



**CHAIRMAN**

Ms Andrea Griffiths  
Secretary  
ECITA References Committee  
S1.57 Parliament House  
CANBERRA ACT 2600

Dear Ms Griffiths

I am writing to you in relation to the Inquiry by the Australian Senate Environment and Communication, Information Technology and the Arts Reference Committee on the establishment of a “new Commonwealth heritage regime” through the *Environment and Heritage Legislation Amendment Bill (no. 2) 2000, Australian Heritage Council Bill 2000, Australian Heritage Council (Consequential and Transitional Provisions) Bill 2000*.

My organisation, the Aboriginal and Torres Strait Islander Commission (ATSIC), represents Australian Indigenous people in international forums and nationally, and has previously been involved in making representations to this Committee to ensure Indigenous rights are protected. ATSIC is also involved as a key player in the Indigenous leadership in concurrent consideration and negotiation with Senator Hill and his advisers from the Department of Prime Minister and Cabinet over amendments to the *Aboriginal and Torres Strait Islander Heritage Protection Bill 1998* (ATSIHP Bill). Committee members would be aware that ATSIC successfully administered the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSIHP Act) and provided principal advice to Government until this responsibility was stripped from ATSIC and transferred to Environment Australia.

In summary ATSIC’s submission will cover the following key matters:

- the lack of adequate consultation about these amendments and ATSIC also seeks the Committee's view on the interaction with the ATSI Heritage Protection Bill particularly since many sites on the National Estate are Indigenous sites worthy of greater Commonwealth protection in the National Interest and under the Commonwealth’s Constitutional powers and duties in s 51(26) of the Australian Constitution
- ATSIC’s grave concerns about the statutory list of the National Estate including nominated sites, **not** being protected under any interim measures in the "New Commonwealth Heritage Regime" amendments to the EPBC Act and in the repeal of the *Australian Heritage Commission Act 1975* (AHC Act). Many Aboriginal sites have a degree of statutory protection under the AHC Act that is of grave concern to ATSIC’s constituents in the event that minimal protection were to

disappear if Parliament agreed to repeal the AHC Act under the current terms of the new Commonwealth Heritage Regime,

- concern over the ease of removal of sites from the Commonwealth lists or the National Lists once those lists are in place at the Ministers pleasure using his discretion if he satisfies him or herself “that it is necessary in the interests of defence and security to do so”
- concern about a purported list of the sites that the Department has assessed that might go on the National list or Commonwealth list and what criteria the Department used and why there was little or no negotiation with Indigenous communities about these lists and establish what happened to reported assurances given in limited discussions with some Indigenous groups that the new regime would protect Indigenous sites by listing as Commonwealth Constitutional sites
- The further erosion our Indigenous rights through the potential handing over of Commonwealth responsibilities to the States and Territories in relation to Aboriginal sites through bilateral agreements without adequate Commonwealth standards of accreditation,
- the lowering of standards of independence for the proposed Australian Heritage Council (AHC) through appointments of members by the Minister that could be perceived as politically motivated without proper representation of the regional basis of Indigenous people and ATSIC’s elected representatives; inadequate provisions for resources and suitable protections to exercise functions and powers impartially and is severely limited as it is only required to give advice if the Minister requests it
- the almost complete disregard for recommendations flowing from the National Heritage Convention held in 1998 and the Evatt Review report on the ATSI Heritage Protection Act.

ATSIC stresses that the Bills in their current form should not be passed. Considerable consultations and work will need to be put into the Bills to make them workable unless a simpler way can be found to achieve a similar result of protection of our vital heritage in the National Interest and in this, the Centenary year of Federation . Perhaps a simple addition of another “matter of national environmental significance” could be contemplated for sites entered on the existing Register of the National Estate and other Indigenous sites and heritage. **In this much more simplified way, any Indigenous sites or heritage, whether on a National List or Commonwealth list, or that becomes identified, will be afforded protection under the EPBC Act as a matter of national environmental significance and thereby fulfil Australia’s International and national constitutional obligations.**

I trust that this paper will assist the Committee to ensure that any new Commonwealth Heritage regime receives the special attention required to protect our vital cultural heritage. I am sure that Committee members will agree with ATSIC and recognise that it is also in the National Interest to protect all our Indigenous sites and Heritage. That will certainly lead Australia in a positive reconciliation direction away from the view of Australia as an “old country” economy that disregards the unique indigenous rights of its first peoples.

I thank the Committee for the opportunity to present this submission on behalf of  
ATSIC.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Geoff Clark', with a large loop at the bottom left and a vertical stroke extending upwards.

Geoff Clark  
9 February 2001

**ATSIC SUBMISSION TO THE SENATE ENVIRONMENT,  
COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE  
ARTS REFERENCES COMMITTEE (SECITAC) INQUIRING INTO  
THE ESTABLISHMENT OF A NEW COMMONWEALTH HERITAGE  
REGIME BY THE *ENVIRONMENT AND HERITAGE LEGISLATION  
AMENDMENT BILL (NO. 2) 2000, AUSTRALIAN HERITAGE COUNCIL  
BILL 2000, AUSTRALIAN HERITAGE COUNCIL (CONSEQUENTIAL  
AND TRANSITIONAL PROVISIONS) BILL 2000.***

**Executive Summary**

- 1. ATSIC is concerned about the lack of adequate consultation about these amendments and ATSIC seeks the Committee's view on the interaction with the ATSI Heritage Protection Bill particularly since many sites on the National Estate are Indigenous sites worthy of greater Commonwealth protection in the National Interest and under the Commonwealth's Constitutional powers and duties in s 51(26) of the Australian Constitution**

***Recommendation 1***

**The Committee should report to Parliament that further consultations around Australia should be conducted to ensure that Indigenous people are fully aware of the implications about any new Heritage Regime and are given ample opportunity to make an informed decision through their representative bodies**

- 2. ATSIC's holds grave concerns about the statutory list of the National Estate including nominated sites, not being protected under any interim measures in the "New Heritage Regime" amendments to the EPBC Act and in the repeal of the *Australian Heritage Commission Act 1975* (AHC Act). Many Aboriginal sites have a degree of statutory protection under the AHC Act that is of grave concern to ATSIC's constituents if it were to disappear if Parliament agreed to repeal that Act.**

***Recommendation 2***

**The Committee should report to Parliament that all sites currently listed on the National Estate and the Interim List ought to automatically be listed in either the National List or the Commonwealth List depending on whether the site is on Commonwealth Land or not, and become Matters**

of National Environmental Significance.

