

Ecologically Sustainable Development in New South Wales

Appendices

- A** Intergovernmental Agreement on the Environment between the Commonwealth and States of Australia and the Australian Local Government Association, May 1992

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Appendix A

Intergovernmental Agreement on the Environment between the Commonwealth and States of Australia and the Australian Local Government Association, May 1992

Intergovernmental Agreement on the Environment⁹⁷

AN AGREEMENT made the 1st day of May one thousand nine hundred and ninety two
BETWEEN

THE COMMONWEALTH OF AUSTRALIA of the first part,
THE STATE OF NEW SOUTH WALES of the second part,
THE STATE OF VICTORIA of the third part,
THE STATE OF QUEENSLAND of the fourth part,
THE STATE OF WESTERN AUSTRALIA of the fifth part,
THE STATE OF SOUTH AUSTRALIA of the sixth part,
THE STATE OF TASMANIA of the seventh part,
THE AUSTRALIAN CAPITAL TERRITORY of the eighth part,
THE NORTHERN TERRITORY OF AUSTRALIA of the ninth part,
THE AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION of the tenth part.

WHEREAS

On 31 October 1990, Heads of Government of the Commonwealth, States and Territories of Australia, and representatives of Local Government in Australia, meeting at a Special Premiers' Conference held in Brisbane, agreed to develop and conclude an Intergovernmental Agreement on the Environment to provide a mechanism by which to facilitate:

- a cooperative national approach to the environment;
- a better definition of the roles of the respective governments;
- a reduction in the number of disputes between the Commonwealth and the States and Territories on environment issues;
- greater certainty of Government and business decision making; and
- better environment protection;

AND WHEREAS the Parties to this Agreement

ACKNOWLEDGE the important role of the Commonwealth and the States in relation to the environment and the contribution the States can make in the development of national and international policies for which the Commonwealth has responsibilities;

RECOGNISE that environmental concerns and impacts respect neither physical nor political boundaries and are increasingly taking on interjurisdictional, international and global significance in a way that was not contemplated by those who framed the Australian Constitution;

RECOGNISE that the concept of ecologically sustainable development including proper resource accounting provides potential for the integration of environmental and economic considerations in decision making and for balancing the interests of current and future generations;

RECOGNISE that it is vital to develop and continue land use programs and co-operative arrangements to achieve sustainable land use and to conserve and improve Australia's biota, and soil and water resources which are basic to the maintenance of essential ecological processes and the production of food, fibre and shelter;

ACKNOWLEDGE that the efficiency and effectiveness of administrative and political processes and systems for the development and implementation of environmental policy in a Federal system will be a direct function of:-

- i. the extent to which roles and responsibilities of the different levels of Government can be clearly and unambiguously defined;
- ii. the extent to which duplication of functions between different levels of Government can be avoided;
- iii. the extent to which the total benefits and costs of decisions to the community are explicit and transparent;

⁹⁷ Source- Australian Government Department of Environment and Water Resources:
<http://www.environment.gov.au/esd/national/igae/index.html>

- iv. the extent to which effective processes are established for co-operation between governments on environmental issues; and
- v. the extent to which responsible Governments are clearly accountable to the electorate for the development and implementation of policy; and

ACKNOWLEDGE that in the development and implementation of environmental policy it is necessary to accommodate the regional environmental differences which occur within Australia;

THE PARTIES AGREE AS FOLLOWS:

SECTION 1 - APPLICATION AND INTERPRETATION

1.1 "Commonwealth" means the Commonwealth of Australia.

1.2 "States" means a State or Territory named as a party to this Agreement.

1.3 "Local Government" means a Local Government body established by or under a law of a State other than a body the sole or principal function of which is to provide a particular service (such as the supply of electricity or water).

1.4 "Australian Local Government Association" means the Federation of State-wide Local Government Associations of the States, constituted by Local Government bodies.

1.5 A reference in this Agreement to the words "give full faith and credit" to the results of mutually approved or accredited systems, practices, procedures or processes, means that the Commonwealth and the States acting in accordance with the laws in force in their jurisdictions, will accept and rely on the outcomes of that system or the practices, procedures or processes, as the case may be, as a basis for their decision making. In making the decision to accredit a system or practices, procedures or processes, the Commonwealth or the States may make provision for how unforeseeable circumstances or flawed execution may be taken into account. A decision to accept and rely on the outcome does not preclude the Commonwealth or the States taking factors into account in their decision making, other than those dealt with in that system or those practices, procedures or processes.

1.6 A reference to a Ministerial Council in this Agreement is a reference not to the Ministerial Council as such but to the Australian members of that Council acting separately from that Council pursuant to this Agreement.

1.7 Commonwealth responsibilities under this Agreement include ensuring adherence as far as practicable within the External Territories and the Jervis Bay Territory.

1.8 Any matters under this Agreement which are the responsibility of the Norfolk Island Assembly under the Norfolk Island Act 1979 will be referred by the Commonwealth to the Norfolk Island Government for its consideration.

1.9 In relation to each of its external Territories and the Territory of Jervis Bay, the Commonwealth has, subject to paragraphs 1.7 and 1.8 the same responsibilities and interests as each State has in relation to that State under paragraph 2.3.

1.10 Section 2.2.3 of this Agreement should be read subject to the Australian Capital Territory (Planning and Land Management) Act 1988.

1.11 The Commonwealth, the States and the Australian Local Government Association acknowledge that while the Association is a party to this Agreement, it cannot bind local government bodies to observe the terms of this Agreement. However in view of the responsibilities and interests of local government in environmental matters and in recognition of the partnership established between the three levels of government by the Special Premiers Conference process, the Commonwealth and the States have included the Australian Local Government Association as a party to this Agreement and included references in the Agreement to local government and all levels of government.

1.12 The States will consult with and involve Local Government in the application of the principles and the discharge of responsibilities contained in this Agreement to the extent that State statutes and administrative arrangements authorise or delegate responsibilities to Local Government, and in a manner which reflects the concept of partnership between the Commonwealth, State and Local Governments.

1.13 Questions of interpretation of this Agreement are to be raised in the first instance in the appropriate Ministerial Council(s) after consultation by the Chair of the Ministerial Council

with the President of the Australian Local Government Association where appropriate. Where these mechanisms do not resolve the interpretation, the matter will be dealt with by reference from the Ministerial Council(s) to First Ministers.

SECTION 2 - ROLES OF THE PARTIES - RESPONSIBILITIES AND INTERESTS

2.1 RESPONSIBILITIES AND INTERESTS OF ALL PARTIES

2.1.1 The following will guide the parties in defining the roles, responsibilities and interests of all levels of Government in relation to the environment and in particular in determining the content of Schedules to this Agreement.

2.2 RESPONSIBILITIES AND INTERESTS OF THE COMMONWEALTH

2.2.1 The responsibilities and interests of the Commonwealth in safeguarding and accommodating national environmental matters include:

- i. matters of foreign policy relating to the environment and, in particular, negotiating and entering into international agreements relating to the environment and ensuring that international obligations relating to the environment are met by Australia;
- ii. ensuring that the policies or practices of a State do not result in significant adverse external effects in relation to the environment of another State or the lands or territories of the Commonwealth or maritime areas within Australia's jurisdiction (subject to any existing Commonwealth legislative arrangements in relation to maritime areas).
- iii. facilitating the co-operative development of national environmental standards and guidelines as agreed in Schedules to this Agreement.

2.2.2 When considering its responsibilities and interests under paragraph 2.2.1(ii), the Commonwealth will have regard to the role of the States in dealing with significant adverse external effects as determined in 2.5.5 of this Agreement, and any action taken pursuant to 2.5.5.

2.2.3 The Commonwealth has responsibility for the management (including operational policy) of living and non-living resources on land which the Commonwealth owns or which it occupies for its own use.

2.3 RESPONSIBILITIES AND INTERESTS OF THE STATES

2.3.1 Each State will continue to have responsibility for the development and implementation of policy in relation to environmental matters which have no significant effects on matters which are the responsibility of the Commonwealth or any other State.

2.3.2 Each State has responsibility for the policy, legislative and administrative framework within which living and non living resources are managed within the State.

2.3.3 The States have an interest in the development of Australia's position in relation to any proposed international agreements (either bilateral or multilateral) of environmental significance which may impact on the discharge of their responsibilities.

2.3.4 The States have an interest and responsibility to participate in the development of national environmental policies and standards.

2.4 RESPONSIBILITIES AND INTERESTS OF LOCAL GOVERNMENT

2.4.1 Local Government has a responsibility for the development and implementation of locally relevant and applicable environmental policies within its jurisdiction in co-operation with other levels of Government and the local community.

2.4.2 Local Government units have an interest in the environment of their localities and in the environments to which they are linked.

2.4.3 Local Government also has an interest in the development and implementation of regional, Statewide and national policies, programs and mechanisms which affect more than one Local Government unit.

2.5 ACCOMMODATION OF INTERESTS

2.5.1 Between the States and the Commonwealth

2.5.1.1 Where there is a Commonwealth interest in an environmental matter which involves one or more States, that interest will be accommodated as follows:

- i. the Commonwealth and the affected States will cooperatively set outcomes or standards and periodically review progress in meeting those standards or achieving those outcomes; or
- ii. where outcomes or standards are impractical or inappropriate, the Commonwealth may approve or accredit a State's practices, procedures, and processes; or
- iii. where the Commonwealth does not agree that State practices, procedures or processes are appropriate, the Commonwealth and the States concerned will endeavour to agree to modification of those practices, procedures and processes to meet the needs of both the Commonwealth and the States concerned;
- iv. where agreement is reached between the Commonwealth and a State under (iii) the Commonwealth will approve or accredit that State practice, procedure or process.

2.5.1.2 Where it has approved or accredited practices, procedures or processes under 2.5.1.1 the Commonwealth will give full faith and credit to the results of such practices, procedures or processes when exercising Commonwealth responsibilities.

2.5.1.3. Where a State considers that its interests can be accommodated by approving or accrediting Commonwealth practices, procedures or processes, or an agreed modified form of those practices, procedures or processes, a State may enter into arrangements with the Commonwealth for that purpose.

2.5.1.4 Where a State has approved or accredited practices, procedures or processes under 2.5.1.3 that State will give full faith and credit to the results of such practices, procedures or processes when exercising State responsibilities.

2.5.1.5 The Commonwealth and the States note that decisions on major environmental issues taken at one level of government may have significant financial implications for other levels of government and agree that consideration will be given to these implications where they are major or outside the normal discharge of legislative or administrative responsibilities of the level of government concerned.

2.5.1.6 Clause 2.5.1.5 applies to each of the Schedules to this Agreement.

2.5.2 International Agreements

2.5.2.1 The parties recognise that the Commonwealth has responsibility for negotiating and entering into international agreements concerning the environment. The Commonwealth agrees to exercise that responsibility having regard to this Agreement and the Principles and Procedures for the Commonwealth-State Consultation on Treaties as agreed from time to time. In particular, the Commonwealth will consult with the States in accordance with the Principles and Procedures, prior to entering into any such international agreements.

2.5.2.2 The Commonwealth will, where a State interest has become apparent pursuant to the Principles and Procedures and subject to the following provisions not being allowed to result in unreasonable delays in the negotiation, joining or implementation of international agreements:

- i. notify and consult with the States at the earliest opportunity on any proposals for the development or revision of international agreements which are relevant to Australia and which relate to the environment and will take into account the views of the States in formulating Australian policy, including consultation on issues relating to roles, responsibilities and costs;
- ii. when requested, include in appropriate cases, a representative or representatives of the States on Australian delegations negotiating international agreements related to the environment. Any such representation will be subject to the approval of the Minister for Foreign Affairs and Trade, and will, unless otherwise agreed, be at the expense of the States;
- iii. prior to ratifying or acceding to, approving or accepting any international agreement with environmental significance, consult the States in an effort to secure agreement on the manner in which the obligations incurred should be implemented in Australia, consistent with the roles and responsibilities established pursuant to this Agreement.

2.5.2.3 The States will establish and advise the Commonwealth on the appropriate channels of communication, and persons responsible for consultation, to ensure that the Commonwealth can discharge its international responsibilities in a timely manner.

2.5.2.4 When ratifying, or acceding to, approving or accepting any international agreement with environmental significance, the Commonwealth will consider, on a case by case basis, making the standard Federal Statement on ratification, accession, approval or acceptance.

2.5.3 Mechanisms for Determining Commonwealth Interests

2.5.3.1 Where a State wishes to determine whether or not an environmental matter in that State will involve the interests of the Commonwealth and is not covered by any established processes, that State may request the Commonwealth to indicate whether that matter is a matter of Commonwealth interest.

2.5.3.2 On receipt of a request from a State, the Commonwealth will consult with that State. If the Commonwealth requires further information it will seek such information within six weeks. The Commonwealth will, as soon as possible, or in any event within eight weeks after the receipt of the original request, or six weeks after the provision of the further information, as the case may be, notify the State whether or not it considers that the matter does involve Commonwealth interests. If it does involve Commonwealth interests, the Commonwealth will notify all other States of the basis and scope of its interest.

2.5.3.3 Where the Commonwealth wishes to determine whether or not a State agrees that an environmental matter in that State involves the interests of the Commonwealth, it may seek advice from the State concerned and the State and the Commonwealth will, if necessary, enter into discussions on the matter within four weeks after the State receives the request for advice.

2.5.3.4 The Commonwealth and the States recognise the importance of responding to requests made under

2.5.3.1 and 2.5.3.3 in the shortest possible time.

2.5.3.5 Where there is disagreement as to whether or not there is a Commonwealth interest in an environmental matter, the Commonwealth and the States concerned will use their best endeavours to resolve the disagreement at First Minister level.

2.5.4 Duplication of Interests

2.5.4.1 With a view to eliminating functional duplication, wherever the interests of a level of Government have been accommodated, the relevant levels of Government will review the need and justification for retaining any comparable processes or institutions.

2.5.4.2 Where some duplication or overlap of interests between levels of government is unavoidable, the relevant levels of Government will seek clear and distinct liaison and consultative procedures, under mechanisms to be agreed at First Minister level, such as Ministerial Councils, to coordinate and harmonise actions and to avoid disputes.

2.5.4.3 Any review under clause 2.5.4.1 or liaison and consultation procedures under 2.5.4.2 will be guided by the need to work towards simplicity, certainty and transparency in the mechanisms relevant to the development and implementation of environmental policy, consistent with the maintenance of proper environmental protection.

2.5.5 Between the States

2.5.5.1 Where the policies, programs, projects, legislation or regulations of a State may affect the environment of another State or States, the States undertake to provide timely notification to any affected State, and appropriate consultation in relation to those policies, programs, projects, legislation or regulations.

2.5.5.2 Wherever significant adverse external effects on another State are expected or identified, the relevant States will use their best endeavours to establish appropriate mechanisms for ensuring cooperative management.

2.5.5.3 Where the States are directly and cooperatively involved with the management of significant adverse external effects and one or more of the States considers that one or more of the other States are not adequately discharging their management responsibilities, the State or States concerned will endeavour to resolve expeditiously any issue of disagreement or concern.

