

## WORKING PAPER SERIES

### FEDERAL ENVIRONMENTAL LAW IN AUSTRALIA

#### I. Introduction<sup>1</sup>

Contemporary Australian environmental law is commonly viewed by the nations' leaders as representing "best practice" environmental regulation.<sup>2</sup> Many Australians consider Australia an environmental policy world leader. For instance, the Federal Minister for the Environment proclaimed at the international celebrations of World Environment Day 2000 in Adelaide that:

We have developed the world's first National Oceans Policy, provided \$50 million to support its objectives and established a National Oceans Office to implement it. The policy has become to be viewed as something of an international benchmark for the protection and management of the marine environment. The United States, for example, has lavished praise on our work in this area.

We have also become a world leader in promoting the concept of marine protected areas in international waters, legally enforced under international laws of the sea. This has been a natural progression from our Government's management of our own marine protected areas, having declared two new areas covering the Great Australian Bight and the Tasmanian seamounts. \* \* \*

We are also take a leading role in the protection of the world's endangered species through international bodies such as the Convention on the International Trade in Endangered Species and the Bonn Convention on the Conservation of Migratory Wildlife. \* \* \* Australia successfully listed 14 species of albatross for protection under the Bonn Convention. We have since developed a threat abatement plan for Australian waters and are now leading the development of a similar plan for our region. \* \* \*

Australia is a world leader in the destruction of ozone depleting gases under the Montreal Protocol. We have destroyed more tonnes of halon 1211 than any other country, established a halon bank as a national and regional centre for the collection,

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<sup>1</sup> For citations to the most widely recognized Australian environmental law and policy texts see the Select Bibliography at the conclusion of the entry for Australia.

<sup>2</sup> See eg Sen. Robert Hill, Minister for the Environment, Reform of Commonwealth Environmental Legislation: Consultation Paper (1998).

recycling and destruction of halon gases and contributed more than US\$17 million to assist developing nations in their efforts.

Australia's expertise in the sustainable management of forests is also considered to be a benchmark for world's best practice with the World Bank seeking our assistance in developing sustainable forestry practices in the developing nations of our region. Our Government has now established a series of Regional Forest Agreements across Australia, striking a sensible balance between conservation and resource security. These agreements have already seen 2 million hectares of forests added to reserve systems, an increase of almost 30 per cent.<sup>3</sup>

Others have been much less sanguine in their assessment. In a recent provocative text, for instance, two prominent academics assert that "not only is the hold of environmental considerations in Australian politics more precarious [than they have ever been], but determined attempts have been and continue to be made by elected representatives to ignore and obliterate them".<sup>4</sup> The Australian Conservation Foundation, Australia's largest environmental non-governmental organization, has also been highly critical of what it considers recent retrograde environmental law "reforms".<sup>5</sup>

The truth, as usual, probably lies between these two extremes. Australia, like a number of developed, western democracies, finds itself at an environmental cross-roads. Over the past three years the Federal Commonwealth Government has undertaken the first major revision of national environmental laws since their inception in the early 1970s. The revision is far from complete, but the central premise behind the current conservative Coalition Government (comprised of the Liberal Party and National Party) appears to be a determined move to a devolution of regulatory responsibility, with an attendant increase in of the principle of subsidiary and self-regulation. A move that reflects trends in international development of a "second generation" of environmental law and regulation.<sup>6</sup>

## II. Geographic and Environmental Background

Australia is the sixth largest country on Earth measured by land mass and is the only country to occupy and entire continent. It comprises 2,965, 368 square miles (7, 682, 300 km<sup>2</sup>), excluding external territories and is located in the Southern Hemisphere between the Indian and Pacific Oceans.<sup>7</sup>

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<sup>3</sup> Senator Robert Hill, Everyday Heros - Australians on World Environment Day (June 5, 2000).

<sup>4</sup> K. Crowley & K.J. Walker, Introduction, in Australian Environmental Policy 2: Studies in Decline and Devolution 3 (UNSW Press, 1999).

<sup>5</sup> Australian Conservation Foundation, Environment Protection and Biodiversity Conservation Act 1999: The Risks and Opportunities of New National Environment Law

<sup>6</sup> See e.g., Marian Chertow & Daniel C. Esty, eds., Thinking Ecologically: Building The Next Generation of Environmental Policy (Yale University Press, 1997).

<sup>7</sup> Special Broadcasting Service, SBS World Guide: The Complete Fact File on Every Country 38 - 48 (8<sup>th</sup> ed, 2000).

In terms of climate and geography, Australia has a tropical monsoon climate in the north, a temperate to Mediterranean climate in the south and a vast, arid interior. Important features of its climate are the highly irregular rainfall, the extreme rate of evaporation of available water, and the large temperature ranges. The continent has a generally flat land surface, with relatively low precipitation and run-off rates. Mountain ranges in the south-east are often snow-covered in winter, but Australia generally experiences mild winters and hot summers. Australia is the second driest continent, with its freshwater and ground water resources having a limited capacity. Drought is a recurring climatic feature over most of the continent.<sup>8</sup>

In terms of biological diversity, Australia is one of only 17 mega-diverse countries in the world. In the world rank of endemism (those species found nowhere else), Australia ranks first for both mammals and reptiles, second for birds, and fifth for both higher plants and amphibians.<sup>9</sup> Based on the working figure of 13.6 million species on Earth, Australia provides a home for 7.4% of life on Earth.<sup>10</sup>

Current environmental issues of importance in Australia include: (i) soil erosion from overgrazing, industrial development, urbanization, and poor farming practices; (ii) soil salinity rising due to the over use of freshwater resources, land clearing, and use of poor quality water; (iii) desertification; (iv) loss of biological diversity through native vegetation clearing for agricultural purposes and development; (v) threats to the World Heritage Great Barrier Reef off the northeast coast, the largest coral reef in the world, by increased shipping and its popularity as a tourist site; and (vi) limited natural fresh water resources. Long-term concerns include pollution, depletion of the ozone layer, climate change, conservation of biological diversity and management and conservation of coastal areas.<sup>11</sup>

### **III. Political Organization<sup>12</sup>**

Australia is an independent federal nation, but retains constitutional links with the British Monarch (currently Queen Elizabeth II). The reigning British Monarch also serves as the Sovereign of Australia and is formally considered Australia's Head of State (although real Federal political power resides with the Prime Minister). The Australian federation has a three-tier system of government - federal, state, and local. The Federal Government is a government of enumerated powers, with the power that remains unexpressed left residing with the States. Australia has no Bill of Rights as such.

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<sup>8</sup> Id.

<sup>9</sup> R. Mittermeier, et al., *Megadiversity: Earth's Biologically Wealthiest Nations* (Conservation International: Washington DC, 1997).

<sup>10</sup> D.L. Hawksworth & M.T. Kalin-Arroyo, *Magnitude and distribution of biodiversity*, 107-192, in V.H. Heywood & R.T. Watson, eds. *Global Biodiversity Assessment* (Cambridge University Press, 1995).

<sup>11</sup> See generally P. Leadbeter, N. Gunningham, & B. Boer, eds., *Environmental Outlook No 3: Law and Policy* (Federation Press, 1999).

<sup>12</sup> See generally, Richard Lucy, *The Australian Form of Government: Models in Dispute* (1993); Raymond Bennett, *Australian Society and Government* (1988).

In addition to the Australian Monarchy, there is a Governor-General and six State Governors. Under the Constitution, the Governor-General is appointed by the reigning Sovereign of Australia on the advice of the Prime Minister in Council. The Constitutional powers and duties of the Governor-General include summoning, proroguing and dissolving Parliament, assenting to draft legislation, appointing Ministers, setting up Departments of State and appointing judges. By convention, however, the Governor-General acts only on the advice of Ministers in virtually all matters and the appointee to the office is selected on the advice of the Government. The six State Governors perform similar roles in their States.

The Prime Minister and other Ministers are elected by the party or coalition of parties that control a majority in the House of Representatives. The Prime Minister decides on the division of responsibilities between Ministers and allocates ministerial portfolios or responsibility. This becomes the Prime Minister's Cabinet. The Cabinet meets in camera. Apart from announcements of decisions by the Prime Minister or other authorised Ministers, there is no public record of its proceedings.

The broad responsibilities of each Minister and his or her portfolio are set out in Administrative Arrangements Orders. Ministers are given specific powers and functions under legislation, as well as the broad power to oversee the running of government Departments and agencies. The Prime Minister's broad responsibilities extend over the full range of Government activities and involve setting strategic directions for the Government. The Prime Minister chairs the Cabinet, which is a forum for collective decision-making by senior Ministers and the key policy-making agency of the Federal Government.

Where necessary, legal effect is given to decisions of the Executive by the Executive Council, a formal body presided over by the Governor-General and usually attended by two or three Ministers of State, although all Ministers and Parliamentary Secretaries are members. The purpose of the Executive Council is essentially to receive formal advice, make appointments, accept resignations, issue proclamations and regulations, and approve the signing of formal documents. Similar procedures of Cabinet decision-making are followed by Australia's State Governments.

Under the Australian Constitution, treaty making - including multilateral and bilateral environmental treaties - is the formal responsibility of the Executive rather than the Parliament. Decisions about the negotiation of multilateral conventions, including determination of objectives, negotiating positions, the parameters within which the Australian delegation can operate, and the final decision as to whether to sign and ratify are taken at Ministerial level, and in many cases, by Cabinet. Parliament has a role in examining all proposed treaty actions (but does not have the power of advice and consent) and in passing legislation to give effect to treaties and the judiciary's oversight of the system.<sup>13</sup> Indeed, under Australia's Constitutional system, international treaty obligations only have very limited effect within Australia, which is

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<sup>13</sup> Department of Foreign Affairs and Trade, Australia and International Treaty Making Information Kit (July 2000).

not to say internationally, until the Parliament transforms those obligations into domestic law by the passage of legislation.<sup>14</sup>

The Federal Parliament is bicameral, having two chambers: the House of Representatives (Lower House) and the Senate (Upper House). The Constitution requires membership of the Australian House of Representatives to be, as nearly as practicable, twice that of the Senate. The House has 148 members (50 from New South Wales, 37 from Victoria, 26 from Queensland, 12 from South Australia, 14 from Western Australia, 5 from Tasmania, 3 from the Australian Capital Territory and 1 from the Northern Territory). Elections for the House of Representatives are held at least every three years.

A system of Cabinet or "responsible" government based on the British Westminster tradition is practised. The party or coalition of parties commanding a majority in the House of Representatives becomes the Government and provides the Ministers (including the Prime Minister) and members of Cabinet, all of whom must be members of the Parliament. The Ministry remains collectively responsible to the Parliament, and through it to eligible voters, for Government actions. If the Government ceases to command a House of Representatives majority, it is obliged to call an election or resign.

