The Parliament of the
Commonwealth of Australia

ENVIRONMENTAL PROTECTION

Adequacy of Legislative and Administrative Arrangements

House of Representatives
Standing Committee on
Environment and Conservation

First Report

October 1979

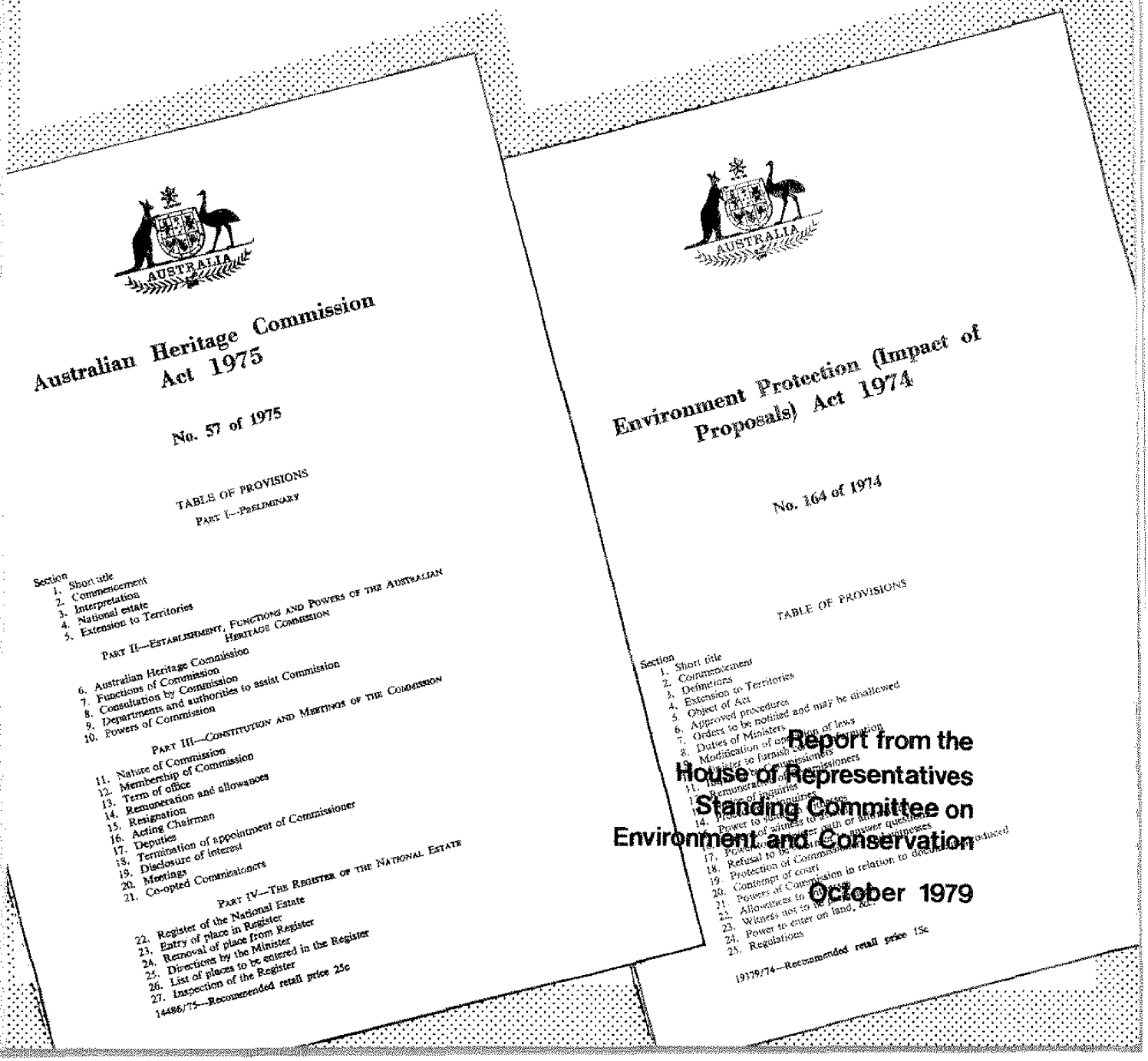
Presented and
ordered to be printed 18 October 1979

Parliamentary Paper
No. 261/1979

Environmental Protection

ADEQUACY OF LEGISLATIVE AND ADMINISTRATIVE ARRANGEMENTS

First Report



Report from the House of Representatives Standing Committee on Environment and Conservation

October 1979

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

ENVIRONMENTAL PROTECTION

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First Report

Environment Protection (Impact of Proposals) Act

Australian Heritage Commission Act

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Australian Government Publishing Service
Canberra 1979

ISBN 0 642 04522 9

Printed by Authority by the Commonwealth Government Printer

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ENVIRONMENT AND CONSERVATION

TERMS OF REFERENCE

That a Standing Committee be appointed to inquire into and report on:

(a) environmental aspects of legislative and administrative measures which ought to be taken in order to ensure the wise and effective management of the Australian environment and of Australia's natural resources, and

(b) such other matters relating to the environment and conservation and the management of Australia's natural resources as are referred to it by:
  (i) the Minister responsible for those matters, or
  (ii) resolution of the House.

MEMBERS OF THE COMMITTEE

Chairman	Mr J.C. Hodges, M.P.
Deputy-Chairman	Dr H.A. Jenkins, M.P.
Members	Mr M. Baillieu, M.P.
	Mr B. Cohen, M.P.
	Mr J.F. Cotter, M.P.
	Mr P.S. Fisher, M.P.
	Mr B.L. Howe, M.P.
	Mr B.D. Simon, M.P.
Clerk to the Committee	Mr J.R. Cummins

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RECOMMENDATIONS

The Committee recommends that:

1 no legislation amending the Environment Protection (Impact of Proposals) Act 1974 and the Australian Heritage Commission Act 1975 be introduced into the House of Representatives until such time as the recommendations contained in this Report have been fully considered;

(paragraph 7)

2 the Commonwealth Government consult with the States before any changes are made to the Environment Protection (Impact of Proposals) Act 1974 and the Australian Heritage Commission Act 1975;

(paragraph 9)

3 Commonwealth involvement in environmental protection be restricted to areas under the direct control of the Commonwealth (e.g. Commonwealth Territories), Commonwealth works and activities, activities which the States have referred to the Commonwealth and matters considered by the Commonwealth Government to be of national significance;

(paragraph 33)

4 Memoranda of Understanding be agreed to between the Minister for Science and the Environment and other Ministers of the Commonwealth Government within a period of 6 months of the proclamation of the amendments to the Act;

(paragraph 72)

5 Memoranda of Understanding be made public;

(paragraph 72)

6 the Environment Protection (Impact of Proposals) Act 1974 be amended to allow the Minister for Science and the Environment to request and be provided promptly with information on proposals from Commonwealth Government departments and instrumentalities;

(paragraph 75)

7 the Environment Protection (Impact of Proposals) Act 1974 be amended to allow the Minister for Science and the Environment to recommend to the proponent Minister that the Act be invoked;

(paragraph 76)

8 the Environment Protection (Impact of Proposals) Act 1974 be amended to allow for a schedule of items to be exempted from the provisions of the Act;

