Preface

This book is a consequence of a convergence of thinking about precaution by each of the Editors, which occurred approximately a decade after the Rio Declaration launched the precautionary principle into global consciousness. Each of us was independently thinking about implementation and application of the principle and it was apparent that, in a variety of jurisdictions and contexts across the globe, there was an urgent need to examine this aspect of precaution. While debates continued to simmer on defining the principle and what it all meant, as a consequence of legal developments in each of the jurisdictions, we were turning our attention to what administrators and regulators were actually doing in response to the emerging legal obligations to apply the principle.

In the European Union, environmental and public health policy is now based on the precautionary principle. The principle is now included in the EU food law and will be progressively applied to a growing number of EU policies. We were particularly interested to explore what the prospective implications are for a future application of the precautionary principle to emerging areas in the scientific and technological fields, such as biodiversity, climate change, (novel) food and nanotechnology.

In Australia, the previous decade has witnessed two significant legal developments. In 1993, Justice Paul Stein of the Land and Environment Court had boldly read the precautionary principle into an existing statutory regime (*Leatch v. National Parks and Wildlife Service* (1993) 81 LGERA 270). This bold judicial move led to the principle playing an important role in environmental litigation, albeit often a contested one. At the same time there was an equally remarkable wave of legislative activity in Australian Federal and State/Territory parliaments, as policy makers sought to clarify the regulatory position regarding precaution in Australian environmental regulation. To reflect on the progress that had, at least in theory, been made in environmental regulation, Judith Jones convened a conference in 2003; *The Precautionary Principle in Environmental Law: Ten Years Since Leatch* (a conference supported by the Australian Centre for Environmental Law and the Centre for International and Public Law at the Faculty of Law, the Australian National University). This conference brought together a diverse group, including scholars, judges, policy makers and regulators to commence an exploration of implementation

of precaution in Australia. Six of the chapters in this book evolved from papers presented at that conference.

As well as researching the developments in these two jurisdictions Elizabeth Fisher was studying the legal and policy frameworks for standard setting under scientific uncertainty in a number of other countries and in particular the United States. Her research increasingly showed that while there were considerable differences in legal culture and thus legal doctrine and institutional structures and processes, there were also a number of common challenges. In particular, she found that the same issues were being raised in debate in different jurisdictions with the participants of those debates being oblivious to developments in other jurisdictions, or more seriously, taking those other developments out of context. Moreover, as her work crossed disciplinary boundaries, she increasingly saw that there were considerable divergences in how the challenges of implementation were characterized by policy makers and by lawyers. This is a fact that has been overlooked in much of the literature but is important in understanding the challenges in implementing the precautionary principle.

Of course this book is not only a convergence of our thoughts about the precautionary principle but also those of the authors of the chapters in this collection. Many of these are also the product of ongoing discourses between those involved in this book and others and we feel honoured to have been able to carry out those conversations. We also thank the authors for the time and effort that they have put into their contributions. We do not see this book as putting an end to the debate about implementation. Rather we see it as the start.

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