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PRODUCTIVITY COMMISSION ISSUES PAPER ON  
IMPLEMENTATION OF ECOLOGICALLY SUSTAINABLE  
DEVELOPMENT BY COMMONWEALTH DEPARTMENTS AND  
AGENCIES

The Australian and New Zealand Minerals and Energy Council (ANZMEC) has reviewed the above Issues Paper which is the subject of an inquiry by the Productivity Commission. ANZMEC consists of State and Territory Ministers with responsibility for Minerals and Energy, the Commonwealth Minister for Resources and Energy and the New Zealand Minister for Energy. ANZMEC's mission is to promote the general welfare and progressive development of the Australian minerals industry and to consult on the nation's energy needs, resources and policies.

ANZMEC's objectives include:

- constructive and compatible changes to the basic legislative and policy framework for the sustainable development of mineral and energy resources;
- improving coordination and, where appropriate, the consistency of policy regimes;
- encouraging new and expanded investment in competitive mineral and energy development opportunities; and
- providing an opportunity for information and policy exchange.

The Productivity Commission Issues Paper raises a number of questions about the implementation of ecologically sustainable development by Commonwealth departments and agencies that reflect some of the concerns of ANZMEC. The attached submission addresses these concerns in relation to specific questions listed in the Issues Paper.

I thank you for the opportunity for ANZMEC to participate in the inquiry process. ANZMEC looks forward to reviewing the draft report that you will prepare following receipt of all submissions. ANZMEC would appreciate the opportunity to take part in the Productivity Commission's continuing consultation process.

D R Kelly  
CHAIR  
Standing Committee of Officials  
ANZMEC

12 November 1998

attach

## ATTACHMENT 1

### PRODUCTIVITY COMMISSION ISSUES PAPER ON IMPLEMENTATION OF ECOLOGICALLY SUSTAINABLE DEVELOPMENT BY COMMONWEALTH DEPARTMENTS AND AGENCIES - COMMENTS BY ANZMEC

The following comments relate to specific sections in the Issues Paper relevant to ANZMEC and answer questions raised by the Commission.

#### **Section 3.1 Intergovernmental coordination on the environment (p 7)**

*The Commission is interested in receiving information on the role, adequacy and effectiveness of intergovernmental coordination on matters relating to ESD, both between levels of government and between Commonwealth departments and agencies.*

The National Strategy for Ecologically Sustainable Development (NSESD) identifies 3 principal objectives for mining: sound environmental practices throughout the industry; appropriate community returns; and improved community consultation and performance in occupational health. Responsibility for various actions to achieve these objectives is allocated to all governments, frequently working through ANZMEC.

The Commonwealth in consultation with various Ministerial Councils including ANZMEC is pursuing the implementation of the objectives identified in the NSESD. Some examples of positive outcomes from ANZMEC's work on ESD include:

- ∴ Development of ANZMEC booklets on Baseline Environmental Guidelines for New and Existing Mines; Security Deposit Systems for Minesite Rehabilitation; and Least Cost Energy Services.

- A number of ANZMEC taskforces with Commonwealth representation have been established in recent years dealing with native title, petroleum and access issues. In the last year three additional task forces have been established which relate directly to the ESD objectives for mining as highlighted in the NSESD. These include: Mines Safety (to define roles of employers, employees and governments; develop a best practice legislative model and performance monitoring for health and safety); Technical Environmental matters (to ensure legitimate mining industry issues are considered in the development of National Environmental Protection Measures NEPMS and that NEPMS are based on sound scientific and economic analysis); and Taxation (to promote a competitive fiscal regime; to identify and analyse tax reform issues which affect the mineral sector; and establish a forum for interjurisdictional consideration of tax reform).

- ∴ Coordinated ANZMEC comments to various proposals **from the** Commonwealth environmental portfolio including the Draft IUCN Protected Areas handbook, AHC Draft Wild Rivers Conservation Guidelines, Interim Bioregionalisation for Australia guidelines and proposals for the reform of Commonwealth environmental legislation.

ANZMEC welcomes the **Commonwealth Resources Policy Statement (February 1998)** which provides a cohesive strategic framework for sustainable development for the resources sector. The policy offers:

- : certainty of decision making processes;
- : a highly competitive operating environment;
- sustained wealth generation; and
- : implements the principles of ESD and encourages best practice in environmental, health and safety management.