A Government need not command a majority in the Senate which has an equal number of members - 12 - from each State. The Australian Capital Territory and the Northern Territory were not represented in the Federal Parliament until 1975 when they each gained two Senators. Normally, Senators serve a six-year term with half the Senate retiring every three years. Senators elected to represent the Territories, however, serve a maximum of three years and their terms coincide with those of the members of the House of Representatives. In Senate elections, the people of each State and Territory vote as single electorates. At a double dissolution election, all Senators retire and each State must elect 12 Senators. The first six selected each serve a six year term while the remaining six serve for three years.

All State parliaments except Queensland, which abolished its Upper House in 1922, are bicameral, with two Houses of Parliament. The Lower House in New South Wales, Victoria, Queensland and Western Australia is known as the Legislative Assembly; in South Australia and Tasmania it is called the House of Assembly. Each of the five State Upper Houses is known as the Legislative Council. Under the federal Constitution, State Governments are responsible for powers not administered by the Federal Government. These include education, transport, law enforcement, health services and agriculture.

The powers of municipal government (known as local government) vary from State to State and are the responsibility of State Governments under the relevant legislation. In general they include town planning, construction and maintenance of local roads, streets and bridges, water, sewerage and drainage systems, public health and sanitary services, supervision of building, administration of slaughtering, weights and measures and other regulations, and the development and maintenance of parks, recreation grounds, swimming pools, public libraries and community centres. Some local government bodies operate public business undertakings such as transport systems or gas and electricity reticulation.

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<sup>14</sup> Donald K. Anton, *Global Environmental Protection* ( McGraw-Hill Book Co., 1996).

The powers of local government derive from legislation enacted by their State parliaments and their operations usually are subject to supervision by a department of their State Government. Finance for their undertakings is obtained through rates and from the Federal and State Governments.

#### **IV. The Governmental Division of Environmental Regulatory Power**<sup>15</sup>

The Commonwealth of Australia is a federation of six self-governing States and two self-governing mainland Territories. The Federal Government's powers and responsibilities are defined in and limited by the Australian Constitution.<sup>16</sup> Under the Australian Constitution the States have general, if not plenary, power to make laws except in relation to matters reserved exclusively to the Commonwealth. The Commonwealth has power to make laws on these exclusively Commonwealth matters, and otherwise only in relation to matters specifically listed in section 51, or elsewhere, in the Constitution.<sup>17</sup> On matters which the Commonwealth and States have concurrent power to make laws, Commonwealth law will prevail in the case of inconsistency.<sup>18</sup> State and Territory Governments also have established systems of municipal government and there are approximately 750 Local Councils operating throughout Australia.

While William McMillan and Alfred Deakin argued for a Commonwealth power over water conservation during the 1891 Constitutional Convention,<sup>19</sup> and John Clark petitioned the 1897 Convention to "draft in the Constitution, a clause protecting the Native Animals, as well as the flora and trees"<sup>20</sup>, explicit treatment of governmental power to regulate activities in furtherance of environmental protection is almost wholly absent in the Australian Constitution. The single environmental issue expressly addressed by the Constitution is the restriction on Commonwealth power to pass a law limiting "the reasonable use of waters of rivers for conservation or irrigation".<sup>21</sup>

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<sup>15</sup> Taken from a consultant's report prepared by the author for Senator Lyn Allion, Chair of the Senate Environment, Communications, Information Technology and the Arts References Committee in the Committee's Inquiry into Commonwealth Environment Powers (May 1999).

<sup>16</sup> *An Act to Constitute the Commonwealth of Australia* 1900 (63 & 64 Victoria, Chap. 12)(hereafter *Australian Constitution Act*).

<sup>17</sup> Saunders C., *Australia's Federal System and the Division of Powers*, in *Federalism and Resource Development: The Australian Case* (P Drysdale & H Shibata, eds., 1985), pp 26-27.

<sup>18</sup> *Australian Constitution Act* s 109.

<sup>19</sup> *Convention Debates*, 3 April 1891, pp. 689-91.

<sup>20</sup> See Irving H, *To Constitute a Nation: A Cultural History of Australia's Constitution* (1997), p 128.

<sup>21</sup> *Australian Constitution Act*, s 100. By implication, under section 100 the Commonwealth does have the power to limit "unreasonable use" of waters of rivers for either "conservation or irrigation"; conservation being understood at that time to mean merely storage of water for later use. See Crawford J, *The Constitution*, in Bonyhady T., ed., *Environmental Protection and Legal Change* (1992), pp 2-3.

As a consequence of the omission of an express Commonwealth environment power, coupled with the formal division of legislative powers under the Constitution,<sup>22</sup> the traditional view has been that primary power over environmental issues resided with the States and that the Commonwealth only had very limited capacity to promulgate environmental laws.<sup>23</sup> Indeed, this has been the official view of various incarnations of the current Department of the Environment and Heritage as recently as 1982.<sup>24</sup> Moreover, as a result of the traditional view most development, land use and natural resource regulation remains primarily State and Territory law, rather than federal law.

The traditional view of very limited Commonwealth powers over the environment has always been more imaginary than real;<sup>25</sup> more the result of uncertainty or a lack of political will than a real absence of power.<sup>26</sup> As early as 1970, when modern environmental awareness first blossomed in Australia, the Senate Select Committee on Water Pollution concluded, in relation to legislative regulation and control of water pollution:

"that the Commonwealth has, through a coalescence of Commonwealth power in the fields of taxation, defence, external affairs, meteorology, fisheries, quarantine, and other fields, sufficient legislative competence to lay down and enforce a national approach [to regulate water pollution] through Commonwealth legislation alone".<sup>27</sup>

As the 1970s progressed and social and political consciousness of the interconnected nature of the environment grew, the need for national<sup>28</sup> and international<sup>29</sup> approaches to major environmental problems became clear. As a consequence, the Commonwealth began to pass

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<sup>22</sup> See *Australian Constitution Act* s 107, which sets out the scheme for the division of power between State and Federal Governments.

<sup>23</sup> Crommelin M, *Resources Law and Public Policy* (1983) 15 UWALR 1, at 1; See also Sawer G., *Conservation and the Law*, in *Conservation* (Costin A.B. & Frith H.J., eds., 1971).

<sup>24</sup> See eg Department of the Environment and Conservation, *Report for Period December 1972 to June 1974*, Parliamentary Paper No 298 of 1974, p 5 ("environmental issues are the responsibility of State and local government"); Department of Home Affairs and Environment, *Annual Report 1981-82*, p 8 ("Constitutionally, the States and Territories have primary responsibility for environment protection.").

<sup>25</sup> Crawford J, *The Constitution and the Environment* (1991) 13 Sydney L.Rev. 11, 12.

<sup>26</sup> Constitutional Commission, 2 Final Report 757-67 (AGPS, 1988). Donald K. Anton, et al, *Nationalizing Environmental Protection in Australia*, 23 *Environmental Law* 763 (1993).

<sup>27</sup> Senate Select Committee on Water Pollution, Parliamentary Paper No 98 of 1970, pp 142 & 187. See also Committee of Inquiry into the National Estate, Parliamentary Paper No 195 of 1974 (recognising ample constitutional authority for the Commonwealth to establish a National Estate).

<sup>28</sup> See *Our Country, Our Future - Statement on the Environment* (1989)("Many of the environmental problems we face today do not respect State and Territory boundaries, and cannot be resolved piecemeal. Increasingly the Australian community and investors are demanding national approaches to major environmental issues), p 10.

<sup>29</sup> Stockholm Declaration of the United Nations Conference on the Human Environment, *Report of the UN Conference on the Human Environment, 5-16 June 1972*, U.N.Doc. A/CONF.48/14/Rev. 1 at 3 (1973).

significant laws for environmental purposes on a wide range of issues under various heads of Constitutional power. These early environmental laws included what has been characterised as the four "cornerstones of national environmental policy" -- the *Environment Protection (Impact of Proposals) Act* 1974, the *Australian Heritage Commission Act* 1975, the *Great Barrier Reef Marine Park Act* 1975 and the *National Parks and Wildlife Conservation Act* 1975.<sup>30</sup>

A unanimous High Court held in an early challenge to the first generation of federal environmental law, that there was no Constitutional obstacle to the Commonwealth's use of various heads of power to regulate activities in order to protect and conserve the environment, even when those heads of power did not necessarily have any apparent environmental purpose behind them.<sup>31</sup> So long as Commonwealth environmental legislation rests on some head of power -- even though not directly touching the environment -- the Commonwealth is entitled to act for environmental reasons alone.

As a result, Commonwealth environmental legislation frequently relies on various heads of power in order to make certain that the federal legislation passes Constitutional muster. Key Commonwealth powers that have been used repeatedly to support legislation for environmental purposes include: the trade and commerce power (section 51(i)), the taxation power (section 51(ii)), the quarantine power (section 51(ix)), the fisheries power (section 51(x)), the corporations power (section 51(xx)), the race power (section 51(xvi)), the external affairs power (section 51(xxix)), the incidental power (section 51(xxxix)), the power over Commonwealth instrumentalities and public service (section 52), the power over customs, excise and bounties (section 90), the financial assistance power (section 96), and the territories power (section 122).<sup>32</sup>

The Commonwealth has also relied on the implied national power, which was recognised in the *AAP* case,<sup>33</sup> in order to pass environmental legislation "appropriate" to a national government.<sup>34</sup> The Commonwealth may also make administrative decisions for environmental purposes providing they are supported by a head of power - as, for example, in

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<sup>30</sup> Report of the Senate Environment, Communications, Information Technology and the Arts Legislation Committee on the *Environment Protection and Biodiversity Conservation Bill* 1998 and the *Environmental Reform (Consequential Provisions) Bill* 1998, p 3, quoting Davis B.W., *Federalism and Environmental Politics: An Australian Overview*, p 2.

<sup>31</sup> 'It is no objection to the validity of a law otherwise within a power that it touches or affects a topic on which the Commonwealth has no power to legislate'. Mason J, *Murphyores Inc. Pty Ltd v. Commonwealth*, (1976), 136 CLR 1 at 22

<sup>32</sup> See Australian and New Zealand Environment and Conservation Council, *Guide to Environmental Legislation in Australia and New Zealand*, 5<sup>th</sup> ed, (Rept No 31, 1997), Chap. 3, Commonwealth Environmental Legislation.

<sup>33</sup> *Victoria v Commonwealth* (1975) 134 CLR 338. Crawford suggests, however, that subsequent jurisprudence indicates that this is not a secure source of substantive regulatory power over the environment. Crawford J, *The Constitution and the Environment* (1991) 13 Syd. L. Rev. 11, 27.

