



PENRITH CITY COUNCIL

Submission to:

Senate Environment, Communications,
Information Technology and the Arts
References Committee

- *Environment and Heritage Legislation Amendment Bill (No 2) 2000*
- *Australian Heritage Council Bill 2000*
- *Australian Heritage Council (Consequential and Transitional Provisions) Bill 2000*

February 2001



PENRITH VALLEY
River Mountains Lakes

1 . 0 I N T R O D U C T I O N

Council has been compelled to lodge a submission on the proposed changes to the Commonwealth Heritage Regime as it believes that the proposed changes will, in their current form, have a deleterious impact on the protection and management of the nation's heritage assets. This submission outlines the possible impact of the three bills that will amend and repeal the existing legislation and recommends relevant actions that, in Council's opinion, should be undertaken to overcome that impact.

The Australian Heritage Council Bill and Environment and Heritage Legislation Bill are specifically commented on in this submission as they contain the detailed provisions relating to the long term protection and management of national heritage places. A third bill, Australian Heritage Council (Consequential and Transitional Provisions) Bill 2000 is not commented on in detail as its principal effect is to repeal the Australian Heritage Commission Act.

2 . 0 A U S T R A L I A N H E R I T A G E C O U N C I L B I L L

Australian Heritage Council Constitution

This bill proposes an Act to establish the Australian Heritage Council and defines its constitution and functions. Of particular concern to Council is the proposed appointment of the Chair and members of the Council by the Minister. Under the existing Australian Heritage Commission Act, the commissioners and chair to the Commission are appointed by the Governor General on the recommendation of the Minister. This arrangement permits independent scrutiny of nominees by a non-political agent as to their suitability for the appointment. It is considered that the proposed Ministerial appointment of the chair and members of the proposed Heritage Council may lead to its politicisation and as a result lower its credibility as an independent arbitrator on heritage issues within the Australian Community.

Request

- ◆ Council strongly recommends that the chair and the members of the proposed Heritage Council be appointed by the Governor General and not the Minister.

Australian Heritage Council Independence

The proposed Australian Heritage Council is unlikely to function independently of the government as the existing Heritage Commission does. The Council does not have the powers to independently assess places of heritage significance, promote conservation, develop national policies, provide financial assistance and nominate places for the new National Heritage list or the Commonwealth Heritage List. Instead it may only carry out such activities only when requested to do so by the Minister. In this instance, the heritage values of a place may be seriously threatened, compromised or lost due to the Minister not requesting the advice of the Heritage Council.

Request

- ◆ Council therefore requests that the functions proposed by the Heritage Council be reconstituted as an independent statutory body with operational powers that are unfettered by ministerial control. It is only through such an approach that the community may have faith in the independence in the identification, management and promotion of the nation's heritage assets.

National Heritage List Monitoring

Of additional concern is the omission of the monitoring function of the condition of the places included in the current Register of the National Estate. Obviously, the new National Heritage List and the Commonwealth Heritage List will take some time to be formulated. In the interim until the places on the Register of the National Estate are reviewed and transferred to the new lists it is vital that the new Australian Heritage Council oversees the monitoring of their condition and make appropriate representations to their owners and managers to conserve them.

Request

- ◆ Council requests that the Heritage Council's functions be expanded to include the monitoring of the condition of places on the Register of the National Estate.

3 . 0 E N V I R O N M E N T A N D H E R I T A G E L E G I S L A T I O N B I L L

This bill proposes an Act to amend the Environment Protection and Biodiversity Act to enable it to protect and conserve national heritage assets. Of particular concern to Council are the provisions relating to the following matters:

- ◆ bilateral national heritage agreements;
- ◆ exclusion of the Australian Heritage Council from certain aspects of the nomination and assessment processes of places for inclusion on the National Heritage List; and
- ◆ lack of a commitment to protect and review places on the Register of the National Estate and ultimately transfer places to the National Heritage List.

These matters are described in detail with requests for the improvement of the bill as follows.

Bilateral National Heritage Agreements

A bilateral agreement may be entered into by the Minister without advice from the Australian Heritage Council. It would seem appropriate that the Australian Heritage Council should have a major role to play in ensuring that such an agreement meets current national and possibly international best practice standards. Under the regime proposed in the Bill, the Minister may make an agreement which, without the review of an independent body such as the Heritage Council, may comprise the conservation of a national heritage place. Other problems associated with the perceived lack of independence of the Heritage Council have been outlined in the section of this submission on the Australian Heritage Council Bill.