Further, the Committee should report to Parliament that the new Heritage Regime should be amended in order that it will list all Indigenous sites and Heritage as matters of National Environmental Significance under the EPBC Act

3. the ease of removal of sites from the Commonwealth lists or the National Lists once those lists are in place at the Ministers pleasure using his discretion rather than being subject to full Parliamentary Scrutiny if he satisfies him or herself “that it is necessary in the interests of defence and security to do so”

*Recommendation 3*

The Committee should report to Parliament that the new Heritage Regime should be amended in order that the removal of sites from the National or Commonwealth lists ought to be only permitted through a disallowable instrument subject to full Parliamentary scrutiny. This would be in accord with the National Interest provisions of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALR Act). In addition, to give effect to the “precautionary principle” in the EPBC Act, ATSIC strongly supports the principle that sites being entered onto a list ought not be subject to a disallowable instrument.

4. Investigation of any list of sites that the Department has assessed, or is assessing or has compiled that might be considered to go onto the National list or Commonwealth list ought to be made public along with the criteria used for any assessment used for acceptance or rejection. The reasons why there was little or no negotiation with Indigenous communities in the compilation of these purported lists ought to be more fully investigated. Investigate what happened to the assurances given in limited discussions with some Indigenous groups that the new regime would protect Indigenous sites by listing as Commonwealth Constitutional sites

*Recommendation 4*

The Committee should investigate any assessments being conducted by the Department and make public any compiled lists of acceptable sites for entering on the proposed National list or the Commonwealth list and include any list of sites rejected for listing and include the criteria used for any such compilations. The Committee should also investigate the reasons for the lack of consultation and negotiations with Indigenous people in the compilations of those lists. It should also investigate what happened to the reported assurances given in limited discussions with

some Indigenous groups that the new regime would protect Indigenous sites by listing as Commonwealth Constitutional sites

5. **The further erosion our Indigenous rights through the potential handing over of Commonwealth Constitutional responsibilities to the States and Territories in relation to Aboriginal sites through bilateral agreements without adequate Commonwealth standards of accreditation**

*Recommendation 5*

The Committee should ensure that Indigenous rights are not eroded by allowing Indigenous sites and Heritage to be dealt with by States and Territories under the EPBC Act without adequate accreditation standards. The Committee could establish “best practice” standards employing the “precautionary principle” in Commonwealth accreditation standards that should, as a bottom line, in consultation with Indigenous representatives, reflect the recommendations made in the Evatt Review and the National Heritage Convention held in 1998.

6. **the lowering of standards of independence for the Australian Heritage Council (AHC) through appointments of members by the Minister that could be perceived as politically motivated without proper representation of the regional basis of Indigenous people and ATSIC’s elected representatives; inadequate provisions for resources and suitable protections for the AHC and its members to exercise functions and powers impartially and is severely limited as it is only required to give advice if the Minister requests it**

*Recommendation 6*

The Committee should recommend to Parliament that membership and the qualifications of members on any Australian Heritage Council should reflect the underlying goal to protect Australia’s heritage, the regional nature of Indigenous representation and also include Elected member(s) of the ATSIC Board and not be limited to Ministerial appointments. The AHC should also be properly resourced in order that it can continue to effectively exercise its heritage identification and protection functions impartially with similar separation of powers and protections as the Aboriginal Land Commissioners enjoy as Statutory Officers under the ALR Act. The AHC ought to be empowered to provide advice when it sees fit to do so.

7. **the almost complete disregard for recommendations flowing from the National Heritage Convention held in 1998 and the Evatt Review report on the ATSIHP Act.**

***Recommendation 7***

**The Committee should revisit the recommendations of the National Heritage Convention and the Evatt Review and refer these matters to Parliament in its report.**

## Introduction

There are few issues of greater importance to indigenous people than the protection of indigenous cultural heritage. Significant intangible heritage, areas and objects form an irreplaceable cultural and physical link between the past and present for the vast majority of indigenous people. The protection of these areas and objects represents an acknowledgment of their profound personal and social relevance to the people and their irreplaceable contribution to the heritage of the nation. At the same time, protection provides an important safeguard to the maintenance and regeneration of indigenous culture and demonstrates an acceptance and respect for cultural differences which are the hallmarks of reconciliation.

ATSIC understands that the proposed legislation will establish a mechanism for the identification of heritage places of national significance. Such places will be entered on a National Heritage List and if on Commonwealth areas they will be entered onto a Commonwealth list. But the current list of sites on the National Estate will no longer be a statutory list.

These initially “empty” lists under the new Commonwealth Heritage Regime are later, to consist of natural, historic and indigenous places that are of outstanding national heritage significance to the nation as a whole if and when the Minister exercises his discretion to place sites on the lists. From the Second Reading speeches of 7 December 2000 we are told that the listing process will be open and transparent and will include a mechanism for consideration of public nominations. The Minister will be guided in his or her decision-making by advice from an independent body of heritage experts - the Australian Heritage Council - which will be established as a separate statutory authority. ATSIC asks why there has been precious little consultation and negotiation with Indigenous people before this legislation was introduced into Parliament. Where is the demonstration of openness and transparency in this legislative process?

ATSIC notes that places on the National and Commonwealth Lists under the new Commonwealth Heritage Regime will be identified under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC) as matters of national environmental significance. Despite this, at the same time, under the EPBC regime, it will allow the Commonwealth to hand over its responsibilities for listed heritage sites to the States under bilateral agreements that are not subject to full Parliamentary scrutiny and we would submit, also have inadequate accreditation standards for bilateral agreements.

Of greater concern to ATSIC and its Indigenous constituents is that the legislative package repeals the *Australian Heritage Commission Act 1975* (AHC Act) and it does not automatically list all Indigenous sites and Heritage to afford a degree of protection under the EPBC Act as a bottom line. With the repeal of the AHC Act, the Register of the National Estate (RNE) will no longer be a statutory register. However, we are told in the Second reading Speech that the information on the Register “*will be used as a valuable source of information in considering the effect of proposed actions under the EPBC Act*” and “*it will also continue to be publicly available as a heritage information resource*”. The provisions of the legislative package, while defining the “National Estate”, does not specifically indicate that the list will not be a Statutory list. It is not absolutely clear from the provisions of the Bills that the National Estate list will be thrown out with the bath water from statutory protection as legislative dross. This signals to the electorate that the 25 years of work



conducted by the AHC to compile a formidable national list of 13,000 sites all over Australia, that many Australian's would be proud of, was of little value other than "for information only". It should be noted that the United Kingdom and the US both have many more heritage sites listed for protection than Australia's Register of the National Estate (RNE).