<sup>34</sup> See eg *National Parks and Wildlife Conservation Act* 1975 (Cth).

the Commonwealth's 1976 decision, under the *Customs Act 1901* and regulations, to refuse approval to export mineral sands from Fraser Island.<sup>35</sup>

## **V. Institutional and Structural Aspects of Environmental Policy Development and Implementation**

Responsibilities for environmental protection and sustainable development are widely accepted and incorporated working programs of key bodies of national governance, which bring together the Federal and State and Territory Governments. Since legislative power over environmental regulation is Constitutionally divided between the Federal and State and Territory Governments, a uniquely Australian brand of "cooperative federalism" has provided the foundation environmental policy development and program delivery, especially since 1992 when all levels of Australian Government signed the Intergovernmental Agreement on the Environment (IGAE).<sup>36</sup>

The IGAE sets out the respective responsibilities of the Commonwealth and States with regard to environmental matters and deals in details with: data collection, resource assessment and land use decisions, environmental impact assessment, climate change, biological diversity, national estate, world heritage, and nature conservation. It also includes details about the manner in which disputes between the State and Federal Governments to the Agreement are to be dealt with and the manner in which international agreements regarding the environment should be negotiated and entered into by Australia. Unfortunately, it is doubtful that the IGAE represents anything more than an unenforceable political agreement. The High Court of Australia has demonstrated a great reluctance to find that agreements between the Federal Government and a State create enforceable legal relations.<sup>37</sup>

Overall national environmental policy formulation and coordination takes place through the Council of Australian Governments (COAG). In 1997, the Council of Australian Governments (COAG) agreed in principle<sup>38</sup> to the Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment. Subsequently, all heads of governments signed the agreement. In the Agreement, the States and Territories and the Commonwealth agreed that reform in the following five areas was needed to develop a more effective framework for intergovernmental relations on the environment:

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<sup>35</sup> *Murphyores Inc. Pty Ltd v. Commonwealth*, (1976), 136 CLR 1.

<sup>36</sup> The IGAE is set out in the Schedule to the *National Environment Protection Council Act 1994* (Cth).

<sup>37</sup> *South Australia v. Commonwealth*, 108 C.L.R. 130 (1962). See also Office of General Counsel (Cth), Attorney-General's Department, Legal advice to the Department of Environment, Sport and Territories (17 January 1994).

<sup>38</sup> The Head of Agreement still has yet to be formally approved by all States and Territories.

- matters of national environmental significance;
- environmental assessment and approval processes;
- listing, protection and management of heritage places;
- Federal compliance with State environmental and planning legislation; and
- better delivery of national environmental programmes.

Key aspects of the Heads of Agreement have been implemented through the Federal *Environment Protection and Biodiversity Conservation Act 1999*. Other key intergovernmental bodies, known as Ministerial Councils, responsible for environmental policy and strategy development include:

- National Environment Protection Council (NEPC)
- Australian and New Zealand Environment and Conservation Council (ANZECC)
- Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ)
- Australian and New Zealand Minerals and Energy Council (AMZMEC)
- Ministerial Council on Forestry, Fisheries and Aquaculture (MCFFA)

Traditionally, cooperative arrangements between the three levels of Australian government have not had a large degree of success. One significant weakness with respect to measures taken on a cooperative basis is a trend to "lowest common denominator" arrangements or arrangements that try to be all things to all jurisdictions.<sup>39</sup> Take for instance, as a recent example, Australia's 1998 *National Greenhouse Strategy*. The Strategy has been agreed to by the Federal and State and Territory Government and sets out principles, goals, strategies, action plans and plans for monitoring and implementation. However, a truly national uniform approach could not be agreed. Thus, the Strategy contains different measures that different governments will pursue using different policy approaches. Implementation of these measures will take account of variations across Australia in environmental, social and economic conditions. Some are not relevant or applicable to all jurisdictions and these will be pursued only where appropriate.

Another, perhaps more important limitation of Australian cooperative arrangements is the general lack of legally binding obligations imposed by agreed measures.<sup>40</sup> For example, of the various Ministerial Councils mentioned above, only the National Environment Protection Council has the power to promulgate what are known as "National Environmental Protection Measures" (NEPMs).<sup>41</sup> The NEPC Act prescribes that NEPMs may relate to any one or more of

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<sup>39</sup> Donald K. Anton, et al, *Nationalizing Environmental Protection in Australia*, 23 *Environmental Law* 763 (1993).

<sup>40</sup> Environmental Law Commission of the Australian Conservation Foundation, *Submission to the Distribution of Powers Committee of the Constitutional Commission* (7 October 1986). See also ROBERT BOARDMAN, *GLOBAL REGIMES AND NATION-STATES: ENVIRONMENTAL ISSUES IN AUSTRALIAN POLITICS* (1990), pp. 22, 107-12.

<sup>41</sup> *National Environment Protection Council Act* § 14(1)(1994)(Cth). As of March 2001, there are six NEPMs in force: Ambient Air Quality (June 1998); National Environment Protection (Assessment of Site Contamination) Measure (1999); Movement of Controlled Waste Between States and Territories (June 1998); National Environment Protection (National Pollutant Inventory) Measure (as varied June 2000); Used Packaging Materials (July 1999). A seventh NEPM on Diesel Vehicle Emission is currently being negotiated.

the following: ambient air quality; ambient marine, estuarine and fresh water quality; the protection of amenity in relation to noise (but only if differences in environmental requirements relating to noise would have an adverse effect on national markets for goods and services); general guidelines for the assessment of site contamination; environmental impacts associated with hazardous wastes; and, the re-use and recycling of used materials.

NEPMs are similar to environmental protection policies. NEPMs may consist of any combination of goals, standards, protocols, and guidelines. Standards and protocols impose binding legal obligations. Goals and guidelines are just that. A NEPM will become law in each *participating jurisdiction* once it is made by the Council, unless it is disallowed by either House of the Commonwealth Parliament. A two-thirds majority is required for the Council to make a NEPM. Implementation of NEPMs is the responsibility of each participating jurisdiction.

The problem with NEPMs is that they rely on the Intergovernmental Agreement on the Environment (IGAE) for their authority.<sup>42</sup> As such, implementation of NEPMs must rely on State and Territory legislation. Yet, as the Federal Government has recognised, there is no obligation on a State to legislate provision to implement a nationally agreed NEPM.<sup>43</sup> Moreover, State and Territory legislation codifying NEPMs can be inconsistent. As such NEPMs remain a weak *ad hoc* mechanism that is unlikely to bring the necessary uniformity and certainty to national environmental protection in Australia.

## **VI. Overview of Federal Environmental Regulation<sup>44</sup>**

As noted, the Federal Government does not possess plenary power to legislate with respect to the environment. Using the broad mix of powers it does possess, the Federal (or Commonwealth) Government has passed legal regulation in the following environmental areas.

### *Development Approval and Environmental Impact Assessment*

Environmental impact assessment for certain activities is required under *the Environmental Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act). The EPBC Act commenced on 16 July 2000 and replaced the Environmental Protection (Impact of Proposals) Act 1974 (Cth), the Act which formerly set out requirements for environmental assessment in Federal law. The EPBC Act has increased the number of activities that will be subject to environmental assessment and approval by the Commonwealth government, and has

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<sup>42</sup> The scheme was originally described in Schedule 4 to the IGAE.

<sup>43</sup> Parliament of the Commonwealth of Australia, Senate, *National Environment Protection Measures (Implementation) Bill 1997, Explanatory Memorandum* (Circulated by Authority of the Minister for the Environment, Senator the Hon Robert Hill), pp. 3-4.

<sup>44</sup> See generally, David Mossop, *Commonwealth Environmental Law* (Law Book Company, 2000). See Appendix 1 for a select list of major Federal legislation relation to the environment. Due to limitations of space, it has not been possible to provide a detailed treatment of State and Territory legislation in Part I. However, because of the importance of State and Territory environmental law and policy, a special Part II devoted to its coverage will be forthcoming.

given a more important role and broader powers to the Federal Minister for the Environment (the 'Minister').

Under the EPBC Act, it is necessary to obtain an approval from the Minister to carry out a 'controlled action'. A controlled action is any action which is carried out by a Commonwealth government department or authority, or is carried out on Commonwealth land, and is likely to have a significant effect on the environment, or the action is likely to have a significant effect on a "matter of national environmental significance". The EPBC Act defines matters of national environmental significance as Ramsar wetlands, listed threatened species and communities, World Heritage properties, listed migratory species, the Commonwealth marine environment and nuclear actions (including uranium mining). The Commonwealth may add more matters to this list in future.

The first step in the environmental assessment process is for the Minister to decide whether a particular proposal is a controlled action. The public may make submissions to the government about whether the proposal should be defined as such. If the Minister decides that the proposal is a controlled action then she or he must decide which level of assessment is appropriate. The Minister may choose one of the following levels of assessment:

- an accredited process, which is a process carried out under a Commonwealth or State law that includes an assessment of environmental impacts,
- assessment on the preliminary documentation,
- a public environment report,
- an Environmental Impact Statement, or
- a public inquiry.

The Minister must make a decision about whether to grant an approval within 30 days of receiving the results of the environmental assessment.

### *Protection of Natural and Cultural Heritage*

Prior to July 2000, World Heritage issues were covered by the World Heritage Properties Conservation Act 1983. This Act was replaced by the introduction of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act). The EPBC Act contains specific sections relating to World Heritage, which continue to implement the international Convention for the Protection of the World Cultural and Natural Heritage (World Heritage Convention) in Australia.

World Heritage properties are identified by the Commonwealth Government, which proposes areas for World Heritage listing. Under the new World Heritage arrangements in the EPBC Act, declarations under the old World Heritage law remains in force. The Federal Minister for the Environment and Heritage may declare a specified property to be a declared World Heritage property if: (i) the Commonwealth submits the property to the World Heritage Committee under the World Heritage Convention, or (ii) the Minister is satisfied that the property has, or is likely to have, World Heritage values, and that some or all of the World Heritage values of the property are under threat.

A property has 'World Heritage values' only if it contains 'natural heritage' or 'cultural heritage', as defined by the World Heritage Convention. Briefly, such places must have "outstanding, universal natural or cultural heritage value" to be eligible. Before making a declaration of a World Heritage property, the State or Territory Government affected by the proposal must be informed and given a reasonable opportunity to comment on the proposal, unless the threat described in (ii) above is imminent.

World Heritage values are matters of 'national environmental significance' under the EPBC Act. This means that the Minister can control potentially destructive activities at World Heritage places, even if the property is in private or State ownership. A person must not take an action that has, will have or is likely to have a significant impact on the World Heritage values of a declared World Heritage property, without an approval under the EPBC Act, or unless certain other requirements are met.

For properties on the World Heritage List that are not entirely Commonwealth owned lands, the Commonwealth must try to prepare and implement management plans in co-operation with the relevant States and Territories. Commonwealth agencies must use all reasonable steps to perform its functions in line with these management plans and World Heritage management principles.

