

## XIII. International Environmental Law

*Greg Rose\**

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### **Commission for Sustainable Development—Founding membership**

On 17 February 1993, Australia was elected as a founding member of the Commission for Sustainable Development. Australia is one of 53 countries representing all geographic regions to be elected to the Commission and will serve an initial two-year term from 1993–94 (News Release M35, 17 February 1993):

The establishment of the Commission was recommended by UNCED (the Earth Summit) in Rio de Janeiro in June last year.

The UN General Assembly agreed in December to establish the Commission to oversee the principal outcomes of UNCED. It will examine progress in implementing Agenda 21 at the national, regional and international levels.

Agenda 21, one of the principal outcomes of UNCED, is a 40-chapter action plan which addresses current problems of development and environment and aims to prepare the world for the challenges of the 21st century.

The Commission will meet for the first time at the UN headquarters in New York in June and will develop a program to consider year-by-year progress made on Agenda 21 issues.

The objective is to have considered the whole of Agenda 21 by 1997 when the General Assembly will hold a special session to review environment and development issues.

### **Climate Change—Intergovernmental Negotiating Committee—Vice-Chair**

On 18 March 1993 Australia's ambassador for the environment, Ms Penny Wensley, was elected to a position as vice-Chair of the Intergovernmental Negotiating Committee on Climate Change (News Release D15, 18 March 1993):

The committee is considering the mechanisms by which countries will meet their commitments under the convention.

Australia has taken a leading role in the negotiations for the convention, reflecting the important environmental, economic and political interests at stake.

Ms Wensley has been involved in the negotiations from the start in February 1991. She led the Australian delegations to the negotiations and was a senior member of the Australian delegation to the UN Conference on Environment and Development (UNCED) in Rio de Janeiro in June last year.

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\* Report prepared by Greg Rose, Environmental Law Unit.

Australia signed the Climate Change Convention during UNCED and lodged its instrument of ratification in New York in late December.

### **Biodiversity Convention—Ratification**

On 20 June 1993 the Minister for Foreign Affairs and the Minister for the Environment, Senator Ros Kelly, announced that Australia had ratified the Convention on Biological Diversity (News Release, 20 June 1993):

Australia joined some twenty countries, including Canada, Japan and Canada in ratifying the Convention. Thirty ratifications are required for the Convention to enter into force and this is expected to occur early in 1994.

Mrs Kelly said the Convention will assist in ensuring the long term survival of genes, species and ecosystems which are vital in protecting the earth's biodiversity.

The Minister said through the implementation of the Convention all countries can come together in an effective partnership to halt the global loss of biological diversity.

"Australia has a special role to play in protecting our biodiversity as we are one of approximately 12 countries containing almost 70% of the world's species", Mrs Kelly said.

Senator Evans said many primary industries, essential to our export earnings, are dependent either directly or indirectly on our biological diversity and that of other countries.

"It is in our economic and environmental interests to take strong and decisive action under the guidance of the Convention to maximise the benefits to be gained from a healthy environment and ecologically sustainable development", Senator Evans said.

The Ministers said that ratification was undertaken following extensive consultation with the States and Territories in accordance with the Intergovernmental Agreement on the Environment. This process had culminated in agreement to ratification being reached at the Council of Australian Governments' meeting on 5 June 1992, at the Earth Summit in Rio de Janeiro.

### **Biodiversity Convention—Entry into force**

On the 29 December 1993, the Convention on Biological Diversity came into force, Document 4 (News Release, 29 December 1993):

Federal Environment Minister Ros Kelly said the Convention commits Australia and other ratifying nations to taking action as part of a global effort to protect the planet's biological wealth.

"Australia played a leading role in the development of the convention and will continue to play a significant part in its early and effective implementation. Australia has a special responsibility as it is home to an estimated 475,000 species of plants and animals, perhaps twice as many as Europe and North America combined."

Biological diversity (or biodiversity) means simply the variety of life on Earth. It includes genetic variation within a specie, variation between different species and variation between different ecosystems.

Mrs Kelly said nearly 170 nations had signed the Convention at last year's Earth Summit in Rio de Janeiro, and some 36 countries have taken the further step of ratification. Australia was the fourth developed country to ratify the Convention.

Under the Convention ratifying countries are required to conserve biological diversity, to make sure living resources are used sustainably, and to ensure a fair distribution of the benefits from the use of genetic resources.

