

# INSTITUTIONAL ROLES IN ESTABLISHING AND ENFORCING ENVIRONMENTAL PRIORITIES\*

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## AUSTRALIA'S FEDERAL SYSTEM

The responsibility for management and protection of Australia's environment is split between the Commonwealth of Australia and each of the States that comprises the Commonwealth. The Commonwealth can only make laws pursuant to a particular power in the Constitution.<sup>1</sup> Although there is no express power to legislate on environmental matters, the Commonwealth is able to use one or more of its powers which, although not directly dealing with environmental matters, can be viewed in certain circumstances as properly enabling the Commonwealth to deal with environmental matters.<sup>2</sup> The most commonly invoked bases of power are the trade and commerce power,<sup>3</sup> the power to regulate foreign corporations and trading or financial corporations<sup>4</sup> and the external affairs

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1. See P. LANE, A MANUAL OF AUSTRALIAN CONSTITUTIONAL LAW 7-16 (4th ed. 1987); see generally M. COPER, ENCOUNTERS WITH THE AUSTRALIAN CONSTITUTION ch. 4 (1987).

2. See the enumerated matters in § 51 of the Australian Constitution. A number of High Court judges, however, have held that the Commonwealth in addition to these powers also derives power from the character and status of the Commonwealth as a national polity. (The High Court is Australia's supreme judicial body.) As the High Court stated in a recent joint judgment: "So it is that the legislative powers of the Commonwealth extend beyond the specific powers conferred upon the Parliament and include such powers as may be deduced from the establishment and nature of the Commonwealth as a polity." *Davis v. Commonwealth*, 166 C.L.R. 79, 93 (1988) (Mason, C.J., Deane, J. and Caurdon, J.). See also *id.* at 110 (Brennan, J.); *contra id.* at 101, 104 (Wilson, J. and Dawson, J.), and at 117, 119 (Tooley, J.).

3. AUSTL. CONST. § 51(i).

4. *Id.* § 51(xx).

power.<sup>5</sup> The external affairs power enables the Commonwealth to implement international treaties to which Australia is a party. Pursuant to this power, the Commonwealth enacted the World Heritage Properties Conservation Act (1983) to implement the UNESCO Convention for the Protection of the World's Cultural and Natural Heritage.<sup>6</sup>

The States are not limited in the way that the Commonwealth is limited but have full power to enact any law on any environmental matter. For this reason, the bulk of the environmental legislation and policies are at the State level.<sup>7</sup> In the event of an inconsistency between State environmental law and a Commonwealth environmental law, § 109 of the Constitution provides that the Commonwealth environmental law shall prevail.<sup>8</sup>

### SEPARATION OF POWERS

The system of government in Australia, at both the Commonwealth and the State level, consists of three branches of government: the legislature, the executive and the judiciary.

The function of the legislature is to settle policies and make rules of law, usually through the enactment of statutes. Although the legislative function is normally exercised by Parliament, it can also be delegated, such that Ministers may issue statutory instruments, local councils may promulgate by-laws, and courts may make rules of court.<sup>9</sup>

The executive branch carries out policies established by the legislature and applies principles and rules of law to individual situations. The executive branch includes the Crown, the Prime Minister (in the case of the Commonwealth) or the Premier (in the case of the States), the various ministers who are members of the Cabinet, the ministers in charge of various departments of state, and the civil servants and other permanent officials of the various gov-

5. *Id.* § 51(xxix).

6. For the extent of the external affairs power in environmental matters, see *Commonwealth v. Tasmania*, 158 C.L.R. 1 (1983) [The Tasmanian Dam Case]; *Richard v. Forestry Comm'n*, 164 C.L.R. 261 (1988); Mason, *The Australian Constitution 1901-1988*, 62 AUSTL. L.J. 752, 755 (1988); Coper, *The Role of the Courts in the Preservation of Federalism*, 63 AUSTL. L.J. 463, 464 (1989); Bates, *The Tasmanian Dam Case and Its Significance in Environmental Law*, 1 ENVTL. & PLANNING L.J. 325 (1984); and Tsamenyi & Bedding, *The World Heritage Convention in the High Court: A Commentary on the Tasmanian Forest Case*, 5 ENVTL. L.J. 232 (1988).