Thirteen properties in Australia are currently on the World Heritage list. The following areas meet all four World Heritage criteria for natural heritage:

- The Great Barrier Reef
- The Tasmanian Wilderness
- Shark Bay
- Wet Tropics of Queensland

The following are listed for both natural and cultural criteria:

- Kakadu National Park: Stage 1(1981), Stage 2 (1987), Stage 3 (1992)
- Uluru National Park: natural (1987), cultural (1994)
- Willandra Lakes Region

The others are listed for meeting at least one criterion for natural heritage:

- Central Eastern Rainforest Reserves of Australia
- Fraser Island
- Macquarie Island
- Heard and McDonald Islands
- Lord Howe Island Group
- The Australian Fossil Mammal Sites (Narcoorte/Riversleigh)

*The National Estate*

The Australian Heritage Commission Act 1975 established the Australian Heritage Commission (the 'Heritage Commission') to help promote appreciation, identification and care of the National Estate. The National Estate is a register that identifies places (including buildings) which have aesthetic, historic, scientific, or social significance or other special value for future generations as well as for the present community. The future of the Australian Heritage Commission and the National Estate lies with the further Commonwealth reforms (see below).

Presently, the main way the Commonwealth Government protects heritage is by listing heritage places on the National Estate register. As at 1 March 2001, there were 12,611 places listed in the register of the National Estate, including 9,734 historic places, 1,983 natural places and 894 Aboriginal places.

Any part of the natural or cultural environment is eligible for listing. Some of the reasons a place or building will be considered to have 'special value' include its importance to Australia's natural or cultural history, rare and endangered species that might live there, or a strong association with a particular community for social, cultural or spiritual reasons.

The Commonwealth Government is bound by National Estate listing. Ministers and Federal authorities must not take any action that adversely affects a registered National Estate place, unless the relevant minister is satisfied that no feasible and prudent alternative exists and all measures to minimise adverse effects have been taken. Some of the Heritage Commission's duties in advising the Commonwealth Government on heritage have been reduced by the introduction of the EPBC Act.

State and local governments and private owners are not legally restricted as to how they must manage or dispose of National Estate places which are not Commonwealth property. Nevertheless, State and local governments often use National Estate listing as a guide to their own heritage controls, particularly when they are deciding whether to approve proposed developments or make demolition orders (s.142, Local Government Act 1993).

Anyone can nominate a place to be registered by sending a form to the Heritage Commission. State and local governments and voluntary organisations can also make nominations. The Heritage Commission refers nominations to experts who assess the place's National Estate significance on the basis of specific criteria before making a final decision. These criteria are publicly available for inspection.

The Heritage Commission notifies landowners and the local council if it intends listing a place. The place is placed on an interim list for three months. Objections to the proposed listing can be made during this time. The Heritage Commission is mainly interested in the place or building's significance as part of the National Estate and not other factors, such as who the owner is or how listing will affect its use. If the Heritage Commission decides to register the place, it must give public notification of the listing and provide a statement of reasons if requested.

In April 1999, a Commonwealth Consultation paper was issued on a National Strategy for Australia's Heritage Places. This paper canvassed future directions for heritage protection. It also responded to concerns over duplication of Commonwealth and State protection of heritage, and proposed that an agreed set of national standards for managing heritage places be established.

At the time of writing, it is expected that Commonwealth law dealing with heritage will be introduced in 2001. Most likely, the Commonwealth will substantially reduce the size of the National Estate and refine it to include only matters of outstanding value and significance to the nation as a whole. It is not known what level of protection these places will have under the future laws. Assessing what is meant by 'outstanding significance' may be a difficult task, involving the political process, expert evidence and public participation.

The Commonwealth Consultation Paper indicated that the States will be given primary responsibility for identifying and managing State significant heritage values, and local government will manage locally significant heritage. The various heritage lists would be linked on a 'one-stop shop' inventory. It is also proposed that State governments may gain accreditation to exercise the Commonwealth's role in heritage protection.

#### *Federal Protected Areas*

The Environment Protection and Biodiversity Conservation Act 1999 ('EPBC Act') allows the Commonwealth Government to create and manage various types of protected areas, including World Heritage properties, Ramsar wetlands, Biosphere reserves and Commonwealth reserves. Due to space limitations this text focuses on Commonwealth reserves as an example of protected area regulation.

The Commonwealth can declare reserves over areas of land or sea that:

- the Commonwealth owns or leases,
- are in a Commonwealth marine area, or
- are areas outside the coastal sea where Australia has international obligations.

When a new Commonwealth reserve is created, it must be assigned to one of the following IUCN conservation categories: strict nature reserve; wilderness area; national park; natural monument; habitat/species management area; protected landscape/seascape; or managed resource protected area.

The nature of the activities that can occur in a Commonwealth reserve depend upon the type of reserve and whether a management plan is in place for the reserve. If there is no management plan in place the following statutory prohibition apply: With very limited exceptions, it is prohibited to kill, injure, or take a member of a native species, damage heritage, erect buildings or carrying out works. Mining operations must not be carried out.

The Director of National Parks must manage the reserve in accordance with both the reserve management principles that apply to the particular type of reserve, or a management plan that

was in operation for the reserve (but is no longer). General management principles and principles specific to each type of reserve are set out in schedule 8 of the Regulations. The Commonwealth government or a Commonwealth agency must not exercise its powers inconsistently with either the reserve management principles that apply to the particular type of reserve. If the reserve is classified as a wilderness area, additional restrictions apply.

If a management plan is in place, a much wider range of activities may be undertaken if provided for in the management plan, as follows: Except in relation to wilderness areas, mining can occur with the consent of the Governor General, if carried on in accordance with the management plan. The activities specified in section 354 (or in the case of wilderness areas, section 360) of the EPBC Act (such as killing, injuring or moving a member of a protected species, damaging heritage, erecting buildings or structures, or undertaking commercial activities) may be undertaken in accordance with the management plan.

It is not an offence to carry out the acts prohibited by the regulations if they are undertaken in accordance with the management plan. In addition to allowing activities to take place, a management plan can also control and guide the exercise of powers by the Director of National Parks and, where relevant, the Commonwealth government or Commonwealth agencies.

Management plans are extremely significant documents. A management plan must be developed for the reserve by either the Director of National Parks or, if there is a Board established for the reserve (as a result of the reserve being wholly or partly on Indigenous peoples land), by the Director in conjunction with the Board.

The following is a summary of the process for the development of management plans. There is opportunity for community involvement in the initial stages and when the final plan is tabled in Parliament. The Director must invite public comment on the proposal to prepare a draft of the plan. The Director and the Board (if any) for the reserve must prepare a draft of the plan, taking into account various things including any comments received in response to the invitation. The Director must invite public comment on the draft plan. The Director and the Board (if any) must consider any comments received in response to the invitation to comment on the draft and may alter the draft.

The plan is then given to the Minister for the Environment, who may approve the plan or give it back to the Director with suggestions. The Director may then amend the plan before resubmitting it to the Minister. The Minister must approve the plan with any amendments that he or she considers appropriate. The plan is then tabled in Parliament for final approval.

The final management plan must provide for the protection and conservation of the reserve and, in particular, address matters including assigning the reserve to an international conservation (IUCN) category, stating how the natural features of the reserve are to be protected, and specifying any activities (including mining) that may be carried on in the reserve. There may be different zones within the reserve and the zones can be assigned to a different IUCN category to the reserve generally. A management plan expires seven years after it takes effect.

Only an 'interested person' can take action to prevent or remedy a breach of the EPBC Act. The definition of interested person includes an organisation whose objects include the protection of the environment and which has engaged in environmental protection or conservation activities for the past 2 years or more.

### *Biological Diversity and Wildlife*

The Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) provides for the listing of some threatened species, and for the assessment of projects that may affect threatened or migratory species. The EPBC Act has six categories for listing species which are threatened nationally: 'extinct', where there is no reasonable doubt that the last member of the species has died, 'extinct in the wild', where the species is not recorded in its expected habitat, and only is known to occur in cultivation or captivity, 'critically endangered', with an extremely high risk of extinction in the wild, 'endangered', with a very high risk of extinction in the wild, 'vulnerable', with a high risk of extinction in the wild in the medium-term future, and 'conservation dependent', where the species will become vulnerable within 5 years if a current conservation plan ceases.

The EPBC Act also provides for protecting ecological communities, critical habitat, whales and dolphins; and for the listing of key threatening processes. The Minister for the Environment decides whether to list a species. Members of the public are entitled to make a nomination, and nominations are reviewed by a scientific committee which advises the Minister about whether or not the nomination should be accepted. Lists of wildlife listed under the EPBC Act are available over the Internet from Environment Australia (see below).

The EPBC Act requires an 'action' to be assessed under the Act if: (i) it is carried out on Commonwealth land, or (ii) it is carried out by a Commonwealth agency, or (iii) it is likely to affect a 'matter of national environmental significance'. An action which needs assessment is called a 'controlled action'.

There are a number of matters of national environmental significance listed under the Act, but the relevant matters here are: (i) significant impact on a listed threatened species or ecological community, or (ii) significant impact on a migratory species protected under the Japan-Australia Migratory Bird Agreement, the China-Australia Migratory Bird Agreement, or the Bonn Convention on the Conservation of Migratory Species of Wild Animals. The Minister for the Environment decides whether particular proposals are controlled actions. The Commonwealth Government has issued Administrative Guidelines which the Minister uses to determine whether an action is likely to have a significant impact.

A person carrying out an action can refer the action to the Minister to see whether it is a controlled action. Alternatively, a State authority that has responsibility for approving a proposed action can refer the action to the Minister for a determination. Members of the public

have no right to refer an action, but you can still write to the Minister asking the Minister to order the proponent to refer the action to the Minister.

If the Minister decides that an action is a controlled action and approval is needed, the Minister determines the appropriate level of assessment that the action should undergo, and after assessment decides if approval should be granted.

Applications for permits are made to the Minister, who cannot issue a permit unless satisfied that: the action will contribute significantly to the conservation of the species or community, or the impact on the species is incidental, and the taking will not adversely affect the survival or recovery of the species and is not inconsistent with any recovery plan.

It is an offence under the EPBC Act to kill, injure, take or damage listed species or ecological communities, migratory species, or listed marine species on Commonwealth land or in Commonwealth waters without a permit, ministerial approval or declaration that a permit or approval is not needed, or unless there is a recovery plan which authorises the action. It is an offence to recklessly kill or injure a member of a threatened species or community, or taking, trading keeping or moving a member of a listed species without approval - penalty up to \$110,000 and/or imprisonment for up to 2 years. It is an offence to take an action that results in the death or injury of a member of a listed species or community without a permit or other approval - penalty up to \$55,000.