This new "Heritage regime" has failed to accept nor incorporate, Australian Heritage Commission's, ATSIC's and other NGO's significant resolutions to the 1998 National Heritage Convention. For example one key recommendation was that the Commonwealth should not accredit State and Territory government processes for identification, listing and management of Indigenous heritage. These Bills go counter to that recommendation, and numerous others (See **Appendix A**). There is a major need to improve Indigenous heritage protection through tighter EPBC amendments to strengthen low Commonwealth accreditation standards and practices.

A related Bill that was not referred to the Senate Standing Committee was the *Environment and Heritage Legislation Amendment (Application of Criminal Code) Bill 2000* which among other things applies the Criminal Code to offences under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. This and other Acts which it covers appear to have lower level of fines and penalties than the offences under the EPBC Act. This bill also expands the defences and removes the term "recklessly" from previous offence provisions in certain acts.

This submission details the basis of ATSIC's concerns in relation to each of the key points but ATSIC would be quite happy to provide any supplementary submission if the Committee so desired.

## **A Treaty**

Committee members will be aware that ATSIC is committed to the pursuit of a full national debate that will lead to an agreement. That will require the determination of authority and control indigenous people can have over our own destinies. The Treaty process will identify rights to determine our own laws, practice our own cultures and live our own way of life and includes hunting and gathering. ATSIC envisages a campaign towards achieving an agreement, or agreements, based on principles that historically connect us to our heritage. Our economic, moral and cultural obligations to ourselves, as well as others, to ensure a continuing future for ourselves in this country will need to unfold from this process. The treaty would Establish how the traditional authority of our family structures and elders should best fit with the laws and institutions imposed by our colonisers. Agreed boundaries of a compact, whether at national, state or local levels ought to be negotiated with appropriate Constitutional Change and a Bill of Rights which establishes the full spectrum of our vibrant Indigenous cultural heritage. This new Commonwealth Heritage Regime has failed in a number of respects to demonstrate the good faith required in any negotiated settlement. That faith can be restored if the Committee reports to Parliament to support the inclusion of Indigenous sites and Heritage as matters of national environmental significance and ensure that protection of these sites is considered to be in the National Interest.

## **International and National policy and Conventions**

The Committee would be aware that International conventions and treaties signed by the Executive and later ratified by the Australian Parliament gave substance to the international

imperatives for environmental protection. These ratified treaties and conventions placed the inherent international obligations firmly on the shoulders of the Commonwealth. The States were not subject to these international initiatives except to the extent required through the inconsistency test applying to State laws under s 109 of the Constitution. One such international protocol is *Agenda 21* steering the Global community to an intensified process of global democratisation seen as essential for the 21st Century. It was one of 5 documents agreed to during the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in June 1992 and signed by 179 Heads of Government as a blueprint for sustainable development in the 21st Century aimed at providing a high quality environment and healthy economy for all the peoples of the world<sup>1</sup>.

It is worth reiterating what ATSIC referred to this Committee on to the Jabiluka mine consents process in relation to national policy development and the international obligations. The same holds for this Senate inquiry. ATSIC said then, that:

in our view, (it will) require a fresh examination as to whether the rights of Aboriginal people are adequately protected. That examination needs to consider Australia's international obligations are met not only under the World Heritage Convention but also under the Convention for the Elimination of all forms of Racial Discrimination (CERD) and the International Convention for Civil and Political Rights (ICCPR) and other related international covenants. The Senate would be aware of the submission made by ATSIC to the CERD committee recently. This Jabiluka issue illustrates some of the points made in that submission in relation to the chapter dealing with Land Rights and the difficulty that Aboriginal traditional owners have in asserting their rights over their traditional lands.

The Government's response to the Senate Standing Committee Report into Uranium Mining and Milling in Australia tabled in Parliament on 13 May 1998 stated in relation to Conclusion/Recommendation 4 : *Uranium mining, where it is permitted, should only occur under the strictest conditions for the protection of the environment* stated:

*"The Government accepts this recommendation and notes projects may only operate under best practicable technology. Consistent with its policy commitment, the Government considers proposals for the development of new uranium mines. **Projects need to satisfy stringent assessments of their potential environmental and heritage impacts including full consultations with Aboriginal interests involved to ensure their views are taken into account and their legal rights are not diminished.**"*

Also in response to Conclusion/Recommendation 27 *Governments, mining companies and Aboriginal organisations should consider negotiation of comprehensive statements of agreement within which partnerships can develop to consolidate economic and social benefits within a context of respect for indigenous culture, customs and ways of life*, the Government stated:

*The Government's policy is that where Aboriginal interests are involved, **the Government is committed to ensuring full and appropriate consultation with affected Aboriginal communities with their views being taken into***

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<sup>1</sup> *Agenda 21* United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in June 1992 and signed by 179 Heads of Government

*account in accordance with applicable law. Aboriginal and cultural issues are considered in the Environmental Impact Statement process for new projects. The Government believes these matters are most appropriately considered on a case-by-case basis by relevant stakeholders.*

It is also worthwhile to underscore the concluding remarks made by the Mirrar Gundjehmi to the 23 of June 1997 meeting of the World Heritage Committee.

In that submission the Mirrar concluded that indigenous rights and their recognition result from a strong respect for the cultural heritage basis of Aboriginal people. A declaration at the UNESCO Conference held in San Jose, Costa Rica in 1981 provides the guiding principles and definitions of “ethno-development” as “an inalienable right of indigenous groups”. That declaration defines “ethno-development”, which is given the status of “an inalienable right of indigenous groups” as:

*“The amplification and consolidation of a culturally distinct society’s own culture, through the strengthening of its capacity to guide its own development and exercise self-determination...and implying an equitable and proper organisation of power. This means that the ethnic group is a political administrative entity, with an authority over its own territory and decision making power in areas constituting its project of development, within an expanding process of autonomy and self management.”*

These principles are also reflected in various articles of other conventions such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the ICCPR. Article 1.1 of both the ICESCR and ICCPR upholds the rights of all peoples to self determination. The Mirrar submission argued that ***“the World Heritage Convention is part of an extensive network of international obligations and principles designed to defend the cultural heritage of indigenous people.”***

Of significant note in this regard is the reference to Article 27 of the ICCPR which states:

*“In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”*

The ILO Convention 169 Concerning Indigenous and Tribal peoples in independent Countries (ILO 169) although not ratified by Australia, in the 7<sup>th</sup> paragraph of the preamble affirms:

*“The distinctive contributions of indigenous and tribal people to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding.”*

ATSIC is also very heartened to hear the UNESCO Director General, Koichiro Matsuura, warning that culture can be threatened by globalisation and exploited in situations of conflict. Only a few months ago while launching the *World Culture Report 2000 – Cultural Diversity, Conflict and Pluralism*, he said:

“The speed of social and economic change often goes counter to the rhythms of culture...UNESCO and its many partners have an urgent task in seeking ways of preserving languages, customs, arts and crafts of the communities most vulnerable to sweeping change”

That report flags UNESCO’s response to the danger that the traditional views of culture, centered around monuments and “leading” civilisations, is too narrow. ATSIC shares this view that a eurocentric domination of any listing will be absolutely discriminatory to the very basis of Australia’s Indigenous heritage and its people.

ATSIC’s own report, *Our Culture : Our Future* lists the rights Indigenous peoples need in relation to their Cultural and Intellectual Property that needs incorporation into standards in criteria and indicators for World Heritage listing and management. In summary it says, we need to be empowered with negotiation rights regarding the use of our cultures and be recognised as the primary guardians and interpreters of our sciences, whether created in the past, or developed by us in the future. Prior informed consent for access, use and application of Indigenous cultural and intellectual property, including cultural knowledge and environment resources is required. We need to control management of Indigenous areas on land and sea. We need to preserve and care, protect, manage and control Indigenous cultural objects, Indigenous ancestral remains, Indigenous cultural resources such as food resources, ochres, stones, plants and animals. We also want to control the disclosure, dissemination, reproduction and recording of Indigenous knowledge, ideas, and innovations concerning medicinal plants, biodiversity, and environmental management.<sup>2</sup>

These Bills in their current form, do not even pay lip service to these nationally and internationally established guiding principles. The Bills also fail to cover protection of “intangible” heritage and are inextricably linked to tangible sites, places and objects. There is very little room for this folklore and traditional law values that serve as the basis of significance of most sites.

### **1. Lack of Consultation and opportunity for informed decisions for matters that are in the National Interest and are Commonwealth obligations under section 51(26) of the Constitution.**

ATSIC is concerned about the lack of adequate consultation about these amendments and ATSIC seeks the Committee's view on the interaction with the ATSI Heritage Protection Bill particularly since many sites on the National Estate are Indigenous sites worthy of greater Commonwealth protection in the National Interest and under the Commonwealth’s Constitutional powers and duties in s 51(26) of the Australian Constitution

It is ironic and very disappointing that on the day before the Bills were introduced into Parliament, representatives of the Indigenous leadership, including myself as the Chairman of ATSIC, were meeting with the Minister Hill on the *Aboriginal and Torres Strait Islander Heritage Protection Bill 1998* and not one word was uttered by the Minister or his advisers about a new Heritage regime being introduced into Parliament on the next day. That is the level of consultation that Indigenous people in Australia are learning to expect from this Government. It is also one reason that the Australian Government is attracting so much attention from International forums that brings the country into disrepute as an “old country”

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<sup>2</sup> ATSIC’s Report on Australian Indigenous Cultural and Intellectual Property – *Our Culture : Our Future*, 1999

economy that has regularly failed to reconcile its harsh treatment and disregard of its original Indigenous people. Australia needs to recognise, encourage and protect the unique rich Indigenous cultural heritage. This is an opportunity for significant reconciliation that should not be lost through haste to beat an election deadline. Despite reported attempts by the Department of Heritage and Environment to hold a number of consultations over a period of time, ATSIC received feedback of from its Indigenous constituents that they were not consulted and this is not in accord with the requirements for informed decisions in equity legislation. One briefing session attended by ATSIC at the National Gallery was a generalised view of the concept of a new Commonwealth heritage regime and there was no discovery draft of the Bill at the time. Very little articulation with the ATSIHP Act and Bill was evident at that briefing.

While the heritage amendments to the EPBC Act are before Parliament, it would be important to detail the impact on the whole Indigenous heritage regime and consider those in context with the ATSIHP Bill negotiations and on the ground protection of Indigenous sites and heritage in the interim.

### ***Recommendation 1***

**The Committee should report to Parliament that further consultations around Australia should be conducted to ensure that Indigenous people are fully aware of the implications about any new Heritage Regime and are given ample opportunity to make an informed decision through their representative bodies**

## **2. Failure to automatically list all sites on the Register of the national Estate**

ATSIC's holds grave concerns about the statutory list of the National Estate including nominated sites, not being protected under any interim measures in the "new Commonwealth heritage regime" amendments to the EPBC Act and in the repeal of the *Australian Heritage Commission Act 1975* (AHC Act). Many Aboriginal sites have a degree of statutory protection under the AHC Act that is of grave concern to ATSIC's constituents if it were to disappear if Parliament agreed to repeal the AHC Act.

There are currently about 13,000 sites on the RNE. Many of these are Indigenous sites or consist of Aboriginal Land. With the repeal of the AHC Act, the Register of the National Estate will no longer be a statutory register. However, we are told in the Second reading Speech that the information on the Register will be used as a valuable source of information in considering the effect of proposed actions under the EPBC Act and it will also continue to be publicly available as a heritage information resource. The provisions of the legislative package, while defining the "National Estate", does not specifically indicate that the list will not be a Statutory list (see **Appendix B**). The wording of the provisions does not mean that sites on the RNE will automatically go on the Commonwealth list and the Second Reading Speech provides guidance in that interpretation in that it states: "**With the repeal of the Australian Heritage Commission Act 1975, the Register of the National Estate will no longer be a statutory Register**". It is not absolutely clear from the actual provisions of the Bills that the National Estate list will be thrown out with the bath water from statutory

protection as legislative dross. This signals to the electorate that the 25 years of work conducted by the AHC to compile a formidable national list of 13,000 sites all over Australia, that many Australian's would be proud of, was of little value other than "for information only".