7. Fowlor, *Environmental Law and Its Administration in Australia*, 1 ENVTL. L.J. 10, 11 (1984).

8. See P. LANE, *THE AUSTRALIAN FEDERAL SYSTEM* 863-98 (2d ed. 1979); Hanks, "Inconsistent" Commonwealth and State Laws: Centralising Government Power in the Australian Federation, 16 FED. L. REV. 107 (1986-87); and B. PRESTON, *ENVIRONMENTAL LITIGATION* 219-28 (1989).

9. D. WALKER, *THE OXFORD COMPANION TO LAW* 758 (1980).

ernmental agencies. To some extent, local or municipal authorities belong to the executive branch of government.<sup>10</sup>

Finally, the judiciary branch decides disputes as to the meaning or application of rules of law.<sup>11</sup> At the federal level, there are a variety of tribunals, including administrative tribunals, the Federal Court of Australia, and the High Court of Australia.<sup>12</sup> A dispute involving a Commonwealth environmental statute would usually be commenced in the Federal Court of Australia before a single judge of that court. An appeal would be brought to a full court of the Federal Court of Australia<sup>13</sup> and thereafter, by special leave only, to the High Court of Australia.<sup>14</sup>

At the State level, the judicial hierarchy differs from state to state. In New South Wales, for example, environmental disputes would usually be dealt with in either the Land and Environment Court of New South Wales, a specialist superior court of record established to determine matters arising under specific environmental statutes,<sup>15</sup> or the Supreme Court of New South Wales, the original state superior court of record in the State.<sup>16</sup> Appeals from the Land and Environment Court and the Supreme Court each go to a permanently established Court of Appeal, which is a part of the Supreme Court of New South Wales.<sup>17</sup> From there, appeals are made, by special leave only, to the High Court of Australia.<sup>18</sup>

#### FORMULATION AND APPLICATION OF POLICY BY EACH BRANCH

The parliaments of the Commonwealth of Australia and of each of the states and territories set environmental policies and pri-

10. *Id.* at 449.

11. *Id.* at 673, para. 12.

12. H. RENFREE, *THE FEDERAL JUDICIAL SYSTEM OF AUSTRALIA* (1984); and B. CAMILLERI, *PRACTICE AND PROCEDURE OF THE HIGH COURT AND FEDERAL COURT OF AUSTRALIA* (1978).

13. *See* Federal Court of Australia Act, 1976-1989, §§ 24, 25 [hereinafter Federal Court Act], AUSTL. ACTS P. 1325, 1331-32 (1976).

14. *See* Federal Court Act, *supra* note 13, at § 33, AUSTL. ACTS P. 1325, 1334-35 (1976).

15. *See* Land & Environment Court Act, §§ 17-21 (N.S.W. 1979) [hereinafter LECA], which specify the matters and statutes with respect to which the court has jurisdiction.

16. *See generally*, Supreme Court Act (N.S.W. 1976); and YOUNG, O'LEARY & HOGAN, *SUPREME COURT CIVIL PROCEDURE* (1987).

Occasionally, jurisdictional disputes arise as to whether the Land and Environment Court or the Supreme Court has jurisdiction to decide certain questions raised in proceedings. Such a situation arises due to § 71 of LECA, *supra* note 15, which provides that the Land and Environment Court has exclusive jurisdiction to decide questions arising under statutes specified in the Act. *See also* B. PRESTON, *supra* note 8, at 248-53.

17. *See* Supreme Court Act, § 101 (N.S.W. 1970); LECA, *supra* note 15, § 58.

18. *See* Judiciary Act, § 35, 7 AUSTL. ACTS P. 1901-1973 39, 47 (1975).

orities by, principally, enacting statutes which deal with environmental matters. Typically, these statutes operate by: 1) establishing governmental agencies which are responsible for overseeing environmental protection measures;<sup>19</sup> 2) setting goals, priorities and parameters governing the exercise of discretion by such governmental agencies in the administration of the statute;<sup>20</sup> and/or 3) regulating or, in some instances, prohibiting certain activities with environmental consequences<sup>21</sup> carried out by individuals or other governmental agencies.<sup>22</sup>

The statutes often also provide for the making of types of delegated legislation. The most common power found in statutes is that of the Governor (who represents the Queen, the head of State in each State and in the Commonwealth) to make regulations effecting the provisions of the statute, on the advice of the Executive Council.<sup>23</sup> In the case of state level planning statutes, the relevant statute may also make provision for the minister, the director of the relevant governmental agency, and the local councils to make planning instruments. This is the situation under the New South Wales Environmental Planning and Assessment Act (1979), which provides for the making of state environmental planning policies, regional environmental plans, and local environmental plans.<sup>24</sup> The local council prepares local environmental plans (although the final decision is made by the Minister for Planning), zones the land for

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19. See, e.g., State Pollution Control Comm'n Act, §§ 11-13 (N.S.W. 1970).