### *Preventing trade in wildlife*

The Wildlife Protection (Regulation of Exports and Imports) Act 1982 (Wildlife Protection Act) is the other important Commonwealth law in this area. Administered by the Environment Australia, the Act's aim is to ensure that trade in wildlife and wildlife products is not detrimental to either a species' survival or the ecosystem it lives in, and that wild harvesting is carried out in a sustainable manner. The Wildlife Protection Act also aims to prevent the introduction of pests which could adversely affect the Australian environment. It regulates: the export of Australian native wildlife and wildlife products, the import of most live animals and plants, and the import and export of all wildlife which is internationally recognised as endangered or threatened.

The Act does this by making it an offence to import or export listed species of wildlife without a permit, and by setting up a permit system for the import and export of certain listed species. Most decisions to grant or refuse applications for permits are subject to review by the Commonwealth Administrative Appeals Tribunal.

Importantly, the Wildlife Protection Act also provides the legal base for meeting Australia's responsibilities under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES Convention). The species listed in the CITES Convention are also listed in the Schedules to the Wildlife Protection Act. It is anticipated that this Act will be incorporated into the EPBC Act in the future. At the time of publication this had not occurred.

## *Industrial Chemicals*<sup>45</sup>

The National Industrial Chemicals Notification and Assessment Scheme (NICNAS) was established under the *Industrial Chemicals (Notification and Assessment) Act 1989* (Cth), to aid in the protection of people at work, the public and the environment from the harmful effects of industrial chemicals. NICNAS is intended to complement other existing schemes for the regulation chemicals, including agricultural and veterinary chemicals.

NICNAS commenced operation on 17 July 1990. It is part of Worksafe Australia (WSA), and is the responsibility of the Minister for Industrial Relations. It is administered by the Director Chemicals Notification and Assessment, who is a statutory office holder under the Act. NICNAS originally operated on a 50% cost recovery basis and moved to 100% cost recovery in 1997-98.

Before NICNAS, industrial chemicals could be introduced into Australia without an assessment of their health and environmental effects. NICNAS seeks to ensure that new industrial chemicals entering Australia are assessed for their health and environmental effects before the chemical is used or released to the environment. NICNAS also evaluates those chemicals which have been in use for a longer time (existing chemicals) on a priority basis in response to concerns about the health and environmental effects of these chemicals. There is, however, no active health monitoring program under NICNAS. The results of NICNAS assessments are made available to those companies which introduce chemicals, people in the workplace and regulatory agencies. NICNAS reports are also publicly available.

The Act requires new industrial chemicals to be notified and assessed prior to their introduction by import or manufacture. A secondary notification system is also in place to ensure the original assessment remains valid as new information becomes available, or new uses or methods of production are identified. Selected chemicals in use prior to the commencement of NICNAS or otherwise not required to be notified, may be declared priority existing chemicals (PEC) by the Minister for Industrial Relations and assessed under the PEC program.

The legal device which distinguishes new from existing chemicals is known as the Australian Inventory of Chemical Substances (AICS). The AICS is a listing of all industrial chemicals in use in Australia between 1 January 1977 and 28 February 1990, and consists of a public and a confidential section. Any chemical not included in the AICS is regarded as a new chemical unless it is outside the scope of the Act or otherwise exempt from notification. New chemicals must be notified and assessed before being manufactured or imported into Australia. The AICS is primarily a list of chemical identity data. It does not contain toxicity data, information on the chemical's use or a list of manufacturers.

Persons intending to introduce a new industrial chemical into Australia by way of manufacture or import are ordinarily required to notify this intention to the Director and apply for an assessment certificate. An application for an assessment certificate must be accompanied by a dossier of prescribed information to enable an assessment of the potential health and environmental effects of that chemical.

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<sup>45</sup> See Donald K. Anton, *Health Monitoring Program for Agricultural and Veterinary Chemicals* (Environmental Defender's Office, Ltd., 1998).

WSA undertakes the primary toxicological evaluation and occupational health and safety assessment. The Department of Health and Aged Care (DHFS) assesses the potential public health effects and the Environmental Protection Agency (EPA) assesses the potential environmental hazard. WSA prepares a consolidated assessment report, combining its assessment with those of the DHFS and EPA. Assessments must be completed within 90 days of receipt of a satisfactory notification dossier.

The priority existing chemical (PEC) provisions were introduced because there are over 38000 existing industrial chemicals in use, most of which have not been tested. Chemicals which do not have to be notified as new chemicals, either because they are listed on the AICS or because they are exempt from notification, may be selected as priority existing chemicals (PEC) and assessed under the PEC program. The public may nominate chemicals to be included in the selection process. Nominated chemicals are then screened and ranked against predetermined selection criteria.

The Director can request manufacturers and importers of existing chemicals to supply relevant information within defined periods. This enables a decision to be taken on whether they should be declared PEC's. After a chemical is declared a PEC, the manufacturers and/or importers must supply specified information which is used to perform an assessment of the potential hazards. The information to be provided varies and is determined on a case-by-case-basis. Notice of these requirements is published in the Chemical Gazette.

An assessment report is prepared for each new and existing chemical assessed by NICNAS. The assessment report comprises a technical assessment of the potential hazard, taking into account both human and environmental exposure to the chemical, and the chemical's toxicity. On the basis of the assessment, recommendations are made on controls and precautions that need to be taken when manufacturing, using, storing and disposing of the chemical. A full public report is also produced.

At the request of the notifier, and having regard to the public interest, the Director may determine that certain items of information should be exempt from publication in the full public report. A defined set of basic information, including prescribed data relating to the health effects and environmental effects, cannot be exempt. A summary of the full public report is published in the Chemical Gazette.

The Chemical Gazette is a monthly publication issued on the first Tuesday of every month. Summary assessment reports are published in the Chemical Gazette on all chemicals assessed by NICNAS. Information published in the summary reports include: (i) physical and chemical data about the chemical; (ii) health and environmental effects of the chemical; (iii) the precautions and restrictions to be observed in the manufacture, handling, (iv) storage, use and disposal of the chemical; and (v) recommendations arising from the assessment of the chemical by NICNAS. The Chemical Gazette also includes other information about NICNAS such as notices and declarations which must be made under the Act, including: (i) listings of new additions to the AICS; (ii) approvals of foreign schemes; (iii) PEC declarations; (iv) amendments to the Schedule which specifies the data that are required to be submitted by the notifier in the notification statement; and (v) notices requiring persons exporting a chemical to give information about movements out of Australia.

## *Agricultural and Veterinary (AgVet) Chemicals*<sup>46</sup>

The responsibility for the regulation and management of AgVet chemicals in Australia is spread across a number of different government bodies at the Commonwealth, State and Territory levels. The responsibility for the regulation of AgVet chemicals in Australia is also subject to a number of different laws and regulations within each jurisdiction. The division in responsibility between Commonwealth and State jurisdiction is largely due to the Australian Constitution and historical development of Constitutional law doctrine.

Because responsibility for managing AgVet chemicals is split between the Commonwealth and the States, ARMCANZ has been established as the main political vehicle for coordinating those responsibilities. ARMCANZ is essentially an annual meeting of Ministers. It does, however, have an active subcommittee structure under the Standing Committee on Agriculture and Resource Management (SCARM), which is made up of head of government departments. Primary duties relating to AgVet chemical issues rests with the Agricultural and Veterinary Chemicals Policy Committee (AVCPC).

At the federal level, AgVet laws and regulations can be broken down into six principal program areas. These include:

- The National Registration Scheme established under the *Agricultural and Veterinary Chemicals Act 1994 (Cth)*; the *Agricultural and Veterinary Chemicals Code Act 1994 (Cth)*; the *Agricultural and Veterinary Chemicals (Administration) Act 1992 (Cth)*; together with the complimentary AgVet laws of each of the States and Territories. A nascent program for monitoring veterinary chemicals has been established under these laws.
- An AgVet chemical residue program that includes a Residue Monitoring Survey established under the *National Residue Survey Administration Act 1992 (Cth)* and the *National Residue Survey Levy Regulations (Cth)*; as well as the establishment of maximum residue limits set by the Australia New Zealand Food Standards Council (a council of Health Ministers) under the *National Food Authority Act 1991 (Cth)* and the *Food Standards Code (Cth)*.
- A regulatory and research program covering workplace hazardous substances established under the *National Occupational Health and Safety Commission Act 1985 (Cth)*; *Industrial Chemicals (Notification and Assessment) Act 1989 (Cth)*; the *National Health Regulations (Cth)*; and Guidelines for Health Surveillance for organophosphate pesticides.
- A research and development program carried out by the Environment Australia, the Commonwealth Scientific and Industrial Research Organisation (CSIRO) and the Bureau of Resource Sciences (BRS), as well as joint government/industry and academic bodies.
- A related and growing regime of National Strategies is in the process of development which addresses, among other things, the issues surrounding sound management of AgVet chemicals.

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<sup>46</sup> See Donald K. Anton, Health Monitoring Program for Agricultural and Veterinary Chemicals (Environmental Defender's Office, Ltd., 1998).

- A program focussed on participation in international efforts and activities designed to address the regulation and management of AgVet chemicals.

The national registration scheme for AgVet chemicals became operational in 1995 and is designed as a single assessment and regulation system. Its primary function is to assess and evaluate the suitability the use of *active constituents* of AgVet chemicals and to regulate the manufacture and supply of these chemicals. The scheme is administered by the NRA. The NRA is responsible for the regulation of the manufacture, distribution and supply of AgVet chemicals *up to the point of retail sale*. After that point, the control-of-use becomes the responsibility of the States and Territories.

The *Agricultural and Veterinary Chemicals Code Act 1994 (Cth)*(the *Code Act*) contains the detailed operational provisions for registering chemical products and provides the NRA with its powers. The Code is a schedule to the *Code Act* and applies only in the Australian Capital Territory. The Code obtains its legal force in the States and the Northern Territory by complimentary legislation passed in each of those jurisdictions. This legal structure is largely necessitated by the Australian Constitution and gives the Code national coverage.

The National Registration Scheme applies to agricultural and veterinary chemical products, both of which are precisely defined in the *Code Act*. It is an offence to sell an agricultural or veterinary chemical product in Australia unless it has been assessed and registered by the NRA. It is also an offence under the *Agricultural and Veterinary Chemicals (Administration) Act 1992 (Cth)* to import an unregistered chemical product into Australia. The NRA may grant approvals and registrations subject to conditions. Failure to comply with the NRA's conditions is an offence and the NRA may suspend or cancel the registration or approval.

The NRA must keep a Record of approved active constituents and a Register of agricultural and veterinary chemical products available to be inspected by the public. Both the Record and Register are to contain a part for confidential commercial information that is not generally available for public inspection. The NRA may issue recall notices for chemical products in appropriate circumstances. Recall notices require people who have, or have had, stocks of chemical products in their possession to stop supplying the products and to take action as directed by the NRA.