"For humanity to survive and thrive we need to keep that variety intact at all levels. We cannot afford to continue activities which erode our biodiversity. New integrated approaches to conservation and development can and must be applied."

Mrs Kelly also announced that the Commonwealth Government had, on 16 December 1993, approved the draft National Strategy for the Conservation of Australia's Biological Diversity.

"This draft Strategy has been developed in close consultation and cooperation with State and Territory Governments and I am hopeful that the State and Territory Governments will also be able to adopt the Strategy in the near future", Mrs Kelly said.

### **Ozone Protection Strategy—New regulations**

Amendments to the Ozone Protection (Product Control) Regulations were gazetted on 21 April 1993. These amendments implement regulations under the Australian and New Zealand Environment and Conservation Council's Ozone Protection Strategy for the introduction of controls, additional to those required under the Montreal Protocol for Protection of the Ozone Layer, on those on the manufacture or import of CFC based refrigeration and air conditioning equipment (Department of Environment Sports and Territories, *Annual Report 1992–1993*, p 293).

### **Trade and Environment—OECD Guidelines**

On 4 June 1993 the Minister for Trade, Senator Peter Cook, issued the following press release concerning Organisation for Economic Cooperation and Development (OECD) Guidelines on Trade and Environment:

The Minister for Trade, Senator Peter Cook has welcomed the guidelines on trade and environment which were endorsed by the OECD Ministerial Council Meeting in Paris on 2–3 June.

"These guidelines are a result of the OECD's innovative work over the past few years to try to effectively integrate and achieve greater coherence between international trade and environment policies. Although these guidelines are not legally binding, they should have an important influence on domestic policy formulation processes", Senator Cook said.

The guidelines have been developed pursuant to the approach to trade and environment issues taken through UNCED Agenda 21 and the Rio Declaration, based on international cooperation and respect for internationally agreed rules and principles.

Senator Cook said that the guidelines should result in even greater transparency of trade and environment policies and ensure that they are mutually sensitive to the principles central to each of these important policy areas.

“They provide for greater consultation during the policy formulation process and provide scope for means to address concerns identified. They also reinforce the need for multilateral cooperation to successfully address environmental concerns without undue effects on trade.”

The communique issued by OECD Ministers at the conclusion of their two day meeting which endorses these guidelines envisages that this OECD work should help countries gain an earlier and deeper understanding of the substantial issues in trade and environment, likely to occupy an increasingly important role on the multilateral trade agenda following the conclusion of the Uruguay Round.

“This is an area which is vital to us all and which must be tackled collectively.”

Senator Cook said that the Government would continue and intensify its work and consultation with the business community and with non-Government conservation and development groups on trade and environment issues.

### **World Heritage Convention—New property list nomination**

In September 1993, a nomination of the Central Eastern Rainforests of Australia was lodged for consideration by the World Heritage Committee during 1993. This nomination comprises the existing East Coast Temperate and Subtropical Rainforest Parks World Heritage property and an extension into Southern Queensland.

If accepted for listing, the Central Eastern Rainforests would be the 11th Australian property on the World Heritage List, following the listing of Fraser Island in December 1992 (Department of Environment Sports and Territories, *Annual Report 1992–1993*, p 293).

### **World Heritage Convention—Federal implementation**

On 16 December 1993 the Parliamentary Secretary to the Minister for Primary Industries and Energy, Senator Sherry, proposed for incorporation into Hansard a second reading speech concerning the Wet Tropics of Queensland World Heritage Area Conservation Bill, which read as follows (Senate, *Debates*, vol 161 (1993), p 4761):

#### **Wet Tropics of Queensland World Heritage Area Conservation Bill 1993**

The main purpose of the Wet Tropics of Queensland World Heritage Area Conservation Bill is to implement the terms of an agreement between the Premier of Queensland and the Prime Minister on 16 November 1990, which provides for a regime of cooperative management of this sensitive and unique environment. The Bill is intended to complement the Queensland Wet Tropics World Heritage Protection and Management Act 1993, which was passed by the Queensland Government on 30 September 1993. These two pieces of legislation together will bring into effect permanent management arrangements to implement Australia’s international obligations for the Wet Tropics of Queensland World Heritage Property under the Convention for the Protection of the World Cultural and Natural Heritage (the World Heritage Convention).

