lake Eyre Basin, there was apprehension at the impacts of large-scale commercial irrigation and mineral, petroleum and gas resource exploration and extraction. AgForce called for no further 'take' of water for irrigation above that identified in the current water management plans, until a more efficient use of current allocations was investigated. Furthermore, AgForce supported a moratorium on coal seam gas development in regions where there was inadequate scientific understanding of the associated risks. The AgForce organisation broadly supported replacement of wild rivers legislation while voicing a clear desire 'for transparent and rigorous delivery of a high level of protection for the environment' (AgForce 2013).

The Western Rivers Advisory Panel, established in 2013 by the Minister for Natural Resources and Mines, sent the same message to the Minister calling for strong environmental protection for the Lake Eyre Basin rivers (Western Rivers Advisory Panel 2013). Established by Minister Cripps in 2012, the Western Rivers Advisory Panel was to give stakeholder advice on alternative strategies in respect of the three main rivers of the Lake Eyre Basin. While it had a similar range of stakeholders as the Lake Eyre Basin Wild Rivers Advisory Panel, its membership was different. Members of the Lake Eyre Basin Wild Rivers Advisory Panel who were strong advocates of Wild Rivers declaration were left off the Western Rivers Advisory Panel (see Chapter 8) and there was no environment or South Australian representative. Aboriginal members were reduced from four to two. Under the terms of reference, the Western Rivers Advisory Panel was directed not to consider an option of retaining the Wild Rivers declaration; instead the panel had to primarily identify 'values or assets of the Basin which were the most important, where protection of these values should be focused and the level of protection that is required' (Western Rivers Advisory Panel 2013, p. 4).

Unsurprisingly, this panel reported that the natural assets identified through this process were 'nearly identical to the Wild Rivers values' previously identified (Western Rivers Advisory Panel 2013). The majority of the panel largely reinforced earlier strong messages that natural flows in the Channel Country must not be reduced, or interfered with, and must be protected from activities such as irrigation, overland flow capture for any purpose, and mining, petroleum and gas operations (Western Rivers Advisory Panel 2013). About a third of the recommendations related to mining including: prohibition on floodplains of major rivers, major tributaries and lakes; no powers by the state Coordinator-General to override protective strategies; and the prevention of contamination of surface and groundwater systems by petroleum and gas operations. The report presented views from five sectors – resources (e.g. mining), natural resource management, local government, Agforce and science – with no record of an Aboriginal view. One of the panel's Aboriginal members issued a media statement soon after the publication of the report to the effect that Aboriginal people in the Channel Country had not been fully consulted, and that all Aboriginal people had strong views on the protection of natural river systems and supported the Wild Rivers declarations (Lloyd 2013).

Because of the gap in recording an Aboriginal view opposing the abolishment of wild rivers protection of the Western Rivers, an Aboriginal forum was organised in November 2013. Attended by over 30 Aboriginal community people, including a large contingent from the Channel Country of the Lake Eyre Basin, Traditional Owners in Queensland expressed the view that their voices are often not captured in reports to relevant ministers (see Chapter 8). As custodians of the land for centuries, they have the longest term human stake in this country (Queensland Aboriginal Forum 2013). They recognise values in the country that are not apparent to many others, and these values are antithetical to those whose interests are mainly commercial. The 2013 forum strongly endorsed the 2011 Tibooburra declaration (Table 21.1; see Chapter 8) and called on the Minister for Natural Resources and Mines, the Honourable Andrew Cripps, to retain Wild Rivers declarations over the Western Rivers.