Under the *AgVet Chemicals (Administration) Act 1992*, the NRA must publish each year approved standards for residues of chemical products in "protected commodities". A protected commodity is any substance or thing used or capable of being used as food or drink (or as an ingredient in food or drink) by humans, any agricultural commodity, animal feed, or other prescribed substance or thing.

The NRA recommends MRLs to the Australia New Zealand Food Authority (ANZFA), which has the responsibility for assessing the dietary exposure resulting from the use of AgVet chemicals. If it is determined that the use of a particular chemical is acceptable in terms of risk to public health, ANZFA makes recommendations to the Australia New Zealand Food Standards Council (ANZFSC) (a council of Health Ministers) for the establishment of a new MRL. If approved by ANZFSC, the MRL is incorporated into the national *Food Standards Code*, which in turn, is incorporated into State and Territory food legislation.

### *Pollution and Waste*

Power to regulate pollution has been traditionally viewed as a State and Territory matter. For the most part, laws regulating air, water, land and noise pollution are not part of the corpus of Federal environmental law. However, through the National Environmental Protection Council (NEPC), a number of National Environmental Protection Measures (NEPMs) have been developed that pertain to pollution and waste. These include NEPMs on: (i) the *National Pollutant Inventory*, (ii) *Ambient Air Quality*, (iii) *Movement of Controlled Waste between States and Territories*, (iv) *Used Packaging Materials*, and (v) *Assessment of Site Contamination*. Each of these is discussed in turn below.<sup>47</sup>

### The NPI

In Australia, as elsewhere there has been increasing acceptance of the public's right to know about pollution and pollution activities taking place in the community. In Australia, the principle community right to know law is part of the National Pollutant Inventory (NPI). The NPI was developed as a National Environment Protection Measure (NEPM) through the National Environment Protection Council (NEPC). The NPI was the first NEPM made by the NEPC. The National Pollutant Inventory (NPI) is an internet database designed to provide the community, industry and government with information on the types and amounts of certain chemicals being emitted to the environment. The database will be also available in summary printed form and in CD-ROM.

Australian industrial facilities using more than a specified amount of the chemicals listed on the NPI reporting list are required to estimate and report emissions of these substances annually. Emissions from facilities using less than the specified amount of the chemicals listed on the NPI will be estimated by government. Government will also estimate emissions arising from everyday household activities, such as driving to work and mowing the lawn. Both of these types of emissions will be included on the database. Unfortunately, the NPI does not require reporting on pollution that leave a facility in the form of a transfer.

Currently industry is required to report their emissions to air, land and water of 36 of the 90 chemicals listed on the NPI. Reporting on emissions of the longer list of 90 substances will commence when industry reports on 2001/02 emissions. The first NPI data was published in January 2000. Australian industrial facilities were required to begin estimating emissions of these substances from 1 July 1998. Industry reporting handbooks have been developed to provide guidance to industry on how to estimate their emissions. Facilities are not be required to report their emissions for the NPI until a handbook has been prepared which relates to the sector in which they work.

### Ambient Air Quality

The National Environment Protection Council (NEPC) of Environment Ministers meeting in Adelaide on 26th June 1998, set uniform standards for ambient air quality standards

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<sup>47</sup> For texts of the NEPMs see: < [www.nepc.gov.au/nepms\\_frame.html](http://www.nepc.gov.au/nepms_frame.html) >.

across Australia for the first time. These standards are contained in the National Environment Protection Measure (NEPM) for ambient air quality. Unfortunately, measurements of "ambient air" will not take place near major sources of air pollution. This has been deemed additionally polluted air falling without the definition of ambient air quality. Additionally, regional differences in air quality also permitted to be taken into account in determining the level of ambient air quality.

Programs to improve and protect air quality remain the responsibility of each individual State and Territory and the Commonwealth. A number of programs, such as new motor vehicle emission standards, will continue to be conducted at the national level. Performance in relation to the standards will be assessed by measurements made at specified monitoring stations or by equivalent methods approved by NEPC. Governments will be required to provide an annual progress report that will be publicly available. Annual monitoring reports will also be publicly available.

### Movement of Controlled Waste Between States and Territories

The National Environment Protection Measure on the Movement of Controlled Waste ensures that wastes that are to be moved between States and Territories are properly identified, transported, and handled in ways that are consistent with environmentally sound practices. In part, the NEPM replaces the National Waste Manifest and Classification System guidelines developed by ANZECC. The ANZECC guidelines have no legislated authority, and were not universally adopted within Australia.

The NEPM provides a national framework for developing and integrating State and Territory systems for the management of the movement of controlled wastes between States and Territories. These management systems include:

- tracking systems which provide information to assist agencies and emergency services, and ensure that controlled wastes are directed to and reach appropriate facilities;
- prior notification systems which provide participating States and Territories with access to information, to assess the appropriateness of proposed movements of controlled wastes in terms of transportation and a facility selection process; and
- the licensing and regulation of generators, transporters and facilities so that tracking and notification functions are compatible with participating State and Territory requirements.

The NEPM includes a list of Controlled Wastes that are subject to procedures for information collection and sharing between jurisdictions.

### Assessment of Site Contamination

The purpose of this NEPM is to establish a nationally consistent approach to the assessment of site contamination to ensure sound environmental management practices by regulators, community, assessors, contaminated land auditors, land owners, developers and

industry. The Measure has ten guidelines and details the assessment process. If the assessment finds the site is contaminated, a clean up or management strategy is developed.

### Used Consumer Packaging Materials

At a special joint meeting on 2 July 1999, the NEPC and the Australian and New Zealand Environment and Conservation Council (ANZECC) gave the approved the National Packaging Covenant and the National Environment Protection Measure for Used Packaging Materials. The Covenant, participation in which is voluntary, attempts to ensure that all industry players in the packaging chain play their part in reducing packaging waste. It is based on the principles of product stewardship applying throughout the packaging chain, from raw material suppliers to retailers and the ultimate disposal of used packaging materials. The NEPM encourages Covenant membership and protects Covenant signatories from competitive disadvantage by setting out a regulatory scheme for industry players who choose not to sign.

All Covenant signatories will develop Action Plans to show how they will tackle waste from their own perspective. As a back up to industry self-regulation, the NEPM shows that governments are prepared to support an industry that wants to develop sustainable solutions to waste issues. A Covenant Council with members drawn from ANZECC agencies and industry has been set up to act as custodian of the Covenant and oversee its implementation and management. A Kerbside Recycling Group with similar membership will focus on kerbside issues and coordinate the funding and programs to support the Covenant.

### *Climate Change*

The Australian Greenhouse Office (AGO) was established as a separate agency within the environment portfolio to provide a whole of government approach to greenhouse matters, and to deliver the Commonwealth Government's \$180 million climate change package, *Safeguarding the Future: Australia's Response to Climate Change*. The AGO is responsible for the coordination of domestic climate change policy and the delivery of Commonwealth programs and provides a central point of contact for stakeholder groups.

The National Greenhouse Strategy (NGS) provides the framework for advancing Australia's domestic greenhouse response into the next decade. The Strategy is a product of agreement between Commonwealth, State and Territory Governments. It also benefits from the input of industry, non-government organisations and local government. The NGS focuses action on three fronts, which are the goals of the Strategy: (i) to limit net greenhouse gas emissions, in particular to meet our international commitments; (ii) to foster knowledge and understanding of greenhouse issues; and, (iii) to lay the foundations for adaptation to climate change. Reducing emissions of greenhouse gases, consistent with the Kyoto Protocol, has been identified by governments as the most important area for action.

The Strategy attempts to address greenhouse issues in a comprehensive way. The range of actions it encompasses, reflects the wide-ranging causes of the enhanced greenhouse effect and the pervasive nature of its potential impacts on all aspects of Australian life and the economy. Key sectors covered by the NGS include energy, transport, industry, waste,

agriculture and vegetation, and households. The Strategy details both existing actions and additional measures, and includes the \$180m package of measures announced by the Prime Minister in November 1997 in his statement Safeguarding the future: Australia's response to climate change.

Implementation of the Strategy will forge major reductions in Australia's projected emissions growth, consistent with meeting our international commitments. It will require a concerted collective effort over the next decade and beyond, from all sections of the Australian community - residential, commercial, industrial, agricultural, government operations, transport and energy. The Strategy also recognises and builds on the emissions reduction achievements that have already been made across a range of sectors. The Strategy demonstrates the commitment of Governments to ensure that Australia carries its fair share of the world-wide effort to combat global climate change, while recognising the importance of protecting jobs and the competitiveness of Australian industry.

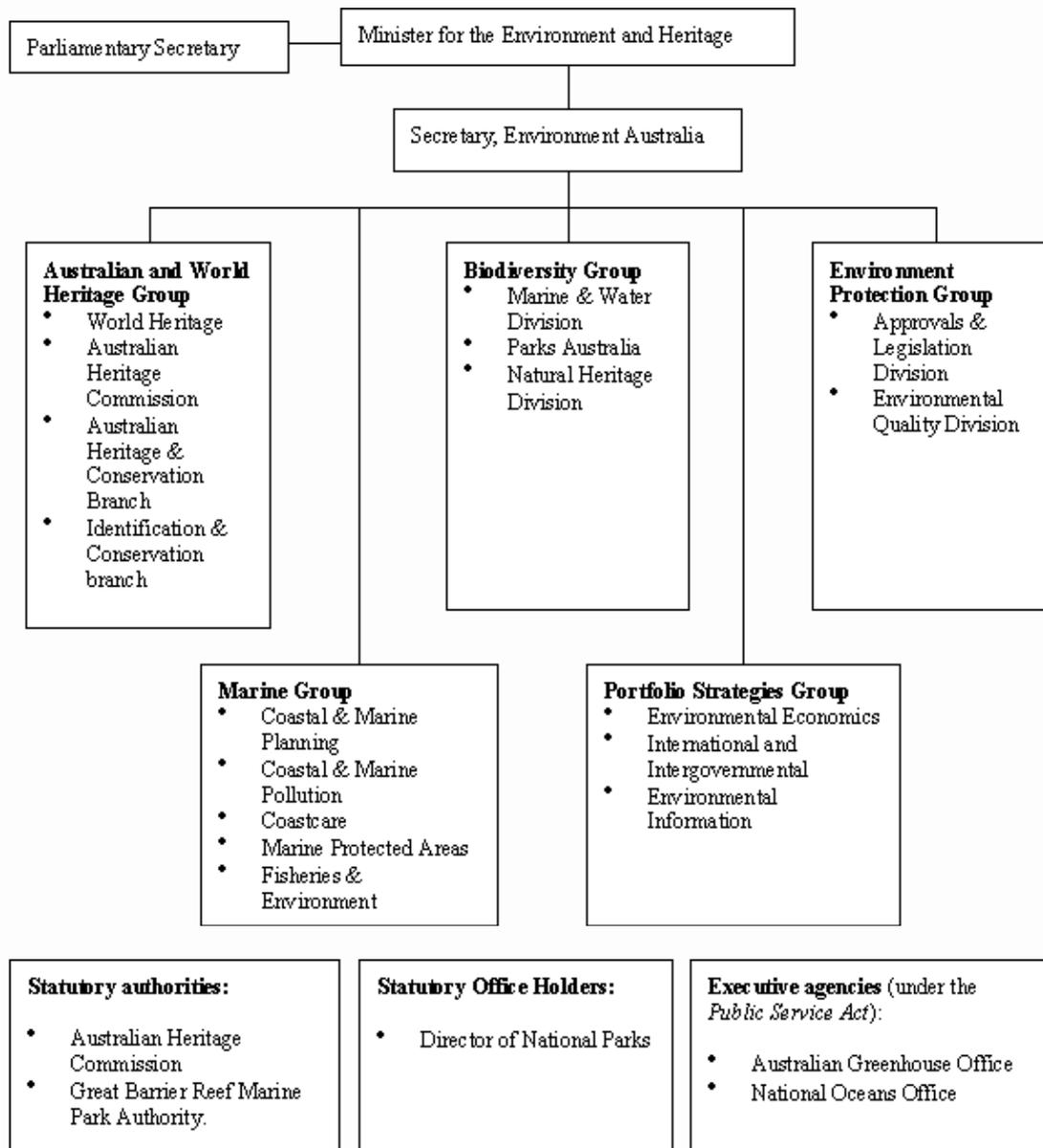
Detailed implementation plans to implement the greenhouse actions set out in the Strategy are to be developed. These will take the form of State or Territory greenhouse strategies or nationally coordinated measure-specific plans. Stakeholders will be involved in the development and implementation of these plans. The Strategy provides for monitoring of progress, especially in relation to the Kyoto emission target, and for review in the light of that monitoring and other changes in circumstances.

