

# National Environment Protection Council (New South Wales) Act 1995 No 4

[1995-4]



New South Wales

## Status Information

### Currency of version

Historical version for 6 July 2004 to 30 June 2021 (accessed 28 July 2024 at 6:15)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Government Sector Finance Legislation \(Repeal and Amendment\) Act 2018 No 70](#) (not commenced)
- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill 2021](#)  
[Road Transport Legislation Amendment Bill 2021](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 10 June 2021

# National Environment Protection Council (New South Wales) Act 1995 No 4



New South Wales

## Contents

|   |    |
|---|----|
| <b>Long title</b> .....   | 6  |
| Preamble .....  | 6  |
| <b>Part 1 Preliminary</b> .....   | 6  |
| 1 Name of Act .....   | 6  |
| 2 Commencement .....  | 6  |
| 3 Object of Act .....   | 6  |
| 4 Act to bind Crown .....   | 7  |
| 5 Application of Acts of interpretation .....   | 7  |
| 6 Definitions .....   | 7  |
| 7 Implementation of national environment protection measures .....                              | 9  |
| <b>Part 2 Establishment and membership of the National Environment Protection Council</b> ..... | 9  |
| 8 The National Environment Protection Council .....   | 9  |
| 9 Membership of the Council .....   | 9  |
| 10 Chairperson of the Council .....   | 10 |
| 11 Deputies .....   | 10 |
| <b>Part 3 Functions and powers of the Council</b> .....   | 10 |
| <b>Division 1 Functions and powers</b> .....  | 10 |

|   |    |
|---|----|
| 12 Functions of the Council .....   | 10 |
| 13 Powers of the Council .....  | 11 |
| <b>Division 2 Making of national environment protection measures</b> .....                    | 11 |
| 14 Council may make national environment protection measures.....                             | 11 |
| 15 General considerations in making national environment protection measures .....            | 12 |
| 16 Council to give notice of intention to prepare a draft of proposed measure.....            | 12 |
| 17 Council to prepare draft of proposed measure and impact statement .....                    | 13 |
| 18 Public consultation .....  | 13 |
| 19 Council to have regard to impact statements and submissions .....                          | 14 |
| 20 Variation or revocation of measures.....   | 14 |
| 21 National environment protection measures to be Commonwealth disallowable instruments ..... | 15 |
| 22 Failure to comply with procedural requirements.....  | 15 |
| <b>Division 2A Minor variation of national environment protection measures</b>                |    |
| .....   | 15 |
| 22A Minor variation of measures.....  | 15 |
| 22B Public consultation for minor variation.....  | 16 |
| 22C Council to have regard to submissions etc.....  | 16 |
| <b>Division 3 Assessment and reporting on implementation and effectiveness of measures</b>    |    |
| .....   | 16 |
| 23 Report by Minister on implementation and effectiveness of measures .....                   | 16 |
| 24 Annual report of Council .....   | 17 |
| <b>Part 4 Meetings of the Council and establishment and meetings of its committees</b>        |    |
| .....   | 17 |
| <b>Division 1 Meetings of Council</b> .....   | 17 |
| 25 Convening of meetings.....   | 17 |
| 26 Procedure at meetings .....  | 17 |
| 27 Quorum .....   | 18 |
| 28 Voting at meetings .....   | 18 |

|  |    |
|--|----|
| <b>Division 2 Committees of Council</b> .....                                  | 18 |
| 29 NEPC Committee .....  | 18 |
| 30 Chairperson of NEPC Committee .....   | 18 |
| 31 Procedures of NEPC Committee .....  | 18 |
| 32 Functions of NEPC Committee .....   | 18 |
| 33 Other committees .....  | 19 |
| 34 Withdrawal from Agreement .....   | 19 |
| <b>Part 5 NEPC Service Corporation, NEPC Executive Officer and staff</b> ..... | 19 |
| <b>Division 1 The NEPC Service Corporation</b> .....                           | 19 |
| 35 NEPC Service Corporation .....  | 19 |
| 36 Functions of the Service Corporation .....                                  | 19 |
| 37 Powers of the Service Corporation .....                                     | 20 |
| 38 Contracts and leases .....  | 20 |
| <b>Division 2 The NEPC Executive Officer</b> .....                             | 21 |
| 39 NEPC Executive Officer .....  | 21 |
| 40 NEPC Executive Officer to control Service Corporation .....                 | 21 |
| 41 NEPC Executive Officer to act in accordance with Council directions .....   | 21 |
| 42 Remuneration and allowances .....   | 21 |
| 43 Leave of absence .....  | 21 |
| 44 Resignation .....   | 22 |
| 45 Termination of office .....   | 22 |
| 46 Terms and conditions not provided for by Act .....                          | 22 |
| 47 Acting NEPC Executive Officer .....   | 22 |
| 48 Powers and functions of acting NEPC Executive Officer .....                 | 23 |
| <b>Division 3 Staff of the Service Corporation and consultants</b> .....       | 23 |
| 49 Public Service staff of Service Corporation .....                           | 23 |
| 50 Non-Public Service staff of Service Corporation .....                       | 23 |
| 51 Staff seconded to Service Corporation .....                                 | 23 |
| 52 Consultants .....   | 23 |
| <b>Part 6 Finance</b> .....  | 24 |

|   |    |
|---|----|
| 53 Payments to Service Corporation by State .....   | 24 |
| 54 Payments to Service Corporation by Commonwealth and other States and Territories .....                 | 24 |
| 55 Money of Service Corporation .....   | 24 |
| 56 Application of money of Service Corporation .....  | 24 |
| 57 Estimates.....   | 24 |
| 58 State audit etc legislation not to apply.....  | 25 |
| 59 Special provisions relating to reports etc prepared under the Audit Act 1901 of the Commonwealth ..... | 25 |
| <b>Part 7 Miscellaneous</b> .....   | 25 |
| 60 Powers and functions conferred under corresponding legislation.....                                    | 25 |
| 61 Delegation by Council.....   | 25 |
| 62 Acts done by Council .....   | 25 |
| 63 Regulations.....   | 26 |
| 64 Review of operation of Act.....  | 26 |
| <b>Schedule</b> .....   | 26 |
| Note.....   | 43 |
| Note.....   | 43 |

# National Environment Protection Council (New South Wales) Act 1995 No 4



New South Wales

An Act to provide for the establishment of a National Environment Protection Council, and for related purposes.

## Preamble

The Commonwealth, the States, the Australian Capital Territory, the Northern Territory and the Australian Local Government Association have entered into an Agreement known as the Intergovernmental Agreement on the Environment setting out certain responsibilities of each party in relation to the environment.

That Agreement provides that the Commonwealth, the States, the Australian Capital Territory and the Northern Territory will make joint legislative provision for the establishment of a body to determine national environment protection measures.

That Agreement further provides that once the form of the joint legislative provision for the establishment of the body has been agreed to, the Commonwealth, the States, the Australian Capital Territory and the Northern Territory will submit to their Parliaments or Legislative Assemblies, and take such steps as are appropriate to secure the passage of, Bills containing that legislation.

**The Legislature of New South Wales therefore enacts:**

## Part 1 Preliminary

### 1 Name of Act

This Act is the *National Environment Protection Council (New South Wales) Act 1995*.

### 2 Commencement

This Act commences on a day to be appointed by proclamation of the Governor published in the New South Wales Government Gazette.

