
SUBMISSION BY THE TASMANIAN GOVERNMENT

TO THE COMMONWEALTH SENATE INQUIRY INTO

HERITAGE LEGISLATION – NATIONAL HERITAGE PLACES TRIGGER

SUMMARY

The Tasmanian Government supports the principle that the roles and responsibilities of the Commonwealth and State Governments should be more clearly defined, as was discussed in the 1997 COAG Agreement on Roles and Responsibilities. The Government also supports the creation of a national list of heritage places in partnership with the States. Tasmania is, however, concerned at the unilateral manner of its implementation, particularly as the subject of the legislation is constitutionally the province of the States and Territories.

At a general level Tasmania is concerned with the inappropriate use by the Commonwealth of its corporations and trade powers to regulate unrelated activities pertaining to management of land and heritage values. This has the potential to create perverse outcomes where listed heritage estate is covered by this legislation and other heritage is not; where similar activities in respect of similar values are subject to very different statutory provisions.

In summary, Tasmania is concerned primarily about the following issues:

1. The State should be involved in the listing process in respect of places in its jurisdiction.
2. Management should be undertaken through a Commonwealth/State partnership using State legislation and processes.
3. The Commonwealth has previously given undertakings to bind Commonwealth agencies to comply with State Law. These provisions should be included in the Bill.
4. The Criteria for listing places on the National Heritage Places register should be established in consultation with the State.
5. The National Heritage Management Principles should be established in consultation with the State.
6. The States should be provided with information on sites in their jurisdiction.
7. The States should be allocated appropriate funding support to manage properties on the National Heritage List.
8. The appropriateness of proposed Indigenous Heritage legislation and in particular the lack of effective means to engage the indigenous people in management of their heritage.

9. A number of issues dealing with timeliness of decisions and ambiguity in meaning should be made clearer.

INTRODUCTION

Whilst the Tasmanian Government supports the Council of Australian Governments (COAG) recommendation, it does not agree with the unilateral action being taken by the Commonwealth in the development of heritage legislation.

The State recommends that heritage management be progressed through a partnership arrangement between the states and the Commonwealth Government. Partnership arrangements should be adopted for:

- The development of planning and development control processes focussed on establishment of National Heritage Management Principles and criteria for the listing of Natural Heritage Values;
- The development of management plans and implementation of works to secure the heritage values of National Heritage places and to promote those values;
- Assigning resources to National Heritage places;
- Securing a management regime over National Heritage places through reservation, covenants, contractual agreements and so on.

Further, the State Government does not support the use of corporations power or trade powers for the management of heritage places conservation. This has the potential to create perverse outcomes where parts of the heritage estate are protected and others are not; where similar activities in respect of similar values are subject to very different statutory provisions.

SPECIFIC COMMENTS

1. The State should be involved in the listing process in respect of places in its jurisdiction.

State and Territory Governments are constitutionally the land use managers in Australia and as such have information on heritage resources and linkages to stakeholders that the Commonwealth Government does not have. The legislation should provide for automatic referral of nominations to the relevant State or Territory for comment and this comment should be considered in the decision making process. The State or Territory involved should agree to the listing of a heritage place.

Further to this, the State should have input to the design of boundaries for places on the Register. This is necessary to ensure that heritage places are consistent with existing management boundaries.

2. Management should be undertaken through a Commonwealth/State partnership using State legislation and processes.

The States and Territories should retain their traditional responsibility for on-ground upkeep and management works of land and heritage resources. The management of properties on the national list should be undertaken using State legislation and processes.

Tasmania expects that the Commonwealth will provide funding support for the upkeep and management of places on the National Heritage List.

3. The Commonwealth has previously given undertakings to bind Commonwealth agencies to comply with State Law. These provisions should be included in the Bill.

In the Environment and Heritage Portfolio Statement accompanying the Federal Budget of 9 May 2000, Senator Hill announced the intention for the Commonwealth to focus on places of national significance, to increase compliance with state laws and protect heritage in its own lands and waters. The Tasmanian Government was advised that the new legislation would contain provisions by which the Commonwealth would have to comply with State law. The Bill contains no such provision and there is no acknowledgement of existing State processes.

The Hobart General Post Office (GPO) offers a prime example of the problem of the Commonwealth not complying with State processes. The post office building has historic heritage values and certain restrictions are placed on works to the site. In late 2000, the GPO decided to erect a neon sign adjacent to the building. The normal planning requirements set out by the State were completely ignored because the GPO was able to use Commonwealth exemptions to avoid them. Similar cases could occur in the future if Commonwealth agencies are not required to comply with State laws.

The Tasmanian Government believes that the Bill should prescribe requirements for the Commonwealth to comply with State laws.

4. The Criteria for listing places on the National Heritage Places register should be established in consultation with the State.

