AUSTRALIA

Reform of Commonwealth Environment Legislation

Consultation Paper

Issued by

Senator the Hon. Robert Hill
Commonwealth Minister for the Environment

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ISBN 0 642 54519 7

Copies of this report are available from:

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Produced by AGPS, Printing Division of CanPrint Communications Pty Limited

Foreword

Ensuring the conservation and sustainable use of Australia's natural resources is a priority for the Commonwealth government. We recognise that the community is concerned about both the economy and, equally, about the protection of the environment. Government must therefore be able to promote economic development that will not compromise the integrity of our environment – ecologically sustainable development.

If we are to be successful in promoting ecologically sustainable development, the Commonwealth government needs an effective and efficient environmental law regime that successfully integrates environmental, economic and social goals. However, there are significant deficiencies in the existing regime which limit its potential to promote sustainable development. For example, several of the most important Acts have not been substantially amended in over 20 years and can no longer be described as representing best practice.

The proposals presented in this paper are designed to comprehensively reform the Commonwealth's environmental law regime. A priority of the reform process is to implement the outcomes of the Council of Australian Governments Review of Commonwealth/State Roles and Responsibilities for the Environment. I am particularly pleased that the reforms presented in this paper therefore represent a revitalised partnership between the Commonwealth and the States and Territories on environmental matters.

The objective of the legislative reform process is to deliver better environmental outcomes in a manner that promotes certainty for all stakeholders and minimises the potential for delay and intergovernmental duplication. Within a framework which recognises an appropriate role for the Commonwealth, the reforms will produce a dynamic and flexible regime equipped to address current and emerging environmental issues. Accordingly, I am confident that the proposed new environmental law regime will enhance the conservation of Australia's environment, including our World Heritage properties, our endangered species and our heritage places of national significance.

The Coalition Government is not, however, relying only on a new environmental law regime to promote ecologically sustainable development. The environmental law reform process is part of a comprehensive package of initiatives to protect our environment for current and future generations.

- The Coalition has established the $1.1 billion Natural Heritage Trust to protect and repair Australia's environment. The largest investment in Australia's environment by any government integrates the mutually supportive goals of biodiversity conservation and sustainable agriculture.
- Under the Coalition, Australia will be one of the first nations in the world to develop a national oceans policy to protect biodiversity and promote sustainable ocean based industries.

- The Coalition has announced a historic $180 million package of measures to reduce greenhouse gas emissions. The package will lead to increases in energy efficiency and conservation and will promote renewable energy technologies.
- The Regional Forest Agreement process has been accelerated. Over 400,000 hectares have been added to the reserve system and measures have been implemented to provide greater security for forest industries and to ensure production forests are managed on a sustainable basis.
- The Commonwealth and State Governments, through the National Environment Protection Council, are expected to approve shortly the first National Environment Protection Measure – the National Pollutant Inventory. Other National Environment Protection Measures are being developed to cover Ambient Air Quality, Movement of Controlled Waste and Assessment of Contaminated Sites.

These initiatives demonstrate the Commonwealth's commitment to addressing the environmental challenges facing all Australians. The Coalition is spending more money on the environment than any previous government and it is prepared to address issues, such as the development of an oceans policy, that have never been addressed before. To complement these initiatives, the Commonwealth is now proposing to make the fundamental reforms that are necessary to achieve an effective, efficient and contemporary environmental law regime.

I look forward to considering your contribution to the reform process.

Robert Hill
Minister for the Environment

Preface

Reform Background

The proposed reforms presented in this paper meet Government commitments to review and improve environmental legislation, which were made in the 1996 pre-election environment policy statement, Saving Our Natural Heritage, and in the Investing in Our Natural Heritage Budget statements.

Purpose of Consultation Paper

The purpose of this paper is to provide information about the Government's proposals for the environmental legislation reform package and to seek your views on the proposed reforms.

Making a Submission

Individuals and organisations are invited to contribute to the reform of the Commonwealth's environmental legislation by providing comments in writing on the proposals outlined in this paper. Comments are requested by 23 March 1998 and should be directed to:

Mr Wayne Fletcher
Director
Legislation Reform Task Force
Department of the Environment
GPO Box 787
CANBERRA ACT 2601

Fax: (02) 6274 1878

Where possible submissions should be accompanied by a copy on either a PC or a Mac computer disc. E-mailed responses are welcomed and should be sent to **wayne.fletcher@ea.gov.au**

Submissions on the consultation paper will be considered in the further development of the environmental legislation reform package.

Note – for the purposes of this paper:

- a reference to a 'State' is a reference to a State or Territory;
- a reference to the 'Environment Protection Act' is a reference to the proposed Environment Protection Act;
- a reference to the 'Biodiversity Conservation Act' is a reference to the proposed Biodiversity Conservation Act; and
- the terms 'activities' and 'proposals' are used interchangeably.

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1 Objectives of the Review of Environmental Law

Environment Australia administers over 20 Commonwealth statutes dealing principally with the protection of the environment. These statutes cover a relatively diverse range of matters including the management of national parks, environmental impact assessment and heritage conservation. Commonwealth environmental legislation also gives effect to Australia's international obligations in relation to the transboundary movement of hazardous waste, trade in wildlife, the protection of the ozone layer and the dumping of wastes at sea.

However, several of the most important Commonwealth environmental statutes were enacted in the mid 1970s. These acts – including the *Environment Protection (Impact of Proposals) Act 1974*, the *Australian Heritage Commission Act 1975* and the *National Parks and Wildlife Conservation Act 1975* – have not been substantially amended in more than 20 years.

While this legislation may have represented best practice in the 1970s, the Commonwealth environmental law regime now requires comprehensive reform. Our knowledge of the environment and our understanding of our impact on the environment has progressed dramatically in the last 20 years. This has been reflected in the rapid evolution of international environmental law. Unfortunately, the Commonwealth's environmental law regime has not evolved to keep pace with these developments. In a sense, Commonwealth environmental law has been allowed to stagnate at a time when environmental management approaches have undergone tremendous change.

The election of the Coalition Government has, however, heralded a progressive new era in the development of environmental law. In order to develop a contemporary regime which reflects world's best practice, the Government is proposing fundamental reforms to Commonwealth environmental law which will include the introduction of two new Acts – an Environment Protection Act and a Biodiversity Conservation Act.

The proposed Environment Protection Act will promote implementation of the principles of ecologically sustainable development through the adoption of an efficient environmental impact assessment and approval process. The Environment Protection Act will replace the existing *Environment Protection (Impact of Proposals) Act 1974*.

The proposed Biodiversity Conservation Act will promote the conservation and sustainable use of Australia's biodiversity. It will replace a number of existing statutes including the *National Parks and Wildlife Conservation Act 1975*.

At a later date, the Commonwealth also intends to introduce new heritage

legislation. This third new Act will be developed following the completion of a cooperative National Heritage Places Strategy being developed by the Commonwealth and the States. This legislation will replace the *Australian Heritage Commission Act 1975*.

The reform process will also involve consequential amendments to other pieces of existing Commonwealth environmental legislation to ensure a consistent and updated environmental law regime.

When the reforms are implemented, the Commonwealth regime will comprise new legislation on biodiversity, environment protection and heritage, combined with existing statutes dealing with matters such as hazardous waste, ozone protection and the National Environment Protection Council. The Commonwealth will then possess a legislative framework which allows Australia to meet the environmental challenges of the 21st Century with renewed confidence.

To develop and implement this framework, it is necessary to overcome the following deficiencies in the Commonwealth's existing environmental law.

- The regime has developed in an ad hoc and piecemeal fashion. Accordingly, the various Acts are not integrated within an appropriate conceptual framework. This limits the ability of the existing legislation to secure good environmental outcomes in an efficient manner.

- The Commonwealth's environmental statutes largely fail to recognise and implement the principles of ecologically sustainable development. A notable exception is the Coalition's *Natural Heritage Trust of Australia Act 1997*. The principles of ecologically sustainable development are now universally accepted as the basis upon which environmental, economic and social goals should be integrated in the development process. The failure to fully recognise and implement the principles of ecologically sustainable development is regarded as a fundamental deficiency in the Commonwealth's existing regime.

- Overall, the Commonwealth's environmental law regime does not adequately equip the Commonwealth to address current and emerging environmental issues. It has not been amended to reflect best practice. For example, in the conservation field, it primarily focuses on first generation issues, such as national park management, and has not evolved to embrace contemporary approaches to biodiversity conservation.

- The existing array of Commonwealth Acts does not reflect an appropriate role for the Commonwealth in environmental matters. In some cases, the Commonwealth does not currently have adequate legislative capacity to discharge its responsibilities for national environmental matters. In other cases, Commonwealth environmental legislation is triggered by matters which are more appropriately the responsibility of local or State governments.

- Early Commonwealth legislation was enacted at a time when most States did not have any significant environmental legislation. However, most States have now enacted relatively comprehensive environmental law regimes. In fact, some States have recently enacted their second or third generation of environmental statutes. The evolution of State law has not been adequately recognised in the Commonwealth's legislative framework, thus hindering seamless and productive integration of Commonwealth and State laws.

As a result of these legislative shortcomings, the Commonwealth is not equipped to discharge its environmental responsibilities in the most effective and efficient manner possible. The shortcomings combine to limit the level of protection offered to the environment and, significantly, to create unnecessary delay, duplication and uncertainty for industry and the community.

The Howard Government is committed to correcting these deficiencies through the comprehensive reform of Commonwealth environmental law. The Government's objective is to deliver better environmental outcomes in a manner that promotes certainty and minimises any potential for delay or duplication. The intention is to establish a framework which recognises an appropriate role for the Commonwealth and to ensure that, within this framework, Commonwealth law operates effectively and efficiently. The result should be a dynamic and flexible environmental law regime that promotes ecologically sustainable development, that is equipped to deal with current and emerging environmental issues and which embraces contemporary approaches to environmental management.

1.1

The Role of the Commonwealth

As indicated above, the existing legislative framework does not reflect an appropriate role for the Commonwealth in environmental matters. In some cases, the Commonwealth does not have the legislative capacity to adequately discharge its environmental responsibilities – for example, in relation to certain international responsibilities and matters of clear national significance. In other cases, Commonwealth legislation is triggered by matters which are of only local or State significance – for example, when a foreign investment decision is required in relation to a mine that raises no national environmental issues.

These problems arise largely because Commonwealth legislation is triggered in an ad hoc and indirect manner by Commonwealth decisions that are not related to environmental criteria – for example, export approvals and funding decisions. Reliance upon these environmentally irrelevant criteria has not only limited the effectiveness of the Commonwealth's contribution to environmental protection, it has created an unacceptable level of delay, uncertainty and duplication for proponents.

In order to correct these deficiencies, a Review of Commonwealth/State Roles and Responsibilities for the Environment has been conducted for the Council of Australian Governments (COAG).

At the COAG meeting in November 1997, all Heads of Government and the President of the Australian Local Government Association gave in-principle endorsement to an Agreement on Commonwealth/State Roles and Responsibilities for the Environment ('the COAG Agreement').

A priority of the reform process is to implement the COAG Agreement.

The most significant outcome from the COAG Review is agreement that the Commonwealth's role should be focused on matters of national environmental significance. The Commonwealth should not be involved in matters of only local or State significance. This position is consistent with the principles enunciated in the Intergovernmental Agreement on the Environment – principles which will be fully implemented through the COAG Agreement.

The COAG Agreement stipulates that Commonwealth environmental assessment and approval processes should be triggered only by those activities or proposals (hereafter the terms 'activities' or 'proposals' are used interchangeably) which may have a significant impact on the following matters of national environmental significance.

- World Heritage properties
- Ramsar wetlands of international importance
- Heritage places of national significance
- Nationally endangered or vulnerable species and endangered ecological communities
- Migratory species and cetaceans
- Nuclear activities
- Management and protection of the marine and coastal environment

The Commonwealth's assessment and approval process would, in addition, continue to apply to Commonwealth places and matters for which the Commonwealth has sole jurisdiction (such as proposals to import or export hazardous waste).

A key objective of the environmental law reform process is therefore to amend Commonwealth legislation to remove the existing indirect triggers and to replace them with triggers based on national environmental significance. Such amendments must ensure that the triggers operate in a manner which provides certainty for all stakeholders. This issue is discussed in more detail in the section on the proposed Environment Protection Act.

The proposed reforms to Commonwealth environmental law also seek to implement the other key elements of the COAG Agreement. These include the following elements.