High-level collaborative protection of Lake Eyre Basin rivers required

It was reasonable to assume that the Queensland Liberal National Government (2012–15) would be open to Aboriginal views from the Channel Country, when their 2012's election promise to abolish the Wild Rivers declarations was based on the opposition from some of Cape York Aboriginal leaders to those declarations. Some Aboriginal leaders in Cape York applied to the Federal Court to annul Wild Rivers declarations over three of the four wild rivers in the Cape: the Archer, Lockhart and Stewart Rivers. In 2014, the Federal Court ruled that these three declarations were invalid on the grounds that the Minister for the Environment, the Honourable Steven Robertson, had to satisfy the statutory preconditions to the exercise of power, as required under the *Wild Rivers Act 2005* (*Koowarta v State of Queensland* (2014)). Under section 13 of the *Wild Rivers Act 2005*, matters that were mandatory for consideration before ministerial exercise of power included the results of community consultation and all properly made submissions. There was evidence that the Minister did not sight the required material accompanying the ministerial brief on the declarations, until after he had made a decision to declare these three rivers (*Koowarta v State*

of Queensland (2014), para. 214). There was also evidence that the ministerial briefing note and the accompanying material did not incorporate any maps showing the boundaries of the Wild Rivers areas (*Koowarta v State of Queensland* (2014), para. 50).

There was no appeal by the state as the *Wild Rivers Act 2005* was repealed by the *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Act 2014*, soon after the *Koowarta* decision. The *Regional Planning Interests Act 2014* now provides that the river systems in the Cape York and other regions, previously subject to Wild Rivers declarations, are rolled into the Regional Planning Interests framework as Strategic Environmental Areas (SEAs). While Cape York has a new regional plan, finalised in 2014 by the Department of Infrastructure, Local Government and Planning, the regional plans for the Channel Country (Central West and South West regions) date from 2009. For information on the protection of floodplains on Western Rivers, we refer to the *Regional Planning Regulation 2014* and its guidelines (Queensland Government 2016).

Under the Regional Planning Interests framework, there is protection of high value or preservation areas in the Channel Country of the Lake Eyre Basin, with a 500 m buffer either side of major tributaries and floodplain wetlands and defined riparian vegetation zones, prohibiting open cut mining, intensive agriculture and dams. There are other preservation areas outside these areas, including floodplain management areas connected to the rivers. However, environmental groups express grave concerns over the repeal of the *Wild Rivers Act 2005*, saying that the *Regional Planning Interests Act 2014* does not provide similar high levels of protection for natural values, as it allows for other types of mining and other agricultural development (Environmental Defenders' Office Queensland 2014).

The *Regional Planning Interests Act 2014* and its regulations have not built on the long and strong partnership among community, scientific and government organisations within the Lake Eyre Basin. At a transboundary level, this aspect of governance has continued to mature under the Lake Eyre Basin Agreement, which provides for collaborative management at the Basin level with the Ministerial Forum and strong input from the Scientific Advisory Panel and the Community Advisory Committee (see Chapter 7). However, this bottom-up input is not replicated at the state level, and certainly not in Queensland, which is the largest of the states constituting the Lake Eyre Basin. For the extensive river systems of the Lake Eyre Basin, a catchment which is sparsely populated, most day-to-day land management is done by graziers, Aboriginal groups, towns and some mining companies. It would be a strategic approach to formally recognise and nurture this relationship where local users and Aboriginal groups co-managed the land and resources of each of the states and the Northern Territory, consistent with the basin-level arrangements (Fig. 21.3), conferring advantages of a formal co-management relationship between state and the local community (Tan 2016).

Conclusion

Open, inclusive and transparent processes inspire confidence by communities in decisions of governments. While past water allocation processes, not only in Queensland, have conferred wide discretionary powers in the hands of decision-makers, present water planning frameworks seek to limit discretion in favour of sustainable management. Similarly, Wild Rivers declarations have aimed to limit deleterious development in parts of natural and near