(paragraph 80)

9 the Environment Protection (Impact of Proposals) Act 1974 be amended to give the Minister for Science and the Environment discretion in the application of the Act if proposals have been subject to State procedures and that the State assessments of the proposals satisfy the provisions of the Commonwealth Act;

(paragraph 109)

10 the Australian Environment Council consider the need to introduce in each State legislation similar to the Environment Protection (Impact of Proposals) Act 1974;

(paragraph 111)

11 the Environment Protection (Impact of Proposals) Act 1974, its Procedures and the administrative arrangements with the States should not be amended in a manner which would preclude an independent assessment of proposals being undertaken by the Commonwealth;

(paragraph 112)

12 the Environment Protection (Impact of Proposals) Act 1974 be amended to require the Minister for Science and the Environment to provide, on request, details of the reasons for not directing an Environmental Impact Statement on particular proposals considered to be of environmental significance;

(paragraph 123)

13 section 10 of the Environment Protection (Impact of Proposals) Act 1974 be amended to require the Minister for Science and the Environment to respond to requests for information within a period of three months;

(paragraph 124)

14 the Environment Protection (Impact of Proposals) Act 1974 be amended to allow the Minister for Science and the Environment to direct round table discussions on proposals subject to the provisions of the Act;

(paragraph 132)

15 the Minister for Science and the Environment through the Australian Environment Council consult with his State counterparts with the aim of developing national standards relating to air and water quality and noise pollution;

(paragraph 151)

16 section 26 of the Australian Heritage Commission Act 1975 be amended to provide that only nominated places be included on the interim list;

(paragraph 170)

17 the Australian Heritage Commission Act 1975 be amended to provide:

- that property owners, and persons and organisations with identifiable interests and local authorities be notified in writing by the Commission of a decision to proceed with the listing of a nominated place; and
- that notification of a decision by the Commission should be made no later than the time at which the Commission advertises its intention to take action in relation to a nominated place;

(paragraph 174)

18 the Australian Heritage Commission Act 1975 be amended to provide for the establishment of a confidential register on which secret Aboriginal sites are to be listed;

(paragraph 185)

19 the Australian Heritage Commission Act 1975 be amended to include provisions which require the hearing of objections and a determination of the need to list a site within 12 months of the receipt of that objection. If a determination has not been made at the end of that period the proposal to list the nominated place will lapse;

(paragraph 189)

20 the Department of Finance, the Department of Administrative Services and the Australian Heritage Commission examine the desirability of introducing a separate item into departmental appropriations or any other means to allow the independent grouping of all maintenance and restoration costs associated with Commonwealth properties listed on the Register of the National Estate;

(paragraph 221)

21 *a fund be established under the control of the Department* of Administrative Services for the maintenance of redundant Commonwealth properties listed on the Register of the National Estate;

(paragraph 224).

1 INTRODUCTION

On 8 June 1978 the Committee resolved to inquire into and report on:

> legislative and administrative arrangements relating to environmental protection and resource management.

2. It was decided to investigate, in the first instance, the availability of environmental data, the development and application of national environmental policies, the cost of environmental protection and the adequacy of existing legislative and administrative arrangements.

3. Industry and conservation groups, individuals and government departments responded to the Committee's request for submissions. An examination of this evidence revealed that while the wider aspects of the Committee's reference were canvassed, the majority of submissions concentrated on the operations of Commonwealth environment legislation, and in particular the Environment Protection (Impact of Proposals) Act 1975 and the Australian Heritage Commission Act 1975.

4. In September 1978 the former Department of Environment, Housing and Community Development in a submission advised that the Impact of Proposals Act was under review by the Commonwealth Government. The Prime Minister announced in the House on 22 February 1979 that the Heritage Commission Act was also under review.

5. The Committee made representations to the former Minister for Environment, Housing and Community Development, the Prime Minister, the Minister for Science and Environment and the Minister for Home Affairs requesting that the review

be delayed until such time as the Committee had reported to the Parliament. The response to the request was that the review would continue.

6. Given the importance of the legislation to the care of the Australian environment and notwithstanding departmental and industry pressures on the Government it is the Committee's view that the Government's evaluation of such important legislation should be exhaustive.

7. At the time of writing no amending legislation has been introduced and the Committee believes that none should be until this Report has been considered by the Government. Accordingly, it is recommended that:

> **no legislation amending the Environment Protection (Impact of Proposals) Act 1974 and the Australian Heritage Commission Act 1975 be introduced into the House of Representatives until such time as the recommendations contained in this Report have been fully considered.**

8. It would appear that no discussions have yet taken place with the States as to any proposed changes in the Commonwealth's legislation. The Committee believes that, if there is to be any variation in Commonwealth legislation or to the joint arrangements agreed between the Commonwealth and the States, the States should be consulted prior to any changes being effected. State officials appearing before the Committee seemed to be unaware of any specific proposals for changes in Commonwealth legislation or in the joint arrangements. The Committee notes that the South Australian Government will soon introduce a bill which is complementary to the Impact of Proposals Act. The officials of the South Australian Government specifically requested that discussion take place with that State prior to any changes.[1]

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1. Transcript, p. 539.

9. The Committee agrees that all States should be consulted about any proposed changes and recommends that:

the Commonwealth Government consult with the States before any changes are made to the Environment Protection (Impact of Proposals) Act 1974 and the Australian Heritage Commission Act 1975.

10. The discussion in this Report of two acts could imply that legislation is the only means of achieving environmental objectives. These Acts are only two elements in a broad spectrum of mechanisms for environmental management. The Committee had hoped to examine the overall need for environmental protection and resource management in Australia. In order that the Committee's recommendations were available to assist the Government in the finalisation of its review of the legislation the Committee chose to defer its examination of the wider issues until a later date.

11. Because it concentrated on two pieces of legislation the Committee has taken incomplete evidence on the operation of the National Parks and Wildlife Conservation Act 1975 and the Great Barrier Reef Marine Park Act 1975. The Committee proposes to continue this aspect of its Inquiry and will table a report on these Acts in due course.

12. During the Inquiry the Committee sought to determine the extent of Commonwealth involvement in the area of environmental protection and the areas to which Commonwealth legislation should be applied. The Report reflects the Committee's view that within a Federal system there are areas that are clearly the national responsibility of the Commonwealth, areas where there are shared responsibilities and areas that are the responsibility of State and local government.

2 CONSTITUTIONAL AND LEGAL POSITION OF THE COMMONWEALTH IN ENVIRONMENTAL PROTECTION

Introduction

13. At the request of the Committee the Attorney-General provided a submission detailing the constitutional and legal position of the Commonwealth in relation to environmental protection.

14. The Committee believes that the propositions put forward in this section are subject to some important qualifications. Certain of the suggested Commonwealth powers have never been used nor have they been tested before the courts.

Constitutional Powers

15. The Commonwealth Parliament has plenary legislative power in respect of the Territories, including the seat of Government, and in respect of all places acquired by the Commonwealth for public purposes. The sovereign power in respect of the territorial sea, the airspace over it and its bed and sub-soil is vested in the Commonwealth. Sovereign rights in respect of the continental shelf for the purpose of exploring it and exploiting its natural resources are also vested in the Commonwealth.