20. See, e.g., Env'tl. Planning & Assessment Act, § 90 (N.S.W. 1979) [hereinafter EPAA], which lists the matters a consent authority must consider when determining whether or not to permit a proposed development.

21. *Id.* § 76.

22. Insofar as they represent the Crown in right of the State or of the Commonwealth, government agencies will not be bound by a statute unless there is demonstrable legislative intent that the Crown in right of the State or Commonwealth shall be bound by all or part of the statute. Usually, Parliament manifests such intent by including in the statute an explicit provision to this effect. In New South Wales a number of statutes, including the EPAA, *supra* note 20, Heritage Act (N.S.W. 1977), and Coastal Protection Act (N.S.W. 1979), contain a provision stating that the statute binds the Crown not only in right of New South Wales, but also of the Commonwealth. Other New South Wales statutes such as the Clean Air Act (N.S.W. 1970) and Noise Control Act (N.S.W. 1975) merely provide that they bind the Crown. This means that these statutes bind the Crown in right of New South Wales and not also the Crown in right of the Commonwealth. Finally, other statutes, such as the Mining Act (N.S.W. 1973), contain no provision purporting to bind the Crown in either capacity. Where a statute contains no provision binding the Crown at all or contains a provision binding the Crown only in right of the enacting parliament, the presumption is that the Crown in its other capacities will not be bound. However, this presumption may still be rebutted where, notwithstanding the absence of a provision, a "proper construction" of the act in question reveals a legislative intent for the Crown in its other capacities to be bound by all or part of the act. See *Bropho v. Western Australia*, 64 A.L.J.R. 374, 380, 383 (1990).

23. See, e.g., EPAA, *supra* note 20, § 158.

24. *Id.* Part III, §§ 2, 3, and 4.

different uses within the boundaries of the local council, and regulates developments within each of those zones. State and regional plans focus more on matters significant to environmental planning for the State and regions of the State, respectively.<sup>25</sup>

Through the statutes, the regulations, the planning instruments, and other delegated legislation, the environmental goals, policies, and priorities are established for the state concerned. However, there are other avenues for establishing environmental goals, policies, and priorities. Both the executive and the judiciary branches may influence such environmental goals, policies, and priorities, notwithstanding the traditional doctrine of separation of powers.

Decision-makers, when exercising discretionary power, invariably make value decisions.<sup>26</sup> This is especially true where the authority's power is open-ended, and the decision is, for example, whether to grant consent to development, a pollution license, or some other form of authority to engage in an activity which may damage the environment. While the relevant statute may enumerate certain guidelines which the decision-maker should consider when reviewing the application for permission,<sup>27</sup> the decision-maker nevertheless enjoys a reasonably broad discretion as to whether or not to grant the permission in question. Therefore, the decision-maker has the power, over time, to exercise its discretion in such a way that a *de facto* policy emerges, a policy that may be just as important as the formal legislative policies.

For example, in reviewing applications for a certain type or locality of development, a local council may consistently exercise its discretion to refuse or grant consent, subject to certain conditions, in a way that establishes precedent and, as the developments are carried out, a townscape or landscape character in that area. The decision by the council in that certain way may not be mandated by the relevant planning statute or planning instruments but is merely the exercise of the council's discretion. The council could, for example, have exercised its discretion in a contrary way and still have been within the parameters laid down by the statute and planning instruments.

Similarly, a court, such as the Land and Environment Court of New South Wales, in reviewing appeals from the planning decision of a local council,<sup>28</sup> could consistently exercise its discretion so as to

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25. See generally D. FARRIER, ENVIRONMENTAL LAW HANDBOOK (1988).

26. See generally D. GALLIGAN, DISCRETIONARY POWERS: A LEGAL STUDY OF OFFICIAL DISCRETION (1986).

27. See, e.g., EPAA, *supra* note 20, § 90; and Local Government Act, § 313 (N.S.W. 1919).

28. Planning appeals are heard in class 1 and 2 of the Land and Environment Court's jurisdiction. See LECA, *supra* note 15, §§ 17-18 (N.S.W. 1979).

have a similar precedential effect. In this fashion, both the executive and the judiciary have the power to establish environmental goals, policies, and priorities.