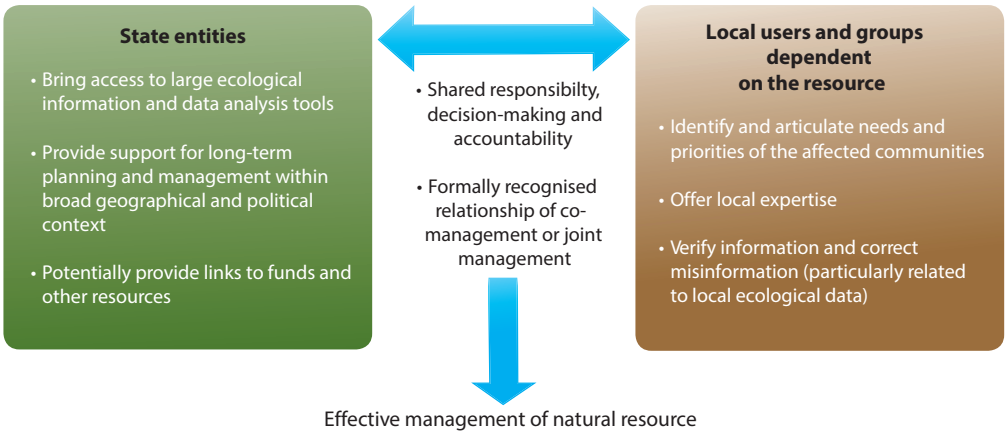

Fig. 21.3. The collaborative structure proposed for Queensland's policy and management of the rivers of the Lake Eyre Basin (adapted from Hoverman *et al.* 2012).

natural river systems. When such controls are either not in place or are relaxed, significant ecological damage can occur, as exemplified by developments in the Lower Balonne river system which had rapid growth in water access, without appropriate regulation of floodplain works, detrimentally affecting floodplains downstream.

In the fragile environments of Lake Eyre Basin rivers, interference in flood flows would cause similar severe detrimental impacts. In the minds of local communities and Traditional Owners, uppermost concerns are impacts not only of large-scale irrigation but also mining on the floodplains. Almost every sector supports the continued strong protection of environmental assets for the rivers of the Lake Eyre Basin, saying that natural flows must not be reduced or interfered with, and must be protected from development or mining infrastructure. The Liberal National Party's (2012–15) Minister of Natural Resources and Mines' own advisory panel devoted nearly a third of their recommendations to address potential threats from mining. This continues to be a strong message to governments of whichever political persuasion.

While local communities in the three Western River catchments in Queensland, particularly Traditional Owners, found that the engagement processes of Wild River declarations enabled them, over a period of nearly a year, to give voice to their concerns, the Aboriginal communities in particular have been disenfranchised by the decision to repeal the Wild Rivers declarations in the Lake Eyre Basin. There was a semblance of consulting with communities over this issue, but the terms of reference of consultation excluded the very option that Aboriginal communities preferred.

Governance processes relating to the protection of natural river landscapes in Queensland would do well to build collaborative structures that engage multiple parties in decision-making – not only powerful interests but also the local community and marginalised groups.

References

AgForce (2013) *WRAP Report a Good Start to Rivers Management.* AgForce, <http://www.agforceqld.org.au/index.php?tgtPage=news&id=view,333%20accessed%209%20May%20201>.

Brandis KJ, Kingsford RT, Ren S, Ramp D (2011) Crisis water management and ibis breeding at Narran Lakes in arid Australia. *Environmental Management* **48**, 489–498. doi:10.1007/s00267-011-9705-5

Council of Australian Governments (2004a) *Intergovernmental Agreement on a National Water Initiative*. Department of Agriculture, Canberra, <http://www.agriculture.gov.au/SiteCollectionDocuments/water/Intergovernmental-Agreement-on-a-national-water-initiative.pdf>.

Council of Australian Governments (2004b) *The Council of Australian Governments' water reform framework*, <https://www.environment.gov.au/system/files/resources/6caa5879-8ebc-46ab-8f97-4219b8ffdd98/files/policyframework.pdf>.

CSIRO (2008) 'Water availability in the Condamine-Balonne. A report to the Australian Government from the CSIRO Murray-Darling Basin Sustainable Yields Project'. CSIRO, Canberra.

Currareva Partnership v Welford (2000) QSC 098, <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/qld/QSC/2000/98.html>.