The Commonwealth legislation will be an acknowledgment of the Commonwealth's on-going commitment to protect, conserve, present and transmit to future generations the Wet Tropics of Queensland World Heritage Property, in accordance with Australia's obligations under the World Heritage Convention.

The Government recognises the processes established under the very comprehensive Queensland legislation. Day to day management of the World Heritage property will be carried out by the Queensland Government in accordance with management plans proclaimed under Queensland's Wet Tropics World Heritage Protection and Management Act 1993. The Queensland legislation provides for extensive consultation with key interest groups including government departments, public authorities, land-holders, local authorities, Aboriginal people concerned with land in the region, interested groups and persons and members of the public in the preparation of management plans.

The Queensland legislation provides for the submission of the final management plan to the Joint Commonwealth/State Ministerial Council, established under an agreement between the Prime Minister and the Premier of Queensland, for recommendation to and subsequent approval by the Governor of Queensland in Council.

The Bill empowers the Minister to act on behalf of the Commonwealth to nominate two Directors to the Board of the Wet Tropics Management Authority for the purposes of 14(b) of the Queensland Act. The Board will consist of 6 persons; 1 person appointed on the nomination of the Ministerial Council, 2 persons appointed on the nomination of the Commonwealth, 2 persons appointed on the nomination of the State and the executive director of the Management Authority.

The Bill makes obligatory the tabling of the annual reports of the Wet Tropics Management Authority in both Houses of this Parliament and provides for the secondment of Commonwealth officers to the Authority.

In addition, arrangements have been made by Ministerial agreement with Queensland, whereby the Commonwealth will have a very significant input into the selection of the executive director and members of the Wet Tropics Management Authority who will be appointed under the Queensland legislation.

### **Wildlife Conservation—Bonn Convention Subsidiary Agreement—Albatross**

In May 1993, at a meeting of the Scientific Council of the Bonn Convention on the Conservation of Migratory Species of Wild Animals, Australia was successful in gaining support for the development of an International Agreement for the Conservation of Albatrosses in the Southern Hemisphere for which it will take the lead role. Australia will draw on its albatross conservation work in the preparation of the draft Agreement.

This includes: a review of cooperative mechanisms for the conservation of the albatross; several projects assessing the problem of decline in albatross populations in Australian waters due to the effects of fisheries by-catch; and the development and field testing of a bait throwing device for use in tuna long-line fisheries, the main cause of by-catch mortality for the albatross (Australian National Conservation Agency, *Annual Report 1992–1993*, p 34).

## **Forests—International Research Centre Agreement**

On 7 March 1993 the Minister for Trade and Overseas Development, John Kerin, signed an agreement with the Ambassadors of Sweden and Switzerland establishing the Centre for International Forestry Research (CIFOR) (News Release MT5, 7 March 1995):

CIFOR is a non-profit, autonomous international scientific research organisation which will establish its headquarters in Bogor, Indonesia. CIFOR will focus on research to sustain and conserve tropical forests and woodlands of the developing world. It will carry out research in major forest zones of tropical Asia, Latin and Central America and Africa/

“Australia’s sponsorship of this new centre is consistent with the Government’s support for the international tropical time agreement and the Earth Summit’s Agenda 21”, Mr Kerin said.

CIFOR is the latest member of the Consultative Group on International Research Centres dedicated to the betterment of people in developing countries. Australia was a foundation member of this group in 1971. The late Sir John Crawford was one of its architects and Australia has remained a strong supporter and financial contributor to the CGIAR since that time.

The Australian Centre for International Agricultural Research (ACIAR) undertook the task of establishing the new Centre on behalf of the CGIAR.

“The decision of the CGIAR to accept the invitation from the Government of Indonesia to establish the headquarters of the Centre in Bogor is welcomed by the government”, Mr Kerin said.

“We look forward to the development of cooperative linkages between the Australian Forestry Research community and CIFOR, and also to opportunities for closer ties between Australia and Indonesia that will result from this initiative”.

## **Forests—International Tropical Timber Agreement Negotiations**

On 6 October 1993, Australia made the following statement to the United Nations Commission on Trade and Development (UNCTAD) Conference to Negotiate a Successor International Tropical Timber Agreement at its third session:

Thank you, Mr President. I appreciate the opportunity to make a statement early in this third session of the negotiating conference.

