

# SIGNATORIES TO IGAE ACKNOWLEDGE CONSTITUTION IS OUTDATED & IRRELEVANT

Graham Williamson  
February 2015

## Prime Minister, Premiers, & President of Local Government Association, Sign IGAE to Implement Agenda 21

According to The Hon. Justice Paul L Stein in a 1999 speech entitled, "[New directions in the prevention and resolution of environmental disputes - specialist environmental courts](#)":

*"As a result of the Rio Earth Summit and Agenda 21, the Commonwealth and the Australian States and Territories entered into the Intergovernmental Agreement on the Environment (IGAE). The Agreement provided that all signatories would implement certain core ESD principles in policy and decision-making."*

A series of meetings occurred as the Commonwealth and the Premiers resolved their differences until the [IGAE was finally endorsed by all parties in May 1992 \(10\)](#). Although the signatories to the agreement included Prime Minister Keating, all the State Premiers, and the President of the [Australian Local Government Association \(ALGA\)](#), "*none of the (IGAE) discussions were subject to any public consultation or input*" (10), and therefore received "[strong criticism that it was developed with no public involvement.](#)"

The Intergovernmental Agreement on the Environment (IGAE) signatories were required to acknowledge that the Commonwealth Constitution is outdated and irrelevant:  
<http://www.environment.gov.au/about-us/esd/publications/intergovernmental-agreement>

*AND WHEREAS the Parties to this Agreement  
RECOGNISE that environmental concerns and impacts respect neither physical nor political boundaries and are increasingly taking on interjurisdictional, international and global significance in a way that was not contemplated by those who framed the Australian Constitution;*

*IN WITNESS WHEREOF this Agreement has been respectively signed for and on behalf of the parties as at the day and year first above written.*

*SIGNED by the Honourable PAUL JOHN KEATING, Prime Minister of the Commonwealth of Australia*

*SIGNED by the Honourable NICHOLAS FRANK GREINER, Premier of the State of New South Wales*

*SIGNED by the Honourable JOAN ELIZABETH KIRNER, Premier of the State of Victoria*

*SIGNED by the Honourable WAYNE KEITH GOSS, Premier of the State of Queensland*

*SIGNED by the Honourable CARMEN MARY LAWRENCE, Premier of the State of Western Australia*

*SIGNED by the Honourable JOHN CHARLES BANNON, Premier of the State of South Australia*

*SIGNED by the Honourable RAYMOND JOHN GROOM, Premier of the State of Tasmania*

*SIGNED by ROSEMARY FOLLETT Chief Minister of the Australian Capital Territory*

*SIGNED by the Honourable MARSHALL BRUCE PERRON, Chief Minister of the Northern Territory*

*SIGNED by Councillor GRAEME BLATCHFORD FRECKER, President of the AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION*

So the formation of COAG and the introduction of [intergovernmental agreements](#) such as the [IGAE](#) marked the beginning of a new era in Australian politics. It was now possible to introduce policies in all States and local council areas, including implementation of international agreements, behind closed doors using “executive or bureaucratic processes” and thereby avoid democratic scrutiny ([11](#), [12](#), [13](#)). Furthermore, this permitted constitutional restrictions to be effectively bypassed.

According to The Hon. Justice Paul L. Stein in a 1999 speech entitled “[Major Issues Confronting the Judiciary in the Adjudication of Cases in the Area of Environment and Development](#)”:

*“Many of the key principles of Agenda 21 have been received into national domestic law, sometimes into State Constitutions.”*

### **Vital Role of COAG in Reporting Australia’s AG21 Progress to UN**

Though the Keating government announced in Parliament that it was introducing a “massive” policy which would control everyone, no democratic approval for this policy was sought and neither was it explained how such a massive policy would be implemented without such approval. But the central role of COAG in implementation of AG21/ESD throughout Australia, and reporting progress to the UN, [has been noted by UN reports](#):

*“At a national level there has been a range of work undertaken on reviewing and monitoring national agreements and strategies. Concurrent with the five year timeframe of the United Nations General Assembly review of progress since UNCED, a number of these reviews are currently underway. The focal point for these review processes is the senior Intergovernmental body, the Council of Australian Governments (COAG).*

*The National Strategy for ESD has been reviewed on two occasions with reports on implementation prepared for 1993 and the period 1993-95. Outcomes from the second review process are currently being directed towards targeting key areas for further progress. The IGAE was reviewed in 1995. Currently in progress is a review of respective governmental roles and responsibilities with respect to the environment with an overarching aim of improving the cooperative framework established under the IGAE. This review will be completed through a report to COAG in June 1997.”*

[COAG](#), the [IGAE](#), and the [NSES](#), were central to the implementation of AG21 in Australia and the avoidance of democratic scrutiny.