### 3 Object of Act

The object of this Act is to ensure that, by means of the establishment and operation of

the National Environment Protection Council:

- (a) people enjoy the benefit of equivalent protection from air, water or soil pollution and from noise, wherever they live in Australia, and
- (b) decisions of the business community are not distorted, and markets are not fragmented, by variations between participating jurisdictions in relation to the adoption or implementation of major environment protection measures.

#### 4 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

#### 5 Application of Acts of interpretation

- (1) If an expression used in this Act or the regulations under this Act would (because of the [Interpretation Act 1987](#)) have a different meaning from the meaning of the same expression used in the corresponding provision of the Commonwealth Act, the expression has the meaning it has in the Commonwealth Act, unless the contrary intention appears.
- (2) Accordingly, the [Interpretation Act 1987](#) does not apply to the interpretation of that expression.

#### 6 Definitions

- (1) In this Act, unless the contrary intention appears:

**Agreement** means the agreement made on 1 May 1992 between the Commonwealth, the States, the Australian Capital Territory, the Northern Territory and the Australian Local Government Association, a copy of which is set out in the Schedule.

**Australian Local Government Association** means the Australian Local Government Association Limited.

**Commonwealth Act** means the [National Environment Protection Council Act 1994](#) of the Commonwealth.

**Council** means the National Environment Protection Council established by section 8.

**member** means a member of the Council.

**Ministerial Council** means a council, comprising one or more Ministers of the Commonwealth and Ministers of one or more of the States or Territories, that includes environmental protection in its functions.

**minor variation**, in relation to a national environment protection measure, means a

decision made under section 22A (1) to vary a national environment protection measure.

***national environment protection goal*** means a goal:

- (a) that relates to desired environmental outcomes, and
- (b) that guides the formulation of strategies for the management of human activities that may affect the environment.

***national environment protection guideline*** means a guideline that gives guidance on possible means for achieving desired environmental outcomes.

***national environment protection measure*** means a measure made under section 14 (1).

***national environment protection protocol*** means a protocol that relates to the process to be followed in measuring environmental characteristics to determine:

- (a) whether a particular standard or goal is being met or achieved, or
- (b) the extent of the difference between the measured characteristic of the environment and a particular standard or a particular goal.

***national environment protection standard*** means a standard that consists of quantifiable characteristics of the environment against which environmental quality can be assessed.

***NEPC Committee*** means the committee established by section 29.

***NEPC Executive Officer*** means the person who, from time to time, holds the office of NEPC Executive Officer established by section 39 and includes a person acting in that office.

***NEPC Service Corporation*** means the Corporation referred to in section 35.

***participating jurisdiction*** means the Commonwealth, a participating State or a participating Territory.

***participating State*** means a State:

- (a) that is a party to the Agreement, and
- (b) in which an Act that corresponds to this Act is in force in accordance with the Agreement.

***participating Territory*** means a Territory:

- (a) that is a party to the Agreement, and



(b) in which an Act that corresponds to this Act is in force in accordance with the Agreement.

**Service Corporation** means the NEPC Service Corporation.

**Territory** means the Australian Capital Territory or the Northern Territory.

(2) A reference in this Act to the implementation of national environment protection measures includes a reference to the enforcement of the laws and other arrangements made for the purpose of implementing those measures.

## **7 Implementation of national environment protection measures**

It is the intention of the Parliament of New South Wales that the State will, in compliance with its obligations under the Agreement, implement, by such laws and other arrangements as are necessary, each national environment protection measure in respect of activities that are subject to State law (including activities of the State and its instrumentalities).

## **Part 2 Establishment and membership of the National Environment Protection Council**

### **8 The National Environment Protection Council**

The National Environment Protection Council is established.

### **9 Membership of the Council**

(1) The Council consists of the following members:

- (a) a Minister of the Commonwealth who is nominated by the Prime Minister,
- (b) a Minister of each participating State who is nominated by the Premier of the State concerned,
- (c) a Minister of each participating Territory who is nominated by the Chief Minister of the Territory concerned.

(2) A member ceases to be a member if:

- (a) the participating State or participating Territory in respect of which the member is nominated ceases to be a participating State or participating Territory, or
- (b) the member ceases to be a Minister, or
- (c) another Minister of the same jurisdiction is nominated in substitution for the member.

(3) Nominations under this section must be in writing.

- (4) The performance of a function or the exercise of a power by the Council is not affected by a vacancy or vacancies in the membership of the Council.
- (5) Anything done by or in relation to a person purporting to act under a nomination under this section is not invalid merely because there was a defect or irregularity in connection with the nomination.

## **10 Chairperson of the Council**

The member referred to in section 9 (1) (a) is the Chairperson of the Council.

## **11 Deputies**

- (1) The Prime Minister, the Premier of a participating State or the Chief Minister of a participating Territory may nominate a Minister to be the deputy of the Minister nominated under section 9.
- (2) In the event of the absence or unavailability of the Chairperson, or of another member, the Minister nominated as the deputy of the Chairperson or of that other member:
  - (a) may act in the place of the Chairperson or of that other member, and
  - (b) while so acting, has all the functions and powers of the Chairperson or of that other member.
- (3) Nominations under this section must be in writing.
- (4) Anything done by or in relation to a person purporting to act under a nomination under subsection (1) is not invalid merely because:
  - (a) there was a defect or irregularity in connection with the nomination, or
  - (b) the occasion to act had not arisen or had ceased.

## **Part 3 Functions and powers of the Council**

### **Division 1 Functions and powers**

#### **12 Functions of the Council**

The Council has the following functions:

- (a) to make national environment protection measures in accordance with Division 2,
- (b) to assess and report on the implementation and effectiveness, in participating jurisdictions, of national environment protection measures.

### **13 Powers of the Council**

The Council has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions, and, in particular, has power to:

- (a) consult with appropriate persons and bodies, and
- (b) obtain advice and assistance from the NEPC Committee or from another committee established by the Council under section 33, and
- (c) undertake or commission research, and
- (d) publish reports relating to the functions and powers of the Council, and
- (e) provide information to the public (including industry), and
- (f) consult with relevant Commonwealth, State and Territory bodies, and
- (g) consult with the Australian Local Government Association, and
- (h) direct the Service Corporation to provide assistance and support to other Ministerial Councils.

## **Division 2 Making of national environment protection measures**

### **14 Council may make national environment protection measures**

- (1) The Council may, by instrument in writing, make a measure, to be known as a national environment protection measure, that relates to any one or more of the following:
  - (a) ambient air quality,
  - (b) ambient marine, estuarine and fresh water quality,
  - (c) the protection of amenity in relation to noise (but only if differences in environmental requirements relating to noise would have an adverse effect on national markets for goods and services),
  - (d) general guidelines for the assessment of site contamination,
  - (e) environmental impacts associated with hazardous wastes,
  - (f) the re-use and recycling of used materials,
  - (g) except as provided in subsection (2), motor vehicle noise and emissions.
- (2) Noise and emission standards relating to the design, construction and technical characteristics of new and in-service motor vehicles may only:
  - (a) be developed and agreed in conjunction with the National Transport Commission,

and

(b) be determined in accordance with the *National Transport Commission Act 2003* of the Commonwealth and, where appropriate, the *Motor Vehicle Standards Act 1989* of the Commonwealth.