- **Accreditation** – for matters of national environmental significance, reforms should also seek to maximise the potential for Commonwealth reliance on State processes and, in some cases, State decisions (for example, decisions under agreed management plans). This will require the establishment of a transparent, accountable and certain framework within which Commonwealth accreditation of State processes can occur. The legislation will also provide for State accreditation of Commonwealth processes.
- **Improving the efficiency and timeliness of the development approvals process.**
- **Rationalisation of the existing arrangements for heritage protection** – jurisdictions have agreed to the development of a cooperative National Heritage Places Strategy which will set out the respective roles and responsibilities of the Commonwealth and the States in relation to the identification, protection and management of places of heritage significance. This Strategy will provide for the establishment of a list of places of national heritage significance and will be implemented at the Commonwealth level through new heritage legislation. This legislation will be developed after the Strategy is finalised.
- **Increased compliance** by the Commonwealth with relevant State environment and planning legislation. Although not dealt with in this reform package, the Commonwealth is committed to taking additional steps to ensure Commonwealth compliance with State legislation (or its equivalent) in accordance with the COAG Agreement.

1.2

An Efficient Regime that Delivers Certainty, Minimises Duplication and Incorporates a Streamlined Approval Process

By translating the outcomes of the COAG Review into a conceptually sound legislative framework, the reforms to Commonwealth environmental law will deliver an efficient regime that promotes certainty, reduces intergovernmental duplication and incorporates a timely assessment and approval process. In particular, the COAG Agreement endorses an environmental assessment and approvals process which maximises reliance upon State processes, and incorporates specific time frames. This process is to be implemented under the proposed Environment Protection Act.

The National Strategy for Ecologically Sustainable Development refers, in its core objectives, to the need to follow a path of economic development that safeguards the welfare of future generations. The guiding principles of that Strategy recognise the need to develop a strong, growing and diversified economy and to maintain and enhance international competitiveness in an environmentally sound manner.

In accordance with that Strategy, and without compromising the level of protection for the environment, the proposed reforms will seek to facilitate economic development by improving the quality of Commonwealth environmental regulation when measured against the following criteria.

- Clarity and simplicity
- Transparency and accountability
- Consultation with key stakeholders
- Certainty
- Removal of unnecessary duplication and overlap
- Efficiency and timeliness

The Coalition is committed to setting high environmental standards. It is also committed to promoting development that meets these standards. The Coalition Government's reforms will reflect this approach.

1.3

Enhance Environment Protection and Promote Sustainable Use

The proposed reforms to Commonwealth environmental law are designed to enhance the protection of Australia's unique environment and promote the ecologically sustainable use of our natural resources.

A fundamental component of the reform package will be the integration of environmental, economic and social considerations through the implementation of the principles of ecologically sustainable development. For example, the precautionary principle and the principle of intergenerational equity will be expressly recognised. The Coalition Government commenced this process by incorporating the principles of ecologically sustainable development in the decision-making process under the *Natural Heritage Trust of Australia Act 1997*. The review process will extend the legislative application of these principles

to decisions under the new Commonwealth environment regime.

The Commonwealth's environmental law regime must be comprehensively restructured so that it has the capacity to address the full range of current and emerging environmental issues. In particular, the proposed introduction of a Biodiversity Conservation Act signals the Coalition Government's commitment to one of the most important environmental challenges of our time – arresting the decline in Australia's biodiversity.

A feature of the new legislation will be more effective implementation of Australia's international environmental responsibilities. For example, it is intended that the legislation will enable the Commonwealth, through measures taken in cooperation with the States, to improve the implementation of the Convention on Biological Diversity, the World Heritage Convention, the Ramsar Convention on Wetlands of International Importance, the Convention on International Trade in Endangered Species of Wild Fauna and Flora and conventions dealing with migratory species. These matters are expressly identified as matters of national environmental significance under the COAG Agreement.

The Coalition Government believes that best practice environmental management requires a greater focus on early, strategic planning. Acknowledging that State governments are primarily responsible for on-ground land management and planning issues, the proposed reforms seek to facilitate joint Commonwealth and State attempts to progress early and strategic planning initiatives for key areas such as World Heritage properties and wetlands of international importance (Ramsar wetlands). Early Commonwealth involvement in planning for such areas will help ensure better protection for important conservation values and will substantially reduce the need for Commonwealth involvement in individual development approvals. This approach should complement the Commonwealth's commitment to progress, in cooperation with the States and in accordance with the National Strategy for the Conservation of Australia's Biodiversity, bioregional planning across Australia.

In summary, the Commonwealth regime will be flexible and will provide for a range of policy approaches and instruments to assist in achieving environmental goals. In addition, enforcement and compliance provisions in all Commonwealth environment statutes will, as necessary, be updated to ensure a consistent and effective regime.

1.4

Regional Forest Agreements

In accordance with the COAG Agreement, the proposed reforms to Commonwealth environmental law will not affect any arrangements entered into, at any time, as part of a Regional Forest Agreement (RFA). The Commonwealth is separately progressing the development of legislation to give effect to RFAs. This legislation will provide certainty in relation to agreed RFA outcomes, including those outcomes relating to the protection of the environment.

2 Environment Protection Act

Australia has pledged its commitment to the principles of ecologically sustainable development in numerous international conventions and instruments. In particular, Australia has committed itself to the broad framework for sustainable development enunciated in the Rio Declaration and Agenda 21.

At the national level, the Intergovernmental Agreement on the Environment requires the Commonwealth and the States to implement the principles of ecologically sustainable development in all decision making. All jurisdictions have also endorsed the National Strategy for Ecologically Sustainable Development (the ESD Strategy). The ESD Strategy sets out an agreed framework under which governments are to make decisions and take actions to pursue ecologically sustainable development.

However, the previous Labor Government failed to take adequate steps to reform the Commonwealth's legislative framework and to incorporate ecologically sustainable development principles. As a result of this failure, the Commonwealth's environmental impact assessment and approval process stagnated while other jurisdictions and nations embraced contemporary approaches to sustainable development.

The Coalition Government intends to demonstrate that it takes seriously the commitment to ecologically sustainable development by introducing an Environment Protection Act which will provide a legislative basis for the implementation of relevant principles.

The Environment Protection Act will replace the *Environment Protection (Impact of Proposals) Act 1974* (EPIP Act), which is now over 23 years old. It will set out an improved environmental impact assessment and approval process, and will require decisions under the Act to be based on ecologically sustainable development principles.

It is a priority of the Coalition Government to ensure that the Environment Protection Act also delivers a significantly more efficient assessment and approval process which increases certainty for proponents and eliminates unnecessary duplication. The past failure to reform the Commonwealth's process to keep pace with best practice has created a cumbersome regime which has the potential to frustrate legitimate and sustainable economic development and reduce the effectiveness of environment protection measures. The Howard Government is therefore committed to improving environmental processes for industry through the Environment Protection Act.

The principles of ecologically sustainable development to be included in the Environment Protection Act will be based on the definition endorsed by COAG in 1992 and incorporated in the *Natural Heritage Trust of Australia Act 1997*. Under this Act, the principles of ecologically sustainable development consist of the following:

Core objectives:

- 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; and

Guiding principles:

- decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations;
- 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;
- the global dimension of environmental impacts of actions and policy should be recognised and considered;
- the need to develop a strong, growing and diversified economy that 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 measures should be adopted;
- decisions and actions should provide for broad community involvement on issues which affect the community.

The proposed reforms will ensure that the principles of ecologically sustainable development are applied to Commonwealth involvement in the assessment and approval process for activities and proposals that may have a significant impact on the environment.

Application of these principles is designed to integrate economic, social and environmental considerations in decision making. In this context, the major focus of the Environment Protection Act will be to ensure that environmental factors are efficiently integrated within the development process, especially through an environmental impact assessment regime that reflects world's best practice.

2.1

Need for Reform

In addition to the failure to implement the principles of ecologically sustainable development, the process in the existing EPIP Act suffers from a number of deficiencies.

- As indicated above, the triggering process in the EPIP Act results in the Commonwealth becoming involved in development proposals which raise environmental issues of only local or State significance. This creates unnecessary duplication of Commonwealth and State processes. Under the proposed Environment Protection Act, Commonwealth involvement will not be triggered by such proposals.
- Conversely, the EPIP Act is not triggered by some development proposals which raise issues of genuine national significance. For example, it would not be triggered by a major development in a Ramsar wetland or a World Heritage area unless some Commonwealth action or decision (such as foreign investment approval or the provision of Commonwealth funding) was required.

The Environment Protection Act will be triggered by activities or proposals which may have a significant impact on matters of national environmental significance. Accordingly, the Commonwealth will, for the first time, be able to adequately discharge its responsibilities for these matters.

- The reliance on indirect and ad hoc triggers in the EPIP Act leads to inconsistent Commonwealth involvement and the potential for unnecessary delay, uncertainty and duplication.

  - Current triggers often occur late in the development proposal phase. Foreign investment approval may lead to Commonwealth processes being initiated when State assessments are substantially complete. The new legislation will ensure a Commonwealth decision on involvement is made up-front, avoiding late intervention.

  - In relation to some development proposals, it currently takes many months for the Department responsible for a triggering action to formally initiate the environmental assessment process.

  - For other development proposals, it is not clear whether a Commonwealth action or decision, which may trigger the assessment process, is required. This makes it more difficult to seamlessly align Commonwealth and State processes.

  - The existing legislation does not include a legislative mechanism enabling early, transparent and efficient accreditation of State processes.

2.2

Features of the Environment Protection Act

The centrepiece of the new legislation will be provisions which focus Commonwealth involvement in the environmental assessment and approval process on matters of national environmental significance. The Commonwealth is therefore fulfilling its obligations under the COAG Agreement to remove the indirect and environmentally irrelevant triggers which currently initiate Commonwealth environmental processes. These triggers will be replaced with a tightly defined test of national environmental significance. Decisions such as foreign investment approvals, export controls, funding decisions and so on will no longer trigger Commonwealth environmental processes.

Other major features of the assessment and approval process under the Environment Protection Act are listed below.

- Proponents will be able to initiate the triggering process in the Act.

- Decisions on Commonwealth involvement will be made early in the process and will be binding.

- A transparent legislative mechanism for accreditation of State assessment processes and, in some cases, State decisions will be adopted. The goal will be to maximise reliance on State processes which meet appropriate standards.

- The decision of the Environment Minister whether to grant consent will be made after full consultation with other relevant Ministers. In practice, if Ministers do not reach agreement then

the advice of Cabinet or the Prime Minister will be sought. The decision will be made on the basis of an ecologically sustainable development approach which includes consideration of economic and social factors.

- Following implementation of the National Heritage Places Strategy, proponents will not be subject to both the environmental assessment process under the EPIP Act and the heritage assessment process under the *Australian Heritage Conservation Act 1975* (AHC Act). Examination of relevant environmental and heritage issues will occur in the one assessment.

2.3

Structure and Content of the Environment Protection Act

2.3.1 Activities or Proposals which will Trigger the Act

The assessment and approval process in the Environment Protection Act will be triggered by an activity or proposal which may have a significant impact on a matter of national environmental significance.

In addition, environmentally significant activities or proposals on Commonwealth places or for which the Commonwealth has sole jurisdiction will continue to trigger the assessment and approval process.

The matters of national environmental significance identified in the COAG Agreement will be defined more precisely in the Act as follows.

World Heritage properties will be defined as areas declared as World Heritage properties under the Biodiversity Conservation Act. The definition will, in future, also contain an appropriate cross-reference to the proposed heritage legislation to include any properties which are listed solely for their cultural values.

Ramsar wetlands will be defined as areas declared as Ramsar wetlands under the Biodiversity Conservation Act.

Places of national heritage significance will be defined after the finalisation of the National Heritage Places Strategy (see Chapter 4). Accordingly, this trigger will not come into force until the National Heritage Strategy is completed. The intention of the Commonwealth is that this trigger will be defined, at the time of enacting new heritage legislation, to cover places included on a national list of heritage places. Pending finalisation of the National Heritage Places Strategy, the AHC Act will continue to operate.

Nationally endangered or vulnerable species and communities will be defined as species listed as critically endangered, endangered or vulnerable, and ecological communities listed as endangered, under the Biodiversity Conservation Act. The COAG Agreement notes that the Commonwealth and the States have yet to reach agreement on precisely how this trigger will operate. The trigger will not come into effect before 1 January 1999. During 1998, it is expected that the Commonwealth and the States will reach agreement on the most effective and efficient mechanism for implementing this trigger. Such agreement will then be given effect through bilateral agreements recognised under the Environment Protection Act (bilateral agreements are covered in more detail under 2.3.2). The intention of the Commonwealth is to maximise its reliance on State processes (and, in some cases, State decisions – for example, decisions

under agreed management plans) where these processes meet appropriate criteria.