2.5.5.4 The States will if necessary determine what mechanism or process should be employed to resolve any disagreement or matter of concern, which mechanism or process may include inviting the Commonwealth to assist in the resolution of the matter.

2.5.6 National Interest

Notwithstanding the particular responsibilities of the Commonwealth in safeguarding and accommodating national environmental matters, the parties agree that all levels of Government have a responsibility to ensure that matters of national interest are properly taken into account in their activities.

SECTION 3 - PRINCIPLES OF ENVIRONMENTAL POLICY

3.1 The parties agree that the development and implementation of environmental policy and programs by all levels of Government should be guided by the following considerations and principles.

3.2 The parties consider that the adoption of sound environmental practices and procedures, as a basis for ecologically sustainable development, will benefit both the Australian people and environment, and the international community and environment. This requires the effective integration of economic and environmental considerations in decision-making processes, in order to improve community well-being and to benefit future generations.

3.3 The parties consider that strong, growing and diversified economies (committed to the principles of ecologically sustainable development) can enhance the capacity for environmental protection. In order to achieve sustainable economic development, there is a need for a country's international competitiveness to be maintained and enhanced in an environmentally sound manner.

3.4 Accordingly, the parties agree that environmental considerations will be integrated into Government decision-making processes at all levels by, among other things:

- i. ensuring that environmental issues associated with a proposed project, program or policy will be taken into consideration in the decision making process;
- ii. ensuring that there is a proper examination of matters which significantly affect the environment; and
- iii. ensuring that measures adopted should be cost-effective and not be disproportionate to the significance of the environmental problems being addressed.

3.5 The parties further agree that, in order to promote the above approach, the principles set out below should inform policy making and program implementation.

3.5.1 precautionary principle -

Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:

- i. careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and
- ii. an assessment of the risk-weighted consequences of various options.

3.5.2 intergenerational equity -

the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

3.5.3 conservation of biological diversity and ecological integrity -

conservation of biological diversity and ecological integrity should be a fundamental consideration.

3.5.4 improved valuation, pricing and incentive mechanisms -

- environmental factors should be included in the valuation of assets and services.
- polluter pays i.e. those who generate pollution and waste should bear the cost of containment, avoidance, or abatement

- the users of goods and services should pay prices based on the full life cycle costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any wastes
- environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, which enable those best placed to maximise benefits and/or minimise costs to develop their own solutions and responses to environmental problems.

SECTION 4 - IMPLEMENTATION AND APPLICATION OF PRINCIPLES

4.1 The Schedules to this Agreement deal with specific areas of environmental policy and management and form part of this Agreement. The schedules have been prepared and are to be interpreted in accordance with Sections 1, 2 and 3 of this Agreement.

4.2 Nothing in this Agreement will affect any existing intergovernmental agreement between the Commonwealth and a State or States, or between the States, unless alterations or amendments to those agreements are proposed in accordance with any existing review process and/or any review process arising as a result of this Agreement.

4.3 For each particular Schedule included in this Agreement, the Commonwealth and the States undertake to nominate an agency or Ministry to assume primary responsibility within its jurisdiction for the issues covered in the Schedule and to inform the other parties accordingly.

4.4 Where not otherwise provided in the Schedules, existing intergovernmental arrangements will be the primary mechanisms for the cooperative application of the provisions of this Agreement.

SECTION 5 - REVIEW

5.1 The operation of this Agreement will be reviewed every three years by the presentation of a report from the relevant Ministerial Councils to the First Ministers following consultation by the Chair of the Ministerial Council with the President of the Australian Local Government Association.

5.2 The Agreement may be amended and schedules added by agreement of all First Ministers. Prior to making amendments in relation to matters specified in this Agreement, or developing any draft schedules, that involve local government, First Ministers will consult and seek the agreement of the President of the Australian Local Government Association. IN WITNESS WHEREOF this Agreement has been respectively signed for and on behalf of the parties as at the day and year first above written.

SIGNED by the Honourable PAUL JOHN KEATING, Prime Minister of the Commonwealth of Australia

SIGNED by the Honourable NICHOLAS FRANK GREINER, Premier of the State of New South Wales

SIGNED by the Honourable JOAN ELIZABETH KIRNER, Premier of the State of Victoria

SIGNED by the Honourable WAYNE KEITH GOSS, Premier of the State of Queensland

SIGNED by the Honourable CARMEN MARY LAWRENCE, Premier of the State of Western Australia

SIGNED by the Honourable JOHN CHARLES BANNON, Premier of the State of South Australia

SIGNED by the Honourable RAYMOND JOHN GROOM, Premier of the State of Tasmania

SIGNED by ROSEMARY FOLLETT Chief Minister of the Australian Capital Territory

SIGNED by the Honourable MARSHALL BRUCE PERRON, Chief Minister of the Northern Territory

SIGNED by Councillor GRAEME BLATCHFORD FRECKER, President of the AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION

SCHEDULE 1

DATA COLLECTION AND HANDLING

1. The parties agree that the collection, maintenance and integration of environmental data will assist in efficient and effective environmental management and monitoring.

2. The development of consistent standards for the description and exchange of all land-related information will be coordinated and fostered by the Australian Land Information Council in conjunction with Standards Australia and specialist groups where needed.
3. In order to avoid overlap and duplication in the collection and maintenance of all land-related data, the Australian Land Information Council will facilitate the coordination of intergovernmental arrangements (including appropriate financial arrangements) and provide mechanisms to make the data more accessible across all levels of government and the private sector. Any arrangements entered into will detail the circumstances in which the exchange and ongoing sharing of data is appropriate. The intergovernmental arrangements will be submitted to First Ministers for their approval no later than twelve months after the execution of this Agreement.
4. The collection of data on natural resources should, where possible, be integrated from the outset, in order to avoid the difficulties inherent in collating data collected with different methodologies and in different conditions.
5. The Australian Land Information Council, (through the National Resources Information Centre and the Environmental Resources Information Network where appropriate) will consult with the relevant national co-ordination bodies and, through its members, with Commonwealth and State jurisdictions, to ensure the development and maintenance of comprehensive directories of natural resource and environmental spatial datasets and to develop and maintain national natural resource data standards.

SCHEDULE 2

RESOURCE ASSESSMENT, LAND USE DECISIONS AND APPROVAL PROCESSES

1. The parties agree that the concept of ecologically sustainable development should be used by all levels of Government in the assessment of natural resources, land use decisions and approval processes.
2. The parties agree that it is the role of government to establish the policy, legislative and administrative framework to determine the permissibility of any land use, resource use or development proposal having regard to the appropriate, efficient and ecologically sustainable use of natural resources (including land, coastal and marine resources).
3. The parties agree that policy, legislative and administrative frameworks to determine the permissibility of land use, resource use or development proposals should provide for -
 - i. the application and evaluation of comparable, high quality data which are available to all participants in the process;
 - ii. the assessment of the regional cumulative impacts of a series of developments and not simply the consideration of individual development proposals in isolation;
 - iii. consideration of the regional implications, where proposals for the use of a resource affect several jurisdictions;
 - iv. consultation with affected individuals, groups and organisations;
 - v. consideration of all significant impacts;
 - vi. mechanisms to resolve conflict and disputes over issues which arise during the process;
 - vii. consideration of any international or national implications.
4. The development and administration of the policy and legislative framework will remain the responsibility of the States and Local Government. The Commonwealth has an interest in ensuring that these frameworks meet its responsibilities and interests as set out in this Agreement. The Commonwealth will continue to co-operate with the States in agreed programs.
5. Within the policy, legislative and administrative framework applying in each State, the use of natural resources and land, remain a matter for the owners of the land or resources, whether they are Government bodies or private persons.
6. To ensure that State land and resource use planning processes properly address matters of Commonwealth interest, a State may refer its land and resource use planning system and its development approval process to the Commonwealth for a preliminary view, as to whether its system or process can be accredited as accommodating Commonwealth

interests. In the event that the Commonwealth is of the view that the processes are inadequate to accommodate the Commonwealth interest, then the State will consider whether it wishes to review and modify the systems and processes and will consult with the Commonwealth on terms of reference for such a review.

7. A State will consult Local Government where appropriate, when undertaking any review of its land and resource use planning systems and/or development approval processes pursuant to this Agreement.

8. Where the Commonwealth has accredited a system or process within a State, the Commonwealth will give full faith and credit to the results of that system or process when exercising Commonwealth responsibilities.

9. Within twelve months of the execution of this Agreement, the parties agree to reconsider the matters contained in this Schedule with a view to incorporating any relevant findings of the ecologically sustainable development process.

SCHEDULE 3

ENVIRONMENTAL IMPACT ASSESSMENT

1. The parties agree that it is desirable to establish certainty about the application, procedures and function of the environmental impact assessment process, to improve the consistency of the approach applied by all levels of Government, to avoid duplication of process where more than one Government or level of Government is involved and interested in the subject matter of an assessment and to avoid delays in the process.

2. The parties agree that impact assessment in relation to a project, program or policy should include, where appropriate, assessment of environmental, cultural, economic, social and health factors.

3. The parties agree that all levels of Government will ensure that their environmental impact assessment processes are based on the following:

- i. the environmental impact assessment process will be applied to proposals from both the public and private sectors;
- ii. assessing authorities will provide information to give clear guidance on the types of proposals likely to attract environmental impact assessment and on the level of assessment required;
- iii. assessing authorities will provide all participants in the process with guidance on the criteria for environmental acceptability of potential impacts including the concept of ecologically sustainable development, maintenance of human health, relevant local and national standards and guidelines, protocols, codes of practice and regulations;
- iv. assessing authorities will provide proposal specific guidelines or a procedure for their generation focussed on key issues and incorporating public concern together with a clear outline of the process;
- v. following the establishment of specific assessment guidelines, any amendments to those guidelines will be based only on significant issues that have arisen following the adoption of those guidelines;
- vi. time schedules for all stages of the assessment process will be set early on a proposal specific basis, in consultations between the assessing authorities and the proponent;
- vii. levels of assessment will be appropriate to the degree of environmental significance and potential public interest;
- viii. proponents will take responsibility for preparing the case required for assessment of a proposal and for elaborating environmental issues which must be taken into account in decisions, and for protection of the environment;
- ix. there will be full public disclosure of all information related to a proposal and its environmental impacts, except where there are legitimate reasons for confidentiality including national security interests;
- x. opportunities will be provided for appropriate and adequate public consultation on environmental aspects of proposals before the assessment process is complete;
- xi. mechanisms will be developed to seek to resolve conflicts and disputes over issues which arise for consideration during the course of the assessment process;

- xii. the environmental impact assessment process will provide a basis for setting environmental conditions, and establishing environmental monitoring and management programs (including arrangements for review) and developing industry guidelines for application in specific cases.

4. A general framework agreement between the Commonwealth and the States on the administration of the environmental impact assessment process will be negotiated to avoid duplication and to ensure that proposals affecting more than one of them are assessed in accordance with agreed arrangements.

5. The Commonwealth and the States may approve or accredit their respective environmental impact assessment processes either generally or for specific purposes. Where such approval or accreditation has been given, the Commonwealth and the States agree that they will give full faith and credit to the results of such processes when exercising their responsibilities.

SCHEDULE 4

NATIONAL ENVIRONMENT PROTECTION MEASURES

General Purpose

1. The Commonwealth and the States acknowledge that there is benefit to the people of Australia in establishing national environment protection standards, guidelines, goals and associated protocols (hereinafter referred to as 'measures') with the objectives of ensuring:

- i. that people enjoy the benefit of equivalent protection from air, water and soil pollution and from noise, wherever they live;
- ii. that decisions by business are not distorted and markets are not fragmented by variations between jurisdictions in relation to the adoption or implementation of major environment protection measures.

Any proposed measures must be examined to identify economic and social impacts and to ensure simplicity, efficiency and effectiveness in administration.

National Environment Protection Authority

2. The Commonwealth and the States agree to set up a Ministerial Council to be called the National Environment Protection Authority. Each State and the Commonwealth will nominate a Minister to be a member of the Ministerial Council, with the Commonwealth Minister to chair the Council and decisions to be made by a two thirds majority of the members of the Ministerial Council.

3. The Authority is to be assisted and supported by:

- i. a standing committee of officials, with one representative being nominated to the committee by each member of the Authority and an observer nominated by the President of the Australian Local Government Association who will seek and present the views of the Association. Each member is entitled to be accompanied by other persons who may be able to assist with the deliberations of the committee. Members of the committee will ensure that the Authority has access to appropriate scientific and technical advice on environmental matters and on the economic and social impacts of the matters considered by the Authority;
- ii. a permanent Executive Officer appointed to a statutory office under the legislation establishing the Authority;
- iii. appropriate personnel seconded or otherwise provided by the parties to conduct continuing or specialist ad hoc tasks, as required by the Authority.

4. The Authority and the statutory office of Executive Officer is to be established by agreed Commonwealth legislation and recognised by agreed complementary State legislation.

National Environment Protection Authority's Powers and Process

5. The Authority may establish measures for the protection of the environment for the benefit of the people of Australia, for:

- i. ambient air quality;
- ii. ambient marine, estuarine, and freshwater quality;
- iii. noise related to protecting amenity where variations in measures would have an adverse effect on national markets for goods and services;
- iv. general guidelines for the assessment of site contamination;
- v. the environmental impacts associated with hazardous wastes;
- vi. motor vehicle emissions;
- vii. the reuse and recycling of used materials;

and shall monitor and report on their implementation and effectiveness.

6. In determining whether to adopt standards, guidelines or goals, the Authority will consider which is the most effective means to achieve the required national environmental outcomes. The Authority will also take into account existing intergovernmental mechanisms in relation to such measures.

7. The Authority will develop national motor vehicle emission and noise standards in conjunction with the National Road Transport Commission. **

8. The standards, guidelines or goals will be interpreted and applied in accordance with agreed protocols on such matters as requirements for monitoring and auditing.

9. To facilitate effective and timely public consultation, draft measures, including timetables for implementation where relevant, will be published by the Authority.

10. Publication of such drafts will be accompanied by an impact statement which includes -

- i. the environmental objectives and reasons for the measures and the environmental impact of not adopting those measures;
- ii. alternatives considered to achieve the desired environmental objectives and the reasons for their non-adoption;
- iii. an assessment of the economic and social impact on the community and industry as a result of establishing the measures;
- iv. the manner in which any regional environmental differences in Australia have been addressed in the development of the measures.

11. The Authority will notify the public of the availability of the draft measures and the associated impact statement and invite comment thereon within a specified time.

12. When finalising any measures, the Authority will give consideration to the impact statement and any comment received on the draft measures or the impact statement.

13. The Commonwealth undertakes to table in its Parliament (in accordance with the Commonwealth's existing practices in relation to delegated legislation) all measures established by the Authority, and to use its best endeavours to ensure their acceptance by the Commonwealth Parliament.

14. The tabling of any measures in the Commonwealth Parliament will be accompanied by an impact statement covering the matters referred to in clause 10 and a summary of public comment received and the response to those comments.

15. Either House of the Commonwealth Parliament can disallow any measure established by the Authority within a specified time.