### INTERACTION BETWEEN THE THREE BRANCHES OF GOVERNMENT AND THE PUBLIC

The formulation of environmental goals, policies, and priorities by the legislative, executive, and judiciary branches is not performed in isolation; rather it is part of an interactive process between each branch and the public. This interactive process has both formal and informal elements.

The formal process includes interaction through the political process, through public participation permitted by environmental statutes, and through specially established commissions of inquiry. Each of these is briefly explained below.

Under the parliamentary system in Australia, citizens vote for candidates elected to Parliament in each of the states and the Commonwealth. Within this system of representative democracy, citizens, through their decisions at the ballot box, should have the power to control both the setting of environmental goals, policies and priorities by the legislature and the exercise of discretionary power by the executive (which is subject to political supervision by parliament).<sup>29</sup> At times, this is an effective mechanism. The current Labor Commonwealth government, for example, was elected in 1983 on a platform which promised to protect the Franklin-Gordon River area from a proposed hydro-electric scheme that would have flooded the area, a region of significant world heritage. By contrast, the former Liberal government, which was defeated, had a policy of non-intervention in environmental disputes in individual States. However, in most instances, individual citizens lack the power to influence, through the ballot box, either the setting of environmental goals, policies, and priorities or the actual exercise of administrative discretion with respect to environmental matters.<sup>30</sup>

Perhaps partly in recognition of the limits of indirect participation through political channels, the legislature has responded by including in many environmental statutes provisions enabling and facilitating direct public consultation and participation, first, in the setting of environmental goals, policies, and priorities and, second, in the enforcement process. The second type of participation will be addressed in the next section. The first type of participation not

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29. See Brennan, *Courts, Democracy and the Law*, 65 AUSTL. L.J. 32, 33-34 (1991).

30. As to the limitations of political means of control of administrative discretion, see Dyzenhaus & Taggart, *Judicial Review, Jurisprudence and the Wizard of Oz*, 1 PUB. L. REV. 21, 47-48; D. GALLIGAN, *supra* note 26, at 236; C. HARLOW & R. RAWLINGS, *LAW AND ADMINISTRATION* (1984); and Brennan, *supra* note 29, at 34-36.

only permits citizens to have a more meaningful and effective input into the policy-making process, but also facilitates better decision-making by informing the decision-maker prior to the exercise of a discretionary power of potential environmental consequence.<sup>31</sup> Participation in the policy-making process can be achieved in a variety of ways. In some statutes, provision is made for an advisory committee, which comprises not only representatives of the relevant government agency but also representatives of relevant industry groups, environmental scientists, and citizens to liaise with the relevant governmental agency and decision-maker.<sup>32</sup>

In planning statutes, there is usually a provision for public exhibition of draft environmental planning instruments to afford citizens the opportunity to object or otherwise comment on these draft instruments. Public comment must then be considered by the decision-maker prior to the making of the environmental planning instruments. This process enables public participation in the setting of environmental goals, policies, and priorities.<sup>33</sup> Planning statutes often also contain provisions requiring public exhibition of individual applications for consent to carry out development of a certain kind or in a certain area. The public may make submissions objecting to or otherwise commenting on these development applications. The determining authority, usually the local council, is required to take such public comment into consideration when determining whether or not to approve the development applications.<sup>34</sup> Citizens (generally, or a particular class of citizens which opposes a particular development application) may also participate in the planning process if the statute so provides. They may also appeal to a planning tribunal or court against a council decision to grant consent to a particular development.<sup>35</sup>

Sometimes, the Parliaments establish either an ad hoc commission of inquiry to investigate a particular environmental matter or issue (such as the Helsham Inquiry which was established by the

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31. See *Scurr v. Brisbane City Council*, 47 A.L.J.R. 532, 535 (1973) (Stephen, J.).

32. See, e.g., Environmentally Hazardous Chemicals Act, § 6(1) (N.S.W. 1985); National Parks and Wildlife Act, §§ 23-24 (N.S.W. 1974), which established the National Parks and Wildlife Advisory Council.

33. See, e.g., EPAA, *supra* note 20, § 67, which enables public comment on local environmental plans.

34. See, e.g., *id.* § 87(1), which provides for public comment on development applications for designated development (development with respect to designated types such as extractive industries, factories, and marinas).