Migratory species and cetaceans will be defined by reference to the corresponding definitions in the Biodiversity Conservation Act. Migratory species will be defined as species listed under the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention), the Japan–Australia Agreement for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment (JAMBA), and the China–Australia Agreement for the Protection of Migratory Birds and their Environment (CAMBA). Cetaceans will be defined as all species of dolphins or whales.

The **nuclear activities** trigger will be defined to cover all environmentally significant actions in the following categories:

- the mining, milling, storage or transport of uranium; and
- the operation of nuclear reactors, and the transport, storage and disposal of intermediate to high level radioactive waste (as defined by the International Atomic Energy Agency).

This trigger will apply to actions by the Commonwealth, by corporations and, to the extent possible in Commonwealth legislation, by other entities.

The **management and protection of the marine and coastal environment** trigger will be tightly defined to cover all activities that may have a significant impact on the environment in Commonwealth waters. It will not cover activities impacting solely on waters under State jurisdiction. Commonwealth waters will be defined to include all waters (the coastal sea, the seabed and waters above the continental shelf and the Exclusive Economic Zone) except those waters vested in a State under the *Coastal Waters (State Title) Act 1980* or vested in the Northern Territory under the *Coastal Waters (Northern Territory Title) Act 1980*. Commonwealth waters will include the Exclusive Economic Zone adjacent to the Australian Antarctic Territories and other external territories.

This trigger will not cover fishing activities in fisheries which, as a result of formal arrangements currently in place under the Commonwealth *Fisheries Management Act 1991*, are under State control.

The existing *Environment Protection (Sea Dumping) Act 1981* and the *Sea Installations Act 1987* will be retained. Consequential amendments will be made to integrate these Acts with the Environment Protection Act – for example, to ensure that any decision under these Acts to grant consent to an environmentally significant proposal triggers the assessment and approval process in the Environment Protection Act.

The definition of the marine and coastal environment trigger will be reviewed if necessary to take into account the outcomes of the process for the development of the National Oceans Policy.

Other matters of national environmental significance – the COAG Agreement notes that the Commonwealth has undertaken not to add to or vary the list of those matters of national environmental significance which trigger Commonwealth involvement in the assessment and approval process except in consultation with the States. The Environment Protection Act will provide that regulations may define other matters of national environmental significance which are triggers for Commonwealth involvement only in consultation with all of the States.

There is currently no intention to prescribe any additional matters of national environmental significance in the regulations.

As indicated above, environmentally significant activities occurring on Commonwealth places or for which the Commonwealth has sole jurisdiction will also trigger the Act. Examples of such activities include:

- activities where the Commonwealth is the proponent;
- activities regulated under the *Ozone Protection Act 1989*;
- proposals to import and export hazardous waste under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*; and
- Commonwealth actions or decisions affecting the environment outside Australia; for example, certain foreign aid decisions.

The regime currently in place for regulating environmental issues associated with telecommunications matters and airports will not be affected by the reforms proposed in this paper.

The regulations may, in limited circumstances, exempt an action from the Act.

As indicated above, proposals or activities covered by the RFA process will not trigger the Act.

2.3.2 Accreditation and Bilateral Agreements

In accordance with the COAG Agreement, the Environment Protection Act will provide that a proposal which triggers the Act and which is not covered by a bilateral agreement between the Commonwealth and a State will be subject to the case-by-case assessment and approval process identified in sections 2.3.3 – 2.3.5 of this paper.

However, for proposals that fall within the terms of a bilateral agreement, the case-by-case assessment and approval process in the Environment Protection Act will be replaced by the process outlined in the bilateral agreement. Bilateral agreements will provide for Commonwealth accreditation of State processes and, in appropriate cases, State decisions (for example, decisions under agreed management plans). Accordingly, bilateral agreements will allow the Commonwealth to accredit State systems which meet specified criteria.

Bilateral agreements will be implemented in regulations under the Environment Protection Act. The Act will set out an efficient, transparent and accountable mechanism for the recognition and implementation of bilateral agreements. In particular, the Act will provide that the Commonwealth may define criteria or standards against which a State process can be measured when considering it for accreditation under a bilateral agreement. Such criteria or standards will reflect best practice. This will ensure consistency (ie, that all States are treated equally) and will provide confidence that appropriately high environmental standards are being met.

A range of options will be available to the Commonwealth to ensure compliance with a bilateral agreement, including the power to revoke an accreditation in the event of non-compliance.

The Commonwealth is committed to maximising its reliance on accredited State processes through the bilateral agreements mechanism. In this respect, the Commonwealth acknowledges that on-ground environmental management is primarily the responsibility of the States. However, the existence of a bilateral agreement will not necessarily mean the

Commonwealth is not involved in the assessment and approval process for a relevant proposal. A bilateral agreement may itself outline a streamlined role for the Commonwealth and may provide that the approval of the Commonwealth Minister is required in specified circumstances.

For example, a bilateral agreement could apply to proposals affecting the Shark Bay World Heritage area. The agreement might provide that such proposals are to be assessed in accordance with accredited Western Australian environmental legislation, with joint Commonwealth–WA approval required for certain classes of proposals. In these circumstances, the case-by-case process under the Environment Protection Act would not be triggered. Regulations under the Act would give effect to the bilateral agreement, including the accreditation of WA legislation and the requirement that joint WA–Commonwealth approval be obtained for specified proposals.

By way of further example, a bilateral agreement may provide for the preparation of management plans for Ramsar wetlands in South Australia. The agreement could provide that actions carried out in accordance with a management plan endorsed by the Commonwealth will not trigger the Environment Protection Act.

The benefits of the bilateral agreements process are significant. While States will continue to perform on-ground management, bilateral agreements will provide the Commonwealth with an assurance that appropriately high standards are being met in relation to the assessment of relevant proposals. They will also facilitate greater Commonwealth participation in early strategic planning for World Heritage areas, Ramsar wetlands and other areas.

The Act will also provide for the recognition and implementation of bilateral agreements under which Commonwealth processes are accredited by the States.

Proposals that are not covered by a bilateral agreement will be subject to the case-by-case assessment and approval process outlined in sections 2.3.3 – 2.3.5 below.

2.3.3 Triggering Process

Under the case-by-case process, the Environment Minister will be responsible for deciding whether a proposal or activity may have a significant impact on a matter of national environmental significance. The Environment Minister will also be responsible for deciding whether an activity on a Commonwealth place, or for which the Commonwealth has sole jurisdiction, triggers the Act.

Proposals may be referred to the Environment Minister by a State body, a Commonwealth body or a proponent for a decision on whether the Act is triggered. In practice, the onus will be on the proponent, as the party requiring approval, to refer a proposal to the Environment Minister.

In the absence of a referral, the Environment Minister will also have the capacity to decide that a proposal will trigger the Act. The Environment Minister will be required to notify the proponent and the relevant State and seek their views before making such a decision.

The decision of the Environment Minister will need to be made in accordance with the criteria identified in the Act and within 4 weeks of a matter being referred to the Minister.

Accordingly, the Act will promote a high level of certainty for proponents. If a proponent is uncertain whether a proposal will trigger the Act, the proponent will be able to refer the matter

to the Environment Minister for a binding decision within four weeks.

The Environment Minister will make a decision on whether a proposal triggers the Environment Protection Act after full consultation with relevant Commonwealth Ministers.

The triggering decision of the Environment Minister will be final and binding on the Commonwealth. In accordance with the COAG Agreement, the Act will allow the triggering decision to be reconsidered by the Minister only in exceptional circumstances when either substantial new information has become available or where there has been a substantial and unforseen change in circumstances which is critical, and of direct relevance, to the Commonwealth's determination. For example, if a proponent amends the route of a proposed pipeline so that instead of by-passing a World Heritage property it cuts through the property, the Minister would be entitled to reconsider an earlier decision that the Act was not triggered by the pipeline project.

Like all statutory decisions, the decision on whether a matter is of national environmental significance will be subject to judicial review. Consistent with existing Commonwealth policy, merits review will not be available.

The Act will also enable the Minister to publish guidelines to provide specific guidance on when a proposal will be regarded as having a significant impact on a World Heritage area, a Ramsar wetland or on one of the other matters of national environmental significance. These guidelines will not be legally binding on the proponent or the Environment Minister but will promote certainty and consistency in the application of the Act.

2.3.4 Assessment Process

For proposals that trigger the case-by-case process, the Environment Minister will be required to specify, within six weeks of deciding that the Act is triggered, details of the environmental assessment and approval process to be followed, including the level of assessment that will be required.

The Act will enable the Minister to publish a pro-forma Notice of Referral describing the information that is required to enable the Minister to decide on the level of assessment. In deciding the level of assessment, the options will be:

- a public inquiry;
- an environmental impact statement (EIS);
- a public environment report (PER);
- one-off accreditation of a State or Commonwealth process; and
- no formal assessment required based on the Notice of Referral.

The appropriate level of assessment will be determined after considering the potential environmental significance of the proposal and the principles of ecologically sustainable development. In making this determination, the Minister will take into account the *ANZECC Guidelines and Criteria on the Need for and Level of EIA in Australia.*

Assessment under the Environment Protection Act would relate only to the matters of national environmental significance (except for activities or proposals on a Commonwealth place or where the Commonwealth has sole jurisdiction).

In keeping with ecologically sustainable development principles, the Act will enable consideration of any relevant cumulative and regional impacts of a proposal.

The Environment Protection Act will ensure that the assessment process – including the timing and level of any formal assessment – is fully integrated with corresponding State processes. This will promote a rigorous assessment of environmental impacts while avoiding unnecessary delay and duplication.

Public Inquiry

The public inquiry process will be more flexible than the existing inquiry process, which has been used only five times in 23 years. This will enable the inquiry process to be linked to inquiries under State legislation where this will deliver a more effective and efficient assessment process. The duration, scope and cost of an inquiry will be flexible enough to ensure the scale of an inquiry reflects the significance of the proposal.

Environmental Impact Statements and Public Environment Reports

The Environment Protection Act will specify the required contents for a PER or an EIS. These requirements will be based on existing provisions.

The Act will enable continuation of the existing practice whereby the draft guidelines for the preparation of a PER or an EIS may be referred for public comment before being finalised.

In cases where a PER or an EIS is required under both State and Commonwealth legislation, only one assessment document which meets the requirements of both jurisdictions will be required. One jurisdiction will lead the assessment process.

The Act will recognise that a State or States may wish to accredit the Commonwealth assessment process – for example, where a proposal would impact on the environment in more than one State. If a State or States accredit the Commonwealth process, the Act will allow the Commonwealth assessment to address all relevant environmental issues, not just the matters of national environmental significance.

One-off Accreditation of a State or Commonwealth Process

Broader accreditation of State processes will be dealt with in bilateral agreements. However, the Environment Protection Act will also provide a formal mechanism for the up-front accreditation of State processes and other Commonwealth processes on a case-by-case basis. That is, the Environment Minister will be able to decide up-front that no formal Commonwealth assessment is required on the basis that an assessment is to be conducted under State legislation or other Commonwealth legislation. A decision to provide up-front accreditation may be made when the Environment Minister is satisfied that the accredited process will result in the same level of assessment that would have otherwise occurred under the Environment Protection Act. This will correct a significant deficiency in the existing legislation which does not adequately provide for such up-front accreditation.

No Formal Assessment required based on the Notice of Referral

Consistent with the existing legislation, the Environment Minister will be able to decide that no formal assessment is required if the Notice of Referral (together with any other information available to the Minister) provides sufficient information to fully identify and examine all relevant impacts. Where the Environment Minister intends to decide that no formal assessment is necessary, the Minister may seek public comments on the Notice of Referral before making a final decision.

2.3.5 Approval Process

The Environment Minister will be responsible for deciding whether to grant consent to proposals that trigger the Environment Protection Act. The Environment Minister must ensure full consultation with other relevant Ministers before making a consent decision. In practice, if Ministers do not reach agreement, then the advice of the Prime Minister or Cabinet will be sought.

The Act will provide that the consent decision is to be based on ecologically sustainable development principles, with proper regard being given to economic and social factors as well as matters of national environmental significance. Advice on the economic and social aspects of the proposal will be sought from other relevant Commonwealth Ministers and gathered from any State assessment processes dealing with such matters.