16. The Commonwealth and the States agree to develop for consideration by First Ministers under clause 23, legislation which will enable the Commonwealth and State Parliaments to authorise the Authority to establish any measures. The legislation will also establish mechanisms for the application of measures in the States. The legislation will ensure that any measures established by the Authority -

- a. will apply, as from the date of the commencement of the measure, throughout Australia, as a valid law of each jurisdiction; and

- b. will, subject to clause 20, replace any existing measures dealing with the same matter.

Implementation, Enforcement, Impact and Reporting in Relation to National Measures

17. The Commonwealth and the States will be responsible for the attainment and maintenance of agreed national standards or goals and compliance with national guidelines within their respective jurisdictions through appropriate mechanisms such as Commonwealth and State environment protection bodies.

18. The Commonwealth and the States agree to establish a uniform hierarchy of offences and related penalty structures to apply to breaches of any requirements applied under any agreed law for the purposes of complying with the standards, guidelines or goals.

19. The measures established and adopted in accordance with the above procedure will not prevent the Commonwealth or a State from introducing more stringent measures to reflect specific circumstances or to protect special environments or environmental values located within its jurisdiction provided there has been consultation with the Authority.

20. Nothing in this Agreement will prevent a State or the Commonwealth maintaining existing more stringent standards which are in effect at the date when the Authority comes into existence.

21. The Commonwealth and the States will prepare an annual report on the measures they adopt to attain and maintain the standards, guidelines, goals or protocols established pursuant to this Agreement and submit that report by 30 September each year to the Authority.

22. The Authority will prepare an annual report which includes the reports received from the Commonwealth and the States. The annual report will be tabled in all Parliaments, through the respective Ministers who are members of the Authority.

Action to Implement Agreements in the Schedule

23. Within twelve months of the execution of this Agreement the Working Group on Environmental Policy will, for the consideration of First Ministers:

- i. prepare draft legislation to implement the agreements reached in this Schedule; and
- ii. develop arrangements for consultation with relevant Commonwealth and State authorities, the Australian Local Government Association, and Ministerial Councils.

24. The Working Group on Environmental Policy will, when submitting the draft legislation to First Ministers, also submit a report on the financial arrangements necessary to give effect to the agreements set out in this Schedule.

25. Once the legislation referred to in clause 23 has been agreed to by First Ministers, the Commonwealth and the States will submit to their Parliaments, and take such steps as are appropriate to secure the passage of, the Bills containing this legislation.

Definitions

26. For the purposes of this Schedule:

- i. a standard is a quantifiable characteristic of the environment against which environmental quality is assessed. Standards are mandatory.
- ii. a goal is a desired environmental outcome adopted to guide the formulation of strategies for the management of human activities which may affect the environment;
- iii. a guideline provides guidance on possible means of meeting desired environmental outcomes. Guidelines are not mandatory.
- iv. a protocol is the description of a process to be followed in measuring environmental characteristics to determine whether a standard or goal is being achieved or the extent of the differential between the measured characteristic and a standard or goal.
- v. SCHEDULE 5

CLIMATE CHANGE

1. The parties acknowledge the potentially significant impact of greenhouse enhanced climate change on Australia's natural, social and working environment, as well as on the global community and global environments. The parties accept and support the need for Australia to participate in the development of an effective international response to meet the challenge of greenhouse enhanced climate change and note Australia's participation in the development of an international convention on climate change.

2. The parties note their endorsement of the decision to adopt an interim planning target to stabilise greenhouse gas emissions (not controlled by the Montreal Protocol on Substances that Deplete the Ozone Layer) based on 1988 levels, by the year 2000 and reducing these emissions by 20% by the year 2005. The parties reiterate their support, as agreed in October 1990, for the interim planning target to form the basis of development of the National Greenhouse Response Strategy, subject to Australia not implementing response measures that would have net adverse economic impacts nationally or on Australia's trade competitiveness, in the absence of similar action by major greenhouse gas producing countries. The parties agree that assessment of the implementation of the National Greenhouse Response Strategy against this agreed objective will be reviewed at Special Premiers' Conferences.

3. The parties reiterate that a National Greenhouse Response Strategy based on the interim planning target must include positive measures for:

- limiting emissions of all greenhouse gases, not controlled by the Montreal Protocol on Substances that Deplete the Ozone Layer;
- conducting further research;
- adapting to the impacts of climate change; and
- ensuring that the community understands the need for early action on measures to reduce greenhouse gas emissions.

The parties also agree that such a strategy should include measures for auditing and reporting on national greenhouse gas emissions.

4. Taking into account regional differences, the parties recognise that development and implementation of the National Greenhouse Response Strategy will require coordinated and effective action by all levels of government and the community to achieve equitable and ecologically sustainable solutions.

5. The parties agree that First Ministers have ultimate responsibility for intergovernmental considerations of and final decisions on the National Greenhouse Response Strategy.

6. To facilitate the preparation of the National Greenhouse Response Strategy, the parties agree to establish a National Greenhouse Steering Committee.

7. The National Greenhouse Steering Committee will have the following responsibilities:

- v. to facilitate the development and co-ordination of an overall framework for the National Greenhouse Response Strategy;
- vi. to consult with the Standing Committees of Ministerial Councils on elements for inclusion in the Strategy and activities of the Ministerial Councils and other specialised bodies such as the National Greenhouse Advisory Committee, and make recommendations to First Ministers on proposed courses of action;

- vii. to encourage development of the strategy in areas where it is not being handled elsewhere;
- viii. to present the Strategy to First Ministers for consideration/adoption;
- ix. to recommend to First Ministers requirements for further development of the Strategy as implementation proceeds.

SCHEDULE 6

BIOLOGICAL DIVERSITY

1. The parties acknowledge that biological diversity is a major and valuable component of the environment and should be protected.
2. The parties note that the Commonwealth Government is currently preparing a draft national strategy for the conservation of biological diversity which is being pursued through the Biological Diversity Advisory Committee which has wide ranging representation, including the States.
3. The parties note that the Commonwealth is responsible for the negotiation, ratification and ensuring implementation of the proposed Biological Diversity Convention.
4. The parties note that the proposed Biological Diversity Convention, while having importance for nature conservation, is likely to have implications across a wide range of Commonwealth and State responsibilities and that the interests and responsibilities of the States and the Commonwealth which may be affected by the proposed Convention are not confined to any particular portfolios.
5. The Commonwealth will continue to provide the States with the opportunity to be represented on Australian delegations to meetings of the Intergovernmental Negotiating Committee for a Convention on Biological Diversity. The Commonwealth and the States will continue their consultations in relation to formulating Australian policy regarding the Convention through the existing mechanisms involving the Department of Foreign Affairs and Trade and State agencies as nominated from time to time by their First Ministers.
6. Given the wide and significant implications of the proposed Convention, the Commonwealth and the States acknowledge that issues may arise which may cause a State to seek consultation in relation to the negotiations at First Minister level.
7. The Australian and New Zealand Environment and Conservation Council, in consultation with and, where appropriate, joint co-operation with, other Ministerial Councils, the agencies referred to in clause 5 and relevant organisations, will forward to First Ministers advice on:
 - x. the implications of implementing the proposed Convention; and
 - xi. the manner in which implementation of the proposed Convention may be undertaken.
8. For the purposes of clause 7, the other Ministerial Councils will include:

Australian Agricultural Council;
Australian Soil Conservation Council;
Australian Water Resources Council;
Australian Forestry Council;

Australian Fisheries Council;
Australian and New Zealand Mineral and Energy Council; and
Australian Industry and Technology Council.

SCHEDULE 7

NATIONAL ESTATE

1. The parties acknowledge that the primary role of the Australian Heritage Commission is to identify the National Estate and advise the Commonwealth on its conservation.
2. The parties further acknowledge that primary responsibility for land use and resource planning decisions rests with States.
3. The parties agree that the register of the National Estate is one of the factors that the States may consider when making land use and resource planning decisions and that Section 30 of the Australian Heritage Commission Act 1975 applies only to decisions of the Commonwealth Ministers, Departments and Authorities. The parties recognise however that some applications of S.30 of the Act may have significant land and resource use planning implications.
4. The Commonwealth supports the current practice whereby the Australian Heritage Commission provides information on all places nominated to the Register of the National Estate or which are identified by studies, to the designated agencies in the relevant State. The Commonwealth agrees to support the current practice whereby the Commission seeks and considers the views of the relevant State on all nominated places before making a decision on interim listing.
5. Each State agrees to establish and advise the Australian Heritage Commission on appropriate channels of communication, the persons responsible for consultation and the persons responsible for coordination of responses to the Australian Heritage Commission on matters related to National Estate nominations and listings.
6. The Commonwealth supports the current practice whereby the Australian Heritage Commission provides information to the relevant local government body on places to be given interim listing status at least two months prior to any public notification of that interim listing.
7. The parties agree that systematic, thematic and/or regional assessment is the preferred basis on which to assess the national estate values of an area.
8. The Commonwealth and the States agree to facilitate joint assessment processes between the Australian Heritage Commission and the States where appropriate. In any event, existing data collections and assessment processes that conform to national estate assessment criteria which are set out in the Australian Heritage Commission Act 1975 can be accredited and relied upon by the Australian Heritage Commission as satisfying the requirements of the Commission.
9. The Commonwealth agrees that any State can negotiate with the Commission on improved forms of consultation concerning development of the Register of the National Estate generally.

10. The Commonwealth and the States agree that there will be consultation and agreement wherever possible on the timing of Australian Heritage Commission and State assessment processes.

11. Where there is an accredited or joint assessment of national estate values the Commonwealth and/or the States will give full faith and credit to the results of such assessment when exercising their responsibilities.

12. The Commonwealth and the States note that where there is an accredited or joint assessment of national estate values the Australian Heritage Commission will generally not, and in any event will not without consultation with the States, reconsider that assessment except where new and significant information is produced.

SCHEDULE 8

WORLD HERITAGE

1. The States recognise that the Commonwealth has an international obligation as a party to the World Heritage Convention to ensure the identification, protection, conservation, presentation and transmission to future generations of Australia's natural and cultural heritage of 'outstanding universal value'.

2. The Commonwealth will consult the States and use its best endeavours to obtain their agreement on the compilation of an indicative list of World Heritage properties. The States agree to consult the relevant local government bodies and interested groups (including conservation and industry groups) on properties for inclusion on the indicative list prior to submission to the Commonwealth. Should conservation or any other groups or individuals make suggestions on an indicative list direct to the Commonwealth these will be referred to the relevant State for comment.

3. The Commonwealth will consult with the relevant State or States, and use its best endeavours to obtain their agreement, on nominations to the World Heritage List.

4. Where the relevant State or States have agreed to a nomination, the preparation of that nomination for World Heritage listing will be the primary responsibility of the relevant State or States and will be undertaken in close consultation with the Commonwealth. In the case of properties that transcend State boundaries, the Commonwealth will coordinate preparation of the nomination. The Commonwealth is responsible for ensuring the nomination is in accordance with the World Heritage Convention and Guidelines and submitting the nomination to UNESCO.

5. Arrangements for the management of a property will be determined as far as practicable prior to the nomination. The management arrangements will take into consideration the continuation of the State's management responsibilities for the property while preserving the Commonwealth's responsibilities under the World Heritage Convention.

SCHEDULE 9

NATURE CONSERVATION

1. The parties agree that each level of Government has responsibilities for the protection of flora and fauna and should use their best endeavours to ensure the survival of species and ecological communities, both terrestrial and aquatic, that

make up Australia's biota. The parties recognise that the protection and sound management of natural habitats is of fundamental importance to this aim and that all levels of Government should use their best endeavours to conserve areas critical to the protection of Australia's flora and fauna and the maintenance of ecological processes that ensure biological productivity and stability.

2. The parties recognise that the States have primary responsibility in the general area of nature conservation.

3. The parties recognise that the Commonwealth has a particular responsibility in the area of nature conservation in relation to:

- management of areas that lie within its own jurisdiction including the external territories and the Jervis Bay Territory, Commonwealth places and marine areas;
- Australia's obligations under international law including under treaties;
- exports, imports and quarantine.

The Commonwealth also has a particular interest in facilitating the effective and efficient co-ordination of nature conservation across all jurisdictions.

4. The parties agree that a national approach should be taken to rare, vulnerable and endangered species given that the distribution of these species and their habitats is not confined or determined by State or Commonwealth borders and that a national approach is desirable to avoid duplication of effort, to ensure appropriate outcomes and to maximise the effectiveness of available resources.

5. The parties agree that environmental management and resource use decisions taken by all levels of Government should have regard to the national distribution of species and other agreed national nature conservation considerations.

6. The Commonwealth and the States agree to cooperate in the conservation, protection and management of native species and habitats that occur in more than one jurisdiction. In addition to participating in such cooperative activities, the Commonwealth and the States may take whatever action they deem appropriate within their respective jurisdictions to protect any native species and habitats which they consider requires specific action.

7. Within one year of the execution of this Agreement, the Australian and New Zealand Environment and Conservation Council, in consultation with relevant Ministerial Councils, will develop and report to First Ministers on a strategy for a national approach to the protection of rare, vulnerable and endangered species. The Australian and New Zealand Environment and Conservation Council will provide a progress report to First Ministers within six months.

8. The report referred to in clause 7 will take into account the preparation of an 'Australian National Strategy for the Conservation of Species and Communities Threatened With Extinction' by the Endangered Species Advisory Committee which was established to advise the Commonwealth Minister of the Arts, Sport, the Environment, Tourism and the Territories and will include the following:

- xv. the identification of Australia's rare, vulnerable and endangered species of flora and fauna;

- xvi. the options for off reserve protection of species and habitats to complement the reserve system and the identification of ecologically significant remnant vegetation;
- xvii. the manner in which all levels of Government might ensure that land or resource use decision making processes explicitly identify circumstances where there is an impact on identified rare, vulnerable and endangered species and assess the nature of this impact prior to taking a decision;
- xviii. the development of mechanisms on a cooperative basis to address cross-jurisdictional problems;
- xix. the setting of outcomes and goals and the allocation of tasks in relation to all States and the Commonwealth and monitoring and reporting on the achievement of those outcomes and goals;
- xx. the co-ordination of any research initiatives;
- xxi. the resource and financial implications and impacts of any national approach.

9. The parties recognise the threat posed to both the natural environment and agricultural and maricultural production by pest species of introduced plants and animals and acknowledge that a cooperative national approach to their control has the potential to produce savings from a reduction of duplication of existing effort. The parties agree that the Commonwealth's role should be one of facilitating co-ordinated State efforts within this national approach. Due to the nature of the threat, coordination of a national approach should be undertaken through the Australian and New Zealand Environment and Conservation Council, the Australian Agricultural Council and the Australian Fisheries Council.

10. The parties agree to co-operate in fulfilling Australia's commitments under international nature conservation treaties and recognise the Commonwealth's responsibilities in ensuring that those commitments are met.

11. The parties recognise the Commonwealth's responsibilities with regard to the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the export of wildlife and wildlife products. The Commonwealth and the States agree to cooperate in the development of improved intergovernmental arrangements for regulating commercial use of native wildlife, including setting of nationally sustainable harvesting levels, establishment of national standards in marketing of wildlife products, and streamlining of permits and regulatory controls and enforcement.