35. See, e.g., *id.* § 98, which permits citizens who have submitted an objection against a designated development under § 87(1) of EPAA to appeal against a decision of a local council to grant development consent; see also Preston, *Third Party Appeals in Environmental Matters in New South Wales*, 60 AUSTL. L.J. 215 (1986) (for third party appeals in New South Wales); see Fogg, *Third Party Objections and Appeals in Development Control Decisions Under Town Planning Legislation*, 2 ENVTL. & PLANNING L.J. 4 (1985) (for third party appeals for other regions in Australia).

Commonwealth to advise on the dispute concerning the Lemonthyme and Southern forests in Tasmania)<sup>36</sup> or a more permanent body to inquire into a range of environmental matters (such as the Resources Assessment Commission).<sup>37</sup> This can be done either through the powers of parliament (such as a parliamentary committee) or through particular enabling statutes. Such inquiries are usually open to the public and usually afford the public an opportunity to make submissions or to participate in the inquiry process. Subsequent to these inquiries, a report recommending a course of action will be prepared and forwarded to the relevant minister or parliament for action.

In addition to these formal methods of public participation, there are a number of informal methods, including representations by citizens to members of Parliament or decision-makers in the executive branch, public protest rallies, civil disobedience, and media releases. The importance of these informal methods should not be discounted. The success of the campaigns to preserve the Franklin and Gordon Rivers in South West Tasmania, the Lemonthyme and Southern forests also in Tasmania, the rain forests of northern New South Wales, the wet tropics region, including the Daintree Rainforest in far northern Queensland, the Great Barrier Reef also in Queensland, and the ongoing battle concerning mining in Kakadu National Park in the Northern Territory are all examples of regions which have been preserved largely as a result of these informal methods of public participation and demonstration. Indeed, in many instances the informal methods were coupled with the more formal methods referred to previously, such as the 1983 election campaign involving the Franklin-Gordon Rivers dispute. In some instances, legal action was also an element in the successful campaign to preserve these outstanding natural areas of Australia.<sup>38</sup>

## ENFORCEMENT OF ENVIRONMENTAL LAWS

The system of checks and balances resulting from the separation of powers in Australia has also encouraged citizens to rely on the judiciary to appropriately control the legislative and executive branches in their exercise of power.<sup>39</sup> In some instances, Parliament

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36. See generally, Tsamenyi & Bedding, *supra* note 6; Tsamenyi, Bedding & Wall, *Determining the World Heritage Values of the Lemonthyme and Southern Forests: Lessons from the Helsham Inquiry*, 6 ENVTL. & PLANNING L.J. 79 (1989); Boer, *Natural Resources and the National Estate*, 6 ENVTL. & PLANNING L.J. 134, 143-46 (1989).

37. See Resource Assessment Commission Act 1989.

38. See *Commonwealth v. Tasmania*, 158 C.L.R. 1 (1983); see also, M. COPER, *THE FRANKLIN DAM CASE* (1983); Bates, *supra* note 6; *Richardson v. Forestry Comm.*, 164 C.L.R. 261 (1988); Tsamenyi & Bedding, *supra* note 6.

39. As Justice Brennan colorfully stated: "As the wind of political expediency now chills Parliament's willingness to impose checks on the Executive and the Executive

has recognized the role and importance of judicial control and has provided expressly for such control in addition to the powers the court has at common law. The Commonwealth's Administrative Decisions (Judicial Review) Act (1977), Administrative Appeals Tribunal Act (1975), and Freedom of Information Act (1982) are examples.<sup>40</sup> The judiciary, in ensuring that the legislature and executive exercise their powers according to the law, ensure that the legislature and the executive remain accountable to citizens. One assumption of a democratic system is that all government powers are held on behalf of the community and therefore account must be made to the community. In this way, therefore, the judiciary is a necessary and integral part of the democratic process.<sup>41</sup>

The degree to which citizens can enforce environmental laws varies among jurisdictions and according to the law involved. Traditionally, the responsibility for enforcement of environmental laws lies primarily with the relevant governmental agencies at Commonwealth, State, and local levels. For example, enforcement of the pollution laws of the State of New South Wales is undertaken by the specialized agency responsible for administering those laws, the State Pollution Control Commission (which is soon to be revamped into a newly established Environmental Protection Agency). The state planning laws, notably the Environmental Planning and Assessment Act (1979) and the Local Government Act (1916), are enforced primarily by local councils.

A noticeable trend, however, is for environmental non-governmental organizations, ad hoc resident committees, and individual citizens to take action themselves to enforce environmental laws.<sup>42</sup> This trend has been facilitated partly by a more liberal judicial attitude towards affording such groups and citizens standing to enforce environmental laws<sup>43</sup> and, in states such as New South Wales, by

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now has a large measure of control over legislation, the courts alone retain their original function of standing between government and the governed." Brennan, *supra* note 29, at 35.

