21 September 2023

Law Council
OF AUSTRALIA

Legal Practice Section

Department of Climate Change, Energy, the Environment and Water
High Seas Policy Section
GPO Box 858
Canberra ACT 2601

Dear Secretary

High Seas Biodiversity Treaty

This submission has been prepared by Australian Environment and Planning Law Group (**AEPLG**) of the Law Council of Australia's Legal Practice Section. The AEPLG welcomes the opportunity to make a submission to the Department regarding potential ratification of the new High Seas Biodiversity Treaty.[1]

As part of its consultation, the Department has proposed specific questions for consideration, which are set out below. The AEPLG has addressed a subset of those questions in this submission.

1. Should Australia ratify the high seas biodiversity treaty?

   Yes

1a. Why should Australia ratify the treaty? What benefits would this have?

   Australia would benefit from ratification of the treaty as it would permit the participation in any scientific advancement relating to marine genetic resource collection. It would also permit Australia to be involved in or have insight into planned activities in the high seas area and participation in the formation of environment protection areas within the high seas, which our neighbour nation states may also be involved in. Ratification would also permit Australia to have insight into future planned activities within the areas of the high seas, which could, for example, relate to prospecting, exploration and exploitation of marine materials in the international seabed. Currently the International Seabed Authority provides guidance in relation to this.

2 The treaty regulates the use of marine organisms (referred to as marine genetic resources) collected in the high seas. This is described in Part II of the treaty. Are you aware of any activities to collect or utilise marine organisms from the high seas, either currently or planned for the future?

   No response

2a Please describe the activities

   No response

3 The treaty creates a framework to establish area-based management tools in the high seas, such as marine protected areas, to protect and restore marine biodiversity and ecosystems. This is described in Part III of the treaty. Would you support Australia playing a role in establishing marine protected areas in the high seas in the future?

[1] Department of Climate Change, Energy, the Environment and Water, 'High Seas Biodiversity Treaty' consultation, opened 10 August 2023, < https://consult.dcceew.gov.au/high-seas-biodiversity-treaty>.

Telephone +61 2 6246 3788 • *Fax* +61 2 6248 0639 • *Email* mail@lawcouncil.asn.au
GPO Box 1989, Canberra ACT 2601, DX 5719 Canberra • 19 Torrens St Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.asn.au

Yes.

3a. What areas of high seas should Australia prioritise for protection, and why?

Areas with identified biodiversity values that would be most at risk from future exploitation or development should be prioritised.

The precautionary principle should be applied, especially where there is an absence of knowledge of what fish, plant or other species exist in specific areas or where issues of ocean depth contribute to difficulties in research and knowledge gathering in an area.

4. The treaty puts in place an environmental impact assessment process to avoid or reduce impacts on the marine environment from activities in the high seas. This is described in Part IV of the treaty. Are you aware of any possible future activities on the high seas that may require an environmental impact assessment if Australia were to ratify the treaty?

4a. Please describe the possible future activities.

Mining or extraction of seabed minerals should be expected in the high seas areas – and should be subject to impact assessment. Similarly, deep ocean storage of hazard and radioactive material should also be subject to assessment.

5. The treaty requires Parties to provide capacity building and transfer marine technology to developing States, as described in Part V of the treaty. Do you have any views on how Australia could provide this support if it were to ratify the treaty?

No response

6. If Australia did ratify the treaty, do you foresee this having any adverse impacts on Australian people, institutions or businesses?

6a. Please describe the potential adverse impacts that ratifying the treaty could have on Australian people, institutions or or businesses with respect to:

i. The provisions on marine genetic resources (Part II)

ii. The provisions on area-based management tools including marine protected areas (Part III)

iii. The provisions on environmental impact assessments (Part IV)

iv. The provisions on capacity building (Part V)

No response

7. Is there anything else you would like to add?

Overall, the treaty addresses environmental protection and scientific research in the high seas beyond nation state boundaries. It seeks to promote research into genetic resources and digital sequencing research. It establishes EIS processes but also allows nations to adopt the EIS processes from their own states. The treaty does not apply to fishing regulated under international law and fishing related activities or fish taken in those circumstances.

The AEPLG supports Australia's ratification of the treaty of the high seas for the conservation and sustainable use of marine biological diversity of marine areas beyond nation boundaries. Ratification will reflect Australia's desire to preserve biodiversity and sustainable practices in the high seas.

The treaty's mechanisms for the establishment of protected areas in the high seas is one of the main reasons to ratify the treaty. To the extent that the treaty allows other states including Australia to scrutinise other member state's EIS processes for activities in the high seas, that is another reason for Australia to ratify.

Having the benefit of the mechanisms and processes in the treaty will also mean that Australia can be involved in future essential research into marine genetics and to help ensure marine degradation in the area is reduced. Participation with neighbouring developing countries who may also ratify the treaty provides an opportunity for Australia to help show support and collaboration to assist the sustainable management of these high seas areas and, with permission, receiving Indigenous traditional cultural knowledge of the high seas.

The AEPLG encourages careful consultation with states and territories to be undertaken by the Australian Government to inform any decision to ratify the treaty.

The AEPLG would welcome the opportunity to discuss this submission with the Department. In the first instance, Robyn Glindemann, Co-Chair of the AEPLG on robyn.glindemann@lantegy.com.au.

Yours sincerely

Geoff Provis
Chair, Legal Practice Section