It should be noted that the United Kingdom and the US both have many more heritage sites listed for protection than Australia's Register of the National Estate (RNE). Australia appears to be retreating backwards yet again when measured against these more progressive trends. ATSIC also understands that the Department is compiling a list of sites to be considered by the Minister to place on the lists and it currently consists of about 700 sites out of the total 13,000. That represents about 5% of all sites on RNE and we believe this process is being conducted behind closed doors rather than in an open and transparent way as implied in the Second Reading Speech of 7 December 2000 that was read into the Senate by the Manager of Government Business in the Senate, Senator the Hon Ian Campbell. The criteria for selection or rejection is not available. There will be a 6 months hiatus of nil protection for sites on the RNE until the Minister decides to use a discretionary power to add some of these to the new Heritage Regime Lists. ATSIC and its constituents are concerned that lifting this minimal protection that sometimes is viewed as "moral protection", will potentially open the flood gates for damage to heritage sites and their disposal to third parties without any protection apart from questionable implied protections from the broader definition of the "environment" in the EPBC Act.

For example, Ranger and Jabiluka uranium mine facilities are located on Aboriginal land in close proximity to AHC Listed sacred sites and the Boyweg Almudj Sacred Site. The Jabiluka Mineral Lease contains approximately 230 art, archaeological and sacred sites. The vast majority are within the Djawumbu-Madjawarna site complex, which is listed on the Register of the Register of the National Estate under the AHC Act and protected within two designated Australian Heritage Commission (AHC) exclusion areas. This includes Malakunanja II, currently the oldest dated archaeological site in Australia (50,000-60,000 years). Committee members will be aware of the intense interest in these sites by the UNESCO World Heritage Committee (WHC). With these significant alterations in the legislative regime proposed in Kakadu one would expect that the Senate Committee would be advising the WHC of its view. ATSIC is advised that the traditional owners in this area have not been consulted about these legislative changes.

Another example is in Jervis Bay Territory where most of the Territory is listed on the RNE and about 87% of it is Aboriginal land. It has Defence lands and other leases that would have the thin veil of protection provided by listing on the RNE lifted with the repeal of the AHC Act. This would allow for disposal of these lands to third parties despite its environmental and Indigenous cultural heritage. ATSIC understands that the Department of Territories is considering avenues for freehold transfer of land to allow for privatisation of some of the infrastructure provided to the Territory and this could prove to be detrimental to the Aboriginal owners of most of this RNE listed property. ATSIC is also advised that there has been no consultation with the traditional owners of this community.

Section 34 inserts the following definition into Section 528 of the EPBC Act:

***indigenous heritage value*** of a place means the heritage value of the place that is of **particular significance to indigenous persons in accordance with their traditions**

It is ATSIC's view that all Indigenous sites and heritage, including intangible heritage, ought to be capable of being entered onto the National and Commonwealth lists subject only to informed decisions from Indigenous people if the locations need to be specified.

### ***Recommendation 2***

**The Committee should report to Parliament that all sites currently listed on the National Estate and the Interim List ought to automatically be listed in either the National List or the Commonwealth List depending on whether the site is on Commonwealth Land or not and become Matters of National Environmental Significance.**

**Further, the Committee should report to Parliament that the new Heritage Regime should be amended in order that it will list all Indigenous sites and Heritage as matters of National Environmental Significance under the EPBC Act**

### **3. Ease of removal of sites from National and Commonwealth lists in the interests of defence and security**

ATSIC views with concern the ease of removal of sites from the Commonwealth lists or the National Lists once those lists are in place at the Ministers pleasure using his discretion rather than being subject full Parliamentary Scrutiny if he satisfies him or herself "that it is necessary in the interests of defence and security to do so"

Justice Woodward in his early 1970's Commission into Aboriginal Land Rights clearly expounded the view that to over ride the exercise of veto to mining on Aboriginal land should only be if the mining was in the National Interest. The over-ride was for eventualities such as national emergencies and it was not to be used for more trivial matters such as the economic status of any corporation or employment. However to safeguard the process for such an over-ride, Woodward recommended that the instrument to over-ride the veto ought to be a disallowable instrument and Parliament ensured that the provisions of the ALR Act had that check and balance provided by full Parliamentary scrutiny. ATSIC submits that similar checks and balances and Parliamentary scrutiny ought to apply to defence of security matters also in the new Commonwealth Heritage regime.

#### **324J Removal of places or national heritage values from the National Heritage List**

(1) The Minister may only remove a place from the National Heritage List if the Minister is satisfied that:

- (a) the place does not have any national heritage values; or
- (b) it is necessary in the interests of Australia's defence or security to do so.

Note: A place may also be removed from the National Heritage List under section 324H(2).

(2) The Minister may only remove one or more national heritage values specified in the National Heritage List for a national heritage place if the Minister is satisfied that the place no longer has the national heritage value or values.

(3) The Minister may remove a place, or a national heritage value specified for a place, by instrument published in the *Gazette*.

(4) The instrument is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* unless the instrument removes the place only because of paragraph (1)(b) (Australia's defence of security).

(2A) If, in making an assessment, the Australian Heritage Council considers that the place might have indigenous heritage value, it must:

(a) ask the Director of Indigenous Heritage Protection to provide written advice on the places indigenous heritage value:

(i) within 40 business days if the Minister asked for the assessment under section 324D; or

(ii) within 20 business days if the Minister asked for the assessment under section 324E (emergency listing); and

(b) if the Director provides the advice on time consider the advice and include a copy of it in the assessment.

Note: This item will only commence after the commencement of section 9 of the Act that establishes the Director of Indigenous Heritage Protection (see section 2 of this Act).

ATSIC believes that the referral to the Director of Indigenous Heritage Protection if Parliament passes the ATSIHP Bill is not an adequate protection for sites to be removed from the Heritage lists where defence of security is at issue since there will be no Parliamentary scrutiny.

In addition, to give effect to the "precautionary principle" in the EPBC Act, ATSIC strongly supports the principle in this new regime that sites being entered onto a list ought **not** be subject to a disallowable instrument. In that way the trend will be, that Heritage will be protected rather than be incrementally exposed to damage.

### ***Recommendation 3***

**The Committee should report to Parliament that the new Heritage Regime should be amended in order that the removal of any sites from the National or Commonwealth lists ought to be only permitted through a disallowable instrument subject to full Parliamentary scrutiny. This would be in accord with the National Interest provisions of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALR Act). In addition, to give effect to the "precautionary principle" in the EPBC Act, ATSIC strongly supports the principle that sites being entered onto a list ought not be subject to a disallowable instrument.**

## **4. Proposals for sites to go on National and Commonwealth lists**

Investigation of any list of sites that the Department has assessed, or is assessing or has compiled that might be considered to go onto the National list or Commonwealth list ought to be made public along with the criteria used for any assessment used for acceptance or rejection. The reasons why there was little or no negotiation with Indigenous communities in



the compilation of these purported lists ought to be more fully investigated. ATSIIC submits that the Committee ought to establish what happened to the assurances given in limited discussions with some Indigenous groups that the new regime would protect Indigenous sites by listing as Commonwealth Constitutional sites. This limited listing for sites to go on the National and Commonwealth lists points more to the 12,000 or so sites that are being rejected by this unclear and non-transparent process.