At the outset, Mr President, I would like to express Australia’s sincere appreciation to you, to Dr Freezailah (the Executive Director of the ITTO) and his staff, and to the spokesmen of the Producer and Consumer groups, for your efforts and leadership in progressing these important negotiations. Already we are beginning to see the fruits of your work and we are confident that under your able leadership we will be successful in negotiating a new Agreement. At the same time, we acknowledge that further hard work will be needed from all of us to achieve final consensus.

Mr President, I thought it might be helpful at this stage in the negotiations to offer an Australian perspective on international forest matters, and to outline the approaches being adopted by Australia concerning the management of our forests.

Mr President, Australia is aware of the problems caused by deforestation. These are of concern to us because of the continuing irreversible loss of biological diversity and other conservation values. In addition, and just as importantly, deforestation is causing a permanent loss of other forest services and values necessary for economic development, such as wood production, soil conservation, food and shelter, water supplies, and opportunities for tourism. It is also having a serious impact on the economic, social and cultural identity of indigenous peoples.

Australia understands the aspirations of many countries to utilise forest resources to achieve higher levels of economic development, and is aware that many Governments around the world are striving to reduce the rate of deforestation and to introduce sustainable forest management. Australia is well aware from its own experiences of the complexity of this task. We recognise the difficulty of achieving the optimum balance between protecting non-commercial values such as nature conservation, while at the same time allowing for the production of important commercial goods.

However, the work of organisations such as the Food and Agriculture Organisation on forest resources assessment shows that deforestation continues to occur on a large scale in many parts of the world, and this work highlights the clear need for enhanced international cooperation to address the problem.

Mr President, for its part Australia is working to achieve the sustainable management of its own forests, and at the international level supports a number of efforts to assist Governments to achieve global sustainable forest management.

Australia has actively supported the shift in the focus of the International Tropical Timber Council in recent years towards addressing the challenge of sustainable forest management. This shift is a reflection of the growing international recognition that economic development, social considerations and environmental concerns are best addressed in an integrated way.

The Council and the International Tropical Timber Organisation have contributed much to efforts to achieve sustainable tropical forest management. I will not attempt to list all of the achievements in this area but these include the development of criteria and guidelines relating to the sustainable management of natural and plantation forests, and guidelines for the conservation of biodiversity in tropical production forests. The ITTO has also achieved a commitment from both its producer and consumer members to work towards the objective of achieving trade in tropical timber from sustainably managed forest resources by the year 2000.

Mr President, notwithstanding its concern about tropical forests, Australia agrees that countries with temperate and boreal forests should do all they can to promote the conservation and sustainable management of their forests.

In this regard, Australia endorsed the Statement of Forest Principles and Agenda 21 at the Rio Earth Summit last year and has since ratified the Biodiversity and Climate Change Conventions.

More recently, Australia participated in the South Pacific Forum, which was attended by 15 countries from the South Pacific region. The Forum urged the international community to step up efforts to ensure stronger commitment by Governments to the sustainable management of the world's forests.

Mr President, while ITTO's Year 2000 objective relates to tropical timber, Australia supports the adoption by all countries of the goal of sustainable forest management for all forest types.

In recent years Australia has made strenuous efforts to achieve this goal for its own forests—both temperate and tropical.

While Australia has only a relatively small area of tropical forests, the Australian Government took action some years ago to preserve the majority of its wet tropical rainforest through nomination and inscription of these forests on the World Heritage List.

In our temperate forests the management task has been more complex because of the greater areas involved and diversity of issues related to their management and use. As a consequence our forests have been the subject of detailed examination over the past decade or so. This involved extensive consultation by Australian Federal, State and Territory Governments with interested groups and individuals including industry and environmental Non-Government Organisations, and the general public.

The outcome has been that Australia's approach to the management and use of its forests now recognises their unique character, and the need for a holistic approach.

The policies of Australian Federal, State and Territory Governments provide that Australia's public and private native forest estates will be managed for the broad range of commercial and non-commercial benefits and values they can provide for present and future generations. The approach adopted by Governments seeks to maintain an extensive and permanent native forest estate in Australia, and to manage that estate in an ecologically sustainable manner so as to conserve the full suite of values that forests provide.

