

November 2020

Gippsland Lakes Participatory Design Workshop 3: Options and Models

Overview

The third workshop on law reform for the Gippsland Lakes was held on 10 November 2020. The focus of this workshop was on possible options and models for law reform. The options are set out in an Options Paper distributed prior to the workshop. Participants were invited to consider a range of possible law reform models and to discuss the strengths and weaknesses of each with regard to their vision for the Gippsland Lakes.

Options and models

At the beginning of the workshop, EJA introduced three models of law reform that could improve the legal and policy protections for the rivers of the west. These options are summarized in the following table:

Section in this paper	Option	Scope of reform	Main characteristics proposed
1	Incremental/minimalist approaches	Within existing legal and policy frameworks and using existing laws (with scope for reform of those laws)	Focus change on improving, adapting and applying existing instruments to better environmental and public outcomes
2	New part for the <i>Water Act</i>	Significant reform of existing legislation	A new section of the Victorian <i>Water Act</i> to strengthen the interaction between water resource management decisions and protection of Ramsar sites
3	New legislative framework for the Gippsland Lakes	Radical new legislation for the Gippsland Lakes and catchment area	Create new legislation to protect, conserve and restore the Lakes, which may include aspects of legal personhood

Group Discussion

Following the presentation, the participants discussed in plenary the following question: *For each model, which aspects are you most concerned about, and which aspects are you most excited about?*

Responses to these questions are summarised in the table below:

<i>For each model, which aspects are you most concerned about, and which aspects are you most excited about?</i>		
	Most concerned about	Most excited about
Incremental/ minimalist approaches	<ul style="list-style-type: none"> ● Ad hoc and fragmented approach ● Isn't able to look at the bigger picture (all and combined stressors) ● Can be overridden by other policies ● This is the status quo ● There is nothing mandatory under existing SWS or policies 	<ul style="list-style-type: none"> ● Able to focus on single issues (achievable reform) ● All the listed work is critical—needs to happen in any case ● If the matters listed were advanced, it would put them on the agenda ● Split SWS between two regional areas
A new part for the <i>Water Act</i>	<ul style="list-style-type: none"> ● Discretions allowing water allocations etc. might override good work (eg. allocation for mine rehab) ● To what degree will this Act have teeth once other laws are taken into consideration? This could come down to wording? ● See Snowy River Scheme and the failure to override the Snowy Water licence ● Any review of the Water Act would go up for submissions, potentially leading to other/negative interests playing a role ● Hanging our hat on Ramsar obligations risks the state technically fulfilling them, but ignoring responsibilities to other environmental outcomes ● There is other legislation dealing with coastal and marine systems (could raise confusion about how these provisions interact) 	<ul style="list-style-type: none"> ● States are gaining more power under EPBC Act ● Embedding Ramsar obligations is potentially v impactful ● Could embed a holistic framework for decisions throughout the catchment ● Sends a message that the Lakes must be connected to freshwater systems

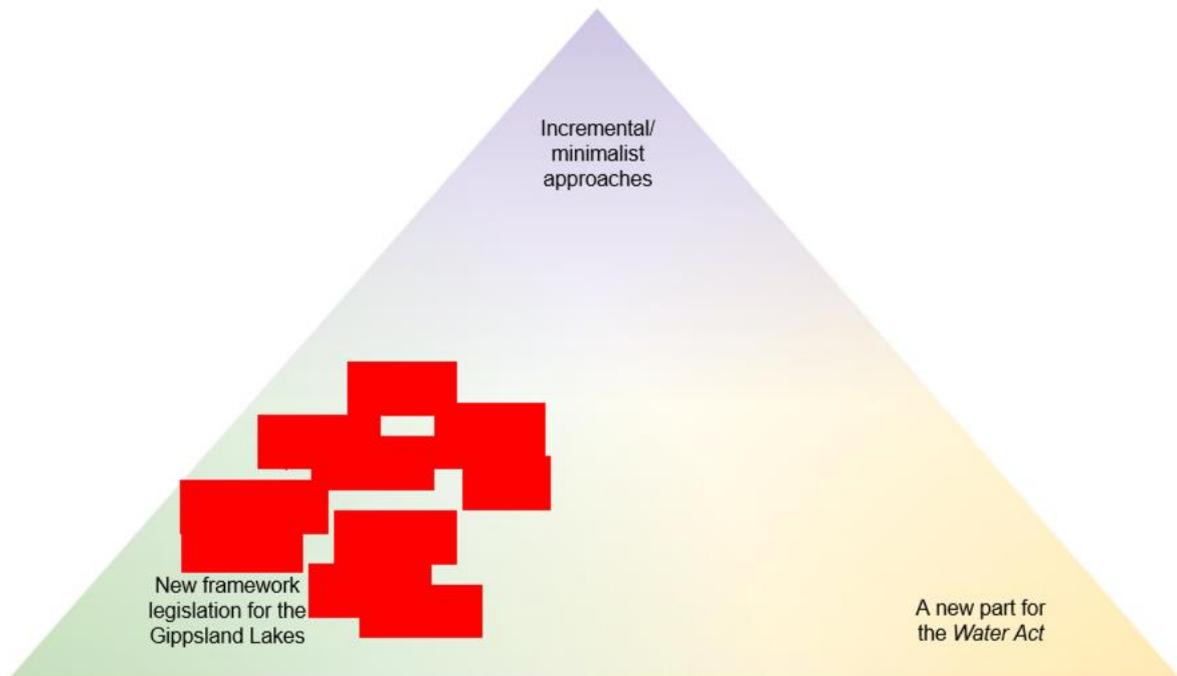
	<ul style="list-style-type: none"> ● any amendment to the Water Act for the Lakes would need to influence, in an enforceable way, other laws that are relevant here ● Ramsar was listed in an already impacted state and has moved a long way from the "limits of acceptable change". So there would need to be some real work around what the aspiration was for the Ramsar status ● Hanging too heavily on Ramsar, as it is a very ill-defined thing. It was listed in an already impacted state and has moved a long way from the "limits of acceptable change". So there would need to be some real work around what the aspiration was for the Ramsar status 	
<p>New framework legislation for the Gippsland Lakes</p>	<ul style="list-style-type: none"> ● Question as to whether recognition has lead to material environmental benefits ● Need to ensure opportunities for community engagement and input ● Potentially a very complex legislation to design — and the devil is in the detail (although Vic Gov has done this for Yarra) ● There are vast vested interests involved and would aim to influence the legislation ● This approach needs to involve a treaty delivering power to traditional owners 	<ul style="list-style-type: none"> ● Opportunity to strengthen the approach to the Lakes as a whole system and living entity ● This approach can be effectively communicated politically (because it cuts across fragmented governance) ● (Watering Plan for Thomson uses living entity language) - Gippsland Lakes currently outside the scope of environmental watering plan, need to tackle fragmentation ● Community buy-in for this option would be strong (e.g. following fires and COVID everyone is aware of how much the local economy needs tourism) ● Potentially a way to force consideration of the Lakes system when it comes to mine rehab water allocation ● Whole of catchment approach is necessary ● Long term health of the Lakes requires a complete rethink of how