(3) National environment protection measures must each comprise one or more of the following:

(a) a national environment protection standard,

(b) a national environment protection goal,

(c) a national environment protection guideline,

(d) a national environment protection protocol.

#### **15 General considerations in making national environment protection measures**

In making any national environment protection measure, the Council must have regard to:

(a) whether the measure is consistent with section 3 of the Agreement, and

(b) the environmental, economic and social impact of the measure, and

(c) the simplicity, efficiency and effectiveness of the administration of the measure, and

(d) whether the most effective means of achieving the desired environmental outcomes of the measure is by means of a national environment protection standard, goal or guideline or any particular combination thereof, and

(e) the relationship of the measure to existing inter-governmental mechanisms, and

(f) relevant international agreements to which Australia is a party, and

(g) any regional environmental differences in Australia.

#### **16 Council to give notice of intention to prepare a draft of proposed measure**

(1) If the Council intends to make a national environment protection measure, the Council must publish a notice:

(a) specifying the subject of the proposed measure, and

(b) stating that the Council intends to prepare a draft of the proposed measure.

(2) The notice must:

(a) be published in the Commonwealth of Australia Gazette, and

(b) so far as each participating State or Territory is concerned—also be published, on

at least 2 days during the month when the Commonwealth of Australia Gazette notice is published, in a newspaper circulating in that State or Territory.

### **17 Council to prepare draft of proposed measure and impact statement**

Before making any national environment protection measure and not earlier than 30 days after the day on which section 16 (2) (b) has been fully complied with in all participating jurisdictions, the Council must prepare:

- (a) a draft of the proposed measure, and
- (b) an impact statement relating to the proposed measure that includes the following:
  - (i) the desired environmental outcomes,
  - (ii) the reasons for the proposed measure and the environmental impact of not making the measure,
  - (iii) a statement of the alternative methods of achieving the desired environmental outcomes and the reasons why those alternatives have not been adopted,
  - (iv) an identification and assessment of the economic and social impact on the community (including industry) of making the proposed measure,
  - (v) a statement of the manner in which any regional environmental differences in Australia have been addressed in the development of the proposed measure,
  - (vi) the intended date for making the proposed measure,
  - (vii) the timetable (if any) for the implementation of the proposed measure,
  - (viii) the transitional arrangements (if any) in relation to the proposed measure.

### **18 Public consultation**

- (1) Before making a national environment protection measure, the Council must publish a notice:
  - (a) stating how the draft of the proposed measure and the impact statement may be obtained, and
  - (b) inviting submissions to the Council on the proposed measure, or on the impact statement, within a specified period.
- (2) A notice must:
  - (a) be published in the Commonwealth of Australia Gazette, and
  - (b) so far as each participating State or Territory is concerned—also be published, on at least 2 days during the month when the Commonwealth of Australia Gazette

notice is published, in a newspaper circulating in that State or Territory.

- (3) The period specified in each notice under subsection (1) must end not less than 2 months after the day on which subsection (2) (b) has been fully complied with in all participating jurisdictions.

#### **19 Council to have regard to impact statements and submissions**

In making a national environment protection measure, the Council is to have regard, in addition to the matters referred to in section 15, to:

- (a) the impact statement that relates to the measure, and
- (b) any submissions it receives that relate to the measure or to the impact statement, and
- (c) any advice from the NEPC Committee or from a committee established under section 33.

#### **20 Variation or revocation of measures**

- (1) The Council may vary or revoke any national environment protection measure.
- (2) If the Council intends to vary or revoke a national environment protection measure, the Council must publish a notice specifying the measure that the Council intends varying or revoking.
- (3) The notice must:
  - (a) be published in the Commonwealth of Australia Gazette, and
  - (b) so far as each participating State or Territory is concerned—also be published, on at least 2 days during the month when the Commonwealth of Australia Gazette notice is published, in a newspaper circulating in that State or Territory.
- (4) Sections 15, 17, 18 and 19 apply to a variation or revocation of a national environment protection measure as if:
  - (a) a reference to making a national environment protection measure were a reference to a variation or revocation of a national environment protection measure, as the case may be, and
  - (b) a reference to a national environment protection measure were a reference to the variation or revocation of such a measure, as the case may be, and
  - (c) a reference to a proposed national environment protection measure were a reference to a proposed variation or proposed revocation of such a measure, as the case may be, and

(d) the reference in section 17 to the day on which section 16 (2) (b) has been fully complied with in all participating jurisdictions were a reference to the day on which subsection (3) (b) of this section has been fully complied with in all participating jurisdictions.

(5) Subsections (2)–(4) do not apply to a minor variation of a national environment protection measure under Division 2A.

## **21 National environment protection measures to be Commonwealth disallowable instruments**

(1) Section 21 of the Commonwealth Act applies to national environment protection measures made by the Council.

(2) Any such measure ceases to have effect if it is disallowed by either House of the Parliament of the Commonwealth or if it otherwise ceases to have effect for the purposes of the Commonwealth Act.

## **22 Failure to comply with procedural requirements**

If:

(a) the Council fails to comply with a particular procedural requirement of this Act in making a national environment protection measure, but

(b) despite that failure the Council has substantially complied with the procedural requirements of this Act for making that measure,

the failure does not invalidate the measure so made.

## **Division 2A Minor variation of national environment protection measures**

### **22A Minor variation of measures**

(1) The Council may vary any national environment protection measure if:

(a) the variation is supported by a unanimous resolution of all of the members, and

(b) the resolution states that the variation does not involve a significant change in the effect of the national environment protection measure.

A variation under this section is a **minor variation**.

(2) If the Council decides that a variation does not involve a significant change in the effect of the national environment protection measure, the Council must prepare:

(a) a draft of the proposed variation, and

(b) a statement relating to the variation that explains:

- (i) the reasons for the proposed variation, and
- (ii) the nature and effect of the proposed variation, and
- (iii) the reasons why the Council is satisfied that the variation is a minor variation.

## **22B Public consultation for minor variation**

- (1) Before making a minor variation to a national environment protection measure, the Council must publish a notice:
  - (a) stating how the draft of the proposed variation and the explanatory statement may be obtained, and
  - (b) inviting submissions to the Council on the proposed variation, or on the explanatory statement, within a specified period.
- (2) A notice must:
  - (a) be published in the Commonwealth of Australia Gazette, and
  - (b) in each participating State or Territory concerned—also be published, on at least 1 day during the month when the Commonwealth of Australia Gazette notice is published, in a newspaper circulating in that State or Territory.
- (3) The period specified in each notice under subsection (1) must end not less than 1 month after the day on which subsection (2) (b) has been fully complied with in all participating jurisdictions.

## **22C Council to have regard to submissions etc**

In making a minor variation to a national environment protection measure, the Council must have regard to:

- (a) any submissions it receives that relate to the proposed variation or the explanatory statement, and
- (b) whether the measure is consistent with section 3 of the Agreement, and
- (c) relevant international agreements to which Australia is a party, and
- (d) any regional environmental differences in Australia.

## **Division 3 Assessment and reporting on implementation and effectiveness of measures**

### **23 Report by Minister on implementation and effectiveness of measures**

- (1) The Minister of the State who is a member of the Council is, after each reporting year of the Council, to prepare a report on the implementation of national environment



protection measures during that year by the State and the effectiveness of those measures.

(2) A report under subsection (1) must be submitted to the Council by the 30 September next following each reporting year.