16. The Commonwealth Parliament also has the power to require environmental factors to be taken into account in the decision-making processes of the Commonwealth and Commonwealth authorities, and also of Territory authorities.

17. On the other hand, the Commonwealth does not have any general legislative power directly to control conduct within a State affecting the environment as such. In

contrast to the limited powers of the Commonwealth, the constitutional powers of the States are limited only by the extent of the exclusive powers of the Commonwealth and by the extent to which the Commonwealth has exercised its other powers. The States have ample powers to create, control and manage systems of national parks; to identify, protect by acquisition or planning, maintain and enhance buildings or groups of buildings which are part of the National Estate; to provide and maintain open space and parklands in or near urban areas; to control mining and other development and to provide fauna and other reserves. The Commonwealth does however possess both legislative and fiscal powers which can be utilized to pursue environmental goals within States.

18. Thus the exercise of the Commonwealth powers in relation to defence, postal, telegraphic, telephonic and similar services, lighthouses and customs duties may have an environmental effect. Of the powers conferred by the placita of section 51 of the Constitution which can thus be used to directly achieve an environmental goal, the most important may be:

(i) Trade and commerce with other countries, and among the States:

(ii) Taxation; but so as not to discriminate between States or parts of States:

(xxvi) The people of any race for whom it is deemed necessary to make special laws:

(xxix) External affairs:

(xxxi) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws:

(xxxvii) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law:

(xxxix) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

19. The trade and commerce power in its application to inter-State trade is restricted by section 92, but in its application to overseas trade it is not so restricted. This section gives the Commonwealth Government power to control the export of goods. The Commonwealth Government can require, where appropriate, that it be satisfied that the exploitation of resources, or the manner or extent of that exploitation, will not adversely affect, among other things, the environment before giving a licence to export. The validity of using this power for environmental purposes has been upheld by the High Court of Australia.[1] The basis of the High Court's decision was succinctly stated by Mr Justice Stephen:

> The administrative decision whether or not to relax a prohibition against the export of goods will necessarily be made in the light of considerations affecting the mind of the administrator; but whatever their nature the consequence will necessarily be expressed in terms of trade and commerce, consisting of the approval or rejection of an application to relax the prohibition on exports. It will therefore fall within constitutional power.

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1. Murphyores Incorporated Pty Ltd v. Commonwealth (1976) 136 Commonwealth Law Reports 1. at p. 12.

> The considerations in the light of which the decision is made may not themselves relate to matters of trade and commerce but that will not deprive the decision which they induce of its inherent constitutionality for the decision will be directly on the subject matter of exportation and the considerations actuating that decision will not detract from the character which its subject matter confers upon it.

20. The taxation power may be used not only for the purpose of raising revenue but to assist or discourage activities in respect of which the Parliament has no direct legislative power. The limit of the use of the taxation power is uncertain because the powers of the Commonwealth have not been challenged in the Courts.

21. Both the trade and commerce power and the taxation power are subject to the prohibition in section 99 of the Constitution of any law or regulation of trade, commerce or revenue giving preference to one State or any part thereof over another State or any part thereof. The taxation power may not be used to discriminate between States or parts of States (see section 51(ii) above).

22. The power to make laws with respect to the people of any race is thought to extend to permit the making of laws which not only affect members of a race as persons, but which preserve racial cultures and places and objects integral to that culture.

23. Upon the Commonwealth becoming a party to a treaty or convention that attracts the operation of the external affairs power, then, subject to constitutional prohibitions expressed or implied, it acquires legislative power to implement the provisions of the treaty or convention. A treaty or convention will attract the power if it is an '*external affair*'. *The question of what attributes a treaty* or convention must have to qualify as an 'external affair'

has not been decided. On one view, the decision will be reached having regard to subject matter, manner of negotiation, extent of international participation and the nature of the obligations imposed. On another, perhaps better, view any treaty or convention entered into in good faith is an external affair. Wynes observes in Legislative, Executive and Judicial Powers in Australia,[2] that where a positive obligation has been undertaken, it is difficult to say that the subject of an international agreement is not in itself of an international character.

24. The power to acquire property on just terms may be exercised for any purpose in respect of which the Parliament has power to make laws. The exercise of the power is therefore dependent upon a finding elsewhere of primary power covering the purpose. The power extends to both real and personal property and may be used to acquire interests in property less than that of an 'owner'.

25. The Parliament of a State may refer power to the Parliament of the Commonwealth to legislate with regard to a matter. When such a matter is referred to the Parliament of the Commonwealth, the law made by the Commonwealth extends only to those States by whose Parliaments the matter has been referred, or which afterwards adopt the law made by the Commonwealth Parliament. When a State Parliament has referred a matter to the Commonwealth Parliament, the State Parliament is not deprived of power to legislate with reference to that matter; it may legislate on the matter, but its legislation cannot operate to the extent that it is inconsistent with any legislation validly made by the Commonwealth Parliament pursuant to the reference. Environmental matters could be the subject of such a reference.

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2. Wynes 5th edn, p. 298, Legislative, Executive and Judicial Powers in Australia.

26. The incidental power provides for the making of laws with respect to matters incidental to the execution of any power vested by the Constitution in the Parliament or in either House thereof, in the executive government or in the judiciary. The ambit of the power has not been, and perhaps could not be, concisely defined. A grant of legislative power on a particular topic itself carries with it a power in respect of matters incidental thereto and it appears that the specific reference in section 51 (xxxix) of the Constitution to matters incidental to the execution of a power has the effect of extending the range of matters which might otherwise have been regarded as being incidental. To be incidental a matter must be connected to the head of power by means which are not tenuous, vague, fanciful or remote.

The Implied Power

27. The Constitution by creating the Commonwealth as a nation state thereby implies in it a power to do those things which are incidental to its status as such and to the exercise of the functions of a national government. 'These are things which, whether in reference to the external or internal concerns of government, should be interpreted widely and applied according to no narrow conception of the functions of the central government of a country in the world of to-day'.[3]

28. The wide nature of this implied power was referred to by the High Court when Mr Justice Mason stated:

> ... in my opinion there is to be deduced from the existence and character of the Commonwealth as a national government and from the presence of sections 51(xxxix) and 61 a capacity to engage in enterprises and activities peculiarly adapted to

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3. Attorney-General (Vic.) v. The Commonwealth (1945) 71 Commonwealth Law Reports 237. at p. 269.

> the government of a nation and which cannot otherwise be carried on for the benefit of the nation ... the Commonwealth may expend money on enquiries, investigations and advocacy in relation to matters affecting public health, notwithstanding the absence of a specific legislative power other than quarantine. ... No doubt there are other enterprises and activities appropriate to a national government which may be undertaken by the Commonwealth on behalf of the nation. The functions appropriate and adapted to a national government will vary from time to time. As time unfolds, as circumstances and conditions alter, it will transpire that particular enterprises and activities will be undertaken, if they are to be undertaken at all, by the national government.[4]

29. Section 6(1) of the National Parks and Wildlife Conservation Act 1975 is an example of the exercise of the implied power. It asserts as an object of the Act 'the establishment and management of parks and reserves -

(a) appropriate to be established by the Commonwealth Government having regard to its status as a national government;'.

