required under Kazakh law to re-register the joint venture company. This required signature of both parties. Kazakh-Telecom refused to sign. As a result the company's bank accounts were frozen and payment was demanded of the revenue earned from 1 January 1997. The Committee stated that:

> Telstra is a victim of the situation in which it found itself in Kazakhstan. It had been in the country for some time before it negotiated a joint venture agreement which for reasons outside its control, and normal commercial practice, was not honoured. While it accepted that risk was part of a commercial venture, it assumed good faith on the other side.

ii) Trade activity between the countries is low

Another reason for the recommendations against ratification is the fact that the trade activity between the two countries is relatively low. The Committee said that:

> At a more general level, this Agreement raises more fundamental issues about the Parliamentary scrutiny of treaties. The most obvious of these is why an economic and commercial cooperation agreement was signed with a nation where the two way trade flow is only $2.11 million. Other agreements are being, or will be, negotiated to provide protection of trade and investment, but the contacts between the two nations are not great. Kazakhstan does not have an embassy in this country yet.

iii) Committee was not given all of the information concerning the commercial environment in Kazakhstan.

Another issue which concerned the Committee was the fact that it was not given all the information available about the situation in Kazakhstan. This raised the 'democratic deficit' issue of the Australian Parliament representing the public being denied the opportunity of considering the issues involved in the implementation of the treaty before ratifying the treaty as part of Australian law. The Committee stated that "[b]oth the NIA and much of the information given at the first hearing were seriously deficient."

CONSULTATION PAPER ON REFORM OF COMMONWEALTH ENVIRONMENT LEGISLATION

The Minister for the Environment, Senator Robert Hill, has now released a Consultation Paper on the foreshadowed reforms to Commonwealth environmental law. It is designed to give effect to the in principle endorsement given in February 1997 by the Council of Australian Governments (COAG) to an agreement on Commonwealth/State roles in responsibilities for the environment. State for this purpose includes the Territories. The objective of the legislative reform process is to deliver better environmental outcomes in a manner that promotes certainty for all stake holders and minimises the potential for delay and intergovernmental duplication.

Three new Commonwealth Acts are proposed:

- an *Environment Protection Act* to replace the existing *Environment Protection (Impact of Proposals) Act 1974.*

- a *Biodiversity Conservation Act* to promote the conservation and sustainable use of Australia's biodiversity, which will replace a number of existing statutes including the *National Parks and Wildlife Conservation Act 1975*.

- at a later date, new legislation on national heritage places which will replace the existing *Australian Heritage Commission Act 1975*.

Proposed New *Environment Protection Act*

The centrepiece of this new legislation will be provisions which focus Commonwealth involvement in the environmental assessment and approval process on matters of national environment significance. In doing this the Commonwealth would be fulfilling its obligations under the COAG Agreement to remove the indirect and environmentally irrelevant triggers which currently initiate Commonwealth Environmental processes. These triggers are to be replaced with a tightly defined test of national environmental significance. Decisions such as foreign investment approvals, export controls, funding decisions and so on will no longer trigger Commonwealth environmental processes.

In accordance with the COAG Agreement the new *Environment Protection Act* will provide that a proposal which triggers the Act and which is not covered by a bilateral agreement between the Commonwealth and a State will be subject to a case by case assessment and approval process identified in the Consultation Paper.

Proposed New *Biodiversity Conservation Act*

This Act will replace not only the *National Parks and Wildlife Conservation Act 1975* but also the *Wildlife Protection Act 1980*, the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, the *Endangered Species Protection Act 1992* and the *World Heritage Properties Conservation Act 1983*. Bilateral agreements mechanisms will be utilised to maximise Commonwealth reliance on State processes.

New initiatives or features in the Act include:

- the identification and monitoring of Australia's biodiversity and the promotion of bioregional planning

- ensuring that the Commonwealth protected area system covers the full range of IUCN categories from strict nature conservation to multiple use

- recognising that the matters of national environmental significance which trigger the assessment and approval process in the *Environmental Protection Act* include world heritage properties, Ramsar wetlands, nationally endangered and vulnerable species and endangered ecological communities and migratory species

- providing for conservation agreements to protect biodiversity on private and public land

- increasing emphasis on biodiversity considerations for the sustainable use of wildlife.

World heritage properties are identified as a matter of national environmental significance.

The overall regime for the management of world heritage properties is intended to ensure that while the Commonwealth's responsibilities under the Convention are discharged, on-ground management is carried out by the States (except for Kakadu and Uluru National Parks, where the Commonwealth has a direct management responsibility).