(3) In this section:

**reporting year** means a year ending on 30 June.

## **24 Annual report of Council**

(1) The Council must, as soon as practicable after 30 September in each year, prepare a report of its operations during the year ended on the preceding 30 June.

(2) A report prepared under subsection (1) must include:

(a) a copy of the report the Council receives under section 23 and copies of the reports for the year that it receives from the Commonwealth and other State and Territory Ministers under corresponding legislation, and

(b) the Council's overall assessment of the implementation and effectiveness of national environment protection measures having regard to all of the reports referred to in paragraph (a).

(3) A copy of the report is to be laid before each House of the Parliament of the State within 7 sitting days of that House after the Council has formally adopted the report.

## **Part 4 Meetings of the Council and establishment and meetings of its committees**

### **Division 1 Meetings of Council**

#### **25 Convening of meetings**

The Chairperson:

(a) may, at any time, convene a meeting of the Council, and

(b) must convene a meeting of the Council when requested to do so in writing signed by at least two-thirds of the members.

#### **26 Procedure at meetings**

(1) The Chairperson is to preside at all meetings at which he or she is present.

(2) If the Chairperson is not present at a meeting, the members present are to elect one of their number to preside.

(3) The Council is to keep minutes of each meeting.

- (4) Subject to this Division, the Council may regulate the conduct of the proceedings at its meetings as it thinks fit.

## **27 Quorum**

At a meeting, two-thirds of the members constitute a quorum.

## **28 Voting at meetings**

- (1) At a meeting, a decision of the Council must be supported by the votes of at least two-thirds of the members, whether present or not.
- (2) The member presiding at a meeting of the Council has a deliberative vote only.

## **Division 2 Committees of Council**

### **29 NEPC Committee**

- (1) There is established by this section a committee known as the National Environment Protection Council Committee.
- (2) The NEPC Committee consists of the following members:
  - (a) the NEPC Executive Officer,
  - (b) a nominee of each member of the Council, being an official of the Commonwealth, a State or a Territory, as the case requires.
- (3) The President of the Australian Local Government Association may nominate a person who is entitled to attend and be heard at any meeting of the NEPC Committee but who is not entitled to vote at any such meeting.

### **30 Chairperson of NEPC Committee**

The nominee of the Chairperson of the Council is to be Chairperson of the NEPC Committee.

### **31 Procedures of NEPC Committee**

- (1) Meetings of the NEPC Committee are to be convened at the request of the Council or by the Chairperson of the Committee in accordance with procedures determined by the Council.
- (2) The procedures to be followed at a meeting of the NEPC Committee are to be determined by the Committee.

### **32 Functions of NEPC Committee**

The functions of the NEPC Committee are to assist and advise the Council in the performance of its functions and the exercise of its powers.

### **33 Other committees**

- (1) The Council may establish other committees to assist the Council in developing national environment protection measures (including assistance on specified issues).
- (2) The functions, membership and procedures of such other committees are to be determined by the Council.

### **34 Withdrawal from Agreement**

- (1) If a State or Territory ceases to be a participating State or participating Territory:
  - (a) the member of the NEPC Committee nominated by the Premier of the State or Chief Minister of the Territory ceases to be a member of the NEPC Committee, and
  - (b) a member of any other committee who represents the State or Territory ceases to be a member of that other committee.
- (2) If the Australian Local Government Association ceases to be a party to the Agreement, the person nominated by the Association to attend and be heard at meetings of the NEPC Committee ceases to be entitled so to attend and be heard.

## **Part 5 NEPC Service Corporation, NEPC Executive Officer and staff**

### **Division 1 The NEPC Service Corporation**

#### **35 NEPC Service Corporation**

- (1) The NEPC Service Corporation is the corporation with perpetual succession constituted by section 35 of the Commonwealth Act.
- (2) The Service Corporation:
  - (a) may acquire, hold and dispose of real and personal property, and
  - (b) may sue and be sued.
- (3) The seal of the Service Corporation is to be kept in such custody as the Council directs and is not to be used except in the circumstances authorised by the Council.
- (4) All courts, judges and persons acting judicially must:
  - (a) take judicial notice of the imprint of the seal of the Service Corporation appearing on any document, and
  - (b) presume the imprint was duly made.

#### **36 Functions of the Service Corporation**

The functions of the Service Corporation are:

- (a) to provide assistance and support to the Council, the NEPC Committee and any other committee established under section 33, and
- (a1) to provide assistance and support to other Ministerial Councils as directed by the Council, and
- (b) to do anything incidental or conducive to the performance of the function referred to in paragraph (a) or (a1).

### **37 Powers of the Service Corporation**

- (1) The Service Corporation has power to do all things that are necessary or convenient to be done for or in connection with the performance of the functions of the Corporation and, in particular, has power:
  - (a) to enter into contracts, and
  - (b) to lease the whole or any part of land or a building for the purposes of the Corporation, and
  - (c) to occupy, use and control any land or building owned or held under lease by the State and made available for the purposes of the Corporation, and
  - (d) to acquire, hold and dispose of personal property, and
  - (e) to accept gifts, devises and bequests made to the Corporation, whether on trust or otherwise, and to act as trustee of money or other property vested in the Corporation on trust, and
  - (f) to do anything incidental to any of the powers of the Corporation.
- (2) Despite anything contained in this Act, any money or property vested in the Corporation on trust must be dealt with in accordance with the powers and duties of the Corporation as trustee.
- (3) The Corporation has power to perform any of its functions in co-operation with the Commonwealth, a State or a Territory, with an authority of the Commonwealth or of a State or a Territory or with a local government body.

### **38 Contracts and leases**

The Service Corporation must not, without the written approval of the Council:

- (a) enter into a contract involving the payment or receipt of an amount exceeding \$250,000 or, if a higher amount is prescribed under section 38 of the Commonwealth Act, that higher amount, and
- (b) take any land or buildings on lease for a period exceeding 3 years.

## **Division 2 The NEPC Executive Officer**

### **39 NEPC Executive Officer**

- (1) There is to be a NEPC Executive Officer.
- (2) The NEPC Executive Officer is to be appointed by the Council.
- (3) The NEPC Executive Officer is to be appointed for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

### **40 NEPC Executive Officer to control Service Corporation**

- (1) The affairs of the Service Corporation are, subject to section 41, to be conducted by the NEPC Executive Officer.
- (2) All acts and things done in the name of, or on behalf of, the Service Corporation by or with the authority of the NEPC Executive Officer are taken to have been done by the Corporation.

### **41 NEPC Executive Officer to act in accordance with Council directions**

- (1) The Council may, by notice in writing given to the NEPC Executive Officer, give directions to the Executive Officer with respect to the conduct of the affairs of the Service Corporation.
- (2) The NEPC Executive Officer must comply with a direction given under subsection (1).

### **42 Remuneration and allowances**

- (1) The NEPC Executive Officer is to be paid such remuneration as is determined by the Remuneration Tribunal of the Commonwealth in accordance with the law of the Commonwealth, but, if no determination of that remuneration is in force, is to be paid such remuneration as is determined in writing by the Council.
- (2) The NEPC Executive Officer is to be paid such allowances as are determined by the Council.
- (3) Remuneration and allowances payable to the NEPC Executive Officer under this section are to be paid out of the money of the Service Corporation referred to in section 55.
- (4) This section, other than subsection (3), has effect subject to the [Remuneration Tribunal Act 1973](#) of the Commonwealth.