12. The parties agree that the management of parks and protected areas is largely a function of the States. The Commonwealth has a responsibility for parks and protected areas on its own land and any parks or protected areas it establishes in Australia's maritime areas (subject to any existing Commonwealth legislative arrangements in relation to maritime areas), and to assist the States with common concerns which have been identified by the Commonwealth and the States to have national implications.

13. The parties agree that a representative system of protected areas encompassing terrestrial, freshwater, estuarine and marine environments is a significant component in maintaining ecological processes and systems. It also provides a valuable basis for environmental education and environmental monitoring. Such a system will be enhanced by the development and application where appropriate of nationally consistent principles for management of reserves.

14. The parties agree that the national approach to the conservation, protection and management of native species and habitats may include the addition of new areas to

reserve systems and protected areas, some of which may be under multiple land use regimes, where such multiple land use does not adversely affect the prime nature conservation function of the reserve or protected area.

15. The parties further recognise that the establishment and management of a reserve system is not in itself sufficient to ensure the protection of Australia's flora and fauna. Off-reserve protection and management, particularly of remnant vegetation, are also required. The parties recognise the need for national co-operation to ensure that remnants that are ecologically significant on a national scale are identified; management and protection arrangements are consistent across borders; research initiatives are co-ordinated and not duplicated; and that off-reserve protection activities complement the reserve system.

16. The Commonwealth and the States agree to co-operate in the development of actions outlined in this schedule and that the Australian and New Zealand Environment and Conservation Council be the primary forum for all co-ordination of nationwide nature conservation functions.

RESERVATION BY THE NORTHERN TERRITORY

The Northern Territory in signing this Agreement notifies that it does not consider itself a party to the Intergovernmental Agreement on Road Transport entered into by the Commonwealth, States and the Australian Capital Territory, and accordingly is not bound by sub-clause 5(vi) and clause 7 of Schedule 4 to this Agreement.

The Northern Territory further notifies its intention to enter into discussions with the other parties with the objective of securing the direct participation of representatives of the Northern Territory Government concerned with transport administration in any joint or collaborative processes among the Commonwealth, States and Territories for the establishment of measures for national motor vehicle emission and noise standards.

** See Northern Territory reservation at end of document.

Appendix B

Part 1 of the Australian National Strategy for Ecologically Sustainable Development endorsed by the Council of Australian Governments, December 1992

National Strategy for Ecologically Sustainable Development⁹⁸

Prepared by the Ecologically Sustainable Development Steering Committee

Endorsed by the Council of Australian Governments

December, 1992

ISBN 0 644 27253 8

Part 1 - Introduction

Index to Part 1

What is ecologically sustainable development?

Ecologically Sustainable Development (ESD) represents one of the greatest challenges facing Australia's governments, industry, business and community in the coming years. While there is no universally accepted definition of ESD, in 1990 the Commonwealth Government suggested the following definition for ESD in Australia:

- 'using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased'.

Put more simply, ESD is development which aims to meet the needs of Australians today, while conserving our ecosystems for the benefit of future generations. To do this, we need to develop ways of using those environmental resources which form the basis of our economy in a way which maintains and, where possible, improves their range, variety and quality. At the same time we need to utilise those resources to develop industry and generate employment.

By developing this Strategy, we have demonstrated our belief that a coordinated approach to ESD is required. There are many reasons for this, including the need to look at management of Australia's ecological and economic resources on a regional, national and international basis, and the significance of potential threats to our environment and economy if we do not take action.

Governments recognise that there is no identifiable point where we can say we have achieved ESD. Some key changes to the way we think, act and make decisions, however, will help ensure Australia's economic development is ecologically sustainable. There are two main features which distinguish an ecologically sustainable approach to development:

- we need to consider, in an integrated way, the wider economic, social and environmental implications of our decisions and actions for Australia, the international community and the biosphere; and
- we need to take a long-term rather than short-term view when taking those decisions and actions.

By following an ecologically sustainable path of development, we should be able to reduce the likelihood of serious environmental impacts arising from our economic activity. The number of divisive and damaging confrontations which have characterised some of our development projects should also decrease. More practically, ESD will mean changes to our patterns of resource use, including improvements in the quality of our air, land and water, and in the development of new, environmentally friendly products and processes.

⁹⁸ Source: Australian Government Department of Environment and Water Resources:
<http://www.environment.gov.au/esd/national/nsesd/strategy/intro.html>

Australia's goal, core objectives and guiding principles for the Strategy

The Goal is:

Development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.

The Core Objectives are:

- to enhance individual and community well-being and welfare by following a path of economic development that safeguards the welfare of future generations
- to provide for equity within and between generations
- to protect biological diversity and maintain essential ecological processes and life-support systems

The Guiding Principles are:

- decision making processes should effectively integrate both long and short-term economic, environmental, social and equity considerations
- where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation
- the global dimension of environmental impacts of actions and policies should be recognised and considered
- the need to develop a strong, growing and diversified economy which can enhance the capacity for environmental protection should be recognised
- the need to maintain and enhance international competitiveness in an environmentally sound manner should be recognised
- cost effective and flexible policy instruments should be adopted, such as improved valuation, pricing and incentive mechanisms
- decisions and actions should provide for broad community involvement on issues which affect them

These guiding principles and core objectives need to be considered as a package. No objective or principle should predominate over the others. A balanced approach is required that takes into account all these objectives and principles to pursue the goal of ESD.

Who will be affected by ESD?

Every one of us has a role to play in national efforts to embrace ESD. The participation of every Australian - through all levels of government, business, unions and the community - is central to the effective implementation of ESD in Australia.

Governments

In addition to setting the strategic and policy framework, governments will be making changes to their institutional arrangements to ensure that ESD principles and objectives are taken into consideration in relevant policy making processes. Among other things, this will involve strengthening of Cabinet processes, establishing more effective coordination arrangements between Ministerial Councils, and reviewing the charters and corporate plans of relevant government agencies to include ESD objectives.

Success will require changes in the patterns of decision-making and actions by all groups and individuals. Significant increases in the overall level of awareness of development and environmental problems and their solutions will also be required. Governments are concerned, however, that any ESD- related actions and decisions do not result in an unequal burden of adjustment on particular regions, sectors or groups in society. Therefore, the appropriateness of some policies and progress on implementation will vary between regions. Experience of a wide range of environment and development problems can be found in all sectors of private enterprise and the community. These same groups can help provide

practical solutions for these problems. Governments recognise that much of this experience has been under-valued in traditional decision making processes. However, Australia's potential for successfully embracing ESD depends in large part on our ability to recognise and utilise the full range of this experience. This can be facilitated by creating a partnership between government, the corporate world and community groups that have a particular interest in, or capacity to contribute to ESD.

Business

Private enterprise in Australia has a critical role to play in supporting the concept of ESD while taking decisions and actions which are aimed at helping to achieve the goal of this Strategy. Many have already been active participants in the ESD process, including taking significant individual steps to ensure that Australia's economy and production base are put on an ecologically sustainable footing.

Community Organisations

A wide range of community-based organisations, including unions, are already working on ESD-related activities such as coordinating public education and information programs, bush regeneration programs and action to control hazards to the environment. Governments will continue to provide opportunities for community consultation so individuals and groups can provide input on the development of programs and policies, and comment on the overall success and direction of this Strategy.

Individuals

Embracing ESD will ultimately rest on the ability of all Australians to contribute individually, through modifying everyday behaviour, and through the opportunities open to us to influence community practices.

As a nation we have a great capacity for change, and a very high awareness that our individual choices can influence social change. These choices will vary from how we respond to environmentally friendly products on our supermarket shelves, to changes in water, energy and waste disposal pricing, to our support for changes to product packaging and improved recycling facilities. We each have the capacity to influence public demand for products and services which are less harmful to the environment while also supporting our economy and providing employment.

How has this Strategy been developed?

This Strategy has evolved over several years and through extensive consultation with all levels of government, business, industry, academia, voluntary conservation organisations, community-based groups and individuals. The Strategy's origins stem back to release of the *World Conservation Strategy* in 1980, the *National Conservation Strategy for Australia* in 1983, and perhaps more importantly, the 1987 report of the World Commission on Environment and Development *Our Common Future* (the Brundtland Report). The Brundtland Report recognised that sustainable development means adopting lifestyles within the planet's ecological means. The Report also made it clear that the world's current pattern of economic growth is not sustainable on ecological grounds and that a new type of development is required to meet foreseeable human needs.

In June 1990, the Commonwealth Government set about the task of identifying comprehensively and systematically what Australians need to do to embrace ESD, by instituting a process of detailed discussion involving governments and the community following release of *Ecologically Sustainable Development: A Commonwealth Discussion Paper*. As part of this process, in August 1990 the former Prime Minister, the Hon R J L Hawke, announced his intention to establish nine sectoral ESD Working Groups, involving government officials, industry, environment, union, welfare and consumer groups, to examine sustainability issues in key industry sectors. Their purpose was to provide advice on future ESD policy directions and to develop practical proposals for implementing them. Community consultation formed an important part of this process, with a series of one day consultation forums being held around Australia to discuss mechanisms for integrating economic and environmental concerns, and an opportunity for broader community comment on the interim reports of the Working Groups.

In November 1991, the nine ESD Working Groups produced reports covering agriculture, forest use, fisheries, manufacturing, mining, energy use, energy production, tourism and transport. In January 1992, the three Chairs of the Working Groups presented further reports on intersectoral issues and greenhouse. In all, these eleven reports contained over five hundred recommendations on ways of working towards ESD.

The ESD Working Group process was valuable in two key respects. First, it produced wide ranging and innovative recommendations for action both within and across key sectors of activity. While unanimity was not reached in a number of areas, many of the recommendations had a wide measure of support from all the interests represented.

Second, and equally important, it promoted a continuing dialogue between interests and community groups. As a result, there is a better understanding of the factual basis of the debate and a greater willingness from the broad range of participants to encourage action which takes account of all the interests involved.

The reports of the ESD Working Groups have provided the foundation on which governments have developed this Strategy. In November 1991, Heads of Government agreed on a cooperative intergovernmental process for examining the recommendations of the ESD reports. They established the intergovernmental ESD Steering Committee (ESDSC) to coordinate the assessment of the many recommendations and their implications for current and future government policies, and to report to Heads of Government on the outcomes of these considerations.

In May 1992, Heads of Government also agreed to release a draft of this Strategy as an officials' discussion paper, to promote discussion and obtain community views on possible future policy directions. This was primarily in recognition of the nature, range and significance of many of the issues covered by the ESD Working Group Reports' recommendations. The draft strategy was subsequently released by the Prime Minister on 30 June for a two-month public comment period.

Over two hundred submissions were received in that period. The majority of these submissions advocated acceptance of, and mechanisms for implementation of the final recommendations from the ESD Working Groups and Chairs; the clearer identification of priorities and of agencies responsible for implementation; and clarification of the linkages between this Strategy and other government policies and initiatives. The changes in structure and content in finalising this Strategy are largely in response to these comments. The ESDSC also found the submissions a valuable source of information on the broader community's priorities, and utilised them in helping to determine final policy positions. In addition, the ESDSC has produced a *Compendium of ESD Recommendations* as an accompanying document to this Strategy. The Compendium describes in tabular form, how this Strategy and the National Greenhouse Response Strategy, agreed by governments, together with examples of relevant existing policies, relate to the over five hundred ESD recommendations.

At its meeting on 7 December 1992, the Council of Australian Governments endorsed the National Strategy for Ecologically Sustainable Development, noting that implementation would be subject to budgetary priorities and constraints in individual jurisdictions. The Council noted that the reports of the ESD Working Groups and Chairs have provided the foundation on which governments have developed the Strategy.

The Council noted that the document is intended to play a critical role in setting the scene for the broad changes in direction and approach that governments will take to try to ensure that Australia's future development is ecologically sustainable. The Council agreed that the future development of all relevant policies and programs, particularly those which are national in character, should take place within the framework of the ESD Strategy and the Intergovernmental Agreement on the Environment which came into effect on 1 May 1992. The Council encouraged business, unions and community groups to use the ESD Strategy as a basis for actions which contribute to the pursuit of Australia's national goal for ESD. The Council agreed to the publication and public release of the Strategy for wide community distribution and access.

What are the linkages between this Strategy and other government policies and initiatives?

The Brundtland Report acted as a catalyst for a number of international developments on environment and development issues, including negotiation of a range of international treaties and conventions. These developments culminated in the United Nations Conference on Environment and Development (UNCED), which was held in Brazil in June 1992 and attended by most of the world's governments.

A number of direction setting documents were signed at UNCED, including the Rio Declaration and Agenda 21. Policy making on related environment and development issues could not be put on hold while these documents were being developed, and the basic principles for world sustainable development were being refined. In some cases consideration of related policy issues was incorporated into the UNCED process, such as the UN Framework Convention on Climate Change and the Convention on Biological Diversity. In this context, the Rio Declaration and Agenda 21 provide a broad framework for global sustainable development.

Within Australia, a number of processes are underway which are important to achieving the overall goal of this Strategy. Some of these initiatives commenced before the formal ESD Working Group process. Related initiatives include the Intergovernmental Agreement on the Environment (IGAE), the National Greenhouse Response Strategy, the development of the National Strategy for the Conservation of Australia's Biological Diversity, the National Waste Minimisation and Recycling Strategy, the Commonwealth Major Projects Facilitation initiative, and National Forest Policy Statement. Governments are also addressing the domestic implications of international documents such as Agenda 21, the UN Framework Convention on Climate Change and the UN Convention on Biological Diversity.

As Australia's goal, core objectives and principles for ESD have been developed, refined and found increasing acceptance, they have been reflected to a greater or lesser extent in these initiatives. Others have been brought directly under this umbrella Strategy. Over time, Governments will ensure greater consistency of related policies and processes with these objectives and principles.

As well as action to ensure environment and development policies are consistent with ESD, Australia has also embarked on a micro-economic reform program which will have far-reaching implications for how we apply our human and material resources towards long term economic well-being. More effective and efficient management and understanding of our resources is therefore critical from all aspects of social, industrial, economic and environmental planning.

What does the *National Strategy* for ESD contain?

This document sets out the broad strategic and policy framework under which governments will cooperatively make decisions and take actions to pursue ESD in Australia. It will be used by governments to guide policy and decision making, particularly in those key industry sectors which rely on the utilisation of natural resources.

The Strategy plays the critical role of setting the scene for the broad changes in direction and approach that governments will take to ensure that Australia's future development is ecologically sustainable.

The Strategy also aims to be accessible to industry, business and the broader community. It should provide these groups with a good understanding of government approaches to a wide range of economic and environment policies. Governments encourage industry and business to use this document as a basis on which to develop processes, resource use and management techniques which contribute to Australia's national goal for ESD.

Similarly, we believe that community groups will find this Strategy a useful information source and we encourage them to promote its goal, objectives and principles and to develop community-based and individual actions to pursue ESD.

When reading the Strategy, the following points need to be kept in mind:

- part 2 provides the broad strategic framework for those key industry sectors which rely on natural resources as their productive base; while
- part 3 provides the same information for a broad range of issues which are relevant to actions in several of the key industry sectors.

For example, when looking for information on how governments will apply pricing and taxation measures to the mining sector, you will need to read both the section on mining in part 2 and the section on pricing and taxation in part 3 to get the full picture.