Fiscal Powers

30. Section 96 of the Constitution enables the Parliament to grant financial assistance to States on such terms and conditions as the Parliament thinks fit. The conditions which may be imposed are not restricted to matters in respect of which the Commonwealth has legislative power. A State is not obliged to accept a grant but if it accepts, it is bound by the conditions. By the use of this power the Commonwealth can, with State co-operation, pursue environmental goals in areas which are beyond its legislative competence.

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4. Victoria v. Commonwealth and Hayden (1975) 136 Commonwealth Law Reports 338. at p. 397.

31. The Parliament has power under section 81 of the Constitution to appropriate moneys 'for the purposes of the Commonwealth'. The question of whether the purposes referred to in this section are limited to purposes in respect of which the Parliament has power to legislate is still undecided. It would however be consistent with past practice if the Parliament were to appropriate moneys for the purposes of bodies, the activities of which are directed to environmental protection.

Conclusion

32. While the Commonwealth has wide ranging incidental powers relating to environmental protection, the Committee has already pointed out the significant qualifications that may limit the use of such powers.

33. The Committee believes that the application of any Commonwealth powers should only occur in certain circumstances. The Committee recommends that:

> as a general rule Commonwealth involvement in environmental protection be restricted to geographic areas under the direct control of the Commonwealth (e.g. Commonwealth Territories), Commonwealth works and activities, activities which the States have referred to the Commonwealth and matters considered by the Commonwealth Government to be of national significance.

3 ENVIRONMENT PROTECTION (IMPACT OF PROPOSALS) ACT

Purpose

34. The Environment Protection (Impact of Proposals) Act 1974 is a major mechanism available to the Commonwealth to identify, evaluate and co-ordinate, direct and indirect impacts of Commonwealth decisions on the Australian environment.

35. The Act requires that matters affecting the environment to a significant extent are fully examined and taken into account in the:

- formulation of proposals;
- carrying out of works and other projects;
- negotiation, operation and enforcement of agreements and arrangements;
- making of or in the participation in the making of decisions and recommendations; and
- incurring of expenditure;

by or on behalf of the Commonwealth Government and authorities of Australia either alone or in association with any other government. The Act extends to matters of those kinds arising in relation to direct financial assistance granted, or proposed to be granted, to the States.

36. Section 3 of the Act defines 'Environment' as including:

> ... all aspects of the surroundings of man whether affecting him as an individual or in his social groupings.

37. The former Department of Environment, Housing and Community Development identified elements of the environment as 'natural', 'built', 'social' and 'economic'. Thus the

Act extends beyond consideration of the physical environment to the consideration of the social environment as well.

38. The purpose of the Act is to ensure that those responsible for developing proposals and those responsible for taking decisions on those proposals think about and take account of environmental factors. The Act requires the proposal developers and decision-makers to think more carefully than they may have in the past about the consequences of their actions. Its aim is to upgrade the role of environmental factors in decision-making so that these factors are considered along with economic, technical, financial and other considerations before decisions are taken.

39. The scope of the Act is not limited to proposals being developed by the Commonwealth. It extends to projects partly financed by the Commonwealth and to private sector activities where these require Commonwealth approval. Such approval is required, for example, where a company's product is for export and is subject to requirements of the Customs (Prohibited Export) Regulations or where a company requires exchange control approval for the import of foreign capital for a development project.

40. A former Attorney-General stated that:

> The object of the Act of course applies generally throughout the range of Government action and Ministers and officials therefore need to keep in mind the requirements of the Act in all areas of Government decision-making.[1]

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1. Letter from the Attorney-General to the Minister for Environment, Housing and Community Development dated 19 April 1977.

Administrative Procedures

41. Section 6 of the Act provides for the preparation of Administrative Procedures for the purpose of achieving the object of the Act. The Procedures amplify the provisions of the Act and outline the steps in the administrative process.

42. The main steps in the Procedures are:

- the Minister responsible for an environmentally significant proposed action (the 'action Minister') designates the proponent. The proponent is generally the person, department or organisation responsible for the execution of the proposed action;

- the proponent submits specified information about the proposed action to the Minister administering the Act (Science and the Environment) as soon as possible after a proposed action has been first formulated;

- this information is assessed and a decision made as to whether or not an Environmental Impact Statement (EIS) is required. The Department of Science and the Environment may determine that an EIS is <u>not</u> required; only the Minister for Science and the Environment may determine that an EIS <u>is</u> required;

- where an EIS is required, the proponent prepares a draft EIS in accordance with guidelines specified in paragraph 4.1 of the Procedures;

- the draft EIS is made available for public comment for a minimum of twenty-eight days;

- a final EIS is prepared by the proponent to take into account public and government agency comment and is submitted to the Department of Science and the Environment for examination;

- the Minister for Science and the Environment may require additional information before making to the proponent, any comments, suggestions or recommendations thought necessary or desirable for the protection of the environment;

- each Minister must ensure that the final EIS, and any suggestions or recommendations made are taken into account;

- the Minister for Science and the Environment or his Department may review and assess the environmental aspects of a proposed action during or after its execution, including the effectiveness of any safeguards and the accuracy of forecasts of environmental effects and then make comments, suggestions and recommendations concerning any safeguards or standards for the protection of the environment that may be able to be adopted or applied.

43. The decision as to whether the Act and its Procedures should be invoked is at the discretion of the proponent Minister and not the Minister for Science and the Environment.

Departmental Attitudes

44. In its Report on the Urban Environment[2] the Committee commented that the Environment Protection (Impact of Proposals) Act 1974 places proposals under scrutiny to a much greater degree, and this has led to tensions. It is apparent from the evidence that these tensions still exist in some areas. This is reflected in the failure by many departments to reach agreement with the Department of Science and the Environment on Memoranda of Understanding. Further evidence of this tension is demonstrated by the reluctance of key departments with interests in the sensitive mining area to provide the Committee with detailed evidence and the strong pressures being exerted on the Government by the Australian Mining Industry Council.

45. Although the Committee did not have the opportunity to speak to all Commonwealth government departments and authorities, it believes that the twelve major government organisations which gave evidence represent a reasonable cross-section of departmental attitudes.

46. The evidence suggests that the Act is operating effectively in the project area (i.e. building and construction). Departments responsible for these activities have a good working relationship with the Department of Science and the Environment and appear to fulfil the obligations placed upon them by the legislation.

47. The Department of Housing and Construction told the Committee that the Act requires every project that the Department undertakes on behalf of its many clients to be

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2. House of Representatives Standing Committee on Environment and Conservation, The Commonwealth Government and the Urban Environment, Parliamentary Paper No. 142 of 1978.

examined in accordance with the Act and the Procedures. The Department has been affected by these requirements but believes that overall this has been in a positive rather than a detrimental sense.

48. The implications of the legislation have highlighted the need for the Department to:

- promote an earlier involvement with clients to ensure that all aspects (economic, technical, environmental) are taken into account in the very early stages of the planning process;

- become fully familiar with relevant Commonwealth, State and local governments' policies and initiatives in the environment and general planning fields;

- develop Departmental procedures and education programs in respect of environmental planning matters.

