

**Australian Heritage Commission (National Estate Protection)  
Amendment Bill 1989  
(Private Senator's Bill)****Date Introduced:** 22 November 1989**House:** Senate**Presented by:** Senator Irina Dunn**Digest of Bill****Purpose**

To allow the regulation of certain activities of corporations and their employees in areas listed in the Register of the National Estate and to create offences and allow for injunctions to prevent breaches of the regulations.

**Background**

The Australian Heritage Commission (the Commission) is a statutory authority established under the *Australian Heritage Commission Act 1975* (the Principal Act) as the Commonwealth's policy advice and administrative body responsible for the National Estate. The National Estate is defined in the Act as those places, being components of the natural or cultural environment of Australia, that have aesthetic, historic, scientific or social significance, or other special value, for future generations, as well as for the present community. The natural and cultural environment includes national parks, nature reserves and other places for the protection of native fauna and flora; the coastline and islands; Aboriginal rock art sites, ceremonial grounds and sacred sites; important historical and archaeological sites (both Aboriginal and European); and historic buildings and structures.

The Commission is responsible for preparing a Register of National Estate places; advising the Minister on all matters related to the National Estate; developing policies and programs for research, professional training, public interest, understanding and education; and administering any gifts and bequests made to the Commission. The Commission has no general executive responsibility for the conservation of the National Estate. The Commission has a direct protective role only in relation to actions proposed by the Commonwealth which might adversely affect the National Estate. There are no direct legal constraints on owners of private property, or on State or Local governments, caused by the entry of a place in the Register. The Commission has no power to direct private owners, or State or Local governments, on actions which might affect a place in the Register, and may not acquire property entered in the Register. However, the Principal Act does impose certain duties on Ministers and authorities of the Commonwealth. Basically, the Principal Act imposes on them an

obligation to protect the National Estate from any action that 'adversely affects' it. The obligation however is qualified in a number of respects, including that the obligation is limited to ensuring that the objective of protection of the National Estate is achieved and that the criterion according to which the alternatives and the preventive measures are determined is to the satisfaction of the Minister.

The Commonwealth has no specific Constitutional head of power to deal with questions of development and conservation except in relation to federal Territories. Where it wishes to become involved outside these areas it has to rely on those heads of Constitutional power that impinge on the development and conservation of natural resources, as was the case in South - West Tasmania where it made use of its foreign affairs and corporations powers. It is clear from the High Courts decision in the *Tasmanian Dams Case* that the Commonwealth's power over corporations extends to regulating the trading activities of primary industry corporations.

The Bill is an expression of the Australian Conservation Foundation's (ACF) and Senator Dunn's personal view's on the role of the Commonwealth in protecting the environment. In a recent submission to the Government, the ACF called for the use of the Commonwealth's corporations power to protect the environment. The ACF's submission also called for a referendum to be held to give the Commonwealth specific powers to deal with certain environmental issues, including the prevention of land, air or water degradation; the use of nuclear fuels, energy or ionising radiation; and the discharge of wastes on to land, into the air or water, affecting more than one State or Territory. The reason given by the ACF for requesting a referendum was that most major environmental issues now require national action, and that present Constitutional arrangements make it difficult where entrenched State interests are at stake.<sup>1</sup>

### **Main Provisions**

A new Division 2 (proposed section 30A - 30G) will be inserted into Part V of the Principal Act by clause 5 and deals with the regulation of activities of corporations and their employees in National Estate areas, and offences and injunctions to prevent breaches of those regulations. Proposed sections 30A and 30C provide that the Governor - General may make regulations prohibiting, absolutely or conditionally, a corporation from doing any act, within or outside the National Estate, that the Governor - General is satisfied will or might adversely affect to a significant degree a place that is part of the National Estate. It will be an offence for a corporation to breach such regulations and the maximum penalty for a breach of this provision will be a fine of \$100 000.

Proposed section 30B and 30C provide that the Governor - General may make regulations prohibiting absolutely or conditionally a corporation from doing any act, within or outside the National Estate, that the Governor - General is satisfied is, or is likely to, damage or destroy an Aboriginal site, or any artefacts or relics situated on an Aboriginal site, or will or might adversely affect to a significant degree an Aboriginal site. Aboriginal site is defined to

be a site that is within the National Estate and is of particular significance to Aboriginal people. It will be an offence for a corporation to breach such regulation and the maximum penalty for a breach of this provision will be a fine of \$100 000.

The Federal Court may issue an injunction where it is satisfied that a corporation has done, is proposing to do, has caused, permitted, or proposes to cause or permit, a breach of regulations made under proposed sections 30A – 30C. Parties which may seek an injunction include the Minister, a person whose use or enjoyment of any part of a place in the National Estate is or may be adversely affected, and organisations whose activities relate to the conservation and protection of the National Estate (proposed section 30D).

Proposed section 30E provides that it will be an offence for officers or employees of a corporation to be, in any way, directly or indirectly knowingly concerned in, or a party to, a corporation breaching regulations made under proposed sections 30A – 30C. The maximum penalty for a breach of this provision will be a fine of \$2000 and/or imprisonment for 6 months.

Proposed section 30F provides for a daily maximum penalty of \$20 000 per breach to be imposed on a corporation where it breaches a regulation made under proposed sections 30A – 30C for 2 or more days.

Proposed section 30G provides for injunctive relief against the Commonwealth and its authorities.

## References

1. *The Sydney Morning Herald*, 2 July 1989.

For further information, if required, contact the Law and Government Group.

13 February 1990

Bills Digest Service  
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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