

RESPECTING AUSTRALIA'S HERITAGE

MINORITY REPORT BY LABOR SENATORS

Introduction

In this Centenary year we are presented with a historic opportunity to set in place a visionary regime for the maintenance and protection of Australia's rich and diverse natural, cultural and indigenous heritage.

The *Australia Heritage Commission Act*, introduced in 1975 by the Whitlam Government, revolutionised the way in which Australian heritage was managed, and it represented world's best practice in heritage legislation at that time. It was truly visionary and has been instrumental in the preservation of much of Australia's heritage.

However, despite its many strengths, the legislation also has its weaknesses. International trends are towards stronger, more pro-active, heritage protection and there is broad agreement that the current legislation can be improved. We have the opportunity for Australia to re-establish our international leadership in the area of heritage protection.

However, the legislation presented to Parliament does not do this. Although it strengthens some aspects of heritage protection, overall it is a significant step backwards. The Labor Party does not support these bills in their current form and will seek to amend the legislation in Parliament.

During the years of the Howard Government, there has been a progressive politicisation of heritage protection, including natural, cultural and indigenous heritage.

The Government-appointed Chair of the Australian Heritage Commission and current Chair of the World Heritage Bureau is a preselected Liberal candidate for the upcoming Federal election, calling into question the independence of the Australian Heritage Commission and undermining Australia's international standing on heritage issues.

The Howard Government has sanctioned the mining of uranium at Jabiluka in a World Heritage area, and has aggressively pursued this in the international arena, despite strong community concerns about its impacts on the environment and indigenous communities.

The Government now appears set to ignore legitimate concerns raised by stakeholders regarding its proposed heritage legislation.

In their submission to the Committee, seven former eminent Chairs and Commissioners of the Australian Heritage Commission, set out the six principles that they thought should form the basis for any amendments to Commonwealth Heritage legislation. They are:

- Heritage protection in Australian needs strong national presence with national leadership from the Commonwealth. This requires a national register or list representing all key strands of Australia's natural and cultural history which acts as a signifier of important values to all Australians and an active statutory body charged with responsibilities to help protect, promote, educate, train and research.
- Complementary State and Territory heritage action should be strongly encouraged.
- Any amendment to Commonwealth Heritage Legislation should be progressively strengthening existing legislation, not weakening it in any way.
- Constitutional powers of the Commonwealth should be used to their full extent to protect places of heritage value to the nation.
- The decision to include or not include and to remove places from national registers or lists should be vested in an independent professional body, not in the Minister.
- Those parts of heritage systems that have worked well for a long time should not be lightly discarded.¹

The Labor Party supports all of these six principles, which have not been followed in the development of the legislation presented to the Parliament.

Significant concerns have been raised with the Committee in the submissions and presentations to the Committee, many of which are detailed below. This list is not exhaustive, but provides an overview of the key issues raised.

These issues will need to be adequately addressed to the satisfaction of the Labor Party before it supports the passage of the legislation.

Using the Environment Protection and Biodiversity Conservation Act framework

Concerns have been raised about whether or not the EPBC Act is an appropriate framework for heritage protection. By attempting to integrate heritage protection into the EPBC Act, the heritage protection regime will be subject to the same deficiencies and inappropriate ministerial discretions that undermine the environmental legislation.

Specific concerns regarding the EPBC Act framework include:

1 *Submission 10*, Professor Yencken and others, p 4-5.

- the ability to delegate approval powers on issues of national significance to the states through bilateral agreements;
- limitations of the current terminology in the Act to reflect heritage objectives and the limited definition of heritage ‘values’, rather than ‘places and associated values’;
- the more limited definition of ‘action’ under the EPBC Act compared to the AHC Act, including the omission of the allocation of grants;
- the ‘significant impact’ threshold test on values does not require consideration of prudent and feasible alternatives as in the existing legislation; and
- uncertainty about the definition of ‘significant impact’ and whether it adequately covers likely impacts on heritage.

The Register of National Estate (RNE)

Of the 13,000 places currently on the Register of the National Estate, it could be expected that only a few hundred places might be included in each of the new lists. With the repeal of the *Australian Heritage Commission Act 1975*, the Register of the National Estate will no longer be a statutory register and the fate of the places included on the list becomes uncertain.

Although there is currently no substantive protection for heritage places of national significance, those places that are removed will have no protection whatsoever. There is grave concern that the interim arrangements are inadequate and that the loss of the statutory basis of the list will lead to its demise.

The Commonwealth list

The 1996 report by the Committee of Review – Commonwealth owned heritage property, *A Presence for the Past* (the Schofield Report), was a comprehensive assessment of Commonwealth heritage management and protection. Many of the key recommendations of this report have been omitted from this legislation.

Separation of assessment and listing processes

The listing of places under the current regime is based on an independent technical evaluation of its heritage values undertaken by the Heritage Commission. Under the proposed regime, responsibility for listing lies with the Minister, guided by advice from the new Australian Heritage Council.

Many witnesses presented an argument that listing should be based solely on a technical assessment of its heritage values, separate from political considerations. Decisions regarding the management of places that are heritage listed are subjective decisions, and more likely to be affected by politics, but the listing of places should be a technical decision and therefore the responsibility of the Council.

Although the proposed listing process includes a mechanism for the consideration of public nominations, the expert Council is unable to instigate an assessment of a place for listing, as this is also at the discretion of the Minister.

The Australian Heritage Council

The proposed Council represents a significant downgrading of the Commission. The functions and powers of the Council will be significantly different from those of the Commission, which currently include the ability to identify places to be included in the Register of the National Estate, to prepare the Register, to give advice on grants, to encourage public interest, to further training and education, to organise and engage in research and to give advice to the Minister on heritage matters.

The functions of the proposed Council by contrast are to advise the Minister, on request from the Minister, about conserving and protecting places on or being considered for the new Lists and about heritage research, promotion, education, national policies, grants and monitoring.

The Council's sole function of its own motion is to nominate places to the Minister for inclusion on the new Lists.

Indigenous heritage

Specific issues raised by ATSIC include the lack of consultation with the indigenous community on the proposed legislation, its relationship with the Aboriginal and Torres Strait Islander Heritage Protection Bill, currently before parliament, the nature of indigenous representation on the Australian Heritage Council, and whether the Bills together deliver on the recommendations of the Evatt Report into the protection of indigenous heritage.

The Federal Labor Party shares these concerns, particularly given that strong protection of indigenous heritage is awaiting amendments to the *Aboriginal and Torres Strait Islander Heritage Bill*, currently being held up by the Federal Government.

To ensure that there is adequate legislation covering indigenous heritage, the Federal Labor Party believes that both these bills should be brought on together, given the negotiated agreement of indigenous representatives plus the clear Senate majority in support of these amendments to the *Aboriginal and Torres Strait Islander Heritage Bill*.

Management principles

Both the proposed national heritage management principles and Commonwealth heritage management principles are not set out in the legislation, and no drafts have been made publicly available.

It is proposed that these principles would be contained in instruments published in The Gazette. Yet these principles are vital to a number of processes under the proposed

legislation and to the preparation and review of management plans for all heritage places. Concerns have been raised about the lack of consultation on these significant principles.

The Federal Labor Party does not support these bills in their current form, but reserves its position on the legislation until the debate in parliament.

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