### **43 Leave of absence**

- (1) Subject to section 87E of the [Public Service Act 1922](#) of the Commonwealth, the NEPC Executive Officer has such recreation leave entitlements as are determined by the

Remuneration Tribunal of the Commonwealth in accordance with the law of the Commonwealth.

- (2) The Council may grant the NEPC Executive Officer leave of absence other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Council determines.

#### **44 Resignation**

The NEPC Executive Officer may resign his or her office by writing signed by him or her and delivered to the Chairperson of the Council.

#### **45 Termination of office**

- (1) The Council may terminate the appointment of the NEPC Executive Officer because of misbehaviour or physical or mental incapacity.
- (2) If the NEPC Executive Officer:
  - (a) engages in paid employment outside the duties of his or her office without the approval of the Council, or
  - (b) is absent from duty, except on leave of absence, for 14 consecutive days or 28 days in any 12 months, or
  - (c) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (d) contravenes section 41 (2) without reasonable excuse,the Council must terminate his or her appointment.

#### **46 Terms and conditions not provided for by Act**

The NEPC Executive Officer holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined by the Council from time to time.

#### **47 Acting NEPC Executive Officer**

The Council may appoint a person to act as the NEPC Executive Officer:

- (a) during a vacancy in the office of NEPC Executive Officer, whether or not an appointment has previously been made to the office, or
- (b) during any period, or during all periods, when the NEPC Executive Officer is absent from Australia or, for any reason, is unable to perform the functions of his or her office.

#### **48 Powers and functions of acting NEPC Executive Officer**

A person acting in the office of NEPC Executive Officer:

- (a) has, and may exercise, all the powers of the Executive Officer, and
- (b) may perform any of the functions of the Executive Officer, and
- (c) is to be taken to be the Executive Officer for the purpose of any reference to the Executive Officer in any other law.

### **Division 3 Staff of the Service Corporation and consultants**

#### **49 Public Service staff of Service Corporation**

- (1) Subject to this Division, staff of the Service Corporation are to be persons appointed or employed under the *Public Service Act 1922* of the Commonwealth.
- (2) The NEPC Executive Officer may exercise the powers conferred by section 49 (2) and (3) of the Commonwealth Act.

#### **50 Non-Public Service staff of Service Corporation**

- (1) In addition to the staff referred to in section 49 (1), the Service Corporation may employ persons, under written agreements, for the performance of any of the functions or the exercise of any of the powers of the Corporation.
- (2) The terms and conditions of employment of persons employed under subsection (1) are such as the Corporation determines from time to time.

#### **51 Staff seconded to Service Corporation**

- (1) The Service Corporation may make arrangements for the services of officers and employees of Departments of the Australian Public Service, and of authorities of the Commonwealth, to be made available to the Corporation in connection with the performance of any of the functions or the exercise of any of the powers of the Corporation.
- (2) The Service Corporation may make arrangements with an officer or authority of a State or Territory, under which the State or Territory or the authority makes officers or employees available to the Corporation to perform services in connection with the performance of any of the functions or the exercise of any of the powers of the Corporation.

#### **52 Consultants**

- (1) The Service Corporation may engage persons with suitable qualifications and experience as consultants.

- (2) The terms and conditions of engagement of consultants are such as the Corporation determines from time to time.

## **Part 6 Finance**

### **53 Payments to Service Corporation by State**

- (1) There is payable to the Service Corporation such money as is appropriated by Parliament of the State for the purposes of the Corporation.
- (2) The Treasurer of the State may give directions about the amounts in which, and the times at which, money payable under subsection (1) is to be paid to the Corporation.

### **54 Payments to Service Corporation by Commonwealth and other States and Territories**

The Service Corporation may receive money paid to it by the Commonwealth or by another State or Territory.

### **55 Money of Service Corporation**

The money of the Service Corporation consists of:

- (a) money paid to the Corporation under section 53, and
- (b) money received by the Corporation under section 54, and
- (c) any other money paid to the Corporation.

### **56 Application of money of Service Corporation**

The money of the Service Corporation is to be applied:

- (a) in payment or discharge of the costs, expenses and other obligations incurred by the Corporation in the performance of its functions and the exercise of its powers (including costs and expenses incurred by the Corporation on behalf of the Council or a committee of the Council), and
- (b) in payment of any remuneration or allowances payable under this Act, and
- (c) in providing, or paying for, any other benefits that are authorised under this Act.

### **57 Estimates**

- (1) The NEPC Executive Officer is to prepare estimates, in such form as the Council directs, of the Service Corporation's receipts and expenditure for each financial year and, if the Council so directs, for any other period specified by the Council.
- (2) The Executive Officer must submit estimates so prepared to the Council not later than such date as the Council directs.



- (3) Except with the consent of the Council, the money of the Corporation must not be spent otherwise than in accordance with estimates of expenditure approved by the Council.
- (4) A direction, consent or approval for the purposes of this section is to be given by resolution of the Council carried in accordance with section 28.

#### **58 State audit etc legislation not to apply**

The Service Corporation is not an authority to which the *Public Finance and Audit Act 1983* applies.

#### **59 Special provisions relating to reports etc prepared under the *Audit Act 1901* of the Commonwealth**

- (1) A report prepared by the Service Corporation under section 63M of the *Audit Act 1901* of the Commonwealth must also contain such other information as is required by the Council to be included in the report.
- (2) A copy of each report and of each set of financial statements given to the Commonwealth Minister under section 63M of the *Audit Act 1901* of the Commonwealth must also be given to each of the other members of the Council as soon as practicable after the end of the financial year to which they relate.

### **Part 7 Miscellaneous**

#### **60 Powers and functions conferred under corresponding legislation**

The Council, each committee of the Council, the NEPC Service Corporation and the NEPC Executive Officer have, in addition to the powers and functions conferred on them by this Act, such powers and functions as are conferred on them by the Act of each other participating jurisdiction that corresponds to this Act.

#### **61 Delegation by Council**

- (1) The Council may, by resolution, delegate all or any of its functions and powers conferred by this Act (other than its powers under sections 14, 20 and 63) to the NEPC Committee, the Service Corporation or the NEPC Executive Officer.
- (2) A delegation under this section may be varied or revoked by resolution of the Council (whether or not constituted by the persons constituting the Council at the time when the power or function was delegated).

#### **62 Acts done by Council**

- (1) A certificate that:
  - (a) purports to be signed by a member of the Council or by the NEPC Executive Officer, and

(b) states that the Council has done any act or thing or formed any opinion,

is, on mere production, receivable as prima facie evidence that the Council has done the act or thing or formed the opinion.

- (2) An act or thing done by the Council (whether by resolution, instrument or otherwise) does not cease to have effect merely because of a change in the Council's membership.

### **63 Regulations**

The Governor may, on the recommendation of the Council, make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed, or  
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **64 Review of operation of Act**

- (1) **Initial review after fifth anniversary of commencement of Act** The Council must cause a review of:

- (a) the operation of this Act and the Act of each other participating jurisdiction that corresponds to this Act, and  
(b) the extent to which the object set out in section 3 of each such Act has been achieved,

to be undertaken as soon as possible after the fifth anniversary of the commencement of that corresponding Act of the Commonwealth.