49. The Department suggests that a relaxation of the requirements of the Act at this stage would result in insufficient consideration being given to matters of environmental importance.

50. The Department of the Capital Territory supports the retention of the Act in its present form. In the case of the States the Department believes it desirable for the Commonwealth to retain as far as possible its existing powers over activities to which the present procedures apply. The Department is concerned that without the Act decisions could be made by the New South Wales Government

which could have adverse environmental effects in the A.C.T. and Jervis Bay.[3]

51. The National Capital Development Commission has incorporated environmental considerations into its planning procedures. Two common techniques utilised are environmental assessment and the preparation and review of Environmental Impact Statements. These techniques were in operation before the Environment Protection (Impact of Proposals) Act 1974 was introduced.

52. The Commission commented that the Act and its Administrative Procedures have been developed on the basis that the EIS is the only method of ensuring adequate environmental assessment. While the Commission acknowledges the value of the EIS, it argued that it is only one of several approaches that can be used. The Commission strongly supports the view that greater flexibility should be encouraged for departments and authorities to develop approaches to environmental assessment and public consultation which best achieves the objectives of the Act. The Commission considers that it has established a good working relationship with the Department of Science and the Environment. As the two authorities have gained more experience in working together on projects of environmental importance a more flexible approach has been developed. The Commission believes it can operate effectively under the Act provided a flexible approach is maintained.

53. The Department of Transport recognises the need for environmental consequences to be evaluated in the development of transport projects. The Department relies to a

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3. Department of the Capital Territory, Submission dated June, 1979.

large extent on the environmental assessments undertaken by State authorities. The Department requires evidence from all States that every project on a program has been environmentally cleared or if it has not been environmentally cleared that procedures are set up within the State to make sure that environmental requirements are met before work proceeds.

54. As part of the working relationship arranged with the Department of Science and the Environment, the Department of Transport forwards details of projects for information thus providing capacity for the system to be monitored as to quality and consistency.

55. The application of the Act involves the Department of Transport in only a small amount of additional work. The Department is in favour of the general aim of the Act and believes that there is good co-operation between it and the Department of Science and the Environment.

56. The Department of Defence told the Committee that compliance with the Act involves the Department in consideration of environmental aspects of all works and activities excluding repairs and maintenance. The Department has maintained a consistent working relationship with the Department of Science and the Environment. In the absence of any formal agreement between the two Departments, Defence currently refers a wide range of matters to the Department of Science and the Environment.

57. The Department of Defence commented that although the present situation may be regarded as vesting extensive control of environment protection in the hands of the Commonwealth, especially by virtue of foreign investment and

export control powers, the Department favours the present ambit of the Act.[4]

58. The Department of National Development advised the Committee that it is fully aware of the need to carefully examine the potential environmental impact of Departmental decisions. The Department believes that its decisions have not had a significant effect on the environment and it has received no representations, complaints or criticisms to suggest otherwise.[5] The Department's main areas of responsibility where environmental effects may need to be considered are in the development of national energy policies, the administration of the Petroleum (Submerged Lands) legislation, the provision of financial assistance under the National Water Resources Program and Regional Development loans and grants. The Committee notes that in its submission to the inquiry the Department did not regard the important matters of the development of national energy policies, or the application of those policies to the exploitation of energy resources, as a main area of activity within the Department's responsibilities in which effects on the environment have called for examination.

59. The Committee recognises that the Department in pursuing its functions is confronted by many problems. Conflicts may arise in attempting to reconcile national development strategies with State development. The Department has a critical role in facilitating national development in a way that does not conflict with the Government's

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4. Transcript, p. 1073.

5. Department of National Development, Submission dated August 1979, p. 5.

environmental objectives. Conflicts could arise between the longer term national interests and the short term benefits accruing to the region or State in which a development is situated.

60. While the Department has operated within the terms of the legislation the Committee believes that the Department has used the administrative discretions available under the Act to avoid the referral of projects to the Department of Science and the Environment. In ten months, from 1 July 1978 to 24 April 1979 the Department had not referred a single proposal to the Department of Science and the Environment under the Act. In the previous year (1 July 1977 to 30 June 1978) 129 proposals had been referred to the Department of Science and the Environment. The Committee notes that because of changes to the Administrative Arrangements at the end of 1978 the functions and responsibilities of departments were altered. However those areas of the former Department of National Development from which the majority of proposals were referred to the former Department of Environment, Housing and Community Development for advice during the 1977/78 financial year remain the administrative responsibility of the present Department of National Development. The Committee finds it difficult to accept that there were no proposals in the last financial year which warranted referral to the Department of Science and the Environment.

61. The Act (s.5(1)(c)) requires that matters affecting the environment to a significant extent are fully examined and taken into account in relation to the negotiation, operation and enforcement of arrangements, including agreements and arrangements with authorities of the States. In the light of this requirement for the Department to comment that it has not so far had to consider in detail the environmental implications of particular proposals because

the assistance given by the Commonwealth represents part only of the cost of a project points to a fundamental lack of understanding of the legislation. To state that these projects are covered by State legislation does not discharge the duty of the Department to determine the significance of a project. The use of State assessments to aid the Department in determining the real significance of a proposal is a useful technique to avoid delay and duplication. The Committee believes that in those cases where an assessment was carried out by a State authority it is obvious that the proposal had significance and should have been referred to the Department of Science and the Environment. That Department would then be in a position to advise National Development as to the likely impact of a proposal.

62. From evidence presented to the Committee it is obvious that the Department of National Development has not established a working relationship with the Department of Science and the Environment.

63. The Department of Trade and Resources stated that it is feasible, in general, to meet the requirements placed on the Department and the Minister for Trade and Resources as they relate to actions concerning matters within the responsibility of the Trade and Resources portfolio. The Department noted that this would give rise to a very considerable workload.

64. The Committee was advised that the Department of Trade and Resources had referred eight projects to the Department of Science and the Environment for consideration and that one EIS had been required.

65. The Department expressed some concern over the efficiency of the Act as it applied to activities and projects undertaken by State governments or private

interests. Criticism was especially directed at administrative inefficiencies. The Department did not however offer advice on possible solutions to the problems raised. The Committee accepts that inefficiencies do exist but notes that consultations are taking place aimed at reducing these.

66. The Committee sought information from the Department of the Treasury on attitudes towards the Act and comments on amendments necessary to improve the operation of the Act. The Committee regrets that the Department of the Treasury refused to supply it with any information. Given the importance of the Treasury with respect to the approval of major projects under such powers as the Foreign Investment Review Act, and the negotiation of Loan Council and Section 96 Grants, it would appear that the Committee was denied evidence in areas crucial to its inquiries. The Committee notes that under the Act (s. 5(e)) a principal object of the legislation is that of ensuring 'matters affecting the environment to a significant extent are taken into account and in relation to ... incurring of expenditure'.

67. The Department of Finance believes that it is unobjectionable that environmental issues should be considered along with all the other aspects of a proposal. The Department however was critical of the manner in which environmental considerations had been unnecessarily emphasised by incorporation in the decision-making process through a complex legislative procedure. The Department suggested that there should be a reduction in the formal legal requirements of the Act and that environmental considerations should be taken account of on precisely the same footing as other considerations.