Clearly these agreements were remarkably compliant with the requirements of the UN, even though they were made with no public mandate or scrutiny and represented a deliberate subversion of democracy within Australia. [According to Botterill](#):

*“COAG can limit parliamentary scrutiny of key national policy positions as Premiers and Chief Ministers commit their governments to action without first exposing policy positions to examination by their respective legislatures, and by extension to the broader community.*

*The increase in executive power over the policy agenda has been facilitated since the 1990s when State governments strengthened the role of the so-called central agencies, such as Departments of*

*Premier and Cabinet. Portfolio ministers attending intergovernmental meetings are increasingly required to have executive clearance of their policy positions before attending such meetings. The involvement of heads of government in policy areas formerly handled by portfolio ministers has been reflected in COAG's interest in issues which were previously the responsibility of ministerial councils. A good example is the National Water Initiative which, while being implemented by the Natural Resource Management Ministerial Council, is a policy initiative of COAG. The centralising trend that results is exacerbated by the nature of COAG. As the Prime Minister decides if and when COAG is to meet and what will be discussed, the Council's priorities are more likely to align with the Commonwealth's policy agenda than the concerns of the States. "*

## **COAG & IGAE Unconstitutional**

But as pointed out by Griffith in [Managerial Federalism - COAG and the States](#), these reforms are not just undemocratic, they also make it possible to effectively bypass the Australian Constitution:

*"In respect to democratic accountability, it is the case that COAG and the Ministerial Councils and other organisations that operate under its auspices are non-parliamentary bodies. They embody executive and bureaucratic processes, managed and guided by officials, by which deep inroads can be made into the constitutional jurisdictions of the States.....The fruits of intergovernmental agreements, in the form of proposed legislation, are presented to State Parliaments for approval but only after the details have been agreed to. While State Parliaments are not powerless to amend or reject these agreements, it is fair to say that for practical purposes their powers are constrained. It might also be said that, if accountability is a guiding concept of the COAG process, its application tends to be more at the executive than parliamentary level, at least as far as the States are concerned.....What is new is the integrated and systematic nature of the current reform agenda and the level of Commonwealth oversight of its application. In terms of strict constitutional law, nothing is altered; in terms of public administration, it seems that profound change is being worked in the actual operation of Australian federalism and, practically speaking, in the status of the States as separate and distinct political entities. For the States, these developments present concerns as well as opportunities.*

*It can be argued that, for the Parliaments of the States, they represent a weakening of control over major areas of constitutional jurisdiction. Indeed, a subtle re-working of the constitutional model of parliamentary government may be underway. In broad terms Australian federalism is founded on the idea that jurisdictional competencies are divided between the Commonwealth and the States and that, under this scheme, State governments and State government Ministers are to be held accountable to their respective State Parliaments for what is done within their jurisdictional areas of competence. It may be that, under the managerial model of federalism that is now emerging, based largely on cross-jurisdictional decision making bodies, these traditional constitutional relationships are rendered less robust."*

And in Western Australia in 1996 a [Standing Committee on Uniform Legislation and Intergovernmental Agreements](#) found that the IGAE was unconstitutional and unenforceable:

*"The Report indicates the Intergovernmental Agreement on the Environment is not legally enforceable. That is, Western Australia is not legally bound by the terms of the Agreement. However the Intergovernmental Agreement presupposes that all jurisdictions will embrace the spirit of the Agreement.*

*The IGAE, together with the enabling legislation of its constituent parties, represents an attempt to deal with two very difficult tensions:*

*(1) The tension between the central and regional Governments in a federal system, particularly in the area of environmental matters where recent High Court decisions*

have significantly empowered the Federal Government at the expense of the States and Territories.

(2) The tension between environmental reforms and development, that is, the public's desire for both meaningful environmental reform and economic prosperity, which forces governments to make very difficult and often politically costly compromises.