- (2) The report of the review is to be tabled in each House of the Parliament of New South Wales within 12 months after the fifth anniversary of that commencement.
- (3) **Subsequent 5 yearly reviews** As soon as possible after the end of every 5 year period following the review under subsection (1), the Council must cause a further review of the kind set out in subsection (1) to be undertaken.
- (4) The report of each further review is to be tabled in each House of the Parliament of New South Wales within 12 months after the end of the period to which it relates.

## **Schedule**

(Section 6)

### **INTERGOVERNMENTAL AGREEMENT ON THE ENVIRONMENT**

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

BETWEEN

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

WHEREAS

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

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

AND WHEREAS the Parties to this Agreement

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

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

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

RECOGNISE that it is vital to develop and continue land use programs and co-operative arrangements

to achieve sustainable land use and to conserve and improve Australia's biota, and soil and water resources which are basic to the maintenance of essential ecological processes and the production of food, fibre and shelter;

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

- (i) the extent to which roles and responsibilities of the different levels of Government can be clearly and unambiguously defined;
- (ii) the extent to which duplication of functions between different levels of Government can be avoided;
- (iii) the extent to which the total benefits and costs of decisions to the community are explicit and transparent;
- (iv) the extent to which effective processes are established for co-operation between governments on environmental issues; and
- (v) the extent to which responsible Governments are clearly accountable to the electorate for the development and implementation of policy; and

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

THE PARTIES AGREE AS FOLLOWS:

## **SECTION 1 APPLICATION AND INTERPRETATION**

—

### **1.1**

"Commonwealth" means the Commonwealth of Australia.

### **1.2**

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

### **1.3**

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

### **1.4**

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

### **1.5**

A reference in this Agreement to the words "give full faith and credit" to the results of mutually approved or accredited systems, practices, procedures or processes, means that the

Commonwealth and the States acting in accordance with the laws in force in their jurisdictions, will accept and rely on the outcomes of that system or the practices, procedures or processes, as the case may be, as a basis for their decision making. In making the decision to accredit a system or practices, procedures or processes, the Commonwealth or the States may make provision for how unforeseeable circumstances or flawed execution may be taken into account. A decision to accept and rely on the outcome does not preclude the Commonwealth or the States taking factors into account in their decision making, other than those dealt with in that system or those practices, procedures or processes.

**1.6**

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

**1.7**

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

**1.8**

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

**1.9**

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

**1.10**

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

**1.11**

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

**1.12**

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

### **1.13**

Questions of interpretation of this Agreement are to be raised in the first instance in the appropriate Ministerial Council(s) after consultation by the Chair of the Ministerial Council with the President of the Australian Local Government Association where appropriate. Where these mechanisms do not resolve the interpretation, the matter will be dealt with by reference from the Ministerial Council(s) to First Ministers.

## **SECTION 2 ROLES OF THE PARTIES—RESPONSIBILITIES AND INTERESTS**

### **2.1 RESPONSIBILITIES AND INTERESTS OF ALL PARTIES**

#### **2.1.1**

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

### **2.2 RESPONSIBILITIES AND INTERESTS OF THE COMMONWEALTH**

#### **2.2.1**

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

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

#### **2.2.2**

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

#### **2.2.3**

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

### **2.3 RESPONSIBILITIES AND INTERESTS OF THE STATES**

#### **2.3.1**

Each State will continue to have responsibility for the development and implementation of policy

in relation to environmental matters which have no significant effects on matters which are the responsibility of the Commonwealth or any other State.

### **2.3.2**

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

### **2.3.3**

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

### **2.3.4**

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

## **2.4 RESPONSIBILITIES AND INTERESTS OF LOCAL GOVERNMENT**

### **2.4.1**

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

### **2.4.2**

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

### **2.4.3**

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

## **2.5 ACCOMMODATION OF INTERESTS**

### **2.5.1 Between the States and the Commonwealth**

#### **2.5.1.1**

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

- (i) the Commonwealth and the affected States will cooperatively set outcomes or standards and periodically review progress in meeting those standards or achieving those outcomes; or
- (ii) where outcomes or standards are impractical or inappropriate, the Commonwealth may approve or accredit a State's practices, procedures, and processes; or
- (iii) where the Commonwealth does not agree that State practices, procedures or processes are appropriate, the Commonwealth and the States concerned will endeavour to agree to

modification of those practices, procedures and processes to meet the needs of both the Commonwealth and the States concerned;

- (iv) where agreement is reached between the Commonwealth and a State under (iii) the Commonwealth will approve or accredit that State practice, procedure or process.

#### **2.5.1.2**

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

#### **2.5.1.3**

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

#### **2.5.1.4**

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

#### **2.5.1.5**

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

#### **2.5.1.6**

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

### **2.5.2 International Agreements**

#### **2.5.2.1**

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

#### **2.5.2.2**

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

- (i) notify and consult with the States at the earliest opportunity on any proposals for the



development or revision of international agreements which are relevant to Australia and which relate to the environment and will take into account the views of the States in formulating Australian policy, including consultation on issues relating to roles, responsibilities and costs;

- (ii) when requested, include in appropriate cases, a representative of the States on Australian delegations negotiating international agreements related to the environment. Any such representation will be subject to the approval of the Minister for Foreign Affairs and Trade, and will, unless otherwise agreed, be at the expense of the States;
- (iii) prior to ratifying or acceding to, approving or accepting any international agreement with environmental significance, consult the States in an effort to secure agreement on the manner in which the obligations incurred should be implemented in Australia, consistent with the roles and responsibilities established pursuant to this Agreement.

#### **2.5.2.3**

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

#### **2.5.2.4**

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

### **2.5.3 Mechanisms for Determining Commonwealth Interests**

#### **2.5.3.1**

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

#### **2.5.3.2**

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

#### **2.5.3.3**

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

#### **2.5.3.4**

The Commonwealth and the States recognise the importance of responding to requests made under 2.5.3.1 and 2.5.3.3 in the shortest possible time.

#### **2.5.3.5**

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

### **2.5.4 Duplication of Interests**

#### **2.5.4.1**

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

#### **2.5.4.2**

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

#### **2.5.4.3**

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

### **2.5.5 Between the States**

#### **2.5.5.1**

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

#### **2.5.5.2**

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

#### **2.5.5.3**

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

#### **2.5.5.4**

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

### **2.5.6 National Interest**

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

## **SECTION 3 PRINCIPLES OF ENVIRONMENTAL POLICY**

### **3.1**

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

### **3.2**

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

### **3.3**

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

### **3.4**

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

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

### **3.5**

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

#### **3.5.1 precautionary principle—**

Where there are threats of serious or irreversible environmental damage, lack of full scientific

certainty should not be used as a reason for postponing measures to prevent environmental degradation.

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

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

### **3.5.2 intergenerational equity—**

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

### **3.5.3 conservation of biological diversity and ecological integrity—**

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

### **3.5.4 improved valuation, pricing and incentive mechanisms—**

environmental factors should be included in the valuation of assets and services

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

## **SECTION 4 IMPLEMENTATION AND APPLICATION OF PRINCIPLES**

---

### **4.1**

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

### **4.2**

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

### **4.3**

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

#### 4.4

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

### SECTION 5 REVIEW

#### 5.1

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

#### 5.2

The Agreement may be amended and schedules added by agreement of all First Ministers. Prior to making amendments in relation to matters specified in this Agreement, or developing any draft schedules, that involve local government, First Ministers will consult and seek the agreement of the President of the Australian Local Government Association.