		<p>things work (and what else are we going to do?) .</p> <ul style="list-style-type: none"> • This could be a good moment in time to advocate for a holistic management approach (e.g. state owes gippsland for supplying power) see: ecological debt • The law has failed the lakes. A radical change is necessary and this approach offers an opportunity to turn power over to Traditional Owners • People are ready to it.
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Mapping the options

Each participant was asked to place their name on the diagram representing the 3 proposed law reform models.

The diagram was as follows (names have been replaced by red squares).



There was a clear tendency toward the options of new framework legislation for the Gippsland Lakes. Participants were asked to give one reason why they have chosen their position on the map. Some of these reasons were:

- The minimalist approaches are essential and should happen anyway. The idea of personhood for the Gippsland Lakes has broad appeal. A purely legislative response through the *Water Act* would not address all the issues.
- The framework legislation can give Traditional Owners real power, including veto power. It is important to have a whole-of-catchment view. Incremental approaches might be easily achievable but we've been trying this for years and it hasn't really worked. Framework legislation is bold and would get the community excited.
- There is a question as to how much incrementalist change is possible. Being gradual makes things more difficult because it isn't inspirational. Strategically, we need all those things, more about setting it out in an action plan as a bundle of actions rather than being mutually exclusive. This is also how the Yarra legislation was framed. The stand-alone legislation was the central point/headline.
- It could be a combination of beefed up legal personhood and rivers law approach, and incrementalist approaches can be on that path, with a view to ensuring overarching legislative framework is developed and implemented
- Personhood framework is much more powerful but it is more like it is based in shared strategy with Gunaikurnai, gives that opportunity to come halfway, third option is integrated with treaty
- Tend to look at the whole rather than just sections, it would be an excellent new framework to address degradation
- There is a need to be ambitious and inclusive, no time to waste – we need a new framework
- A new framework is the only policy that can be effectively communicated – new structure that people can understand that will lead to improved environmental outcomes
- The problem with the incremental is that the lakes are already undermined, with Ramsar, could ignore other parts in the lakes, so would need to address this through a new framework

Steps from here

EJA presented the following a proposal for next steps:

1. Recognise this group as the basis of a Gippsland Lakes network
2. EJA prepares law reform 'proposals' paper
3. You give feedback on the proposals
4. EJA collates and incorporates feedback into final proposal
5. EJA engages with relevant government regarding proposal
6. EJA and Gippsland Lakes network develop advocacy strategy
7. Collectively discuss ongoing advocacy strategy

Together, participants discussed the following questions:

- How do you want to take this forward?
- What more do you think EJA should do?
- Who else needs to feed into this process?

Participants discussed opportunities for collaboration, in particular with new councils, landcare networks, other environment groups, university studies and GlaWAC. There is the possibility of forming a new Gippsland Lakes and rivers waterkeeper, and a discovery centre for the Gippsland Lakes.

The workshop concluded with everyone sharing something that brings them hope/energy/joy and helps them keep up the fight for the Gippsland Lakes.

Further information

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