The Bills provide for very limited nomination criteria that relates to one or more heritage values of a place, that are yet to be prescribed in regulations. This does not follow the “precautionary principle” enacted in the EPBC Act which is to act as the basis of protection for heritage sites. Hypothetically, a hostile house of Parliament could continue disallowing a regulation on the meaning of national heritage values leaving the national list devoid of any sites for considerable period of time.

#### 324D Nominations of places

(1) A person may, in accordance with the regulations (if any), nominate to the Minister a place for inclusion in the National Heritage List.

(2) Within 20 business days after receiving a nomination of a place, the Minister must:

(a) ask the Australian Heritage Council for an assessment of the places national heritage values under section 324F; or

(b) advise the person who made the nomination of the Ministers decision not to include the place in the National Heritage List and of the reasons for that decision.

Note: However, the Minister may, in an emergency, include the place in the National Heritage List before asking for an assessment under section 324F (see section 324E).

#### 324C Meaning of *national heritage values*

(1) A place has one or more *national heritage values* only if it meets one or more of the criteria for national heritage values prescribed in the regulations for the purposes of this section. The criteria may deal with natural, indigenous, historic, or any other, heritage value.

Note: For *indigenous heritage value*, see section 528.

(2) The *national heritage values* of a national heritage place are the national heritage values specified for the place in the National Heritage List.

### ***Recommendation 4***

**The Committee should investigate any assessments being conducted by the Department and make public any compiled lists of acceptable sites for entering on the proposed National list or the Commonwealth list and include any list of sites rejected for listing and include the criteria used for any such compilations. The Committee should also investigate the reasons for the lack of consultation and negotiations with Indigenous people in the compilations of those lists. The Committee ought to establish what happened to the reported assurances given in limited discussions with some Indigenous groups that the new regime would protect Indigenous sites by listing as Commonwealth Constitutional sites**

## **5. Inadequate Commonwealth standards of accreditation for states and territories in EPBC Act**

ATSIC is concerned about the further erosion our Indigenous rights through the potential handing over of Commonwealth Constitutional responsibilities to the States and Territories in relation to Aboriginal sites through bilateral agreements without adequate Commonwealth standards of accreditation. There is very little Parliamentary scrutiny of the Bilateral agreements and if the recently announced Bilateral agreement with Tasmania is anything to go by, the process involved placing a draft on the EA Web pages, placing notices of intention and then executing the agreement with little or no Parliamentary scrutiny. There did not appear to be any disallowable Plan of management associated with this Bilateral agreement as a necessary precursor prior to execution of the Agreement. This cannot be allowed to continue for our vital Heritage, environment and in particular, Indigenous heritage in which the Commonwealth Constitutional obligation is paramount. The exercise of Ministerial discretion for such important matters, without Parliamentary scrutiny, cannot be countenanced.

**34BA Declarations relating to national heritage places**

**51A Agreements relating to national heritage places**

**Minister may enter into a bilateral agreement containing a provision relating to a national heritage place**

(1) The Minister may make a declaration under section 33 relating to a national heritage place only if:

- (a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the national heritage management principles; and
- (b) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management plan under section 33 for the purposes of such a declaration only if he or she is satisfied that the management plan will promote the management of the place concerned in accordance with the national heritage management principles

### ***Recommendation 5***

**The Committee should ensure that Indigenous rights are not eroded by allowing Indigenous sites and Heritage to be dealt with by States and Territories under the EPBC Act without adequate accreditation standards. The Committee could establish “best practice” standards employing the “precautionary principle” in Commonwealth accreditation standards that should, as a bottom line, reflect the recommendations made in the Evatt Review and the National Heritage Convention held in 1998 in consultation with Indigenous representatives.**

## **6. Low standards of independence for the Australian Heritage Council**

ATSIC believes that the standards of independence for the Australian Heritage Council (AHC) are too low in the new Commonwealth Heritage Regime. Appointments of members by the Minister could be perceived as politically motivated without proper representation of

the regional basis of Indigenous people. The council of 6 may be too small to adequately represent such a wide geographical area and the qualifications of membership of the AHC need to be much more specific so that the individual area of interest should include a demonstrated commitment to heritage protection. The Indigenous representatives would need to include ATSIC's elected representatives as a bottom line.

#### Membership

s7 provides for a 6 member Council appointed by Minister 2 with experience of Natural heritage, 2 with experience of historic heritage and paragraph (c) states that "*there are 2 members who have experience or expertise concerning indigenous heritage, one of whom represents the interests of indigenous people*".

ATSIC also believes that the Bills contain inadequate provision for resources and suitable protections for the AHC to exercise functions and powers impartially. The Council is also severely limited as it is only required to give advice if the Minister requests it! It is not empowered to give advice without fear or favour if it receives referrals from other quarters and believes that certain heritage matters ought to be brought to the attention of the Minister for action.

s5 These are the functions of the Council:

- (a) to make assessments **requested by the Minister** under the *Environment Protection and Biodiversity Conservation Act 1999*;
- (b) to advise the Minister, **on request**, on conserving and protecting places included, or being considered for inclusion, in the National Heritage List or Commonwealth Heritage List;
- (c) to advise the Minister, **on request**, on matters relating to heritage including the following:
  - (i) promotional, research, training or educational activities;
  - (ii) national policies;
  - (iii) grants or other financial assistance;
  - (iv) the monitoring of the condition of places included in the National Heritage List or Commonwealth Heritage List;
  - (v) the Commonwealths responsibilities for historic shipwrecks;
- (d) to nominate places for inclusion in the National Heritage List or Commonwealth Heritage List;
- (e) to perform any other functions conferred on the Council by the *Environment Protection and Biodiversity Conservation Act 1999*.

To avoid any political interference, the AHC should be afforded a form of separation of powers and legislative protections of its members as statutory officers with guaranteed tenure of office similar to the Aboriginal Land Commissioners under the ALR Act. The AHC ought to be free to provide advice without fear or favour that effectively extends the protection of our vital heritage sites.