Further work is continuing on a number of complex and difficult areas. For example, the ESD Steering Committee has commissioned work on the relationship of the precautionary principle and policy instruments for application of the principle of intergenerational equity. It should also be recognised that many of the broad strategic directions and actions outlined in this Strategy will require substantial funding. In light of the very significant budgetary constraints facing all levels of government for the foreseeable future, each jurisdiction will determine its own priorities for implementation of actions following assessment of the budgetary priority they should command, both between individual ESD-related actions and against other competing demands for public funding. Funding arrangements agreed between levels of government should reflect the commitment of Heads of Government in July 1991 in relation to tied grants and matched funding.

The Commonwealth, States, Territories and the Australian Local Government Association acknowledge that while the Association endorses this Strategy and will do all within its power to ensure compliance, it cannot bind local government authorities to observe the terms of this Strategy.

What is the Compendium of ESD Recommendations?

The *Compendium of ESD Recommendations* has been prepared as an accompanying document to the *National Strategy for ESD*. The Compendium describes in tabular form how this Strategy and the *National Greenhouse Response Strategy*, agreed by governments, together with examples of relevant existing policies, relate to the over five hundred recommendations arising from the ESD Working Groups' and Chairs' Reports.

The Compendium:

- lists all the recommendations arising from the ESD Working Groups' and Chairs' Reports
- relates the governments' responses in the Strategies, together with examples of relevant existing policies, programs and actions, to each of the recommendations arising from the ESD Reports and provides supporting detail and cross references
- identifies governments' responses to each recommendation
- identifies examples of specific policies, programs and actions that are being put in place or will be put in place to respond to recommendations
- identifies bodies with primary responsibility for implementation
- where appropriate, sets out a broad timeframe for implementation

Appendix C

Rio Declaration on Environment and Development, June 1992

Rio Declaration on Environment and Development⁹⁹

The United Nations Conference on Environment and Development,

Having met at Rio de Janeiro from 3 to 14 June 1992,

Reaffirming the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972, and seeking to build upon it,

With the goal of establishing a new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of societies and people,

Working towards international agreements which respect the interests of all and protect the integrity of the global environmental and developmental system,

Recognizing the integral and interdependent nature of the Earth, our home,

Proclaims that:

Principle 1

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Principle 2

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 3

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Principle 4

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Principle 5

All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

Principle 6

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in

⁹⁹ Source: United Nations Environment Program:
<http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163>

the field of environment and development should also address the interests and needs of all countries.

Principle 7

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

Principle 8

To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.

Principle 9

States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.

Principle 10

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Principle 11

States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and development context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

Principle 12

States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

Principle 13

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

Principle 14

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

Principle 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Principle 16

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

Principle 17

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

Principle 18

States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

Principle 19

States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

Principle 20

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

Principle 21

The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

Principle 22

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

Principle 23

The environment and natural resources of people under oppression, domination and occupation shall be protected.

Principle 24

Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

Principle 25

Peace, development and environmental protection are interdependent and indivisible.

Principle 26

States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.

Principle 27

States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.

Source: Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972

(United Nations publication, Sales No. E.73.II.A.14 and corrigendum), chap. I.

Appendix D

Table of New South Wales and Commonwealth Legislation that refer to Ecologically Sustainable Development

New South Wales Acts and Regulations that contain the phrase “Ecologically Sustainable Development”

Agricultural Tenancies Act 1990 No 64
Agricultural and Veterinary Chemicals (New South Wales) Act 1994 No 53
Central Coast Water Corporation Act 2006 No 105
Coastal Protection Act 1979 No 13
Contaminated Land Management Act 1997 No 140
Energy Services Corporations Act 1995 No 95
Environmental Planning and Assessment Act 1979 No 203
Environmental Planning and Assessment Regulation 2000
Fire Brigades Act 1989 No 192
Fisheries Management (Abalone Share Management Plan) Regulation 2000
Fisheries Management Act 1994 No 38
Fisheries Management (Estuary General Share Management Plan) Regulation 2006
Fisheries Management (Estuary Prawn Trawl Share Management Plan) Regulation 2006
Fisheries Management (Lobster Share Management Plan) Regulation 2000
Fisheries Management (Ocean Hauling Share Management Plan) Regulation 2006
Fisheries Management (Ocean Trap and Line Share Management Plan) Regulation 2006
Fisheries Management (Ocean Trawl Share Management Plan) Regulation 2006
Fisheries Management (Supporting Plan) Regulation 2006
Gas Supply Act 1996 No 38
Independent Pricing and Regulatory Tribunal Act 1992 No 39
Landcom Corporation Act 2001 No 129
Local Government Act 1993 No 30
Local Government (General) Regulation 2005
Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005
Lord Howe Island Act 1953 No 39
Marine Parks Act 1997 No 64
National Environment Protection Council (New South Wales) Act 1995 No 4
National Parks and Wildlife Act 1974 No 80
Native Vegetation Act 2003 No 103
Native Vegetation Regulation 2005
Natural Resources Commission Act 2003 No 102
Passenger Transport Act 1990 No 39
Pesticides Act 1999 No 80
Plantations and Reafforestation Act 1999 No 97
Protection of the Environment Administration Act 1991 No 60
Protection of the Environment Operations Act 1997 No 156
Protection of the Environment Operations (Clean Air) Regulation 2002
Rural Assistance Act 1989 No 97
Rural Fires Act 1997 No 65
Sporting Venues Management Act 2002 No 56
State Owned Corporations Act 1989 No 134
State Property Authority Act 2006 No 40
State Water Corporation Act 2004 No 40
State Water Management Outcomes Plan Order 2002
Sydney Harbour Foreshore Authority Act 1998 No 170
Sydney Olympic Park Authority Act 2001 No 57
Sydney Water Act 1994 No 88
Sydney Water Catchment Management Act 1998 No 171
Threatened Species Conservation Act 1995 No 101
Transport Administration Act 1988 No 109
Waste Avoidance and Resource Recovery Act 2001 No 58
Waste Recycling and Processing Corporation Act 2001 No 59

Water Management Act 2000 No 92
Western Lands Act 1901 No 70
Western Sydney Parklands Act 2006 No 92

**Commonwealth Acts and Regulations that contain the phrase “Ecologically
Sustainable Development”**

Agricultural and Veterinary Chemicals (Administration) Act 1992
Environment and Heritage Legislation Amendment Act (No. 1) 2006
Environment Protection and Biodiversity Conservation Act 1999
Fisheries Administration Act 1991
Fisheries Management Act 1991
Lake Eyre Basin Intergovernmental Agreement Act 2001
National Environment Protection Council Act 1994
National Environment Protection Measures (Implementation) Act 1998
Natural Heritage Trust of Australia Act 1997
Natural Resources Management (Financial Assistance) Act 1992
Petroleum (Submerged Lands) (Management of Environment) Regulations 1999
Primary Industries and Energy Research and Development Act 1989
Productivity Commission Act 1998
Renewable Energy (Electricity) Act 2000
Sydney Harbour Federation Trust Act 2001
Trade Practices Regulations 1974

Appendix E

Selected Extracts from some New South Wales and Commonwealth Legislation that refer to Ecologically Sustainable Development

New South Wales Legislation

Coastal Protection Act 1979 ss 3, 37A, 38, 39, 44, 54A

Contaminated Land Management Act 1997 ss 3, 10

Environmental Planning and Assessment Act 1979 ss 4, 5, 79B, 112D, 112E, 115H

Environmental Planning and Assessment Regulation 2000 Sch 2

Fisheries Management Act 1994 ss 3, 7E, 57, 143, 198, 220A, 220S, 221A, 221E, 221K, 221Q, 221ZK

Local Government Act 1993 ss 7, 8, 82, 89, 403, Dictionary

National Parks and Wildlife Act 1974 ss2A, 91CC

Protection of the Environment Operations Act 1997 s 3

Protection of the Environment Administration Act 1991 ss 6, 27

Sydney Water Catchment Management Act 1998 ss 11, 14

Water Management Act 2000: preamble and ss 3, 14, 292, 372

Commonwealth Legislation

Environment Protection and Biodiversity Conservation Act 1999 (Cth) ss 3, 3A, 136

Fisheries Management Act 1991 (Cth) s 3

New South Wales Legislation¹⁰⁰

Coastal Protection Act 1979

3 Objects of this Act

The objects of this Act are to provide for the protection of the coastal environment of the State for the benefit of both present and future generations and, in particular:

- (a) to protect, enhance, maintain and restore the environment of the coastal region, its associated ecosystems, ecological processes and biological diversity, and its water quality, and
- (b) to encourage, promote and secure the orderly and balanced utilisation and conservation of the coastal region and its natural and man-made resources, having regard to the principles of **ecologically sustainable development**, and
- (c) to recognise and foster the significant social and economic benefits to the State that result from a sustainable coastal environment, including:
 - (i) benefits to the environment, and
 - (ii) benefits to urban communities, fisheries, industry and recreation, and
 - (iii) benefits to culture and heritage, and
 - (iv) benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water, and
- (d) to promote public pedestrian access to the coastal region and recognise the public's right to access, and
- (e) to provide for the acquisition of land in the coastal region to promote the protection, enhancement, maintenance and restoration of the environment of the coastal region, and
- (f) to recognise the role of the community, as a partner with government, in resolving issues relating to the protection of the coastal environment, and
- (g) to ensure co-ordination of the policies and activities of the Government and public authorities relating to the coastal region and to facilitate the proper integration of their management activities, and
- (h) (Repealed)

37A Implementation of principles of ecologically sustainable development

In exercising functions under this Part, the Minister is to promote the principles of **ecologically sustainable development**

38 General supervision of coastal zone

- (1) A public authority shall not, without the concurrence of the Minister:
 - (a) carry out any development in the coastal zone, or
 - (b) grant any right or consent to a person:
 - (i) to use or occupy any part of the coastal zone, or
 - (ii) to carry out any development in the coastal zone,
 - if, in the opinion of the Minister, as advised from time to time by the Minister to the public authority, the development or the use or occupation may, in any way:
 - (b1) be inconsistent with the principles of **ecologically sustainable development**, or
 - (c) adversely affect the behaviour or be adversely affected by the behaviour of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, or

¹⁰⁰ Source- New South Wales Parliamentary Office:
<http://www.legislation.nsw.gov.au/maintop/scanact/inforce/NONE/0>

(d) adversely affect any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse.

(2) The Governor may, by order published in the Gazette, declare that subsection (1) does not, to the extent specified in the order, apply to such area within the coastal zone as is specified or described in the order, and subsection (1) ceases to apply accordingly.

39 Special provisions respecting coastal development

(1) The Governor, on the recommendation of the Minister, may, by order published in the Gazette, in respect of such area within the coastal zone as is specified or described in the order, provide that a public authority so specified shall not, without the concurrence of the Minister:

(a) carry out in the area development or development of such class or description as is so specified or described, or

(b) grant any right or consent to a person to use or occupy the whole or any part of the area or to carry out in the area any development or development of such class or description as is so specified or described.

(2) The Governor, on the recommendation of the Minister, may, by regulation, in respect of such area within the coastal zone as is specified or described in the regulation, make provisions (whether by reference to the functions of a public authority or otherwise) regulating, controlling or prohibiting the use or occupation of the area or the carrying out of development in the area.

(3) The provisions of a regulation made pursuant to subsection (2) do not apply to or in respect of an area that is subject to an environmental planning instrument within the meaning of the Environmental Planning and Assessment Act 1979 other than a State environmental planning policy.

(4) The Minister shall not make a recommendation for the purposes of this section unless the Minister certifies to the Governor that the Minister is satisfied that the order or regulation relates only to development, or the use or occupation of an area that may, in any way:

(a1) be inconsistent with the principles of **ecologically sustainable development**, or

(a) adversely affect the behaviour or be adversely affected by the behaviour of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, or

(b) adversely affect any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse.

44 Matters for consideration in relation to concurrence

In determining any matter relating to the granting or refusal of a concurrence required by or under this or any other Act, the Minister shall have regard only to whether or not the development or the use or occupation of the coastal zone in respect of which the concurrence is required may, in any way:

(a1) be inconsistent with the principles of **ecologically sustainable development**, or

(a) adversely affect the behaviour or be adversely affected by the behaviour of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, or

(b) adversely affect any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse.

54A Implementation of principles of ecologically sustainable development

In exercising functions under this Part, the Minister is to promote the principles of **ecologically sustainable development**.

Contaminated Land Management Act 1997

3 Objects of this Act

(1) The general object of this Act is to establish a process for investigating and (where appropriate) remediating land areas where contamination presents a significant risk of harm to human health or some other aspect of the environment.

(2) Particular objects of this Act are:

(a) to set out accountabilities for managing contamination if a significant risk of harm is identified, and

(b) to set out the role of the EPA in the assessment of contamination and the supervision of the investigation, remediation and management of contaminated sites, and

(c) to provide for the accreditation of site auditors of contaminated land to ensure appropriate standards of auditing in the management of contaminated land, and

(d) to ensure that contaminated land is managed with regard to the principles of **ecologically sustainable development**.

10 Need to maintain ecologically sustainable development

(1) The EPA is to have regard to the principles of **ecologically sustainable development** in the exercise of its functions under this Act and is to seek the implementation of those principles in the management by other persons of contaminated land.

(2) In this section **ecologically sustainable development** and the principles and programs that relate to it are to be construed according to their meanings in the following definition: principles of ecologically sustainable development means the following statements of principle:

Ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. **Ecologically sustainable development** can be achieved through the implementation of the following principles and programs:

(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and

(ii) an assessment of the risk-weighted consequences of various options,

(b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,

(d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:

(i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,

(ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,

(iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

Environmental Planning and Assessment Act 1979

4- Definitions

...

ecologically sustainable development has the same meaning it has in section 6 (2) of the Protection of the Environment Administration Act 1991.

...

5 Objects

The objects of this Act are:

(a) to encourage:

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(ii) the promotion and co-ordination of the orderly and economic use and development of land,

(iii) the protection, provision and co-ordination of communication and utility services,

(iv) the provision of land for public purposes,

(v) the provision and co-ordination of community services and facilities, and

(vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and

(vii) ecologically sustainable development, and

(viii) the provision and maintenance of affordable housing, and

(b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and

(c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

79B Consultation and concurrence

(1) General

If, by an environmental planning instrument, the consent authority, before determining the development application, is required to consult with or to obtain the concurrence of a person, the consent authority must, in accordance with the environmental planning instrument and the regulations, consult with or obtain the concurrence of the person, unless the consent authority determines to refuse to grant development consent.

(2) However, if, by an environmental planning instrument, the Minister, before determining a development application, is required to obtain the concurrence of a person, the Minister is required only to consult with the person.

(3) Consultation and concurrence—threatened species

Development consent cannot be granted for:

- (a) development on land that is, or is a part of, critical habitat, or
- (b) development that is likely to significantly affect a threatened species, population, or ecological community, or its habitat,

without the concurrence of the Director-General of National Parks and Wildlife or, if a Minister is the consent authority, unless the Minister has consulted with the Minister administering the Threatened Species Conservation Act 1995.