The Environment Minister may specify conditions when granting a consent. In deciding whether to impose conditions and what conditions to impose, the Minister must take into account any conditions which will be imposed under any other Commonwealth or State legislation and any environmental management strategy proposed by the proponent.

The Act will provide that, in deciding whether to grant consent and whether to impose any conditions, the Minister's consideration of environmental issues is limited to those aspects of the proposal relating to matters of national environmental significance (except for proposals on Commonwealth places or where the Commonwealth has sole jurisdiction).

Conditions which will contribute to the protection of the environment may be set, including conditions relating to matters such as modification of the proposal, compliance with a specified environmental management strategy, performance bonds, environmental auditing, reporting requirements, monitoring and rehabilitation. The Environment Minister will have the power to monitor compliance with conditions, enforce conditions and take action in the event of default. The conditions stipulated by the Minister will be publicly available, subject to exceptions based on issues of commercial in confidence, national interest, national security and foreign policy.

2.3.6 Strategic Assessment

The Environment Protection Act will provide a mechanism for strategic environmental impact assessment ('strategic EIA'). The purpose of such a provision is to provide an incentive for government agencies and other proponents to incorporate environmental considerations at the earliest possible stage in the development of policies, strategies and plans.

Strategic EIA will be available in relation to a policy, plan or strategy ('plan') which provides for the carrying out of a series of individual actions that could each trigger the Environment Protection Act.

The proponent of a plan may seek a strategic assessment or the Minister may, with the proponent's agreement, direct that a strategic assessment be conducted in relation to the proposed plan.

If a plan is subject to strategic assessment, then any future assessment of individual proposals under the plan will not be required to re-examine matters covered in the strategic assessment. This will facilitate the assessment of individual proposals and may, in some cases, reduce the level of assessment that would otherwise have been required for the individual proposals.

The Environment Minister will be empowered to declare that individual proposals to be carried out under a plan that has been the subject of strategic EIA will not trigger the Act if carried out in accordance with the assessed plan. A declaration of this kind may be made subject to certain conditions being met; for example, certain amendments being made to the plan. A declaration may only be made if the Minister is satisfied that the strategic assessment adequately identified and addressed all significant impacts associated with the relevant individual proposal. For example, after a fisheries management plan has been subject to strategic assessment the Environment Minister may declare that individual fishing operations licensed under the plan will not trigger the Act.

2.3.7 Providing Accurate Information

The Environment Protection Act will impose a duty on proponents to take all reasonable steps to ensure the information presented in a Notice of Referral, a final PER or a final EIS is accurate.

It is important to note that this will not require the proponent to guarantee that all information in an assessment document is accurate. It will require only that all reasonable steps must be taken to ensure that information detailing predicted impacts – and the likely extent of these impacts – is as accurate as possible. The fact that an EIS fails to predict an impact, or fails to predict the extent of that impact will not result in a breach of the statutory duty. A breach will arise only if the impact, and its extent, would have been predicted if all reasonable steps had been taken in the preparation of the EIS.

The remedies available to the Environment Minister in the event of a breach of this statutory duty are discussed in Chapter 5.

2.3.8 Application of Conservation Agreements

The proposed Biodiversity Conservation Act will enable the Commonwealth to enter into conservation agreements which provide for the conservation of biodiversity on private and public land. It will also provide a process for recognising, or accrediting, conservation agreements entered into under State legislation.

Conservation agreements may provide that actions on land covered by the agreement will not trigger the assessment and approval process under the Environment Protection Act. These actions will be regulated by the provisions of the conservation agreement.

Conservation agreements are discussed in more detail in the section on the proposed Biodiversity Conservation Act.

2.4 Consequential Amendments

Consequential amendments to other Commonwealth environmental legislation will be required to ensure a consistent, integrated legislative regime with appropriate linkages to the Environment Protection Act. This will include, among others, amendments to the *Ozone Protection Act 1989* and the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

3 Biodiversity Conservation Act

The loss of biodiversity represents perhaps the greatest environmental challenge facing Australia. Australia, as one of only 12 'megadiverse' nations in the world, has a special responsibility to ensure the conservation and sustainable use of its biodiversity. Unfortunately, our record to date has not been good – 20 mammal, 20 bird and 76 plant species are known to have become extinct since European settlement.

3.1 Commitment to Biodiversity Conservation

The Howard Government is committed to addressing the loss of Australia's biodiversity and promoting the conservation and sustainable use of our biological resources. It is therefore proposing the introduction of a Biodiversity Conservation Act which will integrate a number of existing Commonwealth Acts and regulations and several new initiatives into a single, comprehensive legislative framework designed to protect Australia's biodiversity.

The proposed Biodiversity Conservation Act will be the first comprehensive legislative attempt by any Australian Government to address the conservation and sustainable use of biodiversity. The proposed Biodiversity Conservation Act will complement the Coalition's establishment of the $1.1 billion Natural Heritage Trust – the largest ever single investment in Australia's environment. One of the key objectives of the Natural Heritage Trust is the conservation of biodiversity.

The Coalition Government recognises that the conservation and sustainable use of biodiversity will deliver to Australians a range of environmental, economic, social and cultural benefits. Biodiversity is essential for the maintenance of human life on earth because it supports the life-sustaining processes that purify our water, fertilise our soils and manage our climate. As recognised in the National Biodiversity Strategy, an environment rich in biodiversity offers the broadest array of options for sustainable economic activity, for nurturing human welfare and for adapting to change. The world's species provide us with food, medicine and industrial products. The conservation of biodiversity can also help avoid the enormous costs arising from the degradation of ecological systems – CSIRO estimates that land degradation costs Australia over $1 billion annually. Many people also recognise aesthetic, cultural and ethical reasons for protecting biodiversity.

The introduction of a Biodiversity Conservation Act, combined with the establishment of the Natural Heritage Trust, demonstrates the Coalition Government's recognition that biodiversity conservation must be a focus of efforts to ensure ecologically sustainable development. It also demonstrates the

Government's determination to transform the existing legislative regime, which has a relatively narrow focus on first generation issues such as national park management, into a dynamic framework addressing contemporary environmental issues such as biodiversity conservation.

The Biodiversity Conservation Act will provide for the cooperative Commonwealth–State implementation of Australia's obligations under the Biodiversity Convention and related Conventions dealing with world heritage, wetlands and migratory species. It will signal the greatest commitment by any Commonwealth Government to the implementation of Australia's international environmental responsibilities and it will do so in the context of revitalised Commonwealth–State cooperation. The Act will also provide legislative support for the National Strategy for the Conservation of Australia's Biological Diversity.

A feature of the Government's efforts to protect biodiversity under the Natural Heritage Trust is the focus on promoting community involvement and support. The proposed biodiversity legislation will also attempt to maximise community involvement; for example, in the preparation of management plans and recovery plans. Similarly, the legislation will seek to maximise cooperative Commonwealth–State efforts to protect biodiversity. In this respect, the Commonwealth acknowledges that the States have responsibility for on-ground land management action. While the Commonwealth will not shirk its responsibilities, the proposed legislation will be based on a framework which seeks to ensure State agencies and the community deliver on-ground outcomes.

The Act will address biodiversity issues by adopting several integrated approaches.

- Protection of wildlife, especially endangered and vulnerable species and migratory species.
- Protection of ecosystems including through the establishment, management and conservation of parks and reserves, World Heritage properties and Ramsar wetlands; recognition of critical habitat; the protection of endangered ecological communities; and the promotion of off-reserve conservation measures.
- Recognition of processes that threaten all levels of biodiversity, particularly endangered and vulnerable species, and implementation of plans to address these processes.
- Providing for the sustainable use of wildlife, and the regulation or prohibition of trade in native wildlife and internationally protected wildlife.
- Ensuring that activities and proposals which may have a significant impact on endangered or vulnerable species or endangered ecological communities are properly assessed under the Environment Protection Act.
- Promoting a partnership approach to biodiversity conservation through bilateral agreements with States, conservation agreements with landholders and the involvement of the community in management planning.

3.2

Structure and Content of the Biodiversity Conservation Act

The proposed Biodiversity Conservation Act will replace the following existing Acts (and the regulations under these Acts).

- *National Parks and Wildlife Conservation Act 1975*
- *Whale Protection Act 1980*
- *Wildlife Protection (Regulation of Exports and Imports) Act 1982*
- *Endangered Species Protection Act 1992*
- *World Heritage Properties Conservation Act 1983*

The introduction of a single Biodiversity Conservation Act will result in an improved, integrated framework for the conservation and sustainable use of Australia's biodiversity. As a result, decision making will be more consistent and streamlined. Conservation priorities will be determined in a more systematic and strategic manner and regional approaches to biodiversity conservation will be promoted. Accordingly, a single Biodiversity Conservation Act will produce better outcomes than can be achieved under the existing regime of five separate and largely independent Acts.

The proposed Biodiversity Conservation Act will also contain some new initiatives. Relevant provisions will be implemented in accordance with the COAG Agreement. In particular, the bilateral agreements mechanism will be utilised to maximise Commonwealth reliance on State processes.

The most important new initiatives relate to:

- the identification and monitoring of Australia's biodiversity and the promotion of bioregional planning;
- ensuring that the Commonwealth's protected area system covers the full range of IUCN categories from strict nature conservation to multiple use;
- recognising that the matters of national environmental significance which trigger the assessment and approval process in the Environment Protection Act include World Heritage properties, Ramsar wetlands, nationally endangered and vulnerable species and endangered ecological communities, and migratory species;
- providing for conservation agreements to protect biodiversity on private and public land; and
- increasing the emphasis on biodiversity considerations in the assessment of proposals for the sustainable use of wildlife.

3.2.1 Identification and Monitoring

In the Biodiversity Conservation Act, the term 'biodiversity' will be defined in accordance with the Convention on Biological Diversity to mean the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part. The definition will recognise that biodiversity comprises three components – genetic diversity, species diversity and ecosystem diversity.

The Act will provide a framework for administrative action which the Commonwealth may take to progress, in cooperation with the States, the identification and monitoring of:

- components of biodiversity important for its conservation and sustainable use;
- the conservation status of biodiversity components; and
- processes and activities which have, or are likely to have, significant impacts on the conservation and sustainable use of biodiversity.

This will enable the systematic determination of conservation needs and priorities.

The Act will also provide a framework within which the Commonwealth may assist and cooperate with States to develop bioregional conservation plans.

Bioregional plans will enable the setting of priorities to better focus conservation actions and will provide a consistent framework for more detailed management plans for priority species, communities and ecosystems. Bioregional plans will also assist in the development of management plans for World Heritage properties and Ramsar wetlands.

A key objective of the bioregional planning process will be to provide greater certainty for all stakeholders in relation to the conservation and sustainable use of natural resources within a region.

Relevant provisions relating to the identification and monitoring of Australia's biodiversity and the promotion of bioregional planning will provide statutory recognition of action that could currently be undertaken by the Commonwealth in discharging its executive powers. The provisions will not impose any obligation on the States or on landholders nor will they provide the Commonwealth with any coercive powers.

3.2.2 Protected Areas

Protected areas are geographically defined areas which are managed to achieve specific conservation objectives. The following types of protected area will be recognised under the Act.

- Commonwealth Parks and Reserves (terrestrial and marine)
- World Heritage properties
- Ramsar wetlands
- Biosphere reserves

Protected areas recognised under the Act will be classified according to the international system for the classification of protected areas – the IUCN Protected Area Management Guidelines. The IUCN Guidelines recognise that World Heritage properties, Ramsar wetlands and Biosphere reserves are international designations which may overlay a range of protected area categories. In fact, World Heritage properties, Ramsar wetlands, and Biosphere reserves may contain areas with numerous different tenures, owners, uses and management arrangements.

The Act will provide that the Commonwealth may define management principles for each type of protected area. Where defined, the management principles will reflect the IUCN Guidelines. In addition, the management principles will, for each type of protected area, provide for the conservation of biodiversity values and the full range of other environmental and cultural values for which the area is protected. The management principles will guide Commonwealth decision making in relation to each type of protected area – for example, in the negotiations of bilateral agreements and the accreditation of management plans.

Consistent with the IUCN Guidelines and the Government's commitment to multiple-use principles, the Commonwealth protected areas system will cover the full range of protected area types from strict nature conservation to multiple-use areas.

Commonwealth Parks and Reserves (Terrestrial and Marine)

The circumstances in which an area may be declared a park or reserve (terrestrial

or marine) will be equivalent to the existing provisions in the *National Parks and Wildlife Conservation Act 1975*.