Environmental Defenders' Office Queensland (2014) EDO Qld submission on the State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014. Queensland Environmental Defenders Office, Brisbane, <https://www.parliament.qld.gov.au/documents/committees/SDIIC/2014/22-StatDevIPRTROLAB/submissions/082.pdf>.

Grant R, Papadakis E (2004) Transforming environmental governance in a 'laggard' state. *Environmental and Planning Law Journal* **21**, 144–160.

Hoverman S, Delfau K, Tan P (2012) 'Sub-Project 3: Developing alternative management models for Indigenous water plans and strategies in Australia's north. Final report'. Department of Environment and Energy, Canberra.

Kingsford RT (2000) Review: Ecological impacts of dams, water diversions and river management on floodplain wetlands in Australia. *Austral Ecology* **25**, 109–127. doi:10.1046/j.1442-9993.2000.01036.x

Koowarta v State of Queensland (2014) FCA 627, <http://www.austlii.edu.au/au/cases/cth/FCA/2014/627.html>.

Lloyd G (2013) Fears for channel country. *The Australian*, 30 July 2013, <http://www.theaustralian.com.au/national-affairs/fears-for-channel-country/news-story/f166eeea21d80f577b4a0025cc554137>.

Queensland Aboriginal Forum (2013) 'Putting Aboriginal people in the driver's seat: protecting land and water in Queensland'. Brisbane.

Queensland Department of Natural Resources (2000) *Draft Water Allocation and Management Plan (Condamine Balonne Basin).* Queensland Department of Natural Resources, Brisbane, <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/W/WaterReCoP04.pdf>.

Queensland Department of Natural Resources and Mines (2004) *Water Plan (Georgina and Diamantina) 2004*. Queensland Department of Natural Resources and Mines, Brisbane, <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/W/WaterReGeP04.pdf>.

Queensland Department of Natural Resources and Mines (2008) *Condamine and Balonne Resource Operations Plan*. Queensland Department of Natural Resources and Mines, Brisbane, <https://www.dnrm.qld.gov.au/__data/assets/pdf_file/0005/281534/condamine-balonne-amendment-2015.pdf>.

Queensland Department of Natural Resources and Mines (2011) *Water Plan (Cooper Creek) 2011*. Queensland Department of Natural Resources and Mines, Brisbane, <http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/W/WaterReCCPl11.pdf>.

Queensland Government (2004) *Water Plan (Condamine and Balonne) 2004*. Queensland Government, Brisbane, <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/W/WaterReCoP04.pdf>.

Queensland Government (2016) RPI Act Guideline 05/14: Carrying out resource activities and regulated activities in a Strategic Environmental Area. Department of Infrastructure, Local Government and Planning, Brisbane, <https://www.dilgp.qld.gov.au/resources/guideline/rpi-guideline-11-16-dilgp-companion-guide.pdf>.

Stevenson v Wenck (1995) QCA 186, <http://www.austlii.edu.au/au/cases/qld/QCA/1995/186.html>.

Sydney Morning Herald (2009) Wong won't force Cubbie to sell water. *Sydney Morning Herald*, <http://www.smh.com.au/environment/water-issues/wong-wont-force-cubbie-to-sell-water-20090817-emw0.html>.

Tan P (2000) Conflict over water resources in Queensland: all eyes on the Lower Balonne. *Environmental and Planning Law Journal* **17**, 545–568.

Tan PL (2016) Contests over 'wild' rivers in Queensland: implications for trans-jurisdictional water governance. In *Transjurisdictional Water Law and Governance.* (Eds J Gray, C Holley and R Rayfuse) pp. 260–281. Routledge, Oxon and New York.

Western Rivers Advisory Panel (2013) 'Western Rivers Advisory Panel report'. Queensland Department of Natural Resources and Mines, Brisbane, <https://www.dnrm.qld.gov.au/__data/assets/pdf_file/0015/82500/wrap-report.pdf>.