The IGAE impliedly requires the reservation of significant parliamentary powers to the Executive in the interests of meaningful environmental regulation, save only for the provision for scrutiny by the Commonwealth Parliament. In signing on to the IGAE, the State of Western Australia and other States appeared to have accepted that compromise. Western Australia's enabling legislation now appears to suggest otherwise, and the provisions of Western Australia's section 22, by endeavouring to rescue a measure of parliamentary scrutiny, if that is its intent, are probably illusory. The Committee in an effort to address this, makes an important recommendation later in the Report concerning proposed section 22.

Second, responsibility for adopting NEPMs is clearly vested in the executive, that is, the nominated Minister serving on the NEPC. Moreover, it is within the Minister's discretion to table or not table an adopted NEPM for legislative scrutiny. Hence the Committee makes a recommendation on this matter. Thus, most of Parliament's legislative power to review and adopt NEPMs is delegated under the Bill to the Executive, and by extension to the NEPC composed of the Commonwealth Minister and the States\* and Territories\* Ministers. Such a result is perhaps, inevitable given the nature of the NEPC as a national standard setting body for environmental protection policies

#### **Recommendation 2**

**Section 22 of the Bill be amended/replaced to:**

**(a) provide that all NEPMs adopted by the NEPC shall be tabled before both Houses of Parliament for 21 days; and**

**(b) that all NEPMs shall be incorporated as State Environmental Protection Policies as administered under the Environmental Protection Act (Western Australia) unless disallowed by either House of Parliament.**

If implemented, these recommendations ensure that Western Australia complies substantially with the IGAE by providing for the essentially automatic adoption of NEPMs approved by the NEPC. Incorporation of NEPMs in the manner suggested, unless disallowed by either House of Parliament, preserves legislative scrutiny of NEPMs to a greater degree than in the other States. It more properly balances the discretion of the Executive to propose policy with the discretion of the Legislature to review and adopt that policy. At the same time, requiring a majority of either House of Parliament to disallow an NEPM, sets a high standard for overriding mandatory incorporation of NEPMs into State law.

Although NEPMs are intended to be incorporated automatically into State law without any scrutiny beyond that given by the NEPC and the Commonwealth Parliament, as a practical matter, no jurisdiction has followed that path. All States and Territories provide for some discretion. The Committee recognises that the IGAE/NEPC regime is intended to avoid the potential for Legislative disallowance of NEPMs by the States and Territories. That is why the regime can be characterised as an exercise in Executive Federalism."

So COAG and intergovernmental agreements such as the IGAE, represented a subversion of the Constitution as the government attempted to fabricate constitutional powers which it lacked in order to avoid democratic scrutiny and enforce international agreements such as Agenda 21.

## **UN Says AG21 Must be Embedded into Bureaucracy to Avoid Political Rejection**

Of course it was commonly realised that widespread deception and covert action would be necessary, especially in democratic countries, if there was to be any hope of success in the plan to get all nations to surrender full control to the UN. As a result, one of the requirements of the UN was that the ESD strategy must be continuous, across different political parties, and must not be interrupted by change of government. In other words, it must be thoroughly embedded into policy at the administrative or bureaucratic level, as the UN pointed out in their document, [Guidance in Preparing a National Sustainable Development Strategy](#):

*“the strategy development process should also be backed by strong political commitment at both the national and local levels and such commitment should be there on a continuous and long-term basis.....Ensure continuity of the strategy development process. A national strategy for sustainable development requires long-term and uninterrupted effort. Mechanisms, thus, need to be put in place that would enable the strategy development to be carried out as a continuous and cyclical process with broad national support, regardless of the political party in power.....The sustainable development strategy process should be developed as a way of life.....Activities for the formulation and implementation of the strategy should also be fully mainstreamed in development policy and day-to-day functioning of government and other stakeholders.”*

This instruction by the UN explains the mechanisms used by the Australian government to avoid democratic scrutiny of Agenda 21 by using unconstitutional intergovernmental agreements and embedding it in policy at the executive or bureaucratic level.

## **UN Says AG21 Implementation must be Monitored**

According to [the ICLEI Agenda 21 Implementation Survey of 1997, two essential criteria for defining an Agenda 21 process include:](#)

*“It must establish a monitoring and reporting framework”*, and,

*“It must establish indicators to monitor progress.”*