Other provisions governing the declaration and the management of parks and reserves will be generally equivalent to the provisions in the *National Parks and Wildlife Conservation Act 1975*. The following variations will be made.

- The existing legislation allows parks and reserves to be declared over existing interests, while preserving those interests, only in terrestrial environments. The Biodiversity Conservation Act will allow a declaration of a marine park or reserve over existing interests, while preserving those interests.

- There will be various categories of terrestrial and marine parks and reserves reflecting the IUCN Protected Area Management Guidelines. This will be reflected in the management principles for terrestrial and marine parks and reserves.

- Management plans will need to be consistent with the management principles for the relevant category of park or reserve. Plans will be subject to the approval of the Environment Minister.

- The legislation will ensure appropriate management structures which will include stakeholder representation and participation.

- The existing arrangements with the Traditional Owners at Kakadu, Uluṟu-Kata Tjuṯa and Booderee will be preserved. The Act will enable cooperative arrangements to be established if any new protected area is declared on Aboriginal land or water with the agreement of the Traditional Owners.

- The Great Barrier Reef Marine Park will continue to be managed under the *Great Barrier Reef Marine Park Act 1975*. Some consequential amendments will be made to that Act to ensure consistent integration with the Biodiversity Conservation Act and the Environment Protection Act.

World Heritage Properties

Meeting Australia's international responsibilities for the protection and management of World Heritage properties has been identified in the COAG Agreement as a matter of national environmental significance.

An area may be declared to be a World Heritage property, for the purposes of the application of the Biodiversity Conservation Act, in accordance with the following principles.

- The area must be of World Heritage value; ie, it must be of outstanding universal value as defined in the World Heritage Convention. Listing under the World Heritage Convention will be conclusive evidence that the area is of World Heritage value. An area must be declared to be a World Heritage property under the Act once it is listed under the Convention.

- The Act will provide that nomination of an area for listing under the Convention may proceed only if the Commonwealth has used its best endeavours to reach agreement with the State and any private landholders on the nomination of the area and on a management plan for the area.

- An area may not be declared to be a World Heritage property for the purposes of the Act prior to listing of the area under the Convention, except in cases where the Minister is satisfied that the area is likely to be of World Heritage value and those values are under threat. The declaration of an area on this basis will be limited to a reasonable period allowing for the

assessment of that place, a decision on its nomination and the consideration of that nomination under the Convention.

There are currently no properties in Australia listed under the World Heritage Convention solely for cultural heritage values. The conservation and management of any properties which, in future, are listed solely for cultural heritage values will occur under the proposed new heritage legislation (see the section in this paper on heritage reform).

The Biodiversity Conservation Act will provide that the Commonwealth may define management principles applicable to World Heritage properties. The management principles will reflect the requirements of the World Heritage Convention. Accordingly, these principles will recognise that activities which are consistent with the protection of relevant conservation values may occur in World Heritage properties.

The Biodiversity Conservation Act will recognise that World Heritage properties will normally contain significant values in addition to biodiversity values. The need to ensure the protection and management of the full range of World Heritage values will be reflected in the management principles for World Heritage properties.

The Act will provide for the regulation of any activity or proposal that may have a significant impact on a World Heritage property. An activity which may have a significant impact on a World Heritage property will trigger the assessment and approval process under the Environment Protection Act.

However, an activity will not trigger the process in the Environment Protection Act if it is carried out:

- in accordance with the provisions of a bilateral agreement recognised under the Environment Protection Act; or
- in accordance with the provisions of a conservation agreement established under the Biodiversity Conservation Act.

The overall regime for the management of World Heritage properties is intended to ensure that, while the Commonwealth's responsibilities under the Convention are discharged, on-ground management is carried out by the States (except for Kakadu and Uluṟu-Kata Tjuṯa National Parks, where the Commonwealth has a direct management responsibility). This will be achieved through the bilateral agreements mechanism.

The role of bilateral agreements has been discussed in the section dealing with the Environment Protection Act. Where a bilateral agreement exists in relation to a World Heritage property, then the case-by-case assessment and approval process in the Environment Protection Act will be replaced by the process in the bilateral agreement. The bilateral agreement will detail an assessment and approval process that includes accreditation of State processes and, in some cases, State decisions. Bilateral agreements will be implemented in regulations under the Environment Protection Act.

The Commonwealth Environment Minister will be able to enter into a bilateral agreement covering a World Heritage property only if satisfied that the agreement will ensure Australia's responsibilities under the World Heritage Convention are discharged and, in particular, that the values for which the property was inscribed on the World Heritage list will be protected. Bilateral agreements will need to be consistent with any defined management principles for World Heritage properties. The Commonwealth will be entitled to revoke the bilateral agreement in the event of non-compliance.

The Commonwealth expects that bilateral agreements will, inter alia, deal with the

accreditation of management plans for World Heritage properties. In this respect, the agreement between the Commonwealth and Western Australia in relation to Shark Bay is a useful model. Under that agreement, management plans for Shark Bay must be consistent with the World Heritage Convention. Western Australia is acknowledged as having primary management responsibility for the property. Western Australia has agreed that, in discharging this responsibility, the property will be managed to ensure that only activities which are consistent with the protection, conservation and presentation of the property will be permitted. In return, the Commonwealth will not take action to regulate under Commonwealth legislation activities which are carried out in accordance with a management plan accredited by the Commonwealth. Accreditation may be revoked in defined circumstances.

The intention of such a model is to promote the cooperative Commonwealth–State development of management plans which discharge Australia's obligations under the Convention. In the absence of an adequate management plan, the Commonwealth's assessment and approval process will be triggered by activities which may have a significant impact on World Heritage properties. However, once a management plan is accredited by the Commonwealth then the Commonwealth's assessment and approval process will not be triggered by activities carried out in accordance with the management plan. The assessment and approval of such activities will be carried out in accordance with the management plan.

Management of the Kakadu and Uluṟu-Kata Tjuṯa World Heritage properties will be carried out pursuant to the provisions dealing with Commonwealth parks and reserves.

Management of the Great Barrier Reef Marine Park will be carried out under the *Great Barrier Reef Marine Park Act 1975*. However, the areas of the Great Barrier Reef World Heritage property which are not in the Marine Park will be covered by the World Heritage provisions of the Biodiversity Conservation Act and by the Environment Protection Act.

It is intended that the Wet Tropics Management Plan, when completed, will be accredited under the Biodiversity Conservation Act.

Ramsar Wetlands

Meeting Australia's international responsibilities for the protection and management of Ramsar wetlands has been identified in the COAG Agreement as a matter of national environmental significance.

An area may be declared to be a Ramsar wetland, for the purposes of the application of the Biodiversity Conservation Act, in accordance with the following principles.

- An area may be declared to be a Ramsar wetland for the purposes of the Act only if it is a wetland of international importance. Designation under the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention), is conclusive evidence of international importance. An area must be declared to be a Ramsar wetland under the Act once it is listed under the Convention.

- Designation of a wetland under the Convention may proceed only if the Commonwealth has used its best endeavours to seek agreement with the State and any private landholders on the designation of the wetland and a management plan for the wetland.

- An area may not be declared as a Ramsar wetland under the Act prior to designation of the area under the Convention except in cases where the Minister is satisfied that the wetland is of international importance and the relevant values are under threat. The identification of a wetland on this basis will be limited to a reasonable period covering assessment and designation.

At the commencement of the Biodiversity Conservation Act, all existing Ramsar wetlands will be declared under the Act.

The Biodiversity Conservation Act will provide that the Commonwealth may define management principles applicable to Ramsar wetlands. These principles will incorporate the conservation and 'wise use' principles applicable under the Ramsar Convention and will recognise that activities which are consistent with the protection of relevant conservation values may occur.

The Biodiversity Conservation Act will recognise that Ramsar wetlands may contain significant values in addition to biodiversity values. The need to ensure the protection and management of the full range of Ramsar values will be reflected in the management principles for Ramsar wetlands.

The Act will provide for the regulation of any activity or proposal that may have a significant impact on a Ramsar wetland. Such activities will trigger the assessment and approval process under the Environment Protection Act.

An activity will not trigger the process in the Environment Protection Act if it is carried out:

- in accordance with the provisions of a bilateral agreement recognised under the Environment Protection Act; or
- in accordance with the provisions of a conservation agreement established under the Biodiversity Conservation Act.

The States have on-ground management responsibility for the majority of designated Ramsar wetlands. Accordingly, the overall regime for the management of Ramsar wetlands is intended to ensure that, while the Commonwealth's responsibilities under the Convention are discharged, on-ground management continues to be carried out by the State. This will be achieved through the bilateral agreements mechanism.

Where a bilateral agreement exists in relation to a Ramsar wetland, then the case-by-case assessment and approval process in the Environment Protection Act will be replaced by the process in the bilateral agreement. The bilateral agreement will detail an assessment and approval process that includes accreditation of State processes and, in some cases, State decisions (such as decisions under an agreed management plan for a Ramsar wetland).

The Commonwealth Environment Minister will be able to enter into a bilateral agreement covering a Ramsar wetland only if satisfied that the agreement will ensure Australia's responsibilities under the Ramsar Convention are discharged and, in particular, that the values for which the wetland was designated will be protected. Bilateral agreements will need to be consistent with any defined management principles for Ramsar wetlands. The Commonwealth will be entitled to revoke the bilateral agreement in the event of non-compliance.

The bilateral agreements mechanism is intended to apply in relation to Ramsar wetlands in much the same way as it is intended to apply to World Heritage properties. The intention is to promote the cooperative development of management plans. Once a management plan is accredited by the Commonwealth under a bilateral agreement then the

assessment and approval process in the Environment Protection Act will not be triggered by activities carried out in accordance with that management plan.

Biosphere Reserves

Biosphere reserves are areas which have been given an international designation by the Man and the Biosphere Program of UNESCO because of their characteristic biodiversity values and the way they are used by people. Land use within Biosphere reserves may range from complete protection to intensive but ecologically sustainable development and production.

The Biodiversity Conservation Act will recognise Australia's existing Biosphere reserves and will provide for the recognition of any future Biosphere reserves. In addition, the Act will provide a framework for administrative action by the Commonwealth, in cooperation with the States, to promote the maintenance and management of Biosphere reserves.

The maintenance and management of Biosphere reserves is not identified in the COAG Agreement as a matter of national environmental significance that will trigger Commonwealth involvement in the environmental assessment and approval process.

3.2.3 Conservation Agreements

The proposed Biodiversity Conservation Act will provide the Commonwealth with the capacity to enter into conservation agreements which provide for the conservation of biodiversity. Agreements may be made with government agencies, organisations or individuals and may relate to private land and public land outside the parks and reserves system. It will also provide a process for recognising, or accrediting, conservation agreements entered into under State legislation.

The terms of a conservation agreement will be legally binding, enforceable by all parties, and may cover a range of matters. The agreement may recognise that the landholder has agreed to undertake certain management actions to ensure biodiversity conservation or to restrict or prohibit specified activities which will adversely affect biodiversity values. The terms may also recognise that the Commonwealth will provide technical or financial assistance to the landholder.

In addition, the terms of an agreement may provide that activities on land managed in accordance with the agreement will not trigger the provisions of the Biodiversity Conservation Act or the Environment Protection Act. This is designed to operate as an incentive for landholders to enter into conservation agreements.

It will be possible to include such a provision in an agreement only if any criteria specified in the regulations are met. These criteria will ensure that a net conservation benefit will result from the entry into the conservation agreement. Conservation agreements entered into under State legislation may also be accredited for this purpose if the relevant criteria are met.

It will not be a criminal offence under the Act to breach a conservation agreement. However, the Act will provide that all parties to the agreement may take action to enforce the terms of the agreement, including obtaining an injunction to prevent a breach of the agreement. Action may also be taken to recover any losses incurred as a result of non-compliance. The Act will also provide a process for the revocation of an agreement in the event of non-compliance.

3.2.4 Protection of Threatened Species and Ecological Communities and the Management of Threatening Processes

This section of the proposed Biodiversity Conservation Act will be based on the existing provisions in the *Endangered Species Protection Act 1992 (ESP Act)*. Variations to these provisions are outlined in the following paragraphs.

The major amendment to the existing provisions of the ESP Act will reflect the fact that nationally endangered and vulnerable species and endangered ecological communities are identified in the COAG Agreement as matters of national environmental significance and as triggers for the Commonwealth's assessment and approval process.

Accordingly, the proposed Biodiversity Conservation Act will provide for the regulation of activities or proposals that may have a significant impact on a nationally endangered or vulnerable species or an endangered ecological community. Activities that may have a significant impact on a relevant species or ecological community will trigger the assessment and approval process in the Environment Protection Act.