*Are the objectives outlined in these arrangements being met in practice? To what extent do existing institutional arrangements, frameworks and processes assist Commonwealth departments and agencies in meeting these objectives?*

The proposed reform of the Commonwealth environmental legislation as agreed by COAG last year is welcomed by ANZMEC as there is a need to consolidate the current legislative system to better deliver environmental outcomes which are consistent with the principles of the NSESD and the Intergovernmental Agreement on the Environment (IGAE).

The IGAE ratified in 1992 sought to detail the various roles and responsibilities of State and Commonwealth government in environmental matters but more work is needed to implement the IGAE terms, particularly in regard to accreditation. Of concern to the State and Territory jurisdictions of ANZMEC is that in some respects the current Environmental Protection and Biodiversity Conservation Bill that arose in part from a review of the IGAE, does not support the objectives of the NSESD or the IGAE as there is potential for duplication and overriding of State and Territory environmental assessment, approvals, monitoring and enforcement processes. The Bill provides for accreditation of State processes while providing the Commonwealth with extensive powers. However there remains considerable uncertainty of how the overlapping and duplication of Commonwealth and State powers will be resolved.

ANZMEC has made detailed submissions on both the Bill and the supplement to the IGAE requesting consideration of accreditation for environmental assessment and heritage matters and requesting closer involvement with the Commonwealth in the further development and implementation of the IGAE and the Bill.

The current reform of the Commonwealth environmental legislation has highlighted some shortcomings in relation to duplication and overlap of Commonwealth department responsibilities. Issues arise from the application of the Australian Heritage Commission Act, Environmental Protection (Impact of Proposals) Act, National Parks and Wildlife Conservation Act and Endangered Species Act. Areas covered by the

National Parks and Wildlife Conservation Act are also listed under the Australian Heritage Commission Act and there is continued expansion of the Register of the National Estate. Problems of duplication and overlap of responsibilities also occur with the States where there is a high level of involvement by the Commonwealth in State environmental matters. For example, Shark Bay in WA is listed both on the Register of the National Estate and the World Heritage List but managed under WA's conservation terrestrial and marine reserve system.

*What problems do intergovernmental institutions coordinating environmental responsibilities face? How can their effectiveness be enhanced? How can intergovernmental coordination be improved, both between governments and across sectors? Is the Commonwealth's role in intergovernmental coordination on matters relating to ESD adequately defined?*

Problems associated with intergovernmental coordination on environmental matters include:

- addressing issues in a timely fashion against imminent deadlines (e.g. the National Environment Protection Council sets unrealistically short timeframes for comment on the National Environmental Protection Measures);
- gaining agreement to policy initiatives from all parties due to different political perspectives (e.g. there is inadequate communication between ANZMEC and ANZECC on some matters and between environment and resource portfolios at both Commonwealth and State levels. ANZMEC has made several submissions in recent years to at least 14 different Commonwealth policy initiatives which did not receive any response from environmental portfolios which suggests that ANZMEC/ANZECC consultation is long overdue.); and
- communicating effectively across different time zones.

Effectiveness of intergovernmental coordination can be enhanced by:

- the use of electronic communication (e.g. email and facsimile);
- **regular meetings of members; and**
- development of links with other Ministerial Councils. This process has commenced between ANZMEC and ANZECC through a commencement of joint meetings and gaining input on discussion papers.

The Commonwealth's role in intergovernmental coordination on ESD matters is not clearly defined. Its role tends to vary depending on the nature of the intergovernmental committee or issue involved. In some cases the Commonwealth takes the lead and in others it is a contributor with a particular State taking the main role. Both the National Strategy for Ecologically Sustainable Development and the IGAE seek to define the

roles and responsibilities of each level of government but in practice this has not been fully adopted. The role of the Commonwealth in ESD matters relating to the minerals and energy sector is indirect and primarily conducted through Ministerial Councils such as ANZMEC.

*Which ESD or environmental concerns highlighted in the State of the Environment report (SEA C 1996) are local/state/interstate/national/global in nature, and which jurisdictions or level of government is best placed to redress/intervene in these issues?*

The State of the Environment report identifies a number of different categories of environmental issues including biodiversity, atmosphere, coastal waters, inland waters and land resources that are relevant issues at the local/state level. In the case of biodiversity and atmosphere both issues are also recognised nationally and internationally (via Conventions). The administrative framework set up by the States and Territories adequately provides for management of all these issues and as such they are best placed to redress/intervene in these issues at the practical level. The Commonwealth does have an ongoing important policy setting role that provides a framework for State decision making.