Australia's policies and associated programs seek to ensure its forests are managed to provide the basis for nature conservation, the maintenance of forest values and biological diversity, and to protect heritage, Aboriginal and Torres Strait Islander, and other cultural values. Equally, Australia's forests are managed to provide economic development and employment opportunities in a wide range of sectors, including wood production from native and plantation forests.

Mr President, for its part Australia is committed to the goal of achieving sustainable management of all its forests, and the intention is to achieve this by the year 2000.

Sustained yield strategies for wood production are already in place within Australia. These strategies seek to produce a level of commercial timber volume that can be maintained in perpetuity. However, Australia's goal is to achieve full ecological sustainability in forest management, and there are a number of priority areas for action to achieve this goal.

Australia is working to improve its network of nature conservation reserves. By the year 2000, Australia aims to establish a comprehensive, adequate and representative nature conservation reserve system, to protect unique forest conservation and heritage values. In this regard, priority has been given to ensuring that a reserve system to protect areas of old growth forest and wilderness values will be in place by 1995 on public lands and by 1998 on private lands.



Codes of practice have been developed for major forest users, and a more systematic approach to forest management practices is being developed based on nationally agreed standards and the specific requirements of individual regions.

Australia is working to improve the process of decision making, including through the development of regionally based comprehensive forest assessment arrangements. Consistent with the Statement of Forest Principles, this process provides opportunities for effective participation in decision making by all groups in the community.

Programs are being developed to promote more efficient production and use of wood by industry, and to encourage a more internationally competitive industry that undertakes economically viable value adding.

Programs to facilitate plantation development which will provide a wide range of benefits to the community are in place. Australia now has one million hectares of plantations, which currently supply an increasing proportion of Australia's domestic timber needs. Governments and the private sector are actively seeking to expand Australia's plantation estate.

A National Forest Inventory is being developed to provide objective information to Governments, forest managers and the community about the diverse values of our forests, including their commercial, conservation and cultural values.

Mr President, this is not to say that we have solved all of our forest problems in Australia. The point is that we have recognised our problems and have developed plans based on the principles of ecologically sustainable development which we are now proceeding to implement to address these concerns.

Furthermore, we would welcome the opportunity to share our experiences with other countries. In this regard, Mr President, Australia is prepared to continue to provide information covering both tropical and temperate forests to the International Tropical Timber Council under any successor Agreement. Indeed we have already voluntarily provided this information under the existing Agreement.

In conclusion Mr President, let me reiterate that Australia is prepared to play its part in efforts to achieve sustainable management of the world's forests—both tropical and non-tropical, and will support the efforts of developing countries towards this end. In this context, Australia is committed to the goal of achieving sustainable management of its own forests by the year 2000.

Thank you Mr President

### **Fisheries—Bluefin Tuna Conservation Agreement**

On 10 May 1993, Australia, New Zealand and Japan signed the Convention for the Conservation of Southern Bluefin Tuna.

The move follows five years of negotiations between the three countries (the main nations commercially fishing for southern bluefin tuna, or STB) to arrive at a formal agreement to provide controls on catch throughout the fishery.

Australia has been the driving force behind the convention, which establishes a legally binding international management regime for the conservation and optimum use southern bluefin tuna.

In recent years stocks of southern bluefin tuna, a fish species which provides Australia with a significant export industry, have been severely depleted due to intensive fishing. The species, which is highly migratory, is found in the south Atlantic and Indian Oceans and the Tasman Sea. Southern bluefin tuna is fast-growing, and is fished commercially from the age of two or three years. However, because the tuna do not start to breed until the fish are about eight years old, they are highly vulnerable to over-fishing.

Under the Law of the Sea Convention, (LOSC) all countries through whose waters such highly migratory fish species travel must work together to manage the fish stocks. For its three signatories, the Convention for the Conservation of Southern Bluefin Tuna is an important step towards meeting this obligation.

Although it was initially signed by Australia, Japan and New Zealand, provision has been made for other countries which fish for southern bluefin tuna, or through whose zones the tuna migrate, to join the convention.

The convention also creates the Commission for the Conservation of Southern Bluefin Tuna, which will meet each year to determine management and conservation measures for the fishery, including the total allowable annual catch, and the catch entitlements of all parties to the convention. These decisions will be based on defined criteria, and on the advice of the Scientific Committee also established under the convention. Australia has offered to host the Commission Secretariat.