This provision will apply to all of Australia and its waters. It will not be restricted to Commonwealth areas.

A relevant activity will not trigger the process in the Environment Protection Act if it is carried out:

- in accordance with the provisions of a bilateral agreement recognised under the Environment Protection Act; or
- in accordance with a conservation agreement established under the Biodiversity Conservation Act.

The Act will provide detailed guidance on the factors to be taken into account in determining if an activity will have a significant impact on a listed species or ecological community.

As indicated above, the COAG Agreement notes that the Commonwealth and the States have not yet agreed on precisely how this trigger will operate. The trigger will not come into effect before 1 January 1999. In 1998, the Commonwealth expects to be able to reach agreement with the States on the most effective and efficient mechanism for implementing this trigger. Agreed mechanisms would then be implemented through bilateral agreements recognised under the proposed new legislation.

Where a relevant bilateral agreement exists, then the case-by-case assessment and approval process in the Environment Protection Act will be replaced by the process in the bilateral agreement. The bilateral agreement will detail an assessment and approval process that includes accreditation of State processes and, in some cases, State decisions. Bilateral agreements will be implemented in regulations under the Environment Protection Act.

The Act will provide that the Commonwealth may define criteria or standards against which a State process can be measured when considering it for accreditation under a bilateral agreement. It is expected that bilateral agreements will, while ensuring on-ground management is undertaken by States, recognise a role for the Commonwealth in the assessment and approval process. In appropriate cases, however, the Commonwealth may accredit State decisions.

For those activities not covered by a bilateral agreement, the case-by-case assessment and approval process in the Environment Protection Act will apply. It is important to note that, under this

process, the decision whether to grant consent will be based on environmental, social and economic factors. In addition, all relevant Commonwealth Ministers will be consulted before a consent decision is made and, if Ministers do not reach agreement, the advice of the Prime Minister or Cabinet will be sought.

For the purposes of the case-by-case process, regulations will be made to identify the matters that need to be examined in an assessment of any activity that may have a significant impact on endangered or vulnerable species or endangered ecological communities. Regulations will also specify environmental criteria to be considered by the Environment Minister when deciding whether to grant consent.

The following additional amendments will be made to the regime which is currently implemented under the ESP Act.

- The Act will provide for the listing of species in the following categories recognised in the 1994 Red List of the IUCN.
  - extinct
  - extinct in the wild
  - critically endangered
  - endangered
  - vulnerable
  - conservation dependent
- Three of these categories are new and are described below.
  - Extinct in the wild: known only to survive in cultivation, in captivity or as a naturalised population(s) well outside the past range.
  - Critically endangered: facing an extremely high risk of extinction in the wild in the immediate future. Listing under this category indicates that conservation action is urgently required.
  - Conservation dependent: the focus of a specific conservation program which needs to be sustained to prevent the species becoming threatened. Listing under this category will emphasise the need for continued assistance with conservation programs and the need for monitoring and reporting on the conservation status of the species. However, a recovery plan will not be required for species in this category. In addition, conservation dependent species are not identified as a matter of national environmental significance and so will not provide a basis for triggering the Commonwealth's assessment and approval process.
- The Act will allow regulations to be made defining specialised criteria for the assessment of the conservation status of marine biota.
- All listing processes and criteria will be scientifically rigorous and objective.
- The Endangered Species Scientific Subcommittee (ESSS) will provide advice to the Minister on the listing of species under the six categories referred to above. This role for the ESSS is consistent with its existing role.
- The ESSS will be required to make its recommendation within 12 months of receipt of a public nomination. The Environment Minister will be able to extend this period. (There is currently no time period within which the ESSS must provide advice.)
- The Environment Minister will be required to provide reasons for adding or deleting a species or ecological community from the schedules to the Act. Consistent with the existing legislation, the Minister will be entitled to consider only matters relating to the survival of the species or community concerned when deciding whether to

add or delete a species or community from a schedule.

- The Biodiversity Conservation Act will provide for the listing of vulnerable ecological communities. Vulnerable ecological communities (as opposed to endangered communities) are not identified as a matter of national environmental significance and so will not provide a basis for triggering the Commonwealth's assessment and approval process. Recovery plans will need to be prepared for vulnerable ecological communities that occur on Commonwealth areas.

- The definition of a key threatening process will be amended to include a threatening process that could cause native species or ecological communities that are not endangered *or vulnerable* to become endangered *or vulnerable*. The current definition does not refer to vulnerable species.

- The Act will *not* contain a process for the nomination, assessment and identification of critical habitat. However, it will be an express requirement that critical habitat be identified in the recovery plan process. In advance of the finalisation of a recovery plan, the Environment Minister may define an area of critical habitat on an interim basis if the Minister believes this is necessary to ensure the recovery or survival of the species. Only scientific factors may be taken into account in defining critical habitat. Any relevant landholders and other stakeholders must be consulted before critical habitat is defined. In making decisions on whether the case-by-case environmental assessment process is triggered and whether to grant approval, the Minister will be required to take into account the impact a proposal may have on critical habitat.

- Recovery plans will need to identify endangered populations and identify actions to promote their recovery.

- The Act will confirm that the Environment Minister may approve a joint recovery plan prepared by the Commonwealth and one or more States.

- The ESSS may, if it decides that a species or community does not meet the criteria for listing as critically endangered, endangered or vulnerable, provide advice to the Environment Minister concerning any action that the ESSS believes is necessary to prevent the species or community becoming endangered or vulnerable. Such recommendations must be taken into account by the Environment Minister.

- Schedule 4 to the existing ESP Act will be incorporated into the Biodiversity Conservation Act. The Convention on Biological Diversity together with other relevant international agreements currently listed in Schedule 4 will be listed in a schedule to the Biodiversity Conservation Act. A process for amending this schedule will be included.

The existing National Parks and Wildlife Conservation regulations provide protection for a range of species in listed external territories and on Commonwealth land. These provisions will continue to apply.

3.2.5 Migratory Species

The COAG Agreement recognises that the protection and management of species listed under the Bonn Convention, JAMBA and CAMBA are matters of national environmental significance. The Biodiversity Conservation Act will therefore include a schedule which

identifies species listed under these agreements.

The Biodiversity Conservation Act will provide for the regulation of activities and proposals that may have a significant impact on a migratory species. An activity that may have a significant impact on a migratory species will trigger the assessment and approval process in the Environment Protection Act.

An activity will not trigger the process in the Environment Protection Act if it is carried out:

- in accordance with the provisions of a bilateral agreement recognised under the Environment Protection Act; or
- in accordance with a conservation agreement established under the Biodiversity Conservation Act.

Relevant provisions will be appropriate and adapted to the discharge of Australia's obligations under the relevant international agreements.

3.2.6 Whales and Other Marine Species

The COAG Agreement recognises that the protection and management of whales and other cetaceans is a matter of national environmental significance.

The provisions of the existing *Whale Protection Act 1980* will be incorporated into the Biodiversity Conservation Act. The provisions will be strengthened by:

- providing for the formal declaration of all Australian waters, including the EEZ adjacent to Australia's Antarctic Territory, as a Whale Sanctuary. In the Sanctuary, it will be unlawful to kill, injure, take or interfere with any cetacean; and
- providing that it is not possible to obtain a permit for the capture of cetaceans for live display.

The existing provisions in the National Parks and Wildlife Conservation Regulations which provide for the protection of a range of marine species in Commonwealth waters will be incorporated into this section of the Biodiversity Conservation Act. These provisions will regulate activities or proposals which may have a significant impact on marine species in Commonwealth waters, including species such as albatross and other birds, sea snakes, seals and sea lions, dugongs and marine turtles.

3.2.7 Sustainable Use of Wildlife and International Wildlife Trade

Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and regulation of the export of native wildlife are currently dealt with in the *Wildlife Protection (Regulation of Exports and Imports) Act 1983*. The provisions of that Act will be incorporated, with some amendments, into the Biodiversity Conservation Act.

The proposed amendments will aim to:

- simplify existing provisions;
- increase the emphasis on biodiversity and animal welfare issues;
- provide a clearer structure for the accreditation of management plans prepared under State legislation, with a view to encouraging greater reliance on the provisions dealing with approved management plans rather than controlled specimen declarations;

- ensure that appropriate criteria are applied before decisions are made in relation to the trade in, or use of, wildlife. The criteria to be applied will be based upon the following principles.
  - The use of a species must be sustainable, as defined in the Convention on Biological Diversity.
  - There must be no detriment to the species population or the ecosystem it is taken from. The decision-maker must therefore have as much information as practicable about the species and its role in the ecosystem.
  - Where a management regime is required, the regime should be adaptive and scientifically rigorous.
  - The precautionary principle should be applied.
  - Animals must not be subject to cruelty.
  - Relevant State legislation must be effective.
  - Monitoring and enforcement must be effective, taking into account State legislation and the contribution to be made by the proponent toward monitoring and enforcement costs.
  - The export of native Australian species must not represent a risk to the biodiversity of the country of import;
- strengthen the link between the environmental assessment provisions in the proposed Environment Protection Act and decisions in relation to the trade in, or use of, wildlife; and
- strengthen the provisions creating an offence in relation to the possession of illegally imported CITES listed species.

3.2.8 Access to Biological Resources

Biological resources are increasingly important for the development of technologies and high value-added products in areas such as pharmaceuticals, industrial chemicals, cosmetics and foods. The Convention on Biological Diversity provides for the fair and equitable sharing of the benefits arising out of the utilisation of biological resources. The Convention encourages Parties to provide access to their biological resources, but recognises their right to deny access and requires access to be on mutually agreed terms and subject to prior informed consent.

A unified national approach on access to biological resources is currently being negotiated by the Commonwealth and the States. A joint discussion paper has been prepared. This paper is currently receiving public comment, after which further joint discussion will take place on the development of the national approach.

The Commonwealth Government currently has no specific legislative ability to implement the provisions of the Convention on Biological Diversity dealing with the control of access to biological resources. The proposed Biodiversity Conservation Act will provide the Commonwealth with that ability, by allowing regulations to be made in relation to the management of access to biological resources on Commonwealth lands and in marine environments under Commonwealth control.

The proposed coverage of access to biological resources in the Biodiversity Conservation Act will assist implementation of the national approach when finalised.

4 Reform of Heritage Legislation

The COAG Review identified the listing, protection and management of heritage places as a priority area for reform.

4.1 The National Heritage Places Strategy

One of the outcomes of the COAG Review is, accordingly, an agreement to rationalise existing Commonwealth/State arrangements for the identification, protection and management of places of heritage significance. This will be progressed through the development, within 12 months, of a cooperative National Heritage Places Strategy ('the National Heritage Strategy').

The agreement to develop a National Heritage Strategy was endorsed by COAG in November 1997 and is reflected in the COAG Agreement. The need for such a Strategy had also been recognised at the meeting of National Heritage Ministers in October 1997.

The National Heritage Strategy will:

- set out the respective roles and responsibilities of the Commonwealth and States;
- identify criteria, standards and guidelines, as appropriate, for the protection of heritage by each level of government;
- provide for the establishment of a list of places of national heritage significance; and
- maximise Commonwealth compliance with State heritage and planning laws.

The development of the strategy will involve public consultation.

The COAG Agreement identified places of national heritage significance – those places that will be entered in a national list – as matters of national environmental significance which will trigger Commonwealth involvement in the assessment and approval process. However, the precise Commonwealth role and responsibility in relation to places of national heritage significance is to be defined in the National Heritage Strategy. The Strategy will also identify rigorous criteria and high thresholds to be applied in determining if a place is of national heritage significance.

It is expected that the National Heritage Strategy will be implemented through Commonwealth and State legislation. In order for each jurisdiction to discharge its role under the Strategy, it is expected that some form of cooperative legislative scheme will be relied upon.

The reform of Commonwealth heritage legislation – the AHC Act – is a key element of the environmental law reform process. The Commonwealth is committed to developing and enacting the necessary legislation – in cooperation with the States – as soon as possible after the finalisation of the National Heritage Strategy. Commonwealth heritage legislation which

gives effect to the Strategy will, as an integral part of a dynamic new Commonwealth environment regime, complement the proposed Biodiversity Conservation Act and the proposed Environment Protection Act. Important linkages between each of these two Acts and the heritage regime have been identified in earlier chapters of this paper.