Note. If a biobanking statement has been issued in respect of the development under Part 7A of the Threatened Species Conservation Act 1995, the development is taken not to significantly affect threatened species, populations or ecological communities, or their habitats.

(4) Despite subsection (3), if the Minister administering the Threatened Species Conservation Act 1995 considers that it is appropriate, that Minister may:

- (a) elect to act in place of the Director-General of National Parks and Wildlife for the purposes of that subsection, or
- (b) review and amend any recommendations that that Director-General proposes to make, or any advice that that Director-General proposes to offer, for the purposes of that subsection.

(5) In deciding whether or not concurrence should be granted under subsection (3), the Director-General of National Parks and Wildlife or the Minister administering the Threatened Species Conservation Act 1995 must take the following matters into consideration:

- (a) any species impact statement that accompanied the development application,
- (b) any assessment report prepared by the consent authority,
- (c) any submissions received concerning the development application,
- (d) any relevant recovery plan or threat abatement plan,
- (e) whether the development proposed is likely to reduce the long-term viability of the species, population or ecological community in the region,
- (f) whether the development is likely to accelerate the extinction of the species, population or ecological community or place it at risk of extinction,
- (g) the principles of **ecologically sustainable development**,
- (h) the likely social and economic consequences of granting or of not granting concurrence.

(6) The Minister administering the Threatened Species Conservation Act 1995 must provide the Minister who is the consent authority with any recommendations made by the Director-General of National Parks and Wildlife concerning determination of a development application relating to development referred to in subsection (3) and, if that Minister does not accept any one or more of the recommendations, that Minister must include in the determination the recommendations not accepted and that Minister's reasons for not accepting them.

(7) A copy of the reasons referred to in subsection (6) must be available for public inspection, during ordinary office hours, at the head office of the National Parks and Wildlife Service.

(8) Granting or refusal of concurrence

A person whose concurrence to development is required may:

- (a) grant concurrence to the development, either unconditionally or subject to conditions, or
- (b) refuse concurrence to the development.

In deciding whether to grant concurrence, the person must take into consideration only the matters stated pursuant to section 30 (3) and applicable to the development (unless the relevant environmental planning instrument is a deemed environmental planning instrument).

(9) Giving effect to concurrence

A consent authority that grants consent to the carrying out of development for which a concurrence has been granted must grant the consent subject to any conditions of the concurrence. This does not affect the right of the consent authority to impose conditions under section 80A not inconsistent with the conditions of the concurrence or to refuse consent.

(10) Avoidance of consents subject to concurrence

If, by an environmental planning instrument or by subsection (3), a development application may not be determined by the granting of consent without the concurrence of a specified person, a consent granted:

- (a) without that concurrence, or
- (b) not subject to any conditions of the concurrence,
is, subject to sections 102–104, voidable.

(11) However, if the specified person fails to inform the consent authority of the decision concerning concurrence within the time allowed for doing so, the consent authority may determine the development application without the concurrence of the specified person and a development consent so granted is not voidable on that ground.

(12) Nothing in this section affects any liability of a consent authority in respect of a consent granted as referred to in subsection (10) (a) or (b).

112D Matters to be considered by Director-General of National Parks and Wildlife as concurrence authority

(1) In deciding whether or not concurrence should be granted under section 112C, the Director-General of National Parks and Wildlife (or the Minister administering the Threatened

Species Conservation Act 1995, if that Minister acts under that section) must take the following matters into consideration:

- (a) any species impact statement prepared in relation to the activity,
 - (b) any assessment report prepared by or on behalf of the proponent,
 - (c) any representations made under section 113 concerning the species impact statement,
 - (d) any relevant recovery plan or threat abatement plan,
 - (e) whether the activity is likely to reduce the long-term viability of the species, population or ecological community in the region,
 - (f) whether the activity is likely to accelerate the extinction of the species, population or ecological community or place it at risk of extinction,
 - (g) the principles of **ecologically sustainable development**,
 - (h) the likely social and economic consequences of granting or of not granting concurrence.
- (2) Before the Director-General of National Parks and Wildlife or the Minister administering the Threatened Species Conservation Act 1995 decides to modify a concurrence in respect of an activity under section 112C he or she must:

- (a) give notice of the proposed decision to any person who made representations under section 113 concerning the species impact statement in respect of the activity, and
- (b) provide the person with an opportunity to make submissions with respect to the proposed decision within a period specified in the notice (being a period of not less than 28 days after the date of the notice), and
- (c) have regard to any submissions made to him or her in accordance with the notice within the period so specified.

112E Matters to be considered by Minister or Director-General of National Parks and Wildlife when consulted

The Minister administering the Threatened Species Conservation Act 1995 (for the purposes of consultation under section 112B) or the Director-General of National Parks and Wildlife (for the purposes of consultation under section 112C) (or the Minister administering the Threatened Species Conservation Act 1995, if that Minister acts under that section) must take the following matters into consideration:

- (a) any species impact statement prepared in relation to the activity,
- (b) any assessment report prepared by or on behalf of the proponent,
- (c) any representations made under section 113 concerning the species impact statement,
- (d) whether the activity is likely to reduce the long-term viability of the species in the region,
- (e) whether the activity is likely to place the species at risk of becoming endangered as described in section 10 of the Threatened Species Conservation Act 1995,
- (f) the principles of **ecologically sustainable development**,
- (g) the likely social and economic consequences if the activity is not carried out.

115H Principles guiding administration of Division

The administration of this Division is to be guided by the following principles:

- (a) the principles of **ecologically sustainable development**,
- (b) public participation in accordance with this Division,
- (c) environmental impact assessment in accordance with this Division

Environmental Planning and Assessment Regulation 2000

Schedule 2 Environmental impact statements

(Clauses 72 and 230)

1 Summary

A summary of the environmental impact statement.

2 Statement of objectives

A statement of the objectives of the development or activity.

3 Analysis of alternatives

An analysis of any feasible alternatives to the carrying out of the development or activity, having regard to its objectives, including the consequences of not carrying out the development or activity.

4 Environmental assessment

An analysis of the development or activity, including:

- (a) a full description of the development or activity, and
- (b) a general description of the environment likely to be affected by the development or activity, together with a detailed description of those aspects of the environment that are likely to be significantly affected, and
- (c) the likely impact on the environment of the development or activity, and
- (d) a full description of the measures proposed to mitigate any adverse effects of the development or activity on the environment, and
- (e) a list of any approvals that must be obtained under any other Act or law before the development or activity may lawfully be carried out.

5 Compilation of measures to mitigate adverse effects

A compilation (in a single section of the environmental impact statement) of the measures referred to in item 4 (d).

6 Justification of development

(1) The reasons justifying the carrying out of the development or activity in the manner proposed, having regard to biophysical, economic and social considerations, including the following principles of **ecologically sustainable development**:

(a) the **precautionary principle**, namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
- (ii) an assessment of the risk-weighted consequences of various options,

(b) **inter-generational equity**, namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

(c) **conservation of biological diversity** and ecological integrity, namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,

(d) **improved valuation**, pricing and incentive mechanisms, namely, that environmental factors should be included in the valuation of assets and services, such as:

- (i) polluter pays, that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,
- (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
- (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

Fisheries Management Act 1994

3 Objects of Act

- (1) The objects of this Act are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations.
- (2) In particular, the objects of this Act include:
 - (a) to conserve fish stocks and key fish habitats, and
 - (b) to conserve threatened species, populations and ecological communities of fish and marine vegetation, and
 - (c) to promote **ecologically sustainable development**, including the conservation of biological diversity,
and, consistently with those objects:
 - (d) to promote viable commercial fishing and aquaculture industries, and
 - (e) to promote quality recreational fishing opportunities, and
 - (f) to appropriately share fisheries resources between the users of those resources, and
 - (g) to provide social and economic benefits for the wider community of New South Wales.

Note. At common law, the public has a right to fish in the sea, the arms of the sea and in the tidal reaches of all rivers and estuaries. The public has no common law right to fish in non-tidal waters—the right to fish in those waters belongs to the owner of the soil under those waters. However, the public may fish in non-tidal waters if the soil under those waters is Crown land. In the case of non-tidal waters in rivers and creeks, section 38 declares that the public has a right to fish despite the private ownership of the bed of the river or creek. However, the right to fish in tidal or non-tidal waters is subject to any restriction imposed by this Act.

7E Content of fishery management strategy

A fishery management strategy is to:

- (a) describe the designated fishing activity for which it is prepared, and
- (b) incorporate any management plan or draft management plan for the fishery concerned, and
- (c) outline the fishing regulatory controls or proposed fishing regulatory controls applicable to the designated fishing activity, and
- (d) outline the likely interaction of the designated fishing activity with other fishing activities, and
- (e) include performance indicators to monitor whether the objectives of the strategy (and the management plan) and **ecologically sustainable development** are being attained, and
- (f) describe how the designated fishing activity is to be monitored, and
- (g) specify at what point a review of the strategy is required when a performance indicator is not being satisfied.

Note. See section 57 for content of a management plan for a share management fishery

57 Content of management plan

- (1) The management plan for a share management fishery may make provision for or with respect to the following:
 - (a) the objectives of the plan,
 - (b) the classes of shares in the fishery and the provisions of the plan applicable to each such class,
 - (c) the rights of shareholders to take fish or nominate others to take fish in the fishery,
 - (d) the fish that may be taken in the fishery,
 - (e) the area for taking fish in the fishery,
 - (f) the times or periods for taking fish in the fishery,
 - (g) the use of boats and fishing gear in the fishery,
 - (h) the conduct of fishery reviews for the purposes of the preparation of a new plan,

- (i) the species or group of species of fish taken in the fishery that are to be subject to a total allowable catch for the commercial fishing sector,
 - (j) the protection of the habitats of the species of fish that may be taken in the fishery (including habitats at all stages of the life history of any such species),
 - (k) the taking of bait for use in the fishery,
 - (l) the matters expressly authorised by this Act to be included in the plan,
 - (m) any other matters relating to the management of the fishery that are consistent with this Act and its objects.
- (2) A management plan must:
- (a) include performance indicators to monitor whether the objectives of the plan and **ecologically sustainable development** are being attained, and
 - (b) specify at what point a review of the management plan is required when a performance indicator is not being satisfied.

143 Aquaculture industry development plans

- (1) The Minister may, in accordance with this section, determine plans for the development of the commercial aquaculture industry (development plans).
- (2) A development plan may relate to any aspect of the commercial aquaculture industry, including aquaculture of a particular species of fish or marine vegetation or aquaculture in a particular area.
- (3) The Minister is to have regard to any relevant development plan in the exercise of the Minister's functions under this Part.
- (4) A development plan may contain the following:
 - (a) the objectives of the Minister in the administration of this Part or any provision of this Part,
 - (b) the description of areas suitable for aquaculture and the type of aquaculture for which any such area is suitable,
 - (c) suitable methods for undertaking aquaculture or any type of aquaculture,
 - (d) suitable species of fish or marine vegetation for aquaculture in a particular area,
 - (e) any other matter concerning aquaculture that the Minister considers appropriate.
- (5) A development plan must:
 - (a) include performance indicators to monitor whether the objectives set out in the plan and **ecologically sustainable development** are being attained, and
 - (b) specify at what point a review of the development plan is required when a performance indicator is not being satisfied.
- (6) The Minister may amend or replace a development plan.
- (7) A development plan (including any amendment or new plan) is to be published in the Gazette.
- (8) Before the Minister determines a development plan (including any amendment or new plan), the Minister is required to give the commercial aquaculture industry and the public an opportunity to make submissions on the proposed plan (or proposed amendment or new plan) and to take any submission that is duly made into account.
- (9) The exercise of a function under this Part is not invalid merely because it is inconsistent with a development plan.

198 Objects of Division

The objects of this Division are to conserve the biodiversity of fish and aquatic vegetation and to protect fish habitat by providing for the management of dredging and reclamation work, consistent with the objectives of **ecologically sustainable development**

220A Objects of Part

The objects of this Part are as follows:

- (a) to conserve biological diversity of fish and marine vegetation and promote **ecologically sustainable development** and activities,
- (b) to prevent the extinction and promote the recovery of threatened species, populations and ecological communities of fish and marine vegetation,
- (c) to protect the critical habitat of those threatened species, populations and ecological communities that are endangered,
- (d) to eliminate or manage certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities of fish and marine vegetation,
- (e) to ensure that the impact of any action affecting threatened species, populations and ecological communities of fish and marine vegetation is properly assessed,
- (f) to encourage the conservation of threatened species, populations and ecological communities of fish and marine vegetation by the adoption of measures involving co-operative management.

Note. In furtherance of the objects of this Part, the responsibilities of the Minister and the Director-General extend to biological diversity of fish and marine vegetation—see the other provisions of this Part and the provisions relating to the Biological Diversity Advisory Council and the Biological Diversity Strategy in relation to fish and marine vegetation under Part 9 of the Threatened Species Conservation Act 1995.

220S Matters to which Minister to have regard in declaring critical habitat

- (1) Before deciding whether an area identified by the Minister should be declared critical habitat, the Minister must have regard to the following:
 - (a) the likely social and economic consequences of a declaration of the area as critical habitat,
 - (b) without limiting paragraph (a), the likely consequences of a declaration of the area as critical habitat for landholders of, or other persons having an interest in, or in lawful uses of, the land concerned,
 - (c) the advice of the Fisheries Scientific Committee on the matter,
 - (d) any written submissions received by the Minister on or before the date specified for the receipt of public submissions about the preliminary identification of the area and, in particular, any submissions received from public authorities exercising relevant functions in relation to the area.
- (2) In so doing, the Minister must also consider whether, consistent with the principles of **ecologically sustainable development**, the area identified might be amended to avoid or lessen any adverse consequences of its declaration as critical habitat.

221A Matters that Director-General must take into account

- (1) In considering whether to grant or to refuse to grant a licence application, the Director-General must take into account the following:
 - (a) any species impact statement,
 - (b) any written submissions received concerning the application within the period, and at the address for submissions, specified in the notice,
 - (c) the factors specified in section 220F (Eligibility for listing),
 - (d) any relevant recovery plan or threat abatement plan,
 - (e) the principles of **ecologically sustainable development**,
 - (f) whether the action proposed is likely to irretrievably reduce the long-term viability of the species, population or ecological community in the region,
 - (g) whether the action proposed is likely to accelerate the extinction of the species or ecological community or place it at risk of extinction.

(2) The Director-General must also consider the likely social and economic consequences of granting or refusing to grant a licence application.

221IE Matters that Minister must take into account

(1) In determining whether to make an order, the Minister must take into account the following:

- (a) the species impact statement,
- (b) any advice of the Fisheries Scientific Committee, and any advice of any advisory council established under section 229 that, in the opinion of the Minister, has an interest in the proposed order, received under section 221IA.
- (c) any written submissions concerning the order received within the period allowed for public comment,
- (d) the factors specified in section 220F (Eligibility for listing),
- (e) any relevant recovery plan or threat abatement plan,
- (f) the principles of **ecologically sustainable development**,
- (g) whether the action proposed is likely to irretrievably reduce the long-term viability of the species, population or ecological community in the region,
- (h) whether the action proposed is likely to accelerate the extinction of the species or ecological community or place it at risk of extinction.