68. The Act is designed to ensure that environmental factors are given a certain emphasis. The Committee does not believe that this has had a detrimental effect, nor has it served to establish environmental factors as the paramount consideration in the assessment of proposals. The legislation ensures that environmental factors are no longer submerged by other short-term considerations but are properly accounted for. The Committee does not believe that this would be the case with a system of less formal requirements.

Application of the Act

69. Steps are being taken to improve the administration of the Act by developing Memoranda of Understanding between the Minister for Science and the Environment and other Commonwealth Ministers. Memoranda of Understanding are seen to be necessary primarily because of the lack of any precise definition in the Act as to what is and what is not covered in the provisions. The Act confines itself to 'matters affecting the environment to a significant extent' (s. 5).

70. In commenting on the development of Memoranda of Understanding the Department of National Development stated that it foresaw difficulties in attempting to categorise environmentally significant matters. The Department doubted the practicality of determining the meaning of 'significant extent' in advance of the consideration of a proposal. The Committee believes that the Department has misinterpreted the function of these Memoranda. The Committee accepts that it is not possible to define 'significant' in any meaningful way in the drafting of legislation. Memoranda of Understanding are intended to reduce this problem by providing guidelines on the question of 'significance'. They do not attempt to establish strict definitions.

71. To date Memoranda of Understanding have been reached with the Departments of Administrative Services, Housing and Construction and Aboriginal Affairs and the Postal Commission and the Great Barrier Reef Marine Park Authority. The Committee was informed that Understandings will soon be reached with the Departments of Defence, Capital Territory, Transport and the Australian Telecommunications Commission.

72. The Committee is concerned that negotiations have been proceeding for three to four years without agreement being reached with the majority of Government departments and instrumentalities. The Committee considers that these Memoranda are a means to ensure sound administration and should overcome many of the problems currently experienced with the legislation. The Act has been in operation for four years and it would seem reasonable to expect that sufficient experience has been gained in order to determine with greater precision the types of activities to which the Act should be applied. Accordingly, the Committee recommends that:

Memoranda of Understanding be agreed to between the Minister for Science and the Environment and other Ministers of the Commonwealth Government within a period of 6 months of the proclamation of the amendments to the Act.

The Committee further recommends that:

Memoranda of Understanding be made public.

73. In its Report on the Urban Environment[6] the Committee commented that while it could see merit in Memoranda of Understanding in areas where there are readily identifiable

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6. Report, paragraph 165.

physical impacts it had difficulty in perceiving a situation where these Memoranda could reasonably be applied to the activities of all Commonwealth departments and instrumentalities.

74. The Committee's reluctance to recommend the general adoption of Memoranda of Understanding was prompted by the apparent lack of awareness of some departments, including key policy departments, of the nature and character of the legislation and the responsibility and obligations it places upon them. There was a distinct possibility that some departments would use Memoranda of Understanding as a means to avoid the responsibilities and obligations placed upon them by the Act.

75. The Committee is of the view that these dangers still exist but believes that if the powers of the Minister for Science and the Environment were amended to permit the Minister to request information on proposals from departments, an effective check of departments and authorities would be achieved. Accordingly, to provide a balance to the greater autonomy of departments provided by Memoranda of Understanding the Committee recommends that:

the Environment Protection (Impact of Proposals) Act 1974 be amended to allow the Minister for Science and the Environment to request and be provided promptly with information on proposals from Commonwealth Government departments and instrumentalities.

76. The Committee further recommends that:

the Environment Protection (Impact of Proposals) Act 1974 be amended to allow the Minister for Science and the Environment to recommend to the proponent Minister that the Act be invoked.

77. The Committee believes that the wider use of Memoranda of Understanding would assist in overcoming the misunderstandings and conflicts that exist at present. At the same time the amended powers of the Minister for Science and the Environment would provide the means to ensure that departments observe the spirit of the Act.

78. A number of departments considered that the current scope of the Act is very wide, potentially covering any matter embraced by a Commonwealth decision.[7] It could be applied to areas not suitable to the Environmental Impact Statement technique. One example given was that it could be applied to the Budget.[8] The Committee agrees that it would be administratively impossible to apply the Act to many areas of Government activity.

79. Paragraph 11 of the Administrative Procedures allows for proposed actions to be exempted from any or all of the Procedures of the Act. Exemptions can be granted on the grounds that application would:

- be prejudicial to national security;
- be prejudicial to the interests of Australia;
- adversely affect commercial or other confidences; or
- be otherwise contrary to the public interest.

80. The Procedures do not allow for exemptions on the grounds of administrative impracticability. The Committee considered amendments to the Procedures to allow items to be

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7. Department of Trade and Resources, Submission dated July 1979, p. 2.
Department of National Development, Submission dated August 1979, p. 1.

8. Department of Finance, Submission dated July 1979, p. 3.

exempted from the provisions of the Act but believes that a more appropriate approach would be to amend the Act to provide a schedule of matters which would be exempted from the coverage of the legislation. If the Act's Procedures were used to exempt proposals this would not allow for the necessary Parliamentary scrutiny and would make it relatively easy for departments and the Government to exclude areas that many would consider require environmental examination. A schedule to the Act would provide for greater legal certainty and would ensure that the exemptions were not open to legal challenge should the rules of standing be relaxed. Accordingly, the Committee recommends that:

the Environment Protection (Impact of Proposals) Act 1974 be amended to allow for a schedule of items to be exempted from the provisions of the Act.

81. While recognising that for the Act to operate effectively some matters should be excluded from its coverage the Committee is concerned that the schedule could be used to severely limit its application. The Committee emphasises that the schedule should only include matters that are unsuitable for the impact statement technique and those matters for which it would be administratively impossible to apply the Act. The Committee further emphasises that the schedule should contain only specific proposals and not broad areas of Government responsibility.

82. It has been suggested that the Act should be amended to exclude consideration of the social environment. It has been further suggested that the Act be amended to ensure that its provisions are applied only to the Australian environment.

83. The Act emphasises the importance of social issues. It is not concerned with the effect of proposals on the environment as such but with the impact of environmental

effects on man 'as an individual or in his social grouping'. The intrinsic values of environmental aspects and their importance to our society are recognised and protected under the Act.

84. The importance of social issues is highlighted by the fact that the Act is not directed only to those decisions that have extensively altered the physical environment. A project which may have only a limited impact on an existing environment (e.g. extension of an existing runway) is still deemed to be significant because of the social disruption it may cause.

85. The Department of Science and the Environment advised that in many of the proposals examined under the Act social environment issues have been of paramount concern and a restriction of the Act's coverage to physical environmental issues would represent a major reduction in the importance and usefulness of the Act. Such a step could only be justified if it could be demonstrated that there were other mechanisms available which would ensure that social environmental issues are fully taken into account in the decision-making process. The Committee is not convinced that these other mechanisms exist and therefore does not believe that the proposed schedule of exemptions should include social environmental issues.