#### **Recommendation 6**

**The Committee should recommend to Parliament that membership and the qualifications of members on any Australian Heritage Council should reflect the underlying goal to protect Australia's heritage, the regional nature of Indigenous representation and also include Elected member(s)**

**of the ATSIC Board and not be limited to Ministerial appointments. The AHC should also be properly resourced in order that it can continue to effectively exercise its heritage identification and protection functions impartially with similar separation of powers and protections as the Aboriginal Land Commissioners enjoy as Statutory Officers under the ALR Act. The AHC ought to be empowered to provide advice when it sees fit to do so.**

## **7. Disregard in the Bills for recommendations flowing from the National Heritage Convention held in 1998 and the Evatt Review report**

There is evident an almost complete disregard for recommendations flowing from the National Heritage Convention held in 1998 and the Evatt Review report on the ATSIHP Act. (see **Appendix A**).

Elizabeth Evatt AC recognised that the Commonwealth has international, moral and legislative obligations to ensure that indigenous heritage ‘is nurtured and protected in a comprehensive and consistent way’. She said that the starting point for ensuring that the Commonwealth meets these obligations is the development of a national policy on heritage protection covering ‘all aspects of culture and heritage that are important to Aboriginal people [which] should be developed by an Aboriginal-controlled process’. To adequately reflect the relevant obligations, the policy should include protection of areas, objects, intellectual property and language.

Issues of accreditation and the minimum standards depend for validity upon a sound national policy framework for indigenous heritage. Without this, any moves to accredit States and Territories will not have the tenor of genuine attempts at reform and will not satisfactorily resolve issues related to the effective interaction of Commonwealth, State and Territory laws.

While the issue of national policy framework need not be addressed in the Bill, ATSIC believes that a commitment by the Government to the development and implementation of a policy framework (of which the Bill would be an element) would help to reassure indigenous people of the Government’s intentions in this area. There would be a clear role in this area for an Indigenous Heritage Advisory Council, recommended by Elizabeth Evatt.

There has been considerable development work in recent years in the areas of potential legislation for protecting indigenous intellectual property, policies and programs relating to the repatriation of human remains and cultural property, the recording and maintenance of indigenous languages, and the maintenance and promotion (in some cases restoration) of the supporting fabric of indigenous cultural heritage – including traditional ceremonies, practices, dance, art and craft. An overarching national policy framework would be a useful means of consolidating these developments and confirming the Government’s commitment to the protection and ongoing development of indigenous cultural heritage.

***Recommendation 7***

**The Committee should revisit the recommendations of the National Heritage Convention and the Evatt Review and refer these matters to Parliament in its report.**

**Conclusions**

**ATSIC stresses that the Bills in their current form should not be passed. Considerable consultations and work will need to be put into the Bills to make them workable unless a simpler way can be found to achieve a similar result of protection of our vital heritage in the National Interest and in the centenary year of Federation . Perhaps a simple addition of another “matter of national environmental significance” could be contemplated for heritage sites entered on the existing Register of the National Estate and other Indigenous sites and heritage. This could be achieved by way of Regulation under the existing provisions of the EPBC Act and could prove to be a much less controversial course for Parliament to take once the Commonwealth standards for accreditation of state and territory regimes are strengthened. In this much more simplified way, any Indigenous sites or heritage, whether on a National List or Commonwealth list, or becomes identified, will be afforded protection under the EPBC Act as a matter of national environmental significance and thereby fulfil Australia’s International and national constitutional obligations.**

**ATSIC trusts that this paper will assist the Committee to ensure that any new Commonwealth Heritage regime receives the special attention required to protect our vital national cultural heritage. Committee members will recognise that it is also in the National Interest to protect all our Indigenous sites and Heritage. That will certainly lead Australia in a positive reconciliation direction away from the view of Australia as an “old country” economy that disregards the unique indigenous rights of its first peoples.**

## Appendix A

### Excerpts from Commonwealth National Heritage Convention 1998

69. Aboriginal heritage principles *Protection of Aboriginal cultural heritage should be broadly based on the principles of self-determination and self-management, and respect for Aboriginal knowledge, cultures and traditional practices.*

81. Aboriginal and Torres Strait Islanders Bill The Commonwealth Government must retain its role as a last resort for Indigenous people with concerns about their heritage. A, E

82. Aboriginal peoples' role in management of heritage *Aboriginal peoples should be recognised as the primary guardians, keepers and interpreters of their heritage and this benefits both Aboriginal peoples and humanity as a whole.* A, B 83. Aboriginal principles *The principles for the National Heritage Places Strategy should include specific Aboriginal principles.* A

84. Evatt report – minimum standards for protection of Indigenous heritage For development decisions affecting heritage, a properly thought-out and consistent list of standards is needed. *The recommendations of the Evatt Report on minimum standards for Indigenous heritage protection should be adopted by the Convention to go forward as a recommendation for adoption by COAG.* A, E

85. Evatt Report – COAG adoption of minimum Indigenous heritage standards *The Evatt Report recommendations offer a benchmark for standards for State accreditation and should be adopted as the basis of Commonwealth and State negotiation.* A, D, E 86. Evatt Report – adoption *The Evatt Report's recommendations for Aboriginal heritage should be adopted.* A 87. Evatt Report – COAG adoption of minimum Indigenous heritage standards The Evatt Report was undertaken with extensive detailed consultation with Indigenous Australians. Its recommendations have the general support of Indigenous communities throughout Australia and in the Convention. *The Evatt Report's recommendations on minimum standards should be adopted and endorsed as a recommendation to COAG.* A, D, E

88. Evatt report – Indigenous heritage benchmark The Evatt Report sets out standards which should be the benchmark for roles, meaning and use of Aboriginal heritage. Concern if Commonwealth's role is weakened. *Commonwealth should retain an intervention role for Indigenous heritage.* A, D 89. Evatt report – Indigenous heritage benchmark All heritage should respond to integrated principles. *The Evatt Report should be the benchmark for Indigenous heritage.* A

90. Evatt Report – spiritual and religious beliefs – legislation Spiritual and religious beliefs and Aboriginal rights to religious freedom should be included in any legislation. Related issues include State and Commonwealth relationships and conservation of sites. *Principles in the Evatt Report should be adopted.* A

91. Human remains Unprovenanced remains of Indigenous persons held in museums, universities or private collections *need a respectful keeping-place and an active program of research to return remains to the right communities.* A, B, (?C)

92. Indigenous heritage protection Concern that Aboriginal and Torres Strait Islander (ATSI) heritage matters are managed differently from other types of heritage (by Aboriginal Affairs Department, not Environment Australia). *ATSI heritage is integral to all national heritage values and requires the same level of protection as other heritage values.* A, D 93.