The commission will also act as a central point for the collection of all relevant information on southern bluefin tuna. Its creation satisfies Article 64 of the LOSC, which provides that where no international organisation exists to ensure and promote optimum utilisation of a highly migratory species, states harvesting the resource and coastal states should cooperate to establish such an organisation.

In an important precedent, the convention provides that "reservations may not be made with respect to any of the provisions of this convention". This prevents member states from seeking to alter the force of the terms of the convention. In the past, reservation procedures have been used in international legal instruments by states wishing to avoid complying with measures agreed by other states to manage a natural resource (Environment—Australia's International Agenda, June 1993, p 3).

### **Fisheries—Antarctic Commission Conservation Measures**

Over 100 delegates, representing the 21 member states, attended the 1993 meeting of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), held in Hobart, Australia from 25 October–5 November 1993. Australia is both depositary for the Convention and host for the Commission Secretariat, which is located in Hobart.

The Australian Government is dedicated to the comprehensive protection of the Antarctic's environment. In relation to CCAMLR, this means protecting its waters from commercial overfishing and other conservation threats. Australia has actively supported CCAMLR's ecosystem approach to living resource

conservation because it is fundamental to the environmental preservation of Antarctica.

Australia's objectives at CCAMLR XII included:

- building on the adoption of a precautionary management approach for krill and other resource fishing,
- promoting greater regulation of research fishing,
- developing management measures to deal with new and exploratory fisheries,
- promoting the continued development and refinement of CCAMLR's systems of inspection and scientific observation,
- promoting measures to improve the assessment and avoidance of incidental mortality of non-targeted species, and
- promoting an evaluation of the effectiveness of certain conservation measures.

The Commission adopted a number of conservation measures this year which will improve the effectiveness of the Convention and the organisation, including:

- reducing the total allowable catch (TAC) limits for particular species when there was uncertainty about 1: stock numbers, including retaining the existing precautionary catch limits for krill;
- adopting further measures to enhance biomass data collection. The Commission agreed that it is no longer acceptable to continue to set TAC's using old data;
- designating sub-area 48.3, near the South Sandwich and South Georgia Islands, as a Special Area for Protection and Scientific Study for the Patagonian Toothfish, because of an assessment that this stock was being depleted within and outside the Convention Area. More stringent regulations are now in place for this commercial fishery;
- reducing incidental mortality of seabirds and marine mammals in longline fishing operations. For example, only thawed bait can now be used and the use of plastic packing bands, which entangle seals, on bait boxes will be banned after the 1995/96 fishing season;
- regulating exploratory fisheries in a conservative manner for as long as is needed to develop an assessment of the potential yield. This will prevent the rapid expansion of fisheries before a management plan is developed.

The Commission agreed that the scientific observation scheme, established in 1992, was essential for ensuring that the Commission's conservation measures were adhered to, and strongly recommended that all members of the Commission set up observer programs. In addition, it agreed to examine the installation of transponders to facilitate location and identification of fishing vessels in CCAMLR waters, to discourage illegal fishing. Members also recognised that there was an urgent need for the Parties to address the problem

of stock depletion in waters adjacent to the Convention Area. The Commission, therefore, adopted a resolution, sponsored by New Zealand and Australia, calling on all Members to ensure that their flag vessels conduct harvesting of such stocks in areas adjacent to the Convention Area responsibly and with due respect for the conservation measures adopted under the Convention (Environment—Australia's International Agenda, January 1994, p 6).

### **South Pacific Regional Environment Programme—Establishment Agreement**

On the 16 June 1993, Australia signed the Agreement Establishing the South Pacific Regional Environment Programme (SPREP).

SPREP is the regional body responsible for environmental issues and has its headquarters in Apia, Western Samoa. SPREP was launched in 1980 as a programme of the South Pacific Commission (SPC) and has been administered by the SPC since that time. It was decided in 1990 by the SPREP Intergovernmental Meeting that SPREP should become a separate regional organisation with a separate legal personality. This was confirmed at the Ministerial level SPREP Intergovernmental Meeting in 1991. An Agreement establishing SPREP as a separate regional organisation was concluded at a Plenipotentiary Meeting, held in Apia on 16 June 1993.