Request

- ◆ Principles, guidelines and minimum standards for bilateral agreements should in Penrith City Council's view, be enshrined in the Bill. These should require consultation with an independent Australian Heritage Council to ensure that there is transparency and accountability. It is essential that all stakeholders involved in the debate for the conservation of the nation's heritage should have a clear understanding of the parameters that should be addressed.

Australian Heritage Council Assessment of Places

Under the Bill the Australian Heritage Council's role in setting the agenda for the conservation of the nation's heritage is limited. Nominations for entering places on the National Heritage List may only be made through the Minister and not directly to the Council (s.324D (1)). This limits the public's opportunity to make a nomination to an independent, non-political Heritage Council. It is requested that the Bill be amended to allow nominations to be made directly to the Australian Heritage Council as well as the Minister.

The Minister may exclude the Australian Heritage Council from having a role in the assessment of a place nominated by a person for inclusion in the National Heritage List. Under section 324D (2)(b) the Minister may within 20 days refer a nomination to the Heritage Council, or advise the nominating person that he will not include a nominated place in the National Heritage list. Reference of a nomination to the Heritage Council is therefore optional, not mandatory.

Request

- ◆ It is requested that the Bill be amended to require that a nomination to the Minister to include places on the National Heritage List be assessed by the Australian Heritage Council before the Minister makes a decision to include or not to include that place.

Australian Heritage Council Leadership

The Australian Heritage Council's ability to provide leadership as the nation's premier conservation body is further constrained under section 324F(6) of the Bill. Under this provision, the Australian Heritage Council cannot independently assess the national heritage values of a place unless directed to do so by the Minister. This places the role of the Australian Heritage Council in sharp contrast with the

current Australian Heritage Commission which acts as a true independent arbiter of what places should be conserved in the national interest.

Request

- ◆ It is therefore requested that the Bill be amended to give the Australian Heritage Council true independence from the Minister to assess places of national heritage value and place them on the National Heritage List.

Register of the National Estate

The Bill makes no provision for those items currently listed on the Register of the National Estate. For the last 20 years, the Commission has worked to identify, conserve and promote the National Estate. The Register of the National Estate now includes more than 12,000 places of natural, indigenous and historic importance. Given the considerable investment by the community and government it is paramount that those items currently on the Register of the National Estate should be recognised for their significance by either the new National Heritage List, or be recommended for incorporation on State Heritage Registers or Local Heritage Registers.

The Australian Heritage Council (Consequential and Transitional Provisions) Bill 2000 repeals the Australian Heritage Commission Act under which it is promulgated. As a consequence the provisions of that Act will no longer apply to Commonwealth entities. This will leave a legislative vacuum, as no places with national estate values will have protection from the development aspirations of Commonwealth entities that own such places. In this regard all items currently listed on the Register of the National Estate should be afforded the same protection as currently exists under Section 30 of the Australian Heritage Commission Act until there is a rigorous review of all items on the Register for potential inclusion on the National Heritage List and Commonwealth Heritage List. For example, some 830 hectares of the Australian Defence Industries (ADI) site at St Marys is included on Register of the National Estate. Council cannot be assured that that part of the ADI site currently listed will be transferred in its entirety (or in part) to the new National Heritage List.

Request

- ◆ Penrith City Council requests that the Environmental Protection and Biodiversity Bill and the Australian Heritage Council (Consequential and Transitional Provisions) Bill 2000 be amended to maintain the current Register of the National Estate until it is reviewed and qualified national heritage places within it are transferred to the new National Heritage list. A time frame for this review should also be specified in the Bill. In the interim, the places on the Register of the National Estate should receive at least the same protection that they currently have.
- ◆ Council is also of the opinion that greater statutory authority should be afforded to the new national Heritage List to ensure that State Government respects the status of that listing. This would prevent the State permitting development of items listed on the Register of the national Estate with due consideration of their national significance. This has occurred on the ADI Site at St Marys.

4 . 0 C O N C L U S I O N

This submission has outlined a number of problems with the Bills to change the heritage regime. In their current form they fail to provide for a truly independent Australian Heritage Council that is able to respond to community concerns and direct its resources to assess and protect the nation's heritage places as it sees fit. The Minister is over-empowered and will be able to exercise inappropriate control over the assessment and listing of national heritage places. The resulting politicisation of the assessment and protection of the national heritage places is not in the best interests in the conservation of the nation's heritage and its cultural identity.