Intellectual and cultural property rights *Harvesting of animals and plants on State and*

*Territory protected lists in relation to sacred activity is an ownership issue. A*

94. Listing of Aboriginal places *Aboriginal sites should only be listed as national heritage at the instruction of traditional owners. Where required, confidentiality (for example, protection from FOI legislation) should be preserved. A*

95. Significance assessment of Aboriginal heritage places *Significance assessment is part of the listing process but is at odds with blanket protection and registration of Aboriginal heritage values. For Aboriginal sites, standards should accommodate the requirements of Indigenous heritage and not seek to impose significance assessment. A*

110. The Register of the National Estate and databases *The Register of the National Estate has not yet fulfilled its potential, and needs linkages to other Commonwealth data bases to prevent it becoming isolated, for example, directory of important wetlands, refugia in arid and semi-arid Australia. The RNE needs a clear link to other Commonwealth data collection and storage systems and lists of natural sites. A, D*

## **Resolutions**

Resolutions agreed to at the Convention (other than those involving specific wording changes to the principles and standards) include the following:

A reference group on community participation and education should be established to feed into the development of these standards for the National Heritage Places Strategy.

We, the delegates at the National Heritage Convention 1998, move that the minimum standard on Indigenous heritage protection in the Evatt Report be adopted and forwarded to COAG, and that the Government be urged to reconsider the current legislation before the Senate.

A reference group should be established to develop additional standards on protection and conservation practice.

## **Other resolutions**

The following resolutions were prepared by the Aboriginal and Torres Strait Islander Commission, Australia ICOMOS, Australian Committee of IUCN, Australian Conservation Foundation, Australian Council of Professional Historians Associations, Federation of Australian Historical Societies, The Wilderness Society and World Wide Fund for Nature.

Resolutions 1, 2, 3, 4, 6, 7, 8, 9, 11 and the first dot point of 12 were agreed by the Convention. The remaining resolutions were noted.

1. The recommendations of the Evatt Report in relation to protection of Indigenous heritage should be adopted. (<http://www.aust.lii.edu/rsjlibrary/evatt>)

2. The Commonwealth should provide commitment and leadership in the care and conservation of Australia's heritage.

Legislation should be strengthened to provide better protection for the National Estate.

The Commonwealth's role should be adequately funded, informed, pro-active and have a national perspective.

The Commonwealth should demonstrate its commitment through the good management of its own properties.

3. The Australian Heritage Commission should be retained as the key innovative agency to independently coordinate, guide, inspire, inform and think about heritage. Its processes should be public and transparent.

4. The Commonwealth should not accredit State and Territory government processes for the identification, listing and management of Indigenous heritage.

5. Convention delegates are gravely concerned with the Environment Protection and Biodiversity Conservation Bill and request amendments to:

include all sites on the Register of the National Estate as a trigger for a Commonwealth environmental impact assessment

require a Commonwealth environmental impact assessment to consider the entire development proposal (not just an aspect of heritage value)

subject any accreditation 'bilateral agreement' to prior public consultation, public access to information, third party enforcement, periodic review, and performance auditing

remove the many opportunities for ministerial exemptions and approval of development proposals outside the public process.

6. The Register of the National Estate should be maintained as the comprehensive and integrated national inventory of Australia's heritage.

7. Commonwealth and State legislation should enshrine thorough, expert and independent monitoring of the condition and management of Australia's heritage.

8. The Commonwealth's role as the leading heritage authority supporting State and local agencies should be maintained.

9. There should continue to be a clear separation between assessment on the one hand and protection and management of Australia's heritage on the other.

10. The further development of a National Heritage Places Strategy requires broad consultation with communities and all levels of government including a minimum three month public consultation period.

There should be a further national heritage convention to ensure that all issues affecting the identification, conservation and management of Australia's heritage are adequately covered (for example, the unique rights and custodial responsibilities of Indigenous peoples, the definition of national interest, heritage and place), to be held at the conclusion of the three month consultation period.

NGOs and the representatives of Indigenous peoples should be involved in the preparation of the agenda for the next convention.

11. Public consultation and participation is a fundamental element of caring for Australia's heritage and should be an inherent part of all government processes.

12. The Commonwealth should, in consultation with the community, develop a complete indicative list of Australia's World Heritage in line with its obligations under the World Heritage Convention.

The deep community concerns with the management and protection of Kakadu, the Great Barrier Reef, Shark Bay, the Wet Tropics of Queensland, and the South West Tasmania World Heritage areas are recognised.

The Commonwealth should adhere to the requirement of the World Heritage Convention that proposed developments in or adjacent to World Heritage properties should have no adverse impact on the World Heritage property or its values.

13. Integrated, consultative processes such as the Cape York Peninsula Land Use Strategy, should form the model for comprehensive and inclusive assessment of heritage values in Australia. Processes that adopt arbitrary benchmarks and fail to address the full range of



heritage values, such as the Regional Forest Agreement process, should be abandoned. It is unacceptable for the Commonwealth to abandon for any period its legislative responsibilities for the protection of Australia's forest heritage.

14. The Natural Heritage Trust guidelines should be amended to:

give priority for funding to projects which will identify and enhance the conservation of sites on the Register of the National Estate

require regional strategies developed for NHT funding to identify natural and cultural places on the Register of the National Estate and make provision for their conservation.

## Appendix B

### Schedule 3 of the Bill

#### Places may be taken to be included in the Commonwealth Heritage List (Schedule 3)

(1) In this item:

**Register of the National Estate** means the Register of the National Estate kept under the *Australian Heritage Commission Act 1975*, including the Interim List kept under section 26 of that Act, as in force immediately before this item commences.

(2) Within 6 months after this item commences, the Minister may determine that the Commonwealth Heritage List is taken to include a place if:

(a) the place:

(i) is or was included, immediately before this item commences, in the Register of the National Estate; or

(ii) is part of a place that is or was included, immediately before this item commences, in the Register of the National Estate; and

(b) the place is within a Commonwealth area; and

(c) the Minister is satisfied that the place has one or more Commonwealth heritage values.

(3) The Minister must ensure that the Commonwealth Heritage List specifies the Commonwealth heritage value or values for each place that the Minister determines is taken to be included in the Commonwealth Heritage List.

(4) A determination under subitem (2) must be in writing and a copy of the determination must be published in the *Gazette*.