The Commonwealth will not be enacting heritage legislation until the National Heritage Strategy is finalised. The purpose of including a discussion on heritage matters in this paper is to ensure that the community can assess the proposed new environmental law regime as a whole.

4.2

The Need to Reform the Commonwealth Heritage Regime

The existing Commonwealth heritage legislation, the AHC Act, was enacted at a time when most States did not have heritage protection legislation. Accordingly, passage of the AHC Act demonstrated Commonwealth leadership on an issue of importance to many Australians. It set a powerful legislative precedent for State parliaments.

However, most States have now enacted heritage legislation. In most cases, this legislation provides greater protection for heritage than the AHC Act. It is significant to note that the AHC Act has not been substantially amended since its enactment. In particular, it has not been amended to reflect a Commonwealth/State framework which relies primarily upon State legislation to discharge responsibilities for heritage protection and management.

The development of State legislative regimes in relation to heritage requires amendment of the Commonwealth regime to promote the seamless and efficient integration of Commonwealth and State responsibilities for heritage protection.

Under the AHC Act, there are over 11,800 heritage places listed in the Register of the National Estate. However, the Commonwealth has no real power to protect any of these places.

In relation to national estate places of only local or State heritage significance, it would not be appropriate for the Commonwealth to exercise substantive powers of protection. The protection and management of these places should be the responsibility of local and State governments.

However, in relation to heritage places of exceptional value and importance to the nation as a whole, the Commonwealth believes it should have the legislative capacity to protect such places. Such a capacity should, however, exist only in relation to places on a national list and it should recognise the need to maximise reliance on State processes.

An equally compelling case for reform of the AHC Act relates to the unnecessary uncertainty, delay and duplication it potentially creates for proponents. These deficiencies arise because Commonwealth involvement is potentially triggered in relation to management issues involving any of the 11,800 places in the national estate – including those places that are of only local or State significance.

The essentially procedural requirements of the AHC Act are triggered in relation to proposals affecting a place if a Commonwealth trigger (such as foreign investment approval) occurs. The existing triggers for the AHC Act are ad hoc and indirect. The disadvantages of such triggers have been discussed elsewhere in this paper. In the heritage context, they require Commonwealth involvement in proposals raising issues associated with

heritage places of only local or State significance. Under the current system there is also potential duplication of assessments under the AHC Act and the EPIP Act.

The Commonwealth believes that, in relation to heritage places of local or State significance, Commonwealth heritage legislation should not be triggered where the State has agreed to and is implementing the National Strategy. However, it is essential that adequate State legislation applies in such cases in accordance with the criteria, standards and guidelines included in the Strategy. The Commonwealth, in undertaking its own actions, should comply with such State legislation or equivalent provisions.

4.3

Commonwealth Approach

The Commonwealth will pursue an outcome from the National Heritage Strategy, to be implemented in an appropriate legislative scheme, which includes the following.

- The National Strategy should provide for the preparation of a national list of heritage places of exceptional value and importance to the nation as a whole. Appropriately rigorous criteria and high thresholds should be determined in the Strategy.

- The Commonwealth Environment Minister should be responsible for deciding whether to enter a place on the national list, after considering expert advice. Before listing a place, the Environment Minister should be required to attempt to reach agreement with the relevant State and any private property owner on:
  - the listing of the place; and
  - a management plan for the place.

- The Commonwealth Environment Minister should have the power to protect places on the national list, with any relevant assessment and approval processes to be linked to the proposed Environment Protection Act. However, the Commonwealth should seek to maximise its reliance on State processes and, in particular, accredited management plans for places on the national list. Actions taken in accordance with an accredited management plan would not trigger the Commonwealth's power to protect a place. Commonwealth accreditation of State processes should be dealt with in bilateral agreements recognised under the Environment Protection Act.

- The Commonwealth Environment Minister should be required to accredit a State heritage regime when satisfied that the State regime meets the relevant standards in the National Heritage Strategy. These standards should address, inter alia, the criteria and thresholds for listing places under State legislation and the level of protection to be offered by State legislation.

- In a State with an accredited heritage regime, Commonwealth statutory protection will apply only to places on the national list; ie, section 30 of the AHC Act will no longer apply to national estate places in that State. However, Commonwealth bodies should be required to comply with the provisions of the accredited State regime, or equivalent provisions under Commonwealth law. Commonwealth statutory protection will continue to apply to places of less than national significance that would not fall under State jurisdiction, eg places in external territories. Such places would be maintained on a Commonwealth register.

- World Heritage properties and Ramsar wetlands should be automatically recognised as heritage of international and national significance. However, provisions relating to the protection and management of Ramsar wetlands and World Heritage properties listed for natural values, or combined natural and cultural values, will be contained in the Biodiversity Conservation Act. There are currently no World Heritage properties in Australia listed only for cultural values. Any World Heritage properties listed on the basis of cultural values alone will be managed under heritage legislation. Pending the introduction of new heritage legislation, any such cultural World Heritage properties will be protected under the Biodiversity Conservation Act.

5 Enforcement and Compliance

5.1 Need for Change

Many of the enforcement provisions in existing Commonwealth environmental legislation were developed over 20 years ago and do not accurately reflect community expectations and current criminal law policy.

A major development in Australian criminal law is the enactment of the *Criminal Code Act 1995* which sets out the general principles of criminal responsibility for all offences at the Commonwealth level. There is a need for the current environmental legislation to be brought into line with the Code.

Penalties in some of the current legislation no longer provide an effective deterrent against environmental offences and need to be increased.

5.2 Harmonisation with Commonwealth Criminal Law

The environmental legislation reform package will modernise provisions dealing with offences, penalties and enforcement powers to reflect current Commonwealth criminal law policy.

In accordance with current Commonwealth practice, pecuniary penalties will be expressed as penalty units rather than fixed monetary amounts to enable more efficient administration of the legislation. The monetary value of a penalty unit is defined in the *Crimes Act 1914* as $110 and can be updated across all Commonwealth legislation by amendment of that Act.

Offence provisions will be brought into line with the provisions of the *Criminal Code Act 1995*. While the need to prove fault (intention, recklessness or negligence) is currently inferred from most existing offence provisions, the Acts in the reform package will either explicitly identify the fault element involved or rely on the default fault elements in the Code. If a law creates a strict liability offence there are no fault elements for any of the physical elements of the offence and the defence of honest and reasonable mistake of fact is available.

Where necessary, enforcement provisions will be brought into line with current Commonwealth criminal law policy, particularly those provisions dealing with entry, search and powers of arrest.

5.3 Tiered System

To provide greater consistency in offence provisions, a tiered system of offences and penalties will be established. The system will consist of three tiers of

offences and penalties, in descending order of seriousness.

Tier 1 will cover the most serious offences, including those that cause, or have the potential to cause, serious environmental harm and would require proof of intention, recklessness or negligence. Tier 1 offences will incur the highest level of penalties.

Tier 2 will cover a range of strict liability offences.

Tier 3 represents tier 2 offences that may be dealt with by issuing an infringement notice (on-the-spot fine) or other similar authority. Infringement notices are generally appropriate only for the less serious strict liability offences. They provide a convenient and effective means for dealing with some breaches and can avoid the expense and delay which results from prosecution through the courts.

5.4

Enforcement and Compliance Options

The environmental legislation reform package will employ an improved range of administrative, civil and criminal enforcement tools and remedies.

The expanded range of enforcement tools will overcome current problems in some existing legislation where the only enforcement choices available are either to take no action or totally prohibit an activity. This approach will also improve the balance between criminal offences and civil remedies.

The available options will include:

- conducting a monitoring search;
- writing a formal letter requesting compliance;
- issuing a formal notice, order or direction to cease the violation and, to the extent feasible, remediate any environmental harm caused by the violation;
- providing for the recovery of costs incurred by the Commonwealth in protecting or repairing the environment in response to a violation;
- civil penalties;
- commencing criminal prosecution, including the issuing of an infringement notice where appropriate;
- varying a consent, permit or licence to ensure compliance, for example to require a performance bond and mandatory monitoring and reporting, if these conditions are not already included;
- providing that information produced in voluntary compliance audits will not be used as evidence in prosecutions;
- requiring a mandatory audit of compliance;
- suspending a consent, permit or licence;
- revoking a consent, permit or licence;
- seeking an injunction to stop an activity that is causing or has the potential to cause significant environmental harm;
- not proceeding with prosecution on the condition that the holder of a consent permit or licence develops and complies with an environment improvement program;
- withholding a performance bond to undertake work to remediate any harm caused by a violation;

- commencing criminal prosecution for tier 1 and 2 offences; and
- publicising a violation after securing a conviction.

5.5

Standing

Existing Commonwealth environmental legislation encompasses a range of approaches to standing in relation to judicial review of government decisions and the ability to seek an injunction to prevent a breach of legislation.

In the proposed legislation, the Government intends to ensure greater consistency by providing that standing to seek judicial review of administrative decisions will be based on the provisions adopted by the Coalition in the *Hazardous Waste (Regulation of Exports and Imports) Amendment Act 1996*. In general terms, the model used in that Act provides that standing to seek judicial review is available to:

- any person whose interests are affected by the decision, including a person who has engaged in a series of activities related to the environmental issue the subject of the decision; and
- an organisation or association whose objects or purposes include a matter related to, and whose activities relate to, the environmental issue the subject of the decision, (this test would not be satisfied where the decision was given before the organisation or association was formed or before the objects or purposes of the organisation or association included the matter concerned.)

This test is not intended to limit the general rules for determining standing under the *Administrative Decisions (Judicial Review) Act 1977*.

Similar standing provisions will apply in relation to applications for an injunction to restrain a breach of legislation.

The Environment Minister will also have the power to seek an injunction.

Consistent with the established Commonwealth position, merits review of decisions under Commonwealth environmental law will not be expanded beyond those decisions which are already subject to merits review (for example, certain decisions under the existing *Wildlife Protection (Regulation of Exports and Imports) Act 1982*).

5.6

Consequential Amendments

In due course, consequential amendments will be made to all Commonwealth environmental legislation to ensure a consistent and integrated compliance and enforcement regime.

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[PLEASE DISTRIBUTE WIDELY]

Below is a preliminary analysis of the Consultation Paper on the biggest proposed reforms to Commonwealth environmental laws since their inception.
Please distribute widely. For further information, please contact Don Anton or Katherine Wells at the EDO on (02) 9262 6989

Preliminary Comments on the
"Reform of Commonwealth Environment Legislation"
Consultation Paper
released by
Senator Hill, Commonwealth Minister for the Environment
on 25 February, 1998

1. The "consultation" process is a sham

Senator Hill has finally released his long-awaited paper on the reform of commonwealth environment legislation. To call it a "consultation" paper is wrong, however. The official public comment period is less than a month - comments close on 23 March. Worse, it appears that the drafting process for 2 of the 3 new Bills the paper proposes will have to commence - if it has not already - before the comment period closes. The Bills are presently expected to be introduced into Parliament in early April, approximately 2 weeks after the close of the comment period. It defies belief that the Department of the Environment could expect to properly assess the public's comments about the paper, draft 2 Bills taking

those comments into account, and obtain Ministerial (and probably Cabinet) approval for the Bills within that time-frame.

It also seems clear that the public will not be allowed an opportunity to comment on exposure drafts of the Bills before they are introduced in Parliament. This is unacceptable, because the paper contains only vague descriptions about how the new laws will operate. It omits, as well as over-simplifies, the detail of the proposed reforms - and as has often been pointed out in the past, the devil is in the detail. As things stand, many of the proposals will not become clear until after they are introduced in Parliament.

In addition, the paper indicates that one of the highest priorities of the reform process is to implement the new Agreement on the Environment, apparently reached by the Council of Australian Governments (COAG) in November 1997. However, the Agreement is not publicly available. This, of course, makes it impossible to comment on what is claimed to be one of the most crucial elements of the reform process.

This so-called "consultation" process, on the most extensive rewriting of Commonwealth environmental laws in 20 years, is nothing short of a sham; a transparent exercise in smoke and mirrors.

2. The general tenor of the proposed reforms

Overall, the proposed reforms aim to consolidate and update Commonwealth environmental laws - and since many of them were enacted more than 20 years ago, there is certainly a need for this to occur. Specific comments on each of the proposed Acts are set out below, and some of the proposed changes are welcomed. A number of general points need to be made first, however.

Most importantly, the reforms proposed represent a continued retreat by the

Commonwealth from its environmental responsibilities. There is little in the paper that evinces the strong leadership role for the Commonwealth that is necessary if the Australian environment is to be effectively protected, and to ensure all Australians are guaranteed the benefit of equivalent environmental protection wherever they live. Under the guise of "efficiency and the reduction of intergovernmental duplication", the paper makes it clear that the Commonwealth is committed to devolving as many environmental matters as possible to the States, through mechanisms such as "bilateral agreements".