86. At present the Act's definition of environment does not limit the Act's coverage to the environment of Australia. Thus, Commonwealth Ministers or authorities are required to have regard to the effects a proposal for which they are responsible might have on the environment beyond Australia. The Department of Trade and Resources for instance doubted whether it was feasible to meet the requirements of the Act as it relates to the environment beyond Australia.

87. The Committee emphasises that the Act should not be amended to restrict the Act's coverage to the Australian environment. Such an action could be taken as inconsistent for a nation that regards itself as a responsible member of the international community.[9]

88. The Department of Science and the Environment advised that the requirement to consider environmental effects beyond Australia has not proved to be a problem in practice. The exemption provision of the Administrative Procedures could be applied to any matters which were obviously inappropriate for the Act to deal with.

Arrangements with the States

89. There is considerable potential for overlap between the Commonwealth and the States in environmental assessment. The Department of Science and the Environment informed the Committee that discussions have been entered into with all States in an effort to reduce the possibility of duplication or conflict. Arrangements have been reached with Victoria, South Australia, Western Australia and Tasmania and will soon be reached with New South Wales.

90. The objectives of these arrangements are to:

. co-ordinate the environmental assessment of proposals which require both Commonwealth and State approval;

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9. The Committee notes that the President of the United States, on 5 January 1979, directed all United States Government agencies to assess the environmental consequences of United States projects in the rest of the world. United States Government agencies taking actions that may have environmental effects abroad must now establish procedures for taking these effects into consideration before going on with the program.

- avoid duplication of effort both by proponents and Government agencies;
- ensure that a single environmental impact assessment procedure is required;
- make environmental assessments at the earliest feasible stage;
- gain the benefit of expert advice and local knowledge in the States;
- leave purely local issues to be dealt with by State governments; and
- retain Commonwealth Government involvement in assessment of only those proposals that raise significant environmental concerns and in this respect to clarify those instances when an environmental impact statement would be obtained by the State government and when it would be obtained by the Commonwealth Government.

91. Informal arrangements have been agreed with Queensland which reflect the objectives outlined in the previous paragraph.

92. South Australian Government officials commented that over the past five or six years there has been constant consultation between both State and Commonwealth officials. The arrangements are working satisfactorily and the South Australian Government proposed no amendments.[10]

93. Victorian Government officials stated that the arrangements ensure that there are not two entirely separate assessments running in parallel. The State officials believe that the working arrangements are proceeding smoothly.[11] No amendments were proposed.

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10. Transcript p. 542.

11. Transcript p. 833.

94. While formal agreement has yet to be reached with N.S.W., Government officials informed the Committee that informal arrangements have been in operation for some time and that no fundamental disagreements between the two Governments have arisen. They saw no difficulty in agreement being reached in the near future.[12] No amendments to the working arrangements were proposed.

95. Western Australian Government officials asserted that the Act is centralist and is an intrusion into State rights. Prior to agreement duplicate assessments to satisfy both Commonwealth and State procedures were required. In 1977 formal agreement was reached to ensure that a single environment assessment is carried out when both State and Commonwealth approvals are required. Since the introduction of the administrative arrangements there have been no significant conflicts between the Western Australian and Commonwealth Governments in the interpretation of the legislation. Western Australian officials suggested that if the Act is to remain it should be amended to recognise State legislation and to give statutory backing to the administrative arrangements.[13]

96. A submission from the Tasmanian Government commented that under an agreement between the Tasmanian and Commonwealth Governments arrangements have been arrived at to co-ordinate the environmental assessment of proposed developments and that the arrangements are working quite well.

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12. Transcript p. 1130.

13. Transcript p. 685.

97. Having been advised that there are effective working arrangements between the Commonwealth and State Governments the Committee sought the views of industry groups on the legislation. A number of industry organisations are concerned that since the introduction of the Act companies have been required to undertake separate assessments to satisfy both State and Commonwealth procedures.

98. The Australian Mining Industry Council told the Committee that the Act has been used to direct over a dozen impact statements in relation to mining and metallurgical development proposals in the States. As the companies were also required to prepare environment assessments for the State Governments the potential existed for conflict between State and Commonwealth Governments with the companies caught between differing requirements.[14]

99. The Confederation of Australian Industry recognises that attempts have been made, in some cases successfully, to rationalise EIS procedures between the Commonwealth and State Governments but these arrangements are not designed to eliminate the duplication of powers but rather the duplication of procedures. This introduces a degree of uncertainty in investment planning. The Queensland Chamber of Mines believes that even with these arrangements co-operation between the States and the Commonwealth has not eventuated and expensive and time consuming duplication is now taking place even where the Commonwealth accepts an EIS prepared under State requirements.[15]

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14. Transcript p. 57.

15. Transcript p. 477.

100. The Committee wrote to 13 mining companies whose projects have been subject to the Act. At the time of writing 10 companies had replied. None of the companies was required to undertake separate assessments to satisfy both State and Commonwealth procedures. West Australian Petroleum Pty Ltd commented that:

> ... the general scheme of the Act constitutes an appropriate Commonwealth measure for safeguarding environmental matters... We did not experience any difficulty by reason of there being both Commonwealth and State Environment Departments having an interest in our projects.

101. Woodside Petroleum Development Pty Ltd is of the view that the current arrangement between the Western Australian and the Commonwealth Governments, under which the State through the Western Australian Department of Conservation and Environment provides the point of contact with the company and keeps the Commonwealth informed, is very sensible and effective.

102. Three companies were critical of the operations of the Act. The Electrolytic Zinc Company of Australasia criticised the cost and delays associated with the Ranger Uranium Environmental Inquiry. The public hearings provisions will be discussed later in the report. Thiess Dampier Mitsui Coal Pty Ltd and Collinsville Coal Pty Ltd were critical of the effects of the Act on their coal mining proposals in Queensland.

103. Collinsville Coal Pty Ltd in oral and written evidence informed the Committee that it was unofficially asked to prepare an impact statement to satisfy the Commonwealth legislation even though the Queensland Government advised that an EIS under State procedures was unnecessary. Some two years later, after preparing the statement, the Commonwealth advised that it was no longer required. The Committee has examined the correspondence between the

Company and State and Commonwealth departments and authorities. From this examination it appears that:

- the Queensland authorities did require a report on the project; and
- when provided with the Queensland Guidelines the Commonwealth agreed that the report drafted, in accordance with the guidelines, would satisfy the Commonwealth requirements.

The Committee acknowledges that there was a delay of five months in the designation of Collinsville Coal as the proponent, for the purposes of the Act. The Committee was informed by the Department of Trade and Resources that the delay was caused by the need to seek legal advice from the Attorney-General's Department. Now that the legal problems associated with the designation of proponents have been resolved, delays of this nature are unlikely to occur in the future.

104. Thiess Dampier Mitsui Coal Pty Ltd commented that initially there was no conflict between the State and Commonwealth requirements as the guidelines given by the State were acceptable to the Commonwealth. Later it became evident that the requirements of the Commonwealth for mining conditions were different to the State requirements. The requirements of the Commonwealth were ultimately modified to agree with the States. It was later discovered that these modified Commonwealth requirements were in conflict with revised State requirements. These problems were finally resolved when the revised State requirements were accepted by the Commonwealth.