(2) The Minister must also consider the likely social and economic consequences of making or not making an order.

221K Content of species impact statement

(1) A species impact statement must include a full description of the action proposed, including its nature, extent, location, timing and layout and, to the fullest extent reasonably practicable, the information referred to in this section.

(2) A species impact statement must include the following information as to threatened species and populations:

- (a) a general description of the threatened species or populations known or likely to be present in the area that is the subject of the action and in any area that is likely to be affected by the action,
- (b) an assessment of which threatened species or populations known or likely to be present in the area are likely to be affected by the action,
- (c) for each species or population likely to be affected, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or threat abatement plan applying to it,
- (d) an estimate of the local and regional abundance of those species or populations,
- (e) a full description of the type, location, size and condition of the habitat (including critical habitat) of those species and populations and details of the distribution and condition of similar habitats in the region,
- (f) a full assessment of the likely effect of the action on those species and populations, including, if possible, the quantitative effect of local populations in the cumulative effect in the region,
- (g) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of **ecologically sustainable development**,
- (h) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the species and populations, including a compilation (in a single section of the statement) of those measures,
- (i) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the species or population.

- (3) A species impact statement must include the following information as to ecological communities:
- (a) a general description of the ecological community present in the area that is the subject of the action and in any area that is likely to be affected by the action,
 - (b) for each ecological community present, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or any threat abatement plan applying to it,
 - (c) a full description of the type, location, size and condition of the habitat of the ecological community and details of the distribution and condition of similar habitats in the region,
 - (d) a full assessment of the likely effect of the action on the ecological community, including, if possible, the quantitative effect of local communities in the cumulative effect in the region,
 - (e) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of **ecologically sustainable development**,
 - (f) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the ecological community, including a compilation (in a single section of the statement) of those measures,
 - (g) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the ecological community.
- (4) A species impact statement must include details of the qualifications and experience in threatened species conservation of the person preparing the statement and of any other person who has conducted research or investigations relied on in preparing the statement.
- (5) The requirements of subsections (2) and (3) in relation to information concerning the State-wide conservation status of any species or population, or any ecological community, are taken to be satisfied by the information in that regard supplied to the principal author of the species impact statement by the Department, which information the Department is by this subsection authorised and required to provide.

221Q Appeal to Minister

- (1) A person against whom an order is made under this Division may appeal to the Minister against the making of the order.
- (2) After hearing an appeal, the Minister may:
- (a) confirm the order, or
 - (b) modify or rescind the order, but only if this is consistent with the principles of **ecologically sustainable development**.

221ZK Biodiversity certification

- (1) The Minister may by order published in the Gazette confer biodiversity certification on an EPI if satisfied that the EPI, in addition to any other relevant measures to be taken, will lead to the overall improvement or maintenance of biodiversity values. Biodiversity values include threatened species, populations and ecological communities and their habitats.
- (2) In deciding whether to confer biodiversity certification on an EPI the Minister must also have regard to the following considerations:
- (a) the likely social and economic consequences of implementation of the EPI,
 - (b) the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities,
 - (c) the principles of **ecologically sustainable development**,
 - (d) conservation outcomes resulting from any reservation or proposed reservation of land under Part 4 of the NPW Act or the entering into of a conservation agreement relating to the land under that Act, or resulting from any other action to secure the protection of land for conservation purposes,

(e) conservation outcomes resulting from the operation outside the area of operation of the EPI of strategies, plans, agreements and other instruments (whether or not they are EPIs).

(3) In deciding any matter under this section the Minister is to have regard to the objects of this Part.

(4) An EPI cannot be biodiversity certified unless:

(a) notice is given of proposed biodiversity certification of the EPI in the course of the public exhibition of a draft of the EPI under section 66 of the Environmental Planning and Assessment Act 1979 or by public exhibition following a procedure that substantially accords with the procedure for public exhibition required by that section, and

(b) copies of submissions made in response to an invitation for submissions in the course of that public exhibition have been provided to the Minister.

(5) The Minister may issue guidelines for the purpose of assisting in the preparation of EPIs for biodiversity certification.

Local Government Act 1993 No 30

7 What are the purposes of this Act?

The purposes of this Act are as follows:

- (a) to provide the legal framework for an effective, efficient, environmentally responsible and open system of local government in New South Wales,
- (b) to regulate the relationships between the people and bodies comprising the system of local government in New South Wales,
- (c) to encourage and assist the effective participation of local communities in the affairs of local government,
- (d) to give councils:
 - the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public
 - the responsibility for administering some regulatory systems under this Act
 - a role in the management, improvement and development of the resources of their areas,
- (e) to require councils, councillors and council employees to have regard to the principles of **ecologically sustainable development** in carrying out their responsibilities.

8 The council's charter

(1) A council has the following charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively
- to exercise community leadership
- to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism
- to promote and to provide and plan for the needs of children
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the **principles of ecologically sustainable development**
- to have regard to the long term and cumulative effects of its decisions
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants

82 Objections to application of regulations and local policies

(1) An applicant for an approval may lodge with the council an objection:

- (a) that the regulations or a local policy adopted under Part 3 by the council relating to the activity for which approval is sought do not make appropriate provision with respect to that activity, or
 - (b) that compliance with any provision of those regulations or such a policy is unreasonable or unnecessary in the particular circumstances of the case.
- (2) The applicant must specify the grounds of the objection.
- (3) If the objection relates to the regulations and the council is satisfied that the objection is well founded, it may, with the concurrence of the Director-General, in determining the application, direct that:
- (a) such provisions of any regulation relating to that activity as are specified in the direction:
 - (i) are not to apply, or
 - (ii) are to apply with such modifications as are specified in the direction,

in respect of the carrying out of that activity, or

(b) such requirements as are specified in the direction are to apply to the carrying out of that activity,

or give directions under both paragraphs (a) and (b).

(3A) If the objection relates to a local policy adopted under Part 3 by the council and the council is satisfied that the objection is well founded, it may, in determining the application, direct that:

(a) such provisions of any local policy relating to that activity as are specified in the direction:

(i) are not to apply, or

(ii) are to apply with such modifications as are specified in the direction, in respect of the carrying out of that activity, or

(b) such requirements as are specified in the direction are to apply to the carrying out of that activity,

or give directions under both paragraphs (a) and (b) and the council must give the reasons for its direction or directions.

(3B) An objection is well founded for the purposes of subsection (3A) only if the council is satisfied that no person or the public interest will be adversely affected by the variation and that any variation is consistent with the **principles of ecologically sustainable development**.

(4) Any direction given by the council under subsection (3) or (3A), if the council's approval to the application concerned is granted, has effect according to its tenor and, in the case of a direction referred to in subsection (3) (a) (ii) or (b) or subsection (3A) (a) (ii) or (b), is a condition of that approval.

89 Matters for consideration

(1) In determining an application, the council:

(a) must not approve the application if the activity or the carrying out of the activity for which approval is sought would not comply with the requirements of any relevant regulation, and

(b) must take into consideration any criteria in a local policy adopted under Part 3 by the council which are relevant to the subject-matter of the application, and

(c) must take into consideration the principles of **ecologically sustainable development**.

(2) If no requirements are prescribed for the purposes of subsection (1) (a), and no criteria are adopted for the purposes of subsection (1) (b), the council in determining an application:

(a) is to take into consideration, in addition to the principles of **ecologically sustainable development**, all matters relevant to the application, and

(b) is to seek to give effect to the applicant's objectives to the extent to which they are compatible with the public interest.

(3) Without limiting subsection (2), in considering the public interest the matters the council is to consider include:

(a) protection of the environment, and

(b) protection of public health, safety and convenience, and

(c) any items of cultural and heritage significance which might be affected

403 Contents of draft management plan with respect to council's work and activities

(1) A draft management plan must contain the following statements with respect to the council's activities for the period to which it relates:

- a statement of the principal activities that the council proposes to conduct
- a statement of the objectives and performance targets for each of its principal activities
- a statement of the means by which the council proposes to achieve these targets
- a statement of the manner in which the council proposes to assess its performance in respect of each of its principal activities
- statements with respect to such other matters (including, but not limited to, social, community and cultural matters) as may be prescribed by the regulations.

(2) The statement of principal activities must include the following particulars:

- capital works projects to be carried out by the council
- services to be provided by the council
- asset replacement programs to be implemented by the council
- sales of assets to be conducted by the council
- activities of a business or commercial nature to be undertaken by the council
- human resource activities (such as training programs) to be undertaken by the council
- activities to properly manage, develop, protect, restore, enhance and conserve the environment in a manner that is consistent with and promotes the principles of **ecologically sustainable development**
- activities in response to, and to address priorities identified in, the council's current comprehensive report as to the state of the environment and any other relevant reports
- programs to be undertaken by the council to implement its equal employment opportunity management plan
- such other particulars as may be prescribed by the regulations.

Note. Equal employment opportunity plans are dealt with in Part 4 of Chapter 11.

Dictionary

principles of ecologically sustainable development means the following statements of principle:

Ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
- (ii) an assessment of the risk-weighted consequences of various options,

(b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations,

(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,

(d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:

- (i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,
- (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
- (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

National Parks and Wildlife Act 1974

2A Objects of Act

(1) The objects of this Act are as follows:

- (a) the conservation of nature, including, but not limited to, the conservation of:
 - (i) habitat, ecosystems and ecosystem processes, and
 - (ii) biological diversity at the community, species and genetic levels, and
 - (iii) landforms of significance, including geological features and processes, and
 - (iv) landscapes and natural features of significance including wilderness and wild rivers,
- (b) the conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including, but not limited to:
 - (i) places, objects and features of significance to Aboriginal people, and
 - (ii) places of social value to the people of New South Wales, and
 - (iii) places of historic, architectural or scientific significance,
- (c) fostering public appreciation, understanding and enjoyment of nature and cultural heritage and their conservation,
- (d) providing for the management of land reserved under this Act in accordance with the management principles applicable for each type of reservation.

(2) The objects of this Act are to be achieved by applying the principles of **ecologically sustainable development**.

(3) In carrying out functions under this Act, the Minister, the Director-General and the Service are to give effect to the following:

- (a) the objects of this Act,
- (b) the public interest in the protection of the values for which land is reserved under this Act and the appropriate management of those lands.

91CC Appeal to Minister

(1) A person against whom an order is made under this Division may appeal to the Minister against the making of the order.

(2) After hearing an appeal, the Minister may:

- (a) confirm the order, or
- (b) modify or rescind the order, but only if this is consistent with the principles of **ecologically sustainable development** (as described in section 6 (2) of the Protection of the Environment Administration Act 1991).

Protection of the Environment Operations Act 1997

3 Objects of Act

The objects of this Act are as follows:

- (a) to protect, restore and enhance the quality of the environment in New South Wales, having regard to the need to maintain **ecologically sustainable development**,
- (b) to provide increased opportunities for public involvement and participation in environment protection,
- (c) to ensure that the community has access to relevant and meaningful information about pollution,
- (d) to reduce risks to human health and prevent the degradation of the environment by the use of mechanisms that promote the following:
 - (i) pollution prevention and cleaner production,
 - (ii) the reduction to harmless levels of the discharge of substances likely to cause harm to the environment,
 - (iia) the elimination of harmful wastes,
 - (iii) the reduction in the use of materials and the re-use, recovery or recycling of materials,
 - (iv) the making of progressive environmental improvements, including the reduction of pollution at source,
 - (v) the monitoring and reporting of environmental quality on a regular basis,
- (e) to rationalise, simplify and strengthen the regulatory framework for environment protection,
- (f) to improve the efficiency of administration of the environment protection legislation,
- (g) to assist in the achievement of the objectives of the Waste Avoidance and Resource Recovery Act 2001 .

Protection of the Environment Administration Act 1991

6 Objectives of the Authority

(1) The objectives of the Authority are:

(a) to protect, restore and enhance the quality of the environment in New South Wales, having regard to the need to maintain **ecologically sustainable development**, and
(b) to reduce the risks to human health and prevent the degradation of the environment, by means such as the following:

- promoting pollution prevention,
- adopting the principle of reducing to harmless levels the discharge into the air, water or land of substances likely to cause harm to the environment,
- minimising the creation of waste by the use of appropriate technology,
- regulating the transportation, collection, treatment, storage and disposal of waste,
- encouraging the reduction of the use of materials, encouraging the re-use and recycling of materials and encouraging material recovery,
- adopting minimum environmental standards prescribed by complementary Commonwealth and State legislation and advising the Government to prescribe more stringent standards where appropriate,
- setting mandatory targets for environmental improvement,
- promoting community involvement in decisions about environmental matters,
- ensuring the community has access to relevant information about hazardous substances arising from, or stored, used or sold by, any industry or public authority,
- conducting public education and awareness programs about environmental matters.

(2) For the purposes of subsection (1) (a), **ecologically sustainable development** requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and

(ii) an assessment of the risk-weighted consequences of various options,

(b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,

(d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:

(i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,

(ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,

(iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems

27 Functions of Council

(1) The Council has the following functions:

- (a) to advise the Government on key issues, trends and research requirements relating to environmental education,
- (b) to co-ordinate the preparation of State-wide 3-year plans for environmental education (referred to in this Division as environmental education plans) that:
 - (i) describe the proposed contributions of individual public authorities (other than local government authorities), the local government sector, community organisations and industry to environmental education, and
 - (ii) set out performance indicators for those contributions to ensure those contributions meet the specific needs of the community for environmental education,
- (c) to consult with a wide range of interested community groups in the development of environmental education plans (for example, organisations of parents, organisations concerned with the protection of the environment, industry bodies, professional associations and organisations representing ethnic communities or Aboriginal persons and Torres Strait Islanders),
- (d) if necessary, to establish working groups that are to advise the Council on key issues, or the special needs of groups in the community, relating to environmental education,
- (e) to submit draft environmental education plans, through both the Minister and the Minister for Education and Training, to the Government for consideration, and in doing so to report on issues raised during the consultation process referred to in paragraph (c),
- (f) to monitor progress on the implementation of environmental education plans against the performance indicators set out in the plans,
- (g) to prepare statements on the performance of environmental education programs in the State for inclusion in the reports on the state of the environment required under section 10,
- (h) to prepare advisory papers for environmental education providers to provide guidance so that their products, services and programs assist in furthering the principles of **ecologically sustainable development** and in meeting the cultural and other relevant needs of the community in relation to environmental education.

(2) No later than 6 months after the substitution of this section by the Protection of the Environment Administration Amendment (Environmental Education) Act 1998 (referred to in this section as the substitution date), the Council is to publish a discussion paper setting out:

- (a) the process to be followed for developing environmental education plans, and
 - (b) an outline of the proposed contents and structure of environmental education plans.
- (3) The first environmental education plan is to be submitted to the Government no later than one year after the substitution date.

(4) The first statement under subsection (1) (g) is to be included in the report on the state of the environment that is first submitted after the substitution date.

(5) An environmental education plan is to be tabled in each House of Parliament as soon as practicable after its submission to the Government.