#### *Federal Administration of Environmental Law*

Federal environmental laws are administered by a number of regulatory authorities, including the Australian Heritage Commission, the Great Barrier Reef Marine Park Authority, the Australian Antarctic Division, the Australian Greenhouse Office, the Department of Agriculture, Fisheries and Forestry. By far, however, the most prominent Federal environmental regulator is known as "Environment Australia (EA)" (the Federal Department of the Environment) is the relevant authority (see box below). Over the past six year the responsibilities of EA have subsumed those of the Federal Environment Protection Authority and the National Parks and Wildlife Service, both of which were disbanded as independent statutory authorities.

## Commonwealth administrative structure for environmental matters

(Environment Australia Web-site, August 2000)



Environment Australia is comprised of five different groups. The *Environment Protection Group* has a range of responsibilities. It is the body that is responsible for assessing and granting approvals under the EPBC Act and enforcing this Act. It is also responsible for programs such as the national environment protection measures, the national pollutant inventory, sustainable industries, air quality and chemicals in the environment.

The *Marine Group* advises on marine issues, including coastal and marine pollution, coastal and marine planning, international issues, marine protected areas, marine species conservation, Coastcare and fisheries.

The *Australian and World Heritage Group* advises on national and World Heritage issues, including the nomination and management of World Heritage areas. The Australian Heritage Commission, which is responsible for the Register of the National Estate, is part of this group.

The *Biodiversity Group* is responsible for administering the Natural Heritage Trust and the Bushcare programs. It is also responsible for national parks, biodiversity protection and wildlife trade.

The *Portfolio Strategies Group* focuses on international, inter-governmental and major cross-portfolio activities such as the National Strategy for Ecological Sustainable Development, the Intergovernmental Agreement on the Environment and the Australian and New Zealand Environment and Conservation Council (ANZECC). It is also responsible for programs such as the Environmental Information Resources Network (ERIN), State of the Environment Reporting, the Australian Environmental Education Network, and liaising with non-government organisations.

# APPENDIX 1

## Select Federal Laws and Regulations

At present the Federal Minister for Environment and Heritage administers over 35 Commonwealth Acts, viz:<sup>48</sup>

*Aboriginal and Torres Strait Islander Heritage Protection Act 1984*  
*Antarctic Marine Living Resources Conservation Act 1981*  
*Antarctic Treaty Act 1960*  
*Antarctic Treaty (Environment Protection) Act 1980*  
*Australian Antarctic Territory Act 1954*  
*Australian Heritage Commission Act 1975*  
*Captains Flat (Abatement of Pollution) Agreement Act 1975*  
*Endangered Species Protection Act 1992*  
*Environment (Financial Assistance) Act 1977*  
*Environment Protection (Alligator Rivers Region) Act 1978*  
*Environment Protection and Biodiversity Conservation Act 1999*  
*Environment Protection (Impact of Proposals) Act 1974*  
*Environment Protection (Nuclear Codes) Act 1978*  
*Environment Protection (Sea Dumping) Act 1981*  
*Fisheries Act 1991*  
*Gene Technology Act 2000*  
*Great Barrier Reef Marine Park Act 1975*  
*Great Barrier Reef Marine Park (Environmental Management Charge - Excise) Act 1993*  
*Great Barrier Reef Marine Park (Environmental Management Charge - General) Act 1993*  
*Hazardous Waste (Regulation of Exports and Imports) Act 1989*  
*Heard Island and McDonald Islands Act 1953*  
*Historic Shipwrecks Act 1976*  
*Koongarra Project Area Act 1981*  
*Meteorology Act 1955*  
*Murray Darling Basin Act 1983*  
*National Environment Protection Council Act 1994*  
*National Parks and Wildlife Conservation Act 1975*  
*Natural Heritage Trust of Australia Act 1997*  
*Offshore Minerals Act 1994*  
*Ozone Protection Act 1989*  
*Ozone Protection (Licence Fees - Imports) Act 1995*  
*Ozone Protection (Licence Fees - Manufacture) Act 1995*  
*Protection of the Sea (Discharge of Oil from Ships) Act 1982*  
*Protection of the Sea (Prevention of Pollution for Ships) Act 1983*  
*Protection of the Sea (Civil Liability) Act 1981*

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<sup>48</sup> Administrative Arrangements Order, 21 October 1998 as amended 17 December 1998. For a more complete list of Commonwealth environmental legislation now in force, see Australian and New Zealand Environment and Conservation Council, Guide to Environmental Legislation in Australia and New Zealand, 5<sup>th</sup> ed (Report No 31, 1999), pp163 -76.

*Removal of Prisoners (Territories) Act 1923*  
*Sea Installations Act 1987*  
*Sea Installations Levy Act 1987*  
*State Grants (Nature Conservation) Act 1974*  
*Wet Tropics of Queensland World Heritage Area Conservation Act 1994*  
*Whale Protection Act 1980*  
*Wildlife Protection (Regulation of Exports and Imports) Act 1982*  
*World Heritage Properties Conservation Act 1983*

## APPENDIX 2

### Directory of Principle Federal Government Ministerial Councils and Environment Agencies and Departments<sup>49</sup>

#### *Joint Federal and State Ministerial Councils*

Australian and New Zealand Environment Conservation Council (ANZECC)  
ANZECC Secretariat  
Environment Australia  
GPO Box 787  
CANBERRA ACT 2601  
Phone: +61 2 6274 1428  
Fax: +61 2 6274 1858  
Email: [anzecc@ea.gov.au](mailto:anzecc@ea.gov.au)  
Internet: [www.environment.gov.au/anzecc](http://www.environment.gov.au/anzecc)

National Environment Protection Council Service Corporation (NEPC)  
Level 5, 81 Flinders Street, Adelaide, South Australia 5000  
Phone: +61 8 8419 1200  
Fax: +61 8 8224 0912  
Email: [exec@nepc.gov.au](mailto:exec@nepc.gov.au)  
Internet: [www.nepc.gov.au](http://www.nepc.gov.au)

Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ)  
ARMCANZ Secretariat  
Department of Agriculture, Fisheries and Forestry  
GPO Box 858  
CANBERRA ACT 2601 AUSTRALIA  
Phone: +61 2 6272 5216  
Fax: +61 2 6272 4772  
E-mail: [armcanz.contact@affa.gov.au](mailto:armcanz.contact@affa.gov.au)  
Internet: [www.affa.gov.au/docs/operating\\_environment/armcanz/](http://www.affa.gov.au/docs/operating_environment/armcanz/)

Australian and New Zealand Minerals and Energy Council (ANZMEC)  
ANZMEC Secretariat  
Department of Industry and Science Resources  
GPO Box 9839  
Canberra, ACT 2601  
Tel: +61 2 6213 7159  
Fax: +61 2 6213 7817  
Email: [sec.anzmec@isr.gov.au](mailto:sec.anzmec@isr.gov.au)

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<sup>49</sup> See the current National Guide to Government for comprehensive Federal, State and Territory Government Listings (published by Information Australia, Fax: +61 3 9639 1548). See also The Green Guide containing a comprehensive list of Australian environmental and conservation contacts in government, media and associations (published by Hallmark Editions, Fax: +61 3 9555 7377; email: [hallmark@halledit.com.au](mailto:hallmark@halledit.com.au)).

Internet: [www.isr.gov.au/resources/anzmec/](http://www.isr.gov.au/resources/anzmec/)  
Ministerial Council on Forestry, Fisheries and Aquaculture (MCFFA)  
MCFFA Secretariat  
GPO Box 858  
Canberra ACT 2601  
Tel: +61 2 6272 4441  
Fax: +61 2 6272 4875  
E-mail: [scf@affa.gov.au](mailto:scf@affa.gov.au)  
Internet: [www.affa.gov.au/docs/forestry/mcffa/](http://www.affa.gov.au/docs/forestry/mcffa/)

### **Federal Departments and Agencies**

Environment Australia  
John Gorton Building  
King Edward Terrace  
Parkes ACT 2600  
GPO Box 787  
Canberra ACT 2601  
Phone: +61 2 62741111  
Fax: +61 2 62741123  
Internet E-mail: [www.ea.gov.au/search/feedback\\_query.html](http://www.ea.gov.au/search/feedback_query.html)  
Internet: [www.environment.gov.au](http://www.environment.gov.au)

Department of Agriculture, Fisheries and Forestry  
Edmund Barton Building  
Broughton Street, Barton  
GPO Box 858  
Canberra ACT 2601 Australia  
Phone: +61 2 6272 3933  
Fax:  
Email:  
Internet: [www.daff.gov.au](http://www.daff.gov.au)

Australia and New Zealand Food Authority  
Boeing House  
55 Blackall Street  
BARTON ACT 2600  
Phone: +61 2 6271 2222  
Fax: +61 2 6271 2278  
PO Box 7186  
Canberra Mail Centre ACT 2610 Australia  
email: [info@anzfa.gov.au](mailto:info@anzfa.gov.au)  
Internet: [www.anzfa.gov.au](http://www.anzfa.gov.au)