The Criteria for listing places on the National Heritage Places register are

- Unknown, yet critical to the scale and effect of this Bill; and
- Can be established by Regulation at the discretion of the Minister.

The State Government is concerned that the Criteria are an essential part of the heritage legislation and determine the scale and scope of the list of places, and yet there is no clear indication as to the nature of these criteria. The State is also concerned that the criteria will be subjective despite attempts to make them objective.

The Criteria are established by regulation under the direction of the Minister and without consultation with the States.

The Tasmanian Government recommends that the legislation provide for the Minister to consult with relevant State and Territory Ministers before making regulations establishing the Criteria.

5. The National Heritage Management Principles should be established in consultation with the State.

The National Heritage Management Principles are:

- Unknown, yet critical to the scale and effect of this Bill; and
- Established by Regulation at the direction of the Minister.

As with the Criteria for listing National Heritage Places the National Heritage Management Principles are unknown, yet critical to the scale and scope of the Bill. It is important that the Principles are confirmed as soon as possible. The principles need to be appropriate for each distinct type of heritage; natural, built and indigenous.

The Tasmanian Government recommends that the legislation provide for:

- The Minister to consult with relevant State and Territory Ministers before making regulations establishing the Principles or creating obligations to give effect to the Principles; and
- The Commonwealth to resource the implementation of works required to fulfil any obligations created under section 324 W.

6. The States should be provided with information on sites in their jurisdiction.

The confidentiality clause could potentially hinder the adequate conservation and management of a heritage place. The Commonwealth Government should provide the States with information on where the site is located, what the heritage values are and any other information about the place that would be important for the site's protection. This could be subject to confidentiality agreements similar to those used in relation to information about Native Title claims.

7. The States should be allocated appropriate funding support to manage properties on the National Heritage List.

The Bill stipulates that the States undertake a number of activities for the management of National Heritage Places. Section 324W allows for the creation and imposition of obligations. The Commonwealth Government should fund any works arising from these obligations.

Furthermore, the Commonwealth Government should fund management undertaken by the States, of properties on the National Heritage List.

It is disappointing that the NHPS has chosen to remove one of the few incentives available to conserve heritage, namely income tax rebates through the Tax Incentive for Heritage Conservation Program.

8. The appropriateness of proposed Indigenous Heritage legislation and in particular the lack of effective means to engage the indigenous people in management of their heritage.

There is a separate Bill governing Aboriginal Heritage, namely the *Aboriginal and Torres Strait Islander Heritage Protection Bill 1998*. This proposed legislation overlaps with the *Environment and Heritage Legislation Amendment Bill 2000* and the standards prescribed by both are inconsistent. This inconsistency needs to be resolved.

The Tasmanian Government believes that there are significant deficiencies in the Bill as it relates to the provision of Indigenous Heritage protection. Indigenous heritage has been incorporated into a document that was originally written for built heritage. The language and methods of European built heritage conservation are not necessarily appropriate for Indigenous Heritage.

9. A number of issues dealing with timeliness of decisions and ambiguity in meaning should be made clearer.

Environment and Heritage Legislation Amendment Bill (No. 2) 2000

324E (3)

There is no limit to the amount of time that the Minister can allow for the AHC to provide an assessment. An upper limit should be set.

324F (2)-(a)

The Minister should also formally notify the Government of the relevant State or Territory when it is decided to include a place in the National Heritage List. The State or Territory should have the opportunity to make comment or if necessary, veto the decision.

324F (6)

The wording of this section implies that the only action the Council does of its own volition is identify places of national heritage. It would be appropriate if the Council could initiate recommendations on the protection and management of listed places.

324H (1)

Within a reasonable period of time after considering any comments concerning the listing of a heritage place, the Minister must include the place on the National Heritage List or notify the person who nominated the place that it will not be included. The definition of a reasonable period of time should be made explicit.

324N (1)

Add the words 'or its values' after "place":

'This section applies if the Minister considers that a place *or its values* would be significantly damaged...'

Australian Heritage Council Bill

The Tasmanian Government has a number of issues concerning the appointment of members to the Australian Heritage Council.

In subsection 7 (c) 'there are 2 members who have experience or expertise concerning indigenous heritage, one of whom represents the interests of indigenous people.'

The language in this section is ambiguous and does not require the members with expertise in indigenous heritage to be indigenous people. The Tasmanian Government considers that both of these members should be indigenous people and that both should have relevant knowledge of indigenous heritage.

The Tasmanian Government is concerned to ensure that statutory and other bodies that have the capacity to affect development are comprised of members with a broad balance of knowledge and experience. Ensuring it had expertise in socio-economic issues would enhance the quality of the Council's deliberations.

The Tasmanian Government questions whether the group would be able to make good decisions on the basis of a membership of six, especially given that a quorum requires only a majority of members.