WITNESS WHEREOF this Agreement has been respectively signed for and on behalf of the parties as at the day and year first above written.

SIGNED by the Honourable PAUL JOHN KEATING, Prime Minister of the Commonwealth of Australia \*Signature omitted

SIGNED by the Honourable NICHOLAS FRANK GREINER, Premier of the State of New South Wales \*Signature omitted

SIGNED by the Honourable JOAN ELIZABETH KIRNER, Premier of the State of Victoria \*Signature omitted

SIGNED by the Honourable WAYNE KEITH GOSS, Premier of the State of Queensland \*Signature omitted

SIGNED by the Honourable CARMEN MARY LAWRENCE, Premier of the State of Western Australia \*Signature omitted

SIGNED by the Honourable JOHN CHARLES BANNON, Premier of the State of South Australia \*Signature omitted

SIGNED by the Honourable RAYMOND JOHN GROOM, Premier of the State of Tasmania \*Signature omitted

SIGNED by ROSEMARY FOLLETT Chief Minister of the Australian Capital Territory \*Signature omitted

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

ACCEPTANCE OF THE AGREEMENT BY THE NORTHERN TERRITORY IS \*Signature omitted  
SUBJECT TO THE RESERVATIONS SET OUT IN ANNEXURE A OF THIS  
AGREEMENT

SIGNED by Councillor GRAEME BLATCHFORD FRECKER, President of \*Signature omitted  
the AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION

## **SCHEDULE 1 DATA COLLECTION AND HANDLING**

### **1.**

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

### **2.**

The development of consistent standards for the description and exchange of all land-related information will be coordinated and fostered by the Australian Land Information Council in conjunction with Standards Australia and specialist groups where needed.

### **3.**

In order to avoid overlap and duplication in the collection and maintenance of all land-related data, the Australian Land Information Council will facilitate the coordination of intergovernmental arrangements (including appropriate financial arrangements) and provide mechanisms to make the data more accessible across all levels of government and the private sector. Any arrangements entered into will detail the circumstances in which the exchange and ongoing sharing of data is appropriate. The intergovernmental arrangements will be submitted to First Ministers for their approval no later than twelve months after the execution of this Agreement.

### **4.**

The collection of data on natural resources should, where possible, be integrated from the outset, in order to avoid the difficulties inherent in collating data collected with different methodologies and in different conditions.

### **5.**

The Australian Land Information Council, (through the National Resources Information Centre and the Environmental Resources Information Network where appropriate) will consult with the relevant national co-ordination bodies and, through its members, with Commonwealth and State jurisdictions, to ensure the development and maintenance of comprehensive directories of natural resource and environmental spatial datasets and to develop and maintain national natural resource data standards.

## **SCHEDULE 2 RESOURCE ASSESSMENT, LAND USE DECISIONS AND APPROVAL PROCESSES**

### **1.**

The parties agree that the concept of ecologically sustainable development should be used by all levels of Government in the assessment of natural resources, land use decisions and approval

processes.

**2.**

The parties agree that it is the role of government to establish the policy, legislative and administrative framework to determine the permissibility of any land use, resource use or development proposal having regard to the appropriate, efficient and ecologically sustainable use of natural resources (including land, coastal and marine resources).

**3.**

The parties agree that policy, legislative and administrative frameworks to determine the permissibility of land use, resource use or development proposals should provide for—

- (i) the application and evaluation of comparable, high quality data which are available to all participants in the process;
- (ii) the assessment of the regional cumulative impacts of a series of developments and not simply the consideration of individual development proposals in isolation;
- (iii) consideration of the regional implications, where proposals for the use of a resource affect several jurisdictions;
- (iv) consultation with affected individuals, groups and organisations;
- (v) consideration of all significant impacts;
- (vi) mechanisms to resolve conflict and disputes over issues which arise during the process;
- (vii) consideration of any international or national implications.

**4.**

The development and administration of the policy and legislative framework will remain the responsibility of the States and Local Government. The Commonwealth has an interest in ensuring that these frameworks meet its responsibilities and interests as set out in this Agreement. The Commonwealth will continue to co-operate with the States in agreed programs.

**5.**

Within the policy, legislative and administrative framework applying in each State, the use of natural resources and land, remain a matter for the owners of the land or resources, whether they are Government bodies or private persons.

**6.**

To ensure that State land and resource use planning processes properly address matters of Commonwealth interest, a State may refer its land and resource use planning system and its development approval process to the Commonwealth for a preliminary view, as to whether its system or process can be accredited as accommodating Commonwealth interests. In the event that the Commonwealth is of the view that the processes are inadequate to accommodate the Commonwealth interest, then the State will consider whether it wishes to review and modify the systems and processes and will consult with the Commonwealth on terms of reference for such a review.

**7.**

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

**8.**

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

**9.**

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

**SCHEDULE 3  
ENVIRONMENTAL IMPACT ASSESSMENT**

**1.**

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

**2.**

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

**3.**

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

- (i) the environmental impact assessment process will be applied to proposals from both the public and private sectors;
- (ii) assessing authorities will provide information to give clear guidance on the types of proposals likely to attract environmental impact assessment and on the level of assessment required;
- (iii) assessing authorities will provide all participants in the process with guidance on the criteria for environmental acceptability of potential impacts including the concept of ecologically sustainable development, maintenance of human health, relevant local and national standards and guidelines, protocols, codes of practice and regulations;
- (iv) assessing authorities will provide proposal specific guidelines or a procedure for their generation focussed on key issues and incorporating public concern together with a clear outline of the process;
- (v) following the establishment of specific assessment guidelines, any amendments to those



guidelines will be based only on significant issues that have arisen following the adoption of those guidelines;

- (vi) time schedules for all stages of the assessment process will be set early on a proposal specific basis, in consultations between the assessing authorities and the proponent;
- (vii) levels of assessment will be appropriate to the degree of environmental significance and potential public interest;
- (viii) proponents will take responsibility for preparing the case required for assessment of a proposal and for elaborating environmental issues which must be taken into account in decisions, and for protection of the environment;
- (ix) there will be full public disclosure of all information related to a proposal and its environmental impacts, except where there are legitimate reasons for confidentiality including national security interests;
- (x) opportunities will be provided for appropriate and adequate public consultation on environmental aspects of proposals before the assessment process is complete;
- (xi) mechanisms will be developed to seek to resolve conflicts and disputes over issues which arise for consideration during the course of the assessment process;
- (xii) the environmental impact assessment process will provide a basis for setting environmental conditions, and establishing environmental monitoring and management programs (including arrangements for review) and developing industry guidelines for application in specific cases.

#### **4.**

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

#### **5.**

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

### **SCHEDULE 4 NATIONAL ENVIRONMENT PROTECTION MEASURES**

#### **1. General Purpose**

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

- (i) that people enjoy the benefit of equivalent protection from air, water and soil pollution and from noise, wherever they live;
- (ii) that decisions by business are not distorted and markets are not fragmented by variations

between jurisdictions in relation to the adoption or implementation of major environment protection measures.

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

## **2. National Environment Protection Authority**

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

### **3.**

The Authority is to be assisted and supported by:

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

### **4.**

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

## **5. National Environment Protection Authority's Powers and Process**

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

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

\*\*See Northern Territory reservation at end of document.

(vii) the reuse and recycling of used materials;

and shall monitor and report on their implementation and effectiveness.