Australian Agency for International Development  
62 Northbourne Avenue

Canberra ACT 2601 Australia

Telephone +61 2 6206 4000  
Fax +61 2 6206 4880  
Email: [infoausaid@ausaid.gov.au](mailto:infoausaid@ausaid.gov.au)  
Internet: [www.ausaid.gov.au](http://www.ausaid.gov.au)

Australian Antarctic Division  
Channel Highway  
Kingston Tas 7050  
Phone: +61 3 62323209  
Fax: +61 3 62323288  
Email: [ems@aad.gov.au](mailto:ems@aad.gov.au)  
Internet: [www.antdiv.gov.au](http://www.antdiv.gov.au)

Australian Fisheries Management Authority  
Third Floor, John Curtin House  
22 Brisbane Avenue  
BARTON ACT 2610 Australia  
Phone: +61 2 6272 5029  
Fax: +61 2 6272 5175  
Email: [www.afma.gov.au/contacts.htm](http://www.afma.gov.au/contacts.htm)  
Internet: [www.afma.gov.au](http://www.afma.gov.au)

Australian Greenhouse Office  
John Gorton Building  
King Edward Terrace  
Parkes ACT 2600  
GPO Box 621  
Canberra ACT 2601  
Phone: +61 2 62741888  
Fax: +61 2 62741390  
Email: [communications@greenhouse.gov.au](mailto:communications@greenhouse.gov.au)  
Internet: [www.greenhouse.gov.au](http://www.greenhouse.gov.au)

Australian Heritage Commission  
John Gorton Building  
King Edward Terrace  
Parkes ACT 2600  
GPO Box 1567  
Canberra ACT 2601  
Phone: +61 2 62172111  
Fax: +61 2 62172095  
Email: None provided  
Internet: [www.environment.gov.au/heritage/](http://www.environment.gov.au/heritage/)

Biotechnology Australia  
GPO Box 9839  
Canberra ACT 2601 Australia  
Phone: +61 2 6213 6000  
Fax: +61 2 6213 6952  
Email: ba@isr.gov.au  
Internet: www.biotechnology.gov.au

Great Barrier Reef Marine Park Authority  
Flinders Street East  
Townsville Qld 4810  
PO Box 1379  
Townsville Qld 4810  
Phone: +61 7 47500700  
Fax: +61 7 47726093  
Email: registry@gbrmpa.gov.au  
Internet: http://www.gbrmpa.gov.au

Intrim Office of the Gene Technology Regulator  
Therapeutic Goods Administration  
PO Box 100  
Woden ACT 2606 Australia  
Phone: +61 2 6232 8644  
Fax: +61 2  
Email: tga-information-officer@health.gov.au  
Internet: [www.health.gov.au/tga/genetech.htm](http://www.health.gov.au/tga/genetech.htm)

National Registration Authority for Agricultural and Veterinary Chemicals  
John Curtin House  
22 Brisbane Ave  
Barton, ACT 2600 Australia  
Phone: +61 2 6272 5158  
Fax: +61 2 6272 4753  
Email: nra.contact@nra.gov.au  
Internet: www.affa.gov.au/nra/

National Industrial Chemicals Notification and Assessment Scheme

## APPENDIX 3

### Select Australian Environmental Law Bibliography

#### *General Legal Reference*

*Environmental Planning and Law Journal*, Gerry Bates, ed. (The Law Book Company, Ltd.)

GERRY BATES, ENVIRONMENTAL LAW IN AUSTRALIA (Butterworths, 5<sup>th</sup> ed. forthcoming 2001)

DAVID MOSSOP, COMMONWEALTH ENVIRONMENTAL LAW (The Law Book Company, Ltd., 2000)

ROSS RAMSEY & GERARD C. ROWE, ENVIRONMENTAL LAW AND POLICY IN AUSTRALIA (Butterworths, 1995)

D.E. FISHER, ENVIRONMENTAL LAW (The Law Book Company, Ltd., 1993)

PHILLIP TOYNE, THE RELUCTANT NATION: ENVIRONMENT, LAW AND POLITICS IN AUSTRALIA (Australian Broadcasting Corporation Books, 1994)

TIM BONYHADY, ED., ENVIRONMENTAL PROTECTION AND LEGAL CHANGE (The Federation Press, 1992)

BEN BOER, ROBERT FOWLER & NEIL GUNNINGHAM, ENVIRONMENTAL OUTLOOK: LAW AND POLICY (Nos. 1 -3)(Federation Press, 1994, 1996, 1999)

NICOLE ROGERS, ED., GREEN PARADIGMS AND THE LAW (Southern Cross University Press, 1998)

TIM BONYHADY, PLACE WORTH KEEPING: CONSERVATIONISTS, POLITICS AND LAW (Allen & Unwin, 1993)

#### *Environmental Impact Assessment*

IAN THOMAS, ENVIRONMENTAL IMPACT ASSESSMENT IN AUSTRALIA: THEORY AND PRACTICE (The Federation Press, 1996)

NICK HARVEY, ENVIRONMENTAL IMPACT ASSESSMENT: PROCEDURES, PRACTICE AND PROSPECTS IN AUSTRALIA (Oxford University Press, 1998)

#### *Liability and Litigation*

BRIAN J. PRESTON, ENVIRONMENTAL LITIGATION (The Law Book Company, Ltd., 1989)

GERRY BATES & ZADA LIPMAN, CORPORATE LIABILITY FOR POLLUTION (The Law Book Company, Ltd., 1998)

#### *Municipal Government and Environmental Law*

ZADA LIPMAN, ENVIRONMENTAL LAW AND LOCAL GOVERNMENT IN NEW SOUTH WALES (Federation Press, 1991)

### ***Natural Resources & Biological Diversity***

MICHAEL HUNT, MINERALS AND PETROLEUM LAW (Butterworths, 1997)

DAVID MERCER, A QUESTION OF BALANCE: NATURAL RESOURCES CONFLICT ISSUES IN AUSTRALIA (Federation Press, 3<sup>rd</sup>, ed., 2000)

D.E. FISHER, NATURAL RESOURCES LAW IN AUSTRALIA (The Law Book Company, Ltd., 1987)

ARTHUR CONACHER & JEANETTE CONACHER, ENVIRONMENTAL PLANNING AND MANAGEMENT IN AUSTRALIA (Oxford University Press, 2000)

DON MCDOWELL, WILDLIFE CRIME POLICY AND THE LAW: AN AUSTRALIAN STUDY (Australian Government Publishing Service, 1997)

### ***State Environmental Law***

DAVID FARRIER, ROSEMARY LYSTER & LINDA PEARSON, THE ENVIRONMENTAL LAW HANDBOOK: PLANNING AND LAND USE IN NEW SOUTH WALES (Redfern Legal Centre Publishing, 3<sup>rd</sup> ed., 1999)

THE ENVIRONMENT DEFENDERS OFFICE (VIC) LTD., INTRODUCTION TO VICTORIA'S KEY ENVIRONMENT AND PLANNING LAW (Environment Defenders Office Vic., 1998)

ENVIRONMENTAL DEFENDER'S OFFICE LTD., NEW SOUTH WALES ENVIRONMENTAL LAW FACT SHEETS (Environmental Defender's Office Ltd., 4<sup>th</sup> edition, 2000)

### ***Water Law***

D. E. FISHER, WATER LAW (The Law Book Company, Ltd., 2000)

RICHARD BARTLETT, ALEX GARDNER & SHARON MASCHER, WATER LAW IN WESTERN AUSTRALIA: COMPARATIVE STUDIES AND OPTIONS FOR REFORM (Centre for Commercial and Resources Law, 1997)

### ***Australian Environmental Policy***

K.J. WALKER & K. CROWLEY, AUSTRALIAN ENVIRONMENTAL POLICY (University of New South Wales Press, 1999)

TIMOTHY DOYLE & AYNLEY KELLOW, ENVIRONMENTAL POLITICS AND POLICY MAKING IN AUSTRALIA (MacMillan, 1995).

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ALAN GILPIN, ENVIRONMENT POLICY IN AUSTRALIA (University of Queensland Press, 1980)

***Australian Environmental History***

WILLIAM J. LINES, TAMING THE GREAT SOUTH LAND: A HISTORY OF THE CONQUEST OF NATURE IN AUSTRALIA (Allen & Unwin, 1991)

TIM BONYHADY, THE COLONIAL EARTH (Miegunyah Press, 2000).

STEPHEN DOVERS, ED., AUSTRALIAN ENVIRONMENTAL HISTORY: ESSAYS AND CASES (Oxford University Press, 1994)

***Australian Environmental Politics***

DREW HUTTON & LIBBY CONNORS, A HISTORY OF THE AUSTRALIAN ENVIRONMENT MOVEMENT (Cambridge University Press, 1999)

DREW HUTTON, ED., GREEN POLITICS IN AUSTRALIA (Angus and Robertson Publishers, 1987)

## **APPENDIX 4**

### **Major Australian Environmental Law & Policy Internet Sites**

#### ***Australian Environmental Information***

INFOTERRA Australia

<http://www.environment.gov.au/library/infoterra/index.html>

The Australian Centre for Environmental Law Legal Links for Australian Environmental Lawyers (redesign forthcoming April 2001)

<http://law.anu.edu.au/acle/>

The Environmental Defenders Office Network's Australian Legal and Policy Resources

<http://www.edo.org.au/links.htm>

#### ***Commonwealth, State & Territory Legislation and Case Law***

The Australian Legal Information Institute

<http://www.austlii.edu.au/>

SCALE plus

<http://scaleplus.law.gov.au/>

Australian Weblaw (an legal indexing project of the Law and Justice Foundation of NSW)

<http://lawfoundation.net.au/links/weblaw.html>

#### ***National Environmental Policy and Strategies***

National Strategy for Ecologically Sustainable Development (December 1992)

<http://www.environment.gov.au/psg/igu/nsesd/>

National Strategy for the Conservation of Australia's Biological Diversity

<http://chm.environment.gov.au/strategy/contents.html>

The Oceans Policy

<http://www.oceans.gov.au/aop/main.htm>

The Wetlands Policy of the Commonwealth Government of Australia

<http://www.environment.gov.au/water/wetlands/policy.htm>

National Forest Policy Statement

<http://www.rfa.gov.au/rfa/national/nfps/index.html>

National Strategy for the Conservation of Australian Species and Communities Threatened with Extinction

<http://www.ea.gov.au/bg/threaten/strategy/strategy.htm>

National Greenhouse Strategy

<http://www.greenhouse.gov.au/pubs/ngs/index.html>

Revised Strategy for Ozone Protection in Australia

<http://www.ea.gov.au/epg/ozone/anzecstrategy.htm>

National Packaging Covenant

<http://www.environment.gov.au/epg/covenant/>

A National Strategy for Australia's Heritage Places

<http://www.ea.gov.au/minister/env/99/nhps/nhps.htm>