



RESEARCH NOTE

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The World Heritage Convention in Australia

Australia's obligations under the *Convention for the Protection of the World Cultural and Natural Heritage*, and its powers under the *World Heritage Properties Conservation Act*, have been raised recently concerning the Arthur Pieman Protected Area (or the Tarkine Wilderness) in Tasmania. For example, writing in the *Sydney Morning Herald* (8 May 1995), Tim Bonyhady of the Australian National University states:

under the World Heritage Act the Federal Government has power to stop construction of the road while a Federal inquiry examines whether the Tarkine satisfies the criteria for World Heritage listing.

The *World Heritage Convention* was adopted by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) General Conference in November 1972. Australia ratified the *Convention* in August 1974, and enacted the *World Heritage Properties Conservation Act* in 1983.

Australia has been a member of the World Heritage Committee from 1976 to 1983 and from 1985 to 1989.

The World Heritage Convention

The *Convention* obliges contracting states, including Australia, to identify and protect **natural** and **cultural** sites of outstanding universal value. Contracting states submit suitable properties to the

World Heritage Committee for inclusion on the World Heritage List.

The World Heritage Committee was established under the *Convention*, and consists of 21 member states, elected every two years by parties to the *Convention*. Committee members are elected to 'ensure an equitable representation of the different regions and cultures of the world.' The Committee publishes, from time to time, *Operational Guidelines* for the implementation of the *Convention*.

There are over 300 cultural sites and some 90 natural sites on the World Heritage List.

Included in the *Convention* definition of 'cultural heritage' are architectural works, paintings, cave dwellings, and archaeological sites of 'outstanding universal value from the point of view of history, art or science.' Cultural sites include:

- Angkor in Cambodia; and
- the Acropolis in Greece.

'Natural heritage' covers natural features of outstanding universal value from an aesthetic or scientific point of view, habitats of threatened species and natural sites of outstanding universal value for reasons of science, conservation or natural beauty. Natural sites include:

- the Grand Canyon in the United States; and

- Komodo National Park in Indonesia.

In Australia, eleven sites have been listed (some for both cultural and natural heritage factors):

- Kakadu National Park;
- Lord Howe Island;
- the Great Barrier Reef;
- Willandra Lakes Region;
- Tasmanian Wilderness;
- Uluru-Kata Tjuta National Park;
- Central Eastern Rainforest Reserves;
- Shark Bay, WA;
- Fraser Island;
- the Wet Tropics of Queensland; and
- Australian Fossil Mammal Sites.

World Heritage Properties Conservation Act

In order to stop construction of a dam on the Gordon River in Tasmania, the Commonwealth, in 1983, enacted the *World Heritage Properties Conservation Act* ('the Act'). Since then the Act has been used on a number of occasions. For example, it was used in November 1994 to halt temporarily the Port Hinchinbrook development near Cardwell in North Queensland.

In 1983, the High Court substantially upheld the constitutionality of the Act in the *Franklin Dam*

case. The Act relies on several Constitutional powers:

- the external affairs;
- corporations; and
- peoples of any race powers.

The High Court affirmed earlier decisions that the external affairs power [section 51(xxix)] could be used to give effect to international treaties. A law on external affairs is one which, for example, implements an international treaty, such as the *Convention*.

Section 51(xx) of the Constitution grants the Commonwealth power to legislate on 'foreign corporations, and trading and financial corporations'. A corporation is a 'trading corporation' if a 'sufficiently significant' part of its activities are trading activities. In the *Franklin Dam* case, the Tasmanian Hydro-Electric Commission was a 'trading corporation' as one of its main activities was the sale of electricity.

The non-trading activities of a trading corporation may also be regulated under section 51(xx) if they are carried out for the purpose of engaging in trading activities. Thus, the construction of a dam, although itself not a trading activity, was undertaken for the purpose of a trading activity (ie, the sale of electricity), and could be regulated or prohibited by the Commonwealth.

The majority in the *Franklin Dam* case held that sections 8 and 11 of the Act (which relate to Aboriginal sites) were valid un-

der section 51(xxvi) of the Constitution (the people of any race power).

Operation of the Act

Sections 6, 7 and 8 of the Act provide that where the Governor-General is satisfied that an 'identified property' is being or is likely to be damaged or destroyed, he may make a Proclamation, activating the protective provisions (sections 9, 10 and 11) prohibiting certain activities in relation to that property.

An 'identified property' is defined in section 3A as including, for example, properties:

- on the World Heritage List;
- subject to Listing; and
- forming part of the cultural heritage or natural heritage and is declared by the regulations to form part of that heritage.

The Commonwealth Minister for the Environment, Sport and Territories may give his written consent to activities which would otherwise be unlawful.

The Act enables the Commonwealth to prevent damage to an 'identified property'; it does not allow the Commonwealth to assume the management of that property. The Act does not transfer ownership to the Commonwealth.

Conclusion

Under the *World Heritage Convention* Australia should identify and protect those natural and cul-

tural sites of outstanding universal value. The *World Heritage Properties Conservation Act 1983* provides the Commonwealth with the power to restrict or halt activities in an 'identified property' that are, or are likely to be, detrimental to that property.

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