The paper also severely restricts the nature of environmental matters considered to be appropriate for the Commonwealth to regulate, or play a part in regulating. It limits these to "matters of national environmental significance" which, extraordinarily, fails to include such crucial matters as climate change, vegetation clearance or land degradation. Indeed, the list, in most cases, does not deal with broad-scale environmental issues, but rather one-off places or activities. It could hardly be more restrictive in its view of what the Commonwealth's role in environmental management should be, which is all the more disappointing because the Commonwealth clearly has the legislative competence to do far more.

Another problem is that despite paying lip service to the importance of community involvement in environmental decision-making, there is very little mention of participatory decision-making processes. The paper is full of references to mechanisms such as conservation agreements and management plans which appears will operate with little or no public involvement. These mechanisms - which are intended as an alternative to the normal regulatory processes - appear to signal an attempt to shift environmental decision-making to the private realm, a move that business will no doubt approve of.

Finally, the reforms outlined in the paper are supposed to bring us into

the "second generation" of environmental law. The paper claims that the current laws do not reflect "best practice". There is, however, no comparative best practice analysis contained in the paper, without which it becomes nearly impossible to gauge the reforms being proposed.

3. The structure of the proposed reforms

The paper proposes that most (but not all) of the Commonwealth's environmental laws will be replaced by 3 new Acts; the Environment Protection Act, the Biodiversity Conservation Act, and an Act on heritage protection. The paper sets out the basic principles it intends to apply to the first two Acts, but contains very little detail about the new heritage law, which it does not intend to enact until after the National Heritage Places Strategy has been finalised, later in the year.

4. The proposed Environment Protection Act

The Environment Protection Act is intended to replace the Environment Protection (Impact of Proposals) Act 1974 and its Administrative Procedures, and to update the Commonwealth's environmental impact assessment regime. Comments on both positive and negative impacts of the proposed Act follow.

* One of the most concerning features of the proposed Act is the overwhelming reliance which the Commonwealth is placing on State-based EIA procedures. The Act reflects a clear trend by the Commonwealth to reduce its role in regulating environmentally significant activities and to cede its powers to the States. The Commonwealth will place great reliance on accredited State processes. Under the Act, proposals which fall within the terms of a bilateral agreement or management plan will not trigger the Act.
For example, activities affecting threatened species and world heritage areas will no longer require Commonwealth approval if they are addressed under a bilateral agreement. It is therefore crucial to ensure that

the assessment and approvals processes contained in bilateral agreements and management plans are no less rigorous than the process established under the Act, and that those processes are capable of ensuring national impacts are fully assessed.

* The paper does not specify how a bilateral agreement or management plan will be developed, or what opportunities there will be for public participation, if any, in their development. Similarly, the criteria by which the Commonwealth may approve a bilateral agreement are not identified in the paper, although the assurance is given that the criteria will reflect "best practice".

* Another area of concern is the likelihood that the proposed Act will result in less matters being subject to Commonwealth EIA procedures due to the fact that the Act will only be triggered by an activity or proposal which may have a significant impact on a matter of national environmental significance. At present, the Impact Act is triggered by all matters which are likely to significantly affect the environment. Under the proposed Act, decisions such as foreign investment approvals, export controls and funding decisions will no longer trigger EIA at the Commonwealth level. The content of the list of matters which are of "national environmental significance" will therefore be of crucial importance. The proposed list is seriously deficient as it does not include climate change or a number of other crucial broad-scale issues as a matter of national environmental significance.

* The proposed Act will require decisions to be based on ESD principles. This is an improvement on the current system. However it is not clear from the paper how ESD principles will be incorporated into decision-making

at a practical level. For ESD principles to be effective, it will be important for the Act to ensure that decision makers are bound to take ESD principles into account, and that they are also bound to refrain from approving activities which are not consistent with ESD principles.

* The definition of what is "significant" will also be of crucial importance to the level of protection afforded by the proposed Act. The Act should provide guidance as to how that term will be applied. There should be a merits review available for decisions as to whether an approval is likely to be "significant".

* The onus will now be on the proponent to refer a matter to the Environment Minister. Proposals may also be referred by a State or Commonwealth body, or of the Environment Minister's own volition. The expansion of persons who may trigger the assessment process is an improvement. However, it should also be possible for the public to refer a matter to the Environment Minister to determine whether the proposed Act should be triggered. It is not clear what the consequence of failing to refer a matter to the Environment Minister will be.

* The Environment Minister (rather than the Action Minister) will be responsible for deciding whether to grant consent to proposals that trigger the proposed Act. This is an improvement on the present system. However, the Act should specify how the Environment Minister is to balance social and economic factors with ESD principles.

* One of the major weaknesses of the current Impact Act is that it fails to provide an adequate mechanism to assess long-term or cumulative impacts of environmentally significant activities. The proposed Act will provide a mechanism for strategic environmental impact assessment. Strategic EIA will be available for a policy, plan or strategy which provides for a series of individual actions that could each trigger the Act. This

is likely to be an improvement. However, it is disappointing that the paper does not take the opportunity to apply strategic EIA to broadscale governmental policies.

5. The proposed Biodiversity Conservation Act

The Biodiversity Conservation Act is intended to result in an "integrated framework for the conservation and sustainable use of Australia's biodiversity", and to replace:

the Endangered Species Protection Act 1992
the National Parks and Wildlife Conservation Act 1975
the Whale Protection Act 1980
the Wildlife Protection (Regulation of Experts and Imports) Act 1982, and
the World Heritage Properties Conservation Act 1983.

Unfortunately, what appears in the proposal essentially amounts to a mere consolidation of 5 different Acts; it fails to codify a proactive approach to biodiversity conservation as required by the Biological Diversity Convention. While the Act contains a number of progressive proposals - including provisions for the development of bioregional conservation plans, the use of conservation agreements, the adoption of IUCN Red List categories for listing species, and the broadening of the definition of key threatening processes - they are outweighed by the following list of significant problems and omissions.

* The reforms seek an integrated framework for biodiversity protection, but they fail to address climate change, vegetation clearance or land degradation. Indeed, Regional Forest Agreements fall entirely outside the proposed reforms. Legislative treatment of these issues in the proposed Act is essential to integrated conservation and the sustainable use of biodiversity.

* The proposed Act fails to provide for the legislative implementation any principles from The National Strategy for the Conservation of Australia's Biological Diversity. Moreover, nothing in the reforms

indicate that the principles of ecologically sustainable development will be expressly incorporated into the Act or its decision-making processes. This means the Act is silent on crucial concepts such as the precautionary principle and intergenerational equity.

* The proposed Act fails to include benchmarks based on priority actions set out in the National Biodiversity Strategy. In particular, the Act fails to ensure commitment to the implementation of precautionary or safe minimum national standards as a means to operationalise the precautionary principle.

* The definitional scope of "national environmental significance" is too restrictive; for example, the Act needs to cover all wetlands identified in the Directory of Important Wetlands and refugia identified in the Refugia for Biological Diversity in Arid and Semi-Arid Australia.

* The proposed Act fails to include adequate provisions to detect biodiversity in decline, including an early warning monitoring approach that will trigger strategic conservation interventions.

* The Commonwealth will be able to make regulations under the proposed Act to manage access to biological resources on Commonwealth lands, and marine environments under Commonwealth control. This is inadequate; the Commonwealth should regulate access to all of Australia's biological resources. Also, the provisions should be in the Act instead of regulations.

* The proposed Act fails to address issues of biosafety, biotechnology, or exotic species that may have an adverse impact on the conservation and sustainable use of biodiversity.

* Surprisingly, the proposed Act fails to consider a full range of economic measures, such as tax incentives for the protection of

biodiversity or concessions for research.

* Nothing in the proposed Act regulates Australian "processes and activities" beyond national jurisdiction, as required by the Biodiversity Convention.

* The use of bioregional plans for identification and monitoring, while welcome, is deficient. Under the proposed Act, bioregional planning imposes no obligations on States or landholders, nor does it provide the Commonwealth with any coercive powers. It also needs to be kept conceptually distinct from Identification and Monitoring.

* The proposed Act contains a clear commitment to multiple-use principles, without specifying their nature. This is worrying.

* The proposed Act will preserve all existing interests in marine parks and reserves. Presumably this means that commercial fishery extraction will continue as before.

* The proposed Act does not provide sufficiently for the protection of the non-biodiversity values of protected places. The protection of these values needs to be explicitly provided for in the Act, not just in "management principles".

* The proposed Act will "recognise" Australian biosphere reserves designated under the UNESCO Man and Biosphere program. However, these internationally recognised biosphere reserves are not a matter of national significance under the Act and will not trigger Commonwealth assessment and approval processes. This is unacceptable.

* The development of conservation agreements under the proposed Act is not transparent and provides for no community participation or enforcement. Community involvement is crucial because an agreement has the potential to exempt the application of the Biodiversity Act and the Environment Protection Act from land covered by the agreement.

* The Minister continues to have the ultimate authority to list species, communities, populations, and threatening processes. This has the potential to politicise the listing process. The power to list should rest with the Endangered Species Scientific Subcommittee.

* The proposed Act does not contain a process for the listing of critical habitat.

* While the IUCN Red List categories will expand categories that apply to the listing of species, there is no indication that these categories will apply to communities or populations.

6. The proposed new heritage law

Very little detail has been provided about the Government's position on this proposed law, and the outcome will, in any event, be dependent on the development of the National Heritage Places Strategy. As a consequence, not a great deal can be said about this proposal. However, it is worth noting that:

* It is not clear whether the new law will deal with both cultural and natural heritage. There is also no mention of Aboriginal heritage, or whether Aboriginal heritage will continue to be dealt with in separate legislation.

* While the paper does not make this explicit, its proposals appear to set the scene for the demise of the Australian Heritage Commission, and to make it unlikely that the Commission would be followed by a successor of any real significance.

* The paper proposes, essentially, that the Commonwealth should only be responsible for heritage which is included on a national list of heritage places. The national list is to be determined by reference to

"rigorous criteria and high thresholds" - presumably to ensure a very restricted list of places. The paper also proposes that the Commonwealth should seek to maximise its reliance on accredited State processes, and in particular accredited management plans, for places on the national list.

* In addition, the paper proposes that only World Heritage which is of purely cultural significance (and there is presently none listed) will be dealt with under this Act. World Heritage which is listed for natural, or natural and cultural, values, will be dealt with under the Biodiversity Conservation Act.

* The consequence of these proposals is likely to be that a Commonwealth heritage body will not have much to do. This is inappropriate. It is crucial that there be an independent heritage body at the Commonwealth level with strong listing and enforcement powers. The Commonwealth should be providing leadership - not seeking to fob its responsibilities off on the States.

* It is also important that the work which went into compiling the Register of the National Estate not be lost. There is no mention of what will happen to the approximately 11,000 places currently listed on the Register. This needs to be clarified.

7. Enforcement and Compliance

Strangely, the enforcement of the proposed legislation receives separate treatment at the end of the paper. It is not clear why this is so, and it is also not clear exactly how the penalties and enforcement mechanisms set out relate to the Acts proposed in the rest of the paper. This will need to be clarified.

The paper recognises that penalties developed over 20 years ago no longer provide an effective deterrence, and need to be increased and brought into line with the Criminal Code Act 1995. It proposes a division between offences requiring proof of fault and strict liability offences, and a 3-tiered system of offences. It also proposes an increased range of criminal, administrative and civil enforcement tools and remedies.

This part of the paper also deals with the issue of standing.

Standing to enforce the Environment Protection (Impact of Proposals) Act 1974 is currently determined under the ADJR Act. A person must show a "special interest" in the subject matter in dispute to be entitled to enforce the Impact Act. The paper proposes to allow standing to:

> any person whose interests are affected by the decision, and
> an organisation whose objects or purposes include a matter related to, and whose activities relate to, the environmental issue in dispute.

Although the paper states that the new test is not intended to limit the existing rules for standing, it appears certain that this will be the result. This is unacceptable. The right to bring civil proceedings should be extended to the public through an open standing provision which reads:
"Any person may bring proceedings to remedy or restrain a breach of this Act".

Prepared by the NSW Environmental Defender's Office Ltd on behalf of:

> Australian Conservation Foundation
> Greenpeace Australia
> Humane Society International Australia
> Worldwide Fund for Nature Australia