### **Section 3.2 Commonwealth environmental administration (p 9)**

*The Commission is interested in receiving further information from the public as well as government departments and agencies on the nature of, rationale for and effectiveness of policies and programs promoting ESD outcomes that are administered by the Commonwealth.*

On page 14 of the Issues Paper there is a reference to the OECD review of Australia's environmental performance that states that:

*"Australia is facing the challenge of translating the principles of sustainable development into economic decisions and practices. In many cases, economic objectives take priority over environmental concerns. In addition, process-oriented approaches often dominate, at the expense of a focus on environmental results (OECD 1998, p 28) "*

ANZMEC commends the joint Mining Industry and Environment Australia initiative for a series of booklets on Best Practice Environmental Management in Mining which is a worthwhile initiative to improving environmental outcomes from mining operations. However ANZMEC considers that Commonwealth agencies, in particular Environment Australia, focus on process rather than on outcomes. The proposed Commonwealth environmental legislation is process orientated and does not focus on environmental results. Although there is an environmental impact assessment procedure in the legislation that encompasses ESD principles, it does not however provide for ongoing management. The approach adopted by the States is very different with a focus on environmental outcomes through ongoing management.

*The State of the Environment report (SEA C 1996) lists a number of different categories of environmental issues including biodiversity, the atmosphere, land resources, and inland and coastal waters. Is it sufficiently clear which Commonwealth departments and agencies have responsibilities for different categories of environmental issues?*

The State of the Environment report does not clearly identify responsible Commonwealth agencies for the different categories of environmental issues. The level of consultation across Commonwealth departments does not appear to be as well developed as it is for the States. For example in WA the Departments of Conservation and Land Management, Minerals and Energy and Environmental Protection have a coordinated approach to management of environmental issues with agreed procedures endorsed by Chief Executives in a memorandum of understanding. A similar system of coordinated approach to environmental management of environmental issues exists in the Northern Territory whereby there are administrative agreements in place between the Department of Lands, Planning and Environment, the Parks and Wildlife Commission and the Department of Mines and Energy.

#### **Section 4.1 Mechanisms for incorporating ESD principles into government decision making (p 14)**

*To what extent have ESD principles been incorporated into Commonwealth policies and programs? Are there factors hindering the ability of departments and agencies to incorporate ESD into their policies and programs? If so, how could these factors be overcome?*

There have been a number of Commonwealth programs and policies developed in recent years where the Commonwealth has attempted to incorporate ESD principles. This is considered to have not always been successful. For example, under the Australian Heritage Commission program of listing areas on the Register of the National Estate, items are assessed without due consideration of economic factors. This is not in accord with ESD principles. A more balanced approach by Commonwealth agencies to implement all of the ESD principles in their policies and programs would be more acceptable as it would then allow the Commonwealth to focus on outcomes as well as process. Similar comments apply to the Draft IUCN Protected Areas handbook, AHC Draft Wild Rivers Conservation Guidelines, National Rangelands Management Strategy and Draft Guidelines for establishing the National Reserve System.

ESD principles would appear to have been met in the development of the National Wetlands Inventory, Oceans Policy and Guidelines for establishing the national representative system of marine protected areas.

#### **Section 4.3 Increasing the focus on outcomes and outputs (p 18)**

*The Commission is interested in receiving information and examples of OBM and other approaches that could be used to provide an incentive for Commonwealth departments and agencies to incorporate ESD considerations in their decision making. What are the strengths and limitations of these approaches?*

The Mining Departments across Australia are outcome focussed in regards to the regulation of the environmental implications of mining projects. Companies outline their proposals to the mining departments but the important action by Government is to audit the outcomes of their environmental commitments.

Subsequent to assessing mining or petroleum development proposals under relevant State/Territory environmental assessment legislation, the States/Territories continue to audit operations through various forms of environmental management plans. These plans are continually reviewed, updated and audited to ensure a focus on improved environmental outcomes through a process of continual improvement. ANZMEC would be happy to provide specific details of state management approaches.

## Conclusion

Overall it is important for the Commonwealth to provide a policy framework for national issues that takes into account ESD principles. Further development is required to achieve this goal. Ultimately ESD principles need to be implemented through State and Territory Governments that are constitutionally responsible for land management and more directly in contact with local economic, environmental and social issues.