Sydney Water Catchment Management Act 1998

11 Ministerial directions

- (1) The Authority is subject to the control and direction of the Minister, except in relation to the contents of any report or recommendation made by the Authority.
- (2) Subject to this section, the Board and the Chief Executive must ensure that the Authority complies with any direction given to the Authority by the Minister.
- (3) If the Board considers that:
 - (a) the Authority would suffer a significant financial loss as a result of complying with any such direction, and
 - (b) the direction is not in the commercial interests of the Authority, the Board may request the Minister to review the direction.
- (4) However, a request for a review may not be made on the grounds specified in subsection (3) in relation to a direction given in respect of any alienation, mortgage, charge or demise of land in a special area that is owned by or vested in the Authority.
- (5) The Board may also request the Minister to review a direction if the Board considers that compliance with the direction is likely to result in environmental degradation, or that the direction is otherwise inconsistent with the principles of ecologically sustainable development referred to in section 14 (1) (c).
- (6) A request for a review must be made within 7 days after the direction is given or within such other reasonable period as the Minister determines.
- (7) If the Board requests a review, the Authority is not required to comply with the direction until notified of the Minister's decision following the review.
- (8) Following the review the Minister may confirm or revoke a direction of the kind referred to in subsection (3), but the Minister must not confirm the direction unless:
 - (a) the Minister has estimated the financial loss concerned from information supplied by the Authority or from other sources, and
 - (b) the Minister has referred the matter to the Treasurer, and
 - (c) the Treasurer has approved of the financial loss being reimbursed from public revenue.
- (9) The amount to be reimbursed to the Authority is to be paid, from money advanced by the Treasurer or appropriated by Parliament for that purpose, at such times and in such amounts as the Treasurer determines after receiving advice from the Minister on the estimated financial loss incurred by the Authority from time to time.
- (10) For the purposes of this section, the amount of the financial loss that the Authority suffers as a result of complying with a direction includes the amount of expenditure that the Authority incurs, and the amount of revenue that the Authority forgoes, as a result of complying with the direction which it would not otherwise incur or forgo.
- (11) The Minister is to publish a direction given under this section in the Gazette (and is to make it available on the Internet) as soon as practicable after it is given.
- (12) A direction given under this section is of no effect to the extent that it is inconsistent with the terms and conditions of the Authority's operating licence unless the Minister certifies in the direction that it is given on such grounds, specified in the direction and involving urgency, public health or public safety, as justify the direction's prevailing over those terms and conditions.

14 Objectives

- (1) The principal objectives of the Authority are as follows:
 - (a) to ensure that the catchment areas and the catchment infrastructure works are managed and protected so as to promote water quality, the protection of public health and public safety, and the protection of the environment,
 - (b) to ensure that water supplied by it complies with appropriate standards of quality,
 - (c) where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the Protection of the Environment Administration Act 1991,

- (d) to manage the Authority's catchment infrastructure works efficiently and economically and in accordance with sound commercial principles.
- (2) In implementing its principal objectives, the Authority has the following special objectives:
 - (a) to minimise risks to human health,
 - (b) to prevent the degradation of the environment.
- (3) Nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

Water Management Act 2000

Preamble

An Act to provide for the protection, conservation and **ecologically sustainable development** of the water sources of the State, and for other purposes.

3 Objects

The objects of this Act are to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations and, in particular:

- (a) **to apply the principles of ecologically sustainable development**, and
- (b) to protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality, and
- (c) to recognise and foster the significant social and economic benefits to the State that result from the sustainable and efficient use of water, including:
 - (i) benefits to the environment, and
 - (ii) benefits to urban communities, agriculture, fisheries, industry and recreation, and
 - (iii) benefits to culture and heritage, and
 - (iv) benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water,
- (d) to recognise the role of the community, as a partner with government, in resolving issues relating to the management of water sources,
- (e) to provide for the orderly, efficient and equitable sharing of water from water sources,
- (f) to integrate the management of water sources with the management of other aspects of the environment, including the land, its soil, its native vegetation and its native fauna,
- (g) to encourage the sharing of responsibility for the sustainable and efficient use of water between the Government and water users,
- (h) to encourage best practice in the management and use of water.

14 Functions of management committees

- (1) The principal function of a management committee is to carry out the task for which it is appointed.
- (2) The task for which a committee is appointed may include any one or more of the following:
 - (a) to prepare a draft management plan for the whole or any part of the management area or of the water sources in the area,
 - (b) to review a management plan that is in force in the water management area,
 - (c) to investigate such matters affecting the management of the water management area as the Minister refers to it for investigation,
 - (d) to report to the Minister on such matters affecting the management of the water management area as the Minister refers to it for report,
 - (e) to advise the Minister on such matters affecting the management of the water management area as the Minister refers to it for advice.
- (3) It is the duty of a management committee to exercise its functions consistently with the principles of **ecologically sustainable development**.

292 Functions of water supply authority

- (1) A water supply authority has the following functions:
 - (a) subject to the Minister's approval, to construct, maintain and operate water management works and other associated works,

- (b) to conduct research, collect information and develop technology in relation to water management,
- (c) to do anything for the purpose of enabling the objects of this Act to be attained.
- (2) A water supply authority may exercise its functions within and beyond its area of operations.
- (3) It is the duty of a water supply authority to exercise its functions consistently with the principles of **ecologically sustainable development**.

372 Functions of Ministerial Corporation

- (1) The Ministerial Corporation has the following functions:
 - (a) to construct, maintain and operate water management works,
 - (a1) to construct, maintain and operate gauging stations and other monitoring equipment,
 - (b) to conduct research, collect information and develop technology in relation to water management,
 - (c) to acquire rights to water, whether within or beyond New South Wales,
 - (d) to do anything for the purpose of enabling the objects of this Act to be attained.
 - (1A) The Ministerial Corporation has such other functions as are conferred or imposed on it by or under this or any other Act or law.
 - (2) The Ministerial Corporation may exercise its functions within and beyond New South Wales.
 - (3) The Ministerial Corporation may exercise any of its functions, and may otherwise act, in the name of the Department.
 - (4) It is the duty of the Ministerial Corporation to exercise its functions consistently with the principles of **ecologically sustainable development**.
 - (5) It is the duty of the Ministerial Corporation to exercise its function of issuing a Snowy water licence under Part 5 of the Snowy Hydro Corporatisation Act 1997 consistently with the terms of the Snowy Water Inquiry Outcomes Implementation Deed.
 - (6) In subsection (5), Snowy Water Inquiry Outcomes Implementation Deed means the deed under that title that was entered into on behalf of the Commonwealth, New South Wales and Victoria on 3 June 2002, as that deed is amended from time to time in accordance with its terms.

Commonwealth Legislation¹⁰¹

Environment Protection and Biodiversity Conservation Act 1999

See also ss 37B, 131, 136, 146C, 146F, 270, 271, 287, 464, 516A and 528

3 Objects of Act

(1) The objects of this Act are:

- (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and
- (b) to promote **ecologically sustainable development** through the conservation and ecologically sustainable use of natural resources; and
- (c) to promote the conservation of biodiversity; and
- (ca) to provide for the protection and conservation of heritage; and
- (d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and
- (e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and
- (f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and
- (g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

3A Principles of **ecologically sustainable development**

The following principles are principles of **ecologically sustainable development**:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (c) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

Section 136 General Considerations

Mandatory considerations

- (1) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must consider the following, so far as they are not inconsistent with any other requirement of this Subdivision:
- (a) matters relevant to any matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action;
 - (b) economic and social matters.

Factors to be taken into account

- (2) In considering those matters, the Minister must take into account:

¹⁰¹ Australian Government Attorney-General's Department- Commonwealth of Australia Law Incorporating the Federal Register of Legislative Instruments: <http://www.comlaw.gov.au/>

- (a) the principles of **ecologically sustainable development**; and
- (b) the assessment report (if any) relating to the action; and
- (ba) if Division 3A of Part 8 (assessment on referral information) applies to the action--the finalised recommendation report relating to the action given to the Minister under subsection 93(5); and
- (bc) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action:
 - (i) the documents given to the Minister under subsection 95B(1), or the statement given to the Minister under subsection 95B(3), as the case requires, relating to the action; and
 - (ii) the recommendation report relating to the action given to the Minister under section 95C; and
- (c) if Division 5 (public environment reports) of Part 8 applies to the action:
 - (i) the finalised public environment report relating to the action given to the Minister under section 99; and
 - (ii) the recommendation report relating to the action given to the Minister under section 100; and
- (ca) if Division 6 (environmental impact statements) of Part 8 applies to the action:
 - (i) the finalised environmental impact statement relating to the action given to the Minister under section 104; and
 - (ii) the recommendation report relating to the action given to the Minister under section 105; and
- (d) if an inquiry was conducted under Division 7 of Part 8 in relation to the action--the report of the commissioners; and
- (e) any other information the Minister has on the relevant impacts of the action (including information in a report on the impacts of actions taken under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
- (f) any relevant comments given to the Minister in accordance with an invitation under section 131 or 131A; and
- (g) if a notice relating to the action was given to the Minister under subsection 132A(3)--the information in the notice.

Note: The Minister must also take into account any relevant comments given to the Minister in response to an invitation under paragraph 131AA(1)(b). See subsection 131AA(6).

Person's environmental history

- (4) In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister may consider whether the person is a suitable person to be granted an approval, having regard to:
- (a) the person's history in relation to environmental matters; and
 - (b) if the person is a body corporate--the history of its executive officers in relation to environmental matters; and
 - (c) if the person is a body corporate that is a subsidiary of another body or company (the parent body)--the history in relation to environmental matters of the parent body and its executive officers.

Minister not to consider other matters

- (5) In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Minister must not consider any matters that the Minister is not required or permitted by this Division to consider.

Fisheries Management Act 1991

3 Objectives

(1) The following objectives must be pursued by the Minister in the administration of this Act and by AFMA in the performance of its functions:

(a) implementing efficient and cost effective fisheries management on behalf of the Commonwealth; and

(b) ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of **ecologically sustainable development** (which include the exercise of the precautionary principle), in particular the need to have regard to the impact of fishing activities on non target species and the long term sustainability of the marine environment; and

(c) maximising the net economic returns to the Australian community from the management of Australian fisheries; and

(d) ensuring accountability to the fishing industry and to the Australian community in AFMA's management of fisheries resources; and

(e) achieving government targets in relation to the recovery of the costs of AFMA.

(2) In addition to the objectives mentioned in subsection (1), or in section 78 of this Act, the Minister, AFMA and Joint Authorities are to have regard to the objectives of:

(a) ensuring, through proper conservation and management measures, that the living resources of the AFZ are not endangered by over exploitation; and

(b) achieving the optimum utilisation of the living resources of the AFZ; and

(c) ensuring that conservation and management measures in the AFZ and the high seas implement Australia's obligations under international agreements that deal with fish stocks; and

(d) to the extent that Australia has obligations:

(i) under international law; or

(ii) under the Compliance Agreement or any other international agreement; in relation to fishing activities by Australian flagged boats on the high seas

that are additional to the obligations referred to in paragraph (c)—ensuring that Australia implements those first mentioned obligations;

but must ensure, as far as practicable, that measures adopted in pursuit of those objectives must not be inconsistent with the preservation, conservation and protection of all species of whales.

Appendix F

Table of Selected Australian Cases referring to Ecologically Sustainable Development

Land and Environment Court of New South Wales

Bentley v BGP Properties Pty Ltd (2006) 145 LGERA 234

BGP Properties Pty Ltd v Lake Macquarie City Council (2004) 138 LGERA 237

BT Goldsmith Planning Services Pty Limited v Blacktown City Council [2005]
NSWLEC 210

Carstens v Pittwater Council (1999) 111 LGERA 1

Gales Holdings Pty Limited v Tweed Shire Council (2006) 146 LGERA 236

Gray v Minister for Planning [2006] NSWLEC 720

*Greenpeace Australia Ltd v Redbank Power Company Pty Ltd and Singleton
Council* (1994) 86 LGERA 143

Leatch v National Parks and Wildlife Service and Shoalhaven City Council (1993)
81 LGERA 270

*Murrumbidgee Ground-Water Preservation Association v Minister for Natural
Resources* [2004] NSWLEC 122

Nicholls v Director- General of National Parks and Wildlife and Others (1994) 84
LGERA 397

Port Stephens Pearls Pty Limited v Minister for Infrastructure and Planning [2005]

NSWLEC 426

Providence Projects Pty Ltd v Gosford City Council (2006) 147 LGERA 274

Telstra Corporation Ltd v Hornsby Shire Council (2006) 146 LGERA 10

Other Australian Courts

Bridgetown/Greenbushes Friends of the Forest Inc v Executive Director of the Department of Conservation and Land Management and Ors (1997) 94 LGERA 380 (Supreme Court of Western Australia/ Full Court)

Friends of Hinchinbrook Society Inc v Minister for Environment and Ors (1997) 93 LGERA 249 (Federal Court of Australia)

Tuna Boat Owners Association of SA Inc v Development Assessment Commission and Anor (2000) 110 LGERA 1 (Supreme Court of South Australia/Full Court)

Appendix G

Selected Australian Bibliography

Articles

Charmian Barton, "The Status of the Precautionary Principle in Australia: its Emergence in Legislation and as a Common Law Doctrine" (1998) 22 Harvard Environmental Law Review 509

Ben Boer, "The Globalisation of Environmental Law: The Role of the United Nations" (1995) 20 Melbourne University Law Review 101

Ben Boer & Donald Rothwell, "The influence of International Environmental Law on Australian Courts" (1998) 7 Review of European Community and International Environmental Law 31-39

Maurice Evans, "Sustainability Principles and a Revised Stewardship Ethic" (2002) 7(3) LGLJ 133

D E Fisher, "Sustainability- the Principle, its Implementation, and its Enforcement" (2001) 18(4) EPLJ 361

Warwick Gullett, "Environmental Protection and the Precautionary Principle: A Response to Scientific Uncertainty in Environmental Management" (1997) 14 EPLJ 52

Bill Henningham, "A Question of Balance- It is Time to Try to Balance the Scales" (2000) 6(2) LGLJ 95

Jacqueline Peel, "The Role of Climate Change Litigation in Australia's Response to Global Warming" (2007) 24 EPLJ 90

Jacqueline Peel, "When (Scientific) Rationality Rules: (Mis) application of the Precautionary Principle in Australian Mobile Phone Tower Cases" (2007) 19 Journal of Environmental Law 103

Linda Pearson, "Incorporation of ESD Principles in Land-use Decision-making: Some Issues after Teoh" (1996) 13 EPLJ 47

Brian J Preston, "The Role of the Judiciary in Promoting Sustainable Development: the Experience of Asia and the Pacific" (2005) 9 APJEL 109

Paul L Stein, "Are Decision-makers Too Cautious with the Precautionary Principle?" (2000) 17 EPLJ 3

Lisa Wyman, "Acceptance of the Precautionary Principle- Australian v International Decision-makers" (2001) 18 EPLJ 395

Books

Gerry Bates; *Environmental Law in Australia* (5th ed, Butterworths) (2002)
Chapter 5

D E Fisher; *Australian Environmental Law* (Thomson Lawbook Co) (2003)

Chapter 10

R Harding and E C Fisher; *Perspectives on the Precautionary Principle*

(Federation Press) (1999)

Jacqueline Peel; *The Precautionary Principle in Practice*, (Federation Press)

(2005)