Proposed New National Heritage Places Strategy

The reform of Commonwealth heritage legislation - the *Australian Heritage Commission Act* - is a key element of the environmental law reform process. The Consultation Paper states that the Commonwealth is committed to developing and enacting the necessary legislation - in cooperation with the States as soon as possible after the finalisation of the national heritage strategy.

The Paper states that the existing Commonwealth heritage legislation was enacted at a time when most States did not have heritage protection legislation. However most States have now enacted heritage legislation and the Paper states that in most cases this legislation provides greater protection for heritage than the Commonwealth Act. It is also noted that the Commonwealth Act has not been substantially amended since its enactment. In particular it has not been amended to reflect the Commonwealth/State framework which relies primarily upon State legislation to discharge responsibilities for heritage protection and management.

The National Strategy should provide for the preparation of a national list of heritage places of exceptional value and importance to the nation as a whole. Appropriately rigorous criteria and high thresholds should be determined in the Strategy. Before listing a place in the national lists however, the Environment Minister would be required to attempt to reach agreement with the relevant State and any private property owner on the listing of the place and a management plan for the place.

Enforcement and Compliance Options

The environmental legislation reform package is to employ an improved range of administrative, civil and criminal enforcement tools and remedies. One aim is to overcome current problems in some existing legislation where the only enforcement choices available are either to take no action or totally prohibit an activity.

A related matter to be dealt with is the question of standing. The Government intends to ensure greater consistency by providing that standing to seek judicial review of administrative decisions will be based on the provisions adopted by the Government in the *Hazardous Waste (Regulation of Exports and Imports) Amendment Act 1996*. The model used in that Act provides that standing to seek judicial review is available to:

- any person whose interests are affected by the decision including a person who has engaged in a series of activities related to the environmental issue the subject of the decision;

- an organisation or association whose objects or purposes include a matter related to, and whose activities relate to, the environmental issue the subject of the decision (this test would not be satisfied where the decision was given before the organisation or association was formed or before the objects or purposes of the organisation or association included the matter concerned).

- this test is not intended to limit the general rules for determining standing under the *Administrative Decisions (Judicial Review) Act 1977.*

Date for Comments

Comments were requested by 23 March 1998 (!).

COMPENSATION FOR ACQUISITION OF OFFSHORE OIL EXPLORATION PERMITS

COMMONWEALTH OF AUSTRALIA v WMC RESOURCES LTD

(High Court of Australia (1988) 72 ALJR 280 (forthcoming, presently unreported)).

constitutional law - acquisition of property - just terms compensation - exploration permit issued pursuant to *Petroleum (Submerged Lands) Act* 1967 (Cth)

Background

The relevant permit (WA 74P) was issued to WMC Resources Ltd ("WMC") in June 1977 under the *Petroleum (Submerged Lands) Act 1967* ("PSLA"). The PSLA was designed to provide for the exploration and exploitation of petroleum and other resources in the Australian continental shelf.

At the time of confiscation, WMC held an interest of 16.25 per cent in that permit. The permit authorised WMC (and its joint venture partners) to explore for petroleum within a designated area. That area was part of a wider area known as the Timor Gap, which was the subject of competing claims to sovereignty by Australia and Indonesia.

Notwithstanding this dispute, both Australia and Indonesia were anxious to exploit the potential wealth of the Timor Gap. Thus, in December 1991, a treaty was signed which provided for the establishment of a joint development area, known as the Zone of Co-Operation. The purpose of the Zone was to permit exploitation without prejudice to each country's competing claims.

To incorporate the provisions of the treaty into Australian municipal law, the Commonwealth enacted the *Petroleum (Australia-Indonesia Zone of Co-operation) Act 1990* ("ZOCA") and the *Petroleum (Australia-Indonesia Zone of Co-operation) (Consequential Provisions) Act 1990* ("CPA").

Relevantly, under the provisions of the ZOCA, petroleum exploration was prohibited within Area A of the Zone of Co-operation without the required permit. Further, Part 8 of the CPA amended the PSLA so as to extinguish those parts of any permits which had previously allowed exploration in Area A.

WMC's requests for reasonable compensation were rejected by the Commonwealth and litigation ensued. WMC's constitutional claim was upheld by the primary Judge (121 ALR 661 per Ryan J.), and by the Full Court of the Federal Court (136 ALR 353 per Black CJ and Beaumont J.; Cooper J. dissenting).