

DEVELOPMENTS AT THE FEDERAL LEVEL

The last three months have seen a number of legislative initiatives being approved or implemented by the Commonwealth in the area of environmental law.

First of all, a comprehensive package of **Fisheries Legislation**, centred on the *Fisheries Management Act 1991* and the *Fisheries Administration Act 1991* was given Royal Assent on 10 November 1991. This legislation will be administered by the Department of Primary Industries and Energy. Its purpose is to regulate and protect the fishing industry and supply of fish by a regime of quotas and administrative procedures.

The *Arts, Sport, Environment, Tourism and Territories Legislation Amendment Act (No. 2) 1991* received Royal Assent and commenced on 25 November 1991. It includes a provision increasing from \$4,000 to \$8,000 the limit of fees which the regulations may fix under the *Hazardous Wastes (Regulation of Exports and Imports) Act 1990* for applications and notices in relation to export and import permits under the Act. This is to ensure that the Commonwealth is able to recover its costs associated with administering the Act, and hence ensure the continuing financial viability of the regime of environment protection set up under the Act.

On 29 November 1991, the *Arts, Sport, Environment and Territories Legislation Amendment Bill 1991* was introduced into the House of Representatives. It contains an amendment to the *Environment Protection (Sea Dumping) Act 1981* and the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* that will facilitate the giving of evidence by specialist analysts appointed by the Minister under those Acts, as well as overcoming any potential gaps in evidence in the course of judicial proceedings.

The ASET Bill also contains an amendment to the *National Parks and Wildlife Conservation Act 1975* that will enable a park or reserve declared under the Act to be managed as a botanic garden, the purpose of which is to increase awareness and

appreciation of the environment through education, displays and conservation. This will facilitate the operation of the Australian National Botanic Garden in Canberra and its annex at Jervis Bay by the Australian National Parks and Wildlife Service.

Another amendment to the Act enables the implementation by regulation of three additional international agreements under section 69, namely: *Apia Convention 1976* (Conservation of Nature in South Pacific), *Bonn Convention 1979* (Migratory Species of Wild Animals) and the *China-Australia Migratory Birds Agreement 1986*.

Several major pieces of environmental protection legislation are intended for introduction into Parliament in 1992. These are the *Antarctic Legislation Amendment Bill*, *Endangered Species Bill*, *Environment Protection (Sea Dumping) Bill*, *National Parks and Wildlife (Amendment) Bill*, *Ozone Protection Bill* and *Shark Bay Conservation Bill*.

The *Antarctic Legislation Amendment Bill* will amend the *Antarctic Mining Prohibition Act 1991* and the *Antarctic Treaty (Environment Protection) Act 1980* to give legislative effect to Australia's obligations under the Protocol on Environment Protection to the Antarctic Treaty, concluded at Madrid last year. The Protocol implements a ban on mining in Antarctica for 50 years. Australia played a leading role in the negotiations that led to the ratification of the Protocol.

It is intended that the *Endangered Species Bill* will contain a number of key features. One of these is that there will be a scientifically based listing process which would identify national lists of endangered and vulnerable species and ecological communities, as well as key threatening processes of national importance. An international list of endangered species would also be prepared and the legislation will enable the Commonwealth to provide international assistance for the recovery of endangered species in the international list.

Another feature will be specific obligations for Commonwealth land or waters, where the Commonwealth must prepare and implement plans for listed species and threats, and ensure that critical habitats are protected. This will include an obligation on Commonwealth authorities to prevent actions or decisions that may threaten with extinction listed species and communities. The legislation would also feature a new management approach that emphasises the preparation of plans to recover endangered species

and control key threats (such as predation by foxes).

The Bill will enable Commonwealth assistance to the States and Territories for the preparation of plans listed species, communities and threats, and for the implementation of approved plans (ie, to provide direction for the endangered species program). Community and interest group involvement will also be facilitated through an advisory committee, public participation in planning, publication of annual reports and through possible third party action on breaches of certain sections of the legislation.

The *Environment Protection (Sea Dumping) Amendment Bill* will make a number of amendments enabling Australia to ratify the Protocol for the Prevention of Pollution of the South Pacific Region under the Convention for the Protection of Natural Resources of the South Pacific Region (the SPREP Convention). Australia is a major participant in SPREP and this legislation is an important part of fulfilling Australia's obligations in the region.

The *National Parks and Wildlife Conservation (Amendment) Bill* will contain a number of amendments, one of which will ensure that wardens appointed under the Act are able to exercise their powers of enforcement over the continental shelf and Exclusive Economic Zone of Australia (which is expected to be declared in the near future).

It will also provide for the appointment of wildlife inspectors with powers similar to the wardens, but to deal specifically and only with offences etc, under Part III of the National Parks and Wildlife Regulations (which deals with protected animals, animals in danger of extinction and migratory birds).

In addition, the provisions protecting marine mammals (excluding whales) are being transferred from the new Fisheries Legislation to the Act, and will be included in Schedule 1 of the Regulations. These amendments will ensure that there is consistency with the *Whale Protection Act 1980*.

The *Ozone Protection (Amendment) Bill* will add provisions to the Act which will enable Australia to comply with amendments to the Montreal Protocol on Ozone Depleting Substances, which were adopted by the parties at their meeting in London in June 1990. The amended Protocol is expected to come into effect later in 1992.

The *Shark Bay Conservation Bill* will implement a regime of management and environment protection in the Shark Bay World Heritage Area of Western Australia, similar, but not identical to, the World Heritage Conservation-legislation. The federal Bill will complement legislation proposed for introduction in the WA Parliament this year.

Another major environmental law initiative commenced in 1991 was the federal resources security legislation: the *Forest Conservation and Development Bill 1991* was introduced in the House of Representatives on 19 November 1991. The Bill passes through the House of Representatives in early March 1992 and is currently before the Senate.

Christian P Fabricius
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EDITOR'S NOTE: On 24 December 1991, the Taxation Laws Amendment Act No 3 of 1991 received Royal assent. That Act introduces into the regime set up under the Income Tax Assessment Act. provisions allowing tax deductions for environmental impact statement. This will be the subject of an article in the June edition of the AELN.