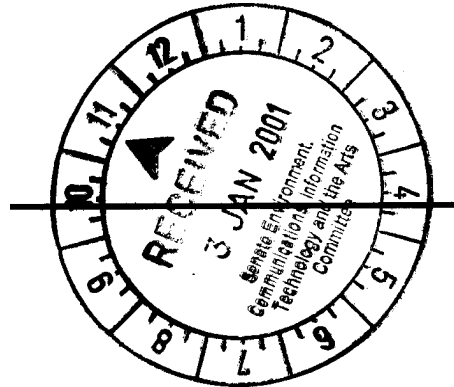


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The Secretary
Senate ECITA Reference Committee
S 1.57 Parliament House
Canberra

Sir,

Australian Heritage Council Bill 2000 and related matters

It is crucial to understanding this major policy shift in heritage evaluation and protection, that it is driven essentially by ideological and political concepts. Like the GST, it intends to hand back hard-won powers which have been achieved by the Commonwealth over many years. Whatever the appropriate improvements to existing legislation, these are submerged beneath the deleterious potential consequences of handing total control over most of the nation's environmental and cultural heritage to States and Territories, including those with poor records, especially in indigenous matters.

Despite improvements in State, Territories and Local Government heritage comprehension and management since the 1975 Heritage legislation, this is uneven, and it is more appropriate for the Commonwealth to co-ordinate and facilitate, so ensuring that Commonwealth standards and management quality are everywhere equal.

The new legislation compiles a restricted National list, thereby relegating the bulk of heritage places to a lower category, while terminating the compilation of the Register of the National Estate (RNE).

Note the timely words with which Prime Minister Malcolm Fraser introduced the 1981 volume, *The Heritage of Australia* (Macmillan): '... to make sure that the National Estate is looked after in the way it deserves.' 'It is the culmination of a great deal of ... work - although the complete Register of the National Estate still continues as a vast and ongoing undertaking.' And it remains incomplete today; permanently so it seems.

As a foundation Australian Heritage Commissioner 1976-82, I am familiar with demands that the RNE be divided into and A category ('National' list) and the remainder be relegated to B category. Fortunately, in those more enlightened times, those who argued that once a place did not merit 'A' category, it risked being consigned to destruction, or at best, to neglect, won the day.

I experienced a comparable situation when, as an Australian delegate to the 1977 World Heritage Bureau meeting in Paris, criteria for World Heritage listing were compiled. A West African delegate warned the meeting that listing a World Heritage property in his nation would ensure its protection, while ensuring that all other places would be overlooked in their funding and protection because they were deemed less important.

Under the present legislation the RNE list is ongoing, while its status does offer moral, if not legal, protection. Return of all non-National places and powers to State, Territory and Local authorities implies both the cessation of the RNE and varied policies of protection, with environmental and indigenous places at particular risk.

Practical Issues

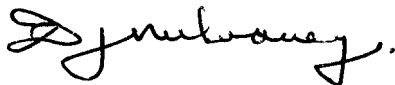
1. I am pleased to learn that members of the new Council should have expertise in natural, cultural or indigenous areas. Some other councils today lack such expertise.

The essential problem, however, is their lack of power. They may only advise the minister, 'on request', which so limits their activities should the minister be weak (or strong). This is made even clearer in 324F(6), where the Council 'must not undertake an assessment of a place's national heritage values unless the Minister asks it to do so'. Political considerations are likely to receive priority over heritage values.

2. The Council 'must not consider any matter that does not relate to the place's national heritage values'. This is sound advice, and in accord with current Heritage Commission practice. Yet the final decision rests with the Minister, who is unlikely to exclude political or economic considerations, which are likely to sway many decisions. Will the Minister really make public the reasons for such decisions?
Similarly with 341Z(3), the sale or lease of Commonwealth Heritage places - 'reasonable steps to ensure as far as practicable' binding covenants, is a remarkably vague requirement which allows easy evasions.
3. The Minister is not required to seek Council advice before removing a National place from the list, when 'defence or security' are involved. The Minister has undue freedom to define these matters and is a recipe for easy evasion.
For example, an historic wharf/building/Aboriginal site/is inconvenient, yet planning could incorporate it should the Defence Department have the will to do so. Would the Minister be willing to resist Defence pressures for destruction?
4. The National Heritage List is to be reviewed and reported 'at least once in every 10 years' (324Z). This conflicts with present AHC annual reporting, and the information provided in the Public Briefing (21 September 2000), that such monitored reports would be issued every two years.
Reporting every decade would mask the deterioration and destruction, and constitutes deliberate obfuscation.
5. Indigenous places and the National List (Sections 324C, 528).
This issue poses a test serious and divisive flaw in the operation of the new legislation and must be resolved. This really matters for the reconciliation process.
The Public Briefing indicated that the National List would not be large. How can this be applied to Aboriginal society, even using the stated criteria, when each linguistic or 'tribal' grouping reveres its own fundamental creation/Dreaming places and interconnecting pathways ('Songlines')? Europeans, for example, rate Uluru as the supreme Aboriginal place (witness the National Museum's 'Uluru Line'). Yet its significance for Aboriginal people was limited to the people of that region, and it was not more important to them than many less impressive places. Indigenous elders in totally diverse regions (Cape York, Kimberley, Arnhem Land) would list many places which, to them, are as 'national' as Uluru.
Consequently, unless Eurocentric values dominate site selection, the National Indigenous list must be considerable.
As some States and Territories have (or may develop) policies unsympathetic to Aboriginal traditions and question the significance of places, the Commonwealth Government has an obligation to protect Aboriginal concerns.

Should this Act be passed, it is essential that it allows the concept either of an expanded National List or, preferably, all Aboriginal places should be included on the Commonwealth List. This is a crucial flaw in the proposed legislation.

Yours sincerely,



D. J. Mulvaney AO, CMG (Emeritus Professor)