**6.**

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

**7.**

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

\*\*See Northern Territory reservation at end of document.

**8.**

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

**9.**

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

**10.**

Publication of such drafts will be accompanied by an impact statement which includes—

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

**11.**

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

**12.**

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

**13.**

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

**14.**

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

**15.**

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

**16.**

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

- (a) will apply, as from the date of the commencement of the measure, throughout Australia, as a valid law of each jurisdiction; and
- (b) will, subject to clause 20, replace any existing measures dealing with the same matter.

**17. Implementation, Enforcement, Impact and Reporting in Relation to National Measures**

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

**18.**

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

**19.**

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

**20.**

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

**21.**

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

**22.**

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

**23. Action to Implement Agreements in the Schedule**

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

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

**24.**

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

**25.**

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

**26. Definitions**

For the purposes of this Schedule:

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

**SCHEDULE 5  
CLIMATE CHANGE**

**1.**

The parties acknowledge the potentially significant impact of greenhouse enhanced climate change on Australia's natural, social and working environment, as well as on the global community and

global environments. The parties accept and support the need for Australia to participate in the development of an effective international response to meet the challenge of greenhouse enhanced climate change and note Australia's participation in the development of an international convention on climate change.

**2.**

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

**3.**

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

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

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

**4.**

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

**5.**

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

**6.**

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

**7.**

The National Greenhouse Steering Committee will have the following responsibilities:

- (i) to facilitate the development and co-ordination of an overall framework for the National Greenhouse Response Strategy;
- (ii) to consult with the Standing Committees of Ministerial Councils on elements for inclusion in the Strategy and activities of the Ministerial Councils and other specialised bodies such as the National Greenhouse Advisory Committee, and make recommendations to First Ministers on proposed courses of action;
- (iii) to encourage development of the strategy in areas where it is not being handled elsewhere;
- (iv) to present the Strategy to First Ministers for consideration/adoption;
- (v) to recommend to First Ministers requirements for further development of the Strategy as implementation proceeds.

## **SCHEDULE 6 BIOLOGICAL DIVERSITY**

### **1.**

The parties acknowledge that biological diversity is a major and valuable component of the environment and should be protected.

### **2.**

The parties note that the Commonwealth Government is currently preparing a draft national strategy for the conservation of biological diversity which is being pursued through the Biological Diversity Advisory Committee which has wide ranging representation, including the States.

### **3.**

The parties note that the Commonwealth is responsible for the negotiation, ratification and ensuring implementation of the proposed Biological Diversity Convention.

### **4.**

The parties note that the proposed Biological Diversity Convention, while having importance for nature conservation, is likely to have implications across a wide range of Commonwealth and State responsibilities and that the interests and responsibilities of the States and the Commonwealth which may be affected by the proposed Convention are not confined to any particular portfolios.

### **5.**

The Commonwealth will continue to provide the States with the opportunity to be represented on Australian delegations to meetings of the Intergovernmental Negotiating Committee for a Convention on Biological Diversity. The Commonwealth and the States will continue their consultations in relation to formulating Australian policy regarding the Convention through the existing mechanisms involving the Department of Foreign Affairs and Trade and State agencies as nominated from time to time by their First Ministers.

### **6.**

Given the wide and significant implications of the proposed Convention, the Commonwealth and the

States acknowledge that issues may arise which may cause a State to seek consultation in relation to the negotiations at First Minister level.

**7.**

The Australian and New Zealand Environment and Conservation Council, in consultation with and, where appropriate, joint co-operation with, other Ministerial Councils, the agencies referred to in clause 5 and relevant organisations, will forward to First Ministers advice on:

- (i) the implications of implementing the proposed Convention; and
- (ii) the manner in which implementation of the proposed Convention may be undertaken.

**8.**

For the purposes of clause 7, the other Ministerial Councils will include:

- Australian Agricultural Council;
- Australian Soil Conservation Council;
- Australian Water Resources Council;
- Australian Forestry Council;
- Australian Fisheries Council;
- Australian and New Zealand Mineral and Energy Council; and
- Australian Industry and Technology Council.

**SCHEDULE 7  
NATIONAL ESTATE**

**1.**

The parties acknowledge that the primary role of the Australian Heritage Commission is to identify the National Estate and advise the Commonwealth on its conservation.

**2.**

The parties further acknowledge that primary responsibility for land use and resource planning decisions rests with States.

**3.**

The parties agree that the register of the National Estate is one of the factors that the States may consider when making land use and resource planning decisions and that Section 30 of the [Australian Heritage Commission Act 1975](#) applies only to decisions of the Commonwealth Ministers, Departments and Authorities. The parties recognise however that some applications of s.30 of the Act may have significant land and resource use planning implications.

**4.**

The Commonwealth supports the current practice whereby the Australian Heritage Commission provides information on all places nominated to the Register of the National Estate or which are



identified by studies, to the designated agencies in the relevant State. The Commonwealth agrees to support the current practice whereby the Commission seeks and considers the views of the relevant State on all nominated places before making a decision on interim listing.

**5.**

Each State agrees to establish and advise the Australian Heritage Commission on appropriate channels of communication, the persons responsible for consultation and the persons responsible for coordination of responses to the Australian Heritage Commission on matters related to National Estate nominations and listings.

**6.**

The Commonwealth supports the current practice whereby the Australian Heritage Commission provides information to the relevant local government body on places to be given interim listings status at least two months prior to any public notification of that interim listing.

**7.**

The parties agree that systematic, thematic and/or regional assessment is the preferred basis on which to assess the national estate value of an area.

**8.**

The Commonwealth and the States agree to facilitate joint assessment processes between the Australian Heritage Commission and the States where appropriate. In any event, existing data collections and assessment processes that conform to national estate assessment criteria which are set out in the [Australian Heritage Commission Act 1975](#) can be accredited and relied upon by the Australian Heritage Commission as satisfying the requirements of the Commission.

**9.**

The Commonwealth agrees that any State can negotiate with the Commission on improved forms of consultation concerning development of the Register of the National Estate generally.

**10.**

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

**11.**

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

**12.**

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

**SCHEDULE 8  
WORLD HERITAGE**

**1.**

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

**2.**

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

**3.**

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

**4.**

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

**5.**

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

**SCHEDULE 9  
NATURE CONSERVATION**

**1.**

The parties agree that each level of Government has responsibilities for the protection of flora and fauna and should use their best endeavours to ensure the survival of species and ecological communities, both terrestrial and aquatic, that make up Australia's biota. The parties recognise that the protection and sound management of natural habitats is of fundamental importance to this aim and that all levels of Government should use their best endeavours to conserve areas critical to the protection of Australia's flora and fauna and the maintenance of ecological processes that ensure biological productivity and stability.

**2.**

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

**3.**

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

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

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

**4.**

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

**5.**

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

**6.**

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

**7.**

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

**8.**

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

- (i) the identification of Australia's rare, vulnerable and endangered species of flora and fauna;

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

**9.**

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

**10.**

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

**11.**

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

**12.**

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

**13.**

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

**14.**

The parties agree that the national approach to the conservation, protection and management of native species and habitats may include the addition of new areas to reserve systems and protected areas, some of which may be under multiple land use regimes, where such multiple land use does not adversely affect the prime nature conservation function of the reserve or protected area.

**15.**

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

**16.**

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

**Annexure A**

**RESERVATION BY THE NORTHERN TERRITORY**

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

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