40. See G. FLICK, *FEDERAL ADMINISTRATIVE LAW* (1983); M. ALLARS, *INTRODUCTION TO AUSTRALIAN ADMINISTRATIVE LAW* (1990); M. ARONSON & N. FRANKLIN, *REVIEW OF ADMINISTRATIVE ACTION* (1987).

41. See J. ELY, *DEMOCRACY AND DISTRUST* 101-04 (1980); Galligan, *Judicial Review and Democratic Principles*, 57 *AUSTL. L.J.* 69, 77 (1983). See generally, D. GALLIGAN, *supra* note 26; I. HARDEN & N. LEWIS, *THE NOBLE LIE: THE BRITISH CONSTITUTION AND THE RULES OF LAW* 214, 264-65 (1986); Dyzenhaus & Taggart, *supra* note 30, at 49-50.

42. See Preston, *Public Enforcement of Environmental Laws in Australia*, 5 *J. ENVTL. L. & LIT'N* (1991).

43. Justice Brennan, a judge of the High Court of Australia, has noted that "the movement is all one way, that is, towards relaxing earlier restrictions on standing to sue"; see Brennan, *The Purpose and Scope of Judicial Review*, 2 *AUSTL. B. REV.* 93, 100 (1986); see also Toohey, *Environmental Law — Its Place in the System*, *PROCEEDINGS OF THE FIRST NELA/LAWASIA INTERNATIONAL CONFERENCE ON ENVIRONMEN-*

the statutory liberalization of standing rules. Regarding the latter, New South Wales has, in a number of environmental statutes, provided that any person, whether or not he or she has an interest or right affected by the subject matter of the proceedings, may bring proceedings to remedy or restrain a breach of that environmental statute.<sup>44</sup> The growth in citizen suits to enforce environmental statutes in New South Wales has been largely a response to such open standing provisions. Recently, there has been a call to insert such provisions in pollution control laws to enable not only civil enforcement actions but also criminal proceedings instead of the existing arrangement whereby the permission of the relevant governmental agency or minister must be obtained before suits or prosecutions can be commenced.<sup>45</sup>

### CONCLUSION

The process by which environmental goals, policies, and priorities are established and enforced continues to evolve in Australia. The roles of the three branches of government, non-governmental organizations, and the public are also evolving. The trend identified in particular above is an increasing role for non-governmental organizations and citizens and, through them, the judiciary. Although the legislature and executive remain primarily responsible for the process, they have increasingly been held accountable to the community for their actions, not only through the traditional political processes but also through informal means such as public protests, media condemnation, and judicial control through citizens' suits. A high degree of environmental awareness within communities will ensure that this process of evolution continues.

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TAL LAW 77-78 (1989). For recent illustrations of the more liberal attitude towards granting standing in environmental matters, see *Saggers v. Valtone Pty. Ltd.*, 66 L.G.R.A. 56, 59-60 (1988) (Hemmings, J.); *Australian Conservation Found. v. South Australia*, 69 L.G.R.A. 443 (1990); and *North Sydney Mun. Council v. Roads and Traffic Auth.*, No. 40191 Land & Env'tl. Ct. 7-9 (1990) (Hemmings, J.).

44. See EPAA, *supra* note 20, § 123; Heritage Act § 153 (N.S.W. 1977); Environmentally Hazardous Chemicals Act § 57 (N.S.W. 1985); National Parks and Wildlife Act § 176A (N.S.W. 1974); Wilderness Act § 27 (N.S.W. 1987).

45. See Franklin, *Environmental Pollution Control: The Limits of Criminal Law*, 1 CURRENT ISSUES CRIM. JUST. 81, 88 (1990); Hemmings, *The Role of the Land and Environment Court in Pollution Control*, ENVTL. L. NEWS 9-10 (Sp. 1990); *Farrel v. Dayban Pty. Ltd.*, 69 L.G.R.A. 415, 419-20 (1989) (Cripps, C.J.); Environmental Offences and Penalties Act §§ 13, 25 (N.S.W. 1989) (where citizens are not permitted to bring suits except with the permission of the State Pollution Control Commission or the Minister administering the Act); see also Martyn, *Environmental Offences and Penalties Bill*, IMPACT, Sept. 1989, at 1.