The purpose of the proposed Agreement will be to promote cooperation in the South Pacific region and to provide assistance in order to protect and improve its environment and to ensure sustainable development for present and future generations. The work of SPREP will include monitoring and assessing the state of the environment in the region and promoting and developing programmes, including research programmes, to protect the atmosphere and terrestrial, freshwater, coastal and marine ecosystems and species, while ensuring ecologically sustainable utilisation of resources.

Membership of SPREP is open to all States in the South Pacific, Cook Islands, Federated States of Micronesia, Fiji, France, Kiribati, the Marshall Islands, Nauru, New Zealand, Niue, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, United Kingdom on behalf of Pitcairn Islands, United States of America, Vanuatu and Western Samoa. It is also open to all territories in the region, American Samoa, French Polynesia, Guam, New Caledonia, Northern Mariana Islands, Palau, Tokelau and Wallis and Futuna.

The SPREP secretariat and staff shall enjoy such privileges and immunities necessary for the fulfilment of their functions.

The Prime Minister, Treasurer, Attorney-General and the Ministers for Foreign Affairs, Development Cooperation and Pacific Island Affairs, and Environment, Sport and Territories have approved Australia's signature of the Agreement.

Regulations under the International Organisations (Privileges and Immunities) Act are required to implement the privileges and immunities necessary under the Agreement. These will be required prior to ratification.

### **Waste dumping—South Pacific Protocol—Implementation**

On 28 October 1993 the Manager of Government Business in the Senate, Senator Faulkner, read the following speech introducing the Environment Protection (Sea Dumping) Amendment Bill 1993 (Senate, *Debates*, vol 160 (1993), p 2689):

The Government is committed to the protection of the Australian marine environment and has pursued the implementation of this policy on both the national and international fronts by participating in consultations aimed at producing agreed measures for the prevention and control of marine pollution.

The purpose of this bill is to amend the Environment Protection (Sea Dumping) Act 1981 so as to enable Australia to ratify the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping, which is commonly referred to as the SPREP Dumping Protocol. This protocol is one of two protocols to the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, otherwise known as the SPREP Convention. Australia has already ratified the other Protocol concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region.

The SPREP Convention was ratified by Australia on 19 July 1989. It is a comprehensive, umbrella agreement for the protection, management and development of the marine and coastal environment of the South Pacific Region. It lists the sources of pollution which require control, such as pollution from ships, dumping, land-based sources, atmospheric discharges, among many others. The SPREP Dumping Protocol recognises the danger posed to the marine environment by pollution caused by the dumping of waste or other matter at sea, and places obligations on parties to prevent, reduce and control pollution in the Protocol Area by dumping.

The SPREP Dumping Protocol is essentially a regional agreement consistent with the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, also known as the London Convention 1972. Australia fulfils its international obligations under the London Convention 1972 through the Sea Dumping Act, which came into effect on 6 March 1984. As a great majority of the obligations under the SPREP Dumping Protocol are met by the provisions of the Sea Dumping Act, it is expedient that Australia join its Pacific Island neighbours in this regional agreement by amending the Sea Dumping Act. Also, the major overlap with the provisions of the existing Act means that the financial implications of ratifying the SPREP Dumping Protocol will be minimal.

However, there are some aspects of the SPREP Dumping Protocol which impose slightly different requirements from arrangements currently in place under the Sea Dumping Act. The major difference is that the SPREP Dumping Protocol covers a geographical area which is different from the definition of "Australian waters" in the Sea Dumping Act. However, there is no legal reason why Australia cannot choose to apply the additional requirements of the SPREP Dumping Protocol in waters to which the Sea Dumping Act applies. The practical effect of applying the SPREP Dumping Protocol to all Australian waters and the continental shelf is that it will be an offence to dump organophosphorous compounds in the Indian and Southern Oceans as well as the SPREP Convention area. Consequently, as Tasmania currently has the rollback provisions under section 9 of the Sea Dumping Act which allows it to administer

the loading and dumping of wastes or other matter in its coastal waters, the Tasmanian Environment Protection (Sea Dumping) Act 1987 will need to be amended within 12 months to reflect the additional requirement of the SPREP Dumping Protocol. The necessary action is underway.

**Waste dumping—Industrial waste reservation**

On 12 November 1993, Australia indicated that it would make a reservation concerning the dumping of jarosite to the ban on dumping at sea of industrial wastes under the London Convention.<sup>1</sup>

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<sup>1</sup> See Practice Section, Chapter VI, pp 454–55 of this volume.