105. The Committee was informed that the problems associated with these instances were a result of poor communication between the Commonwealth and Queensland

Governments and that communication between the two Governments has since improved and problems such as these are unlikely to occur in the future.

106. The conservation movement was critical of the arrangements reached with the States. The Australian Conservation Foundation (ACF) commented that while the most appropriate way of managing the environment in Australia is through the States rather than through a single centralised authority, the development of administrative arrangements which rely on State assessments before the States have adopted proper procedures is a retrograde step. State conservation councils support the ACF view.[16]

107. In its Report on the Urban Environment[17] the Committee commented that each State Government's approach to environment protection differs but none of the procedures is so different from the Commonwealth's as to preclude a co-operative use of Commonwealth and State procedures in the assessment of particular proposals where this is necessary. The Committee does not accept that these arrangements necessarily represent a down grading of the Commonwealth role. The arrangements represent a desirable streamlining of procedures and leave the respective powers of the Commonwealth and the States unchanged. If two separate environment statements were required to satisfy both Commonwealth and State procedures information contained in them is likely to be the same. The use of a single document in the review and assessment process in no way removes the possibility of independent action by the Commonwealth Government.

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16. Transcript p. 14.

17. Report, paragraph 179.

108. Notwithstanding the comments of industry associations, some companies and the conservation movement, the Committee supports in principle administrative arrangements between the Commonwealth and State Governments for environmental assessment and believes in most instances these arrangements are working well. The Committee notes that problems were experienced by two companies in Queensland but, as stated earlier, no formal agreement exists between the Commonwealth and Queensland Governments. The Committee believes that with a formal agreement these problems would be unlikely to recur. The Committee stresses the need for the Commonwealth to reach formal agreement with the New South Wales and Queensland Governments.

109. The Committee accepts the comment that the Impact of Proposals Act does not acknowledge the role of the States in environmental protection. The Committee recognises the responsibility of the States and believes that the Act should be amended to acknowledge the States' role. Accordingly, the Committee recommends that:

> the Environment Protection (Impact of Proposals) Act 1974 be amended to give the Minister for Science and the Environment discretion in the application of the Act if proposals have been subject to State procedures and that the State assessments of the proposals satisy the provisions of the Commonwealth Act.

110. Victoria is the only State which has comprehensive environmental legislation although legislation is currently before the New South Wales Parliament and is in the process of being drafted in South Australia. There are no proposals for the introduction of legislation in other States. The Committee believes that the Environment Protection (Impact of Proposals) Act 1974 is the most effective means yet developed to ensure the broad examination of proposals and alternatives and to enable full community involvement. The

Commonwealth should encourage those States without environmental legislation to adopt legislation similar to the Impact of Proposals Act.

111. The Committee considers that the Australian Environment Council[18] is the ideal forum for these discussions and recommends that:

> the Australian Environment Council consider the need to introduce in each State legislation similar to the Environment Protection (Impact of Proposals) Act 1974.

112. Until comprehensive legislation is introduced in each State the Committee considers that the Act should continue to be invoked for a wide range of proposals. Should the States adopt legislation similar to that of the Commonwealth, the Committee believes that there will still be instances when issues of national importance arise which warrant Commonwealth involvement. The Committee recommends that:

> the Environment Protection (Impact of Proposals) Act 1974, its Procedures and the administrative arrangements with the States should not be amended in a manner which would preclude an independent assessment of proposals being undertaken by the Commonwealth.

The Committee emphasises the need for the Commonwealth to maintain powers that would enable it to intervene in environmental matters of national concern. The Committee further believes that it is for the Commonwealth Government itself to determine if a matter is of national significance.

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18. The Australian Environment Council consists of Commonwealth and State Ministers with responsibilities in environmental matters.

Public Participation and Environmental Impact Assessment

113. An important element in the Environment Protection (Impact of Proposals) Act 1974 and its Procedures is the opportunity it provides for the public to comment upon and influence the decision-making process.

114. The Procedures require that the impact statement outline objectives and need for the project and the evaluation of a range of feasible and prudent alternatives including the alternative of not proceeding with the proposal. Draft impact statements are required to be advertised for public comment and for any public comment received to be taken into account in the finalisation of the impact statement.

115. A number of witnesses explained the benefits and limitations of the EIS technique. The Department of Construction commented that the general benefits lie in the potential of the EIS technique to:

- allow early identification of environmental problems which may significantly affect the technical or economic feasibility of a proposal;

- allow integration of studies and identification of interaction between technical, economic and environmental factors during planning;

- encourage an integrated and methodical multi-disciplinary approach to planning;

- allow the cost of environmental protection measures to be incorporated into economic feasibility studies; and

- in time, lessen the emphasis being placed on the environmental statement itself and increase the emphasis on the assessment and decision-making processes.

116. On the other hand the Department of Construction believes that at the present time certain limitations are associated with the implementation of Commonwealth environment protection policies in terms of the application of the EIS technique in that:

- it is somewhat complicated and still at the pioneering stage;

- procedures can be time consuming and costly;

- difficulties are experienced in harnessing specialist knowledge required to carry out environmental assessments;

- there is a lack of criteria for the qualitative and quantitative assessment of environmental aspects;

- the EIS technique and environmental considerations are not properly integrated into the overall planning process;

- environmental assessment often commences after too many decisions have been made;

- alternative solutions are often not adequately canvassed; and

. some developers/proponents may be biased in favour of maximizing financial benefits at the expense of environmental considerations.

117. Dr M. Hollick of the University of Western Australia commented that it is desirable for the public to be given the opportunity to express opinions on proposals but believed that it was asking for confrontation and protest if having been given an opportunity to voice their opinions people find they are not able to influence decisions. Public comment at the EIS stage has little chance to exert much influence since most decisions have been made. He suggests that there should be continuous interaction between the proposer, Government agencies and the public from the conception of a proposal. In this way objections, alternatives and additional information which now do not emerge until the formal review stage could be included and considered while options were still open.[19]

118. The National Capital Development Commission has adopted an approach supplementary to the EIS technique which involves a combination of internal environmental evaluation and direct consultation with affected community groups. Direct consultation enables community input to be made at a much earlier stage and to continue as the proposal is progressively developed and implemented.

119. The former Department of Environment, Housing and Community Development during a previous inquiry stated that public response to environmental impact statements has been less than anticipated and gave a possible reason as being a belief that the impact statement process is really window dressing and that there is no real opportunity for the public to influence decisions.

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19. Transcript, p. 803.

120. While agreeing that public comment should be encouraged early in and during the development of a proposal and despite the problems experienced with the EIS technique the Committee considers that the preparation and review procedure is useful in informing the public of proposals, obtaining public comment and outlining environmental issues that may otherwise have been overlooked.

121. To ensure that the public is given the opportunity to comment it is important that the impact statements are readily available. The Committee has been informed that impact statements are available in public libraries in the capital city of the State and also in public libraries in the region where the project is proposed. A number of witnesses commented that some impact statements cost as much as $50. The Committee considers that this cost makes them too expensive for many people. The Act's Procedures require that an EIS shall contain a clear and concise summary of the matters dealt with by it. The Committee believes that this summary should be made available at cost to interested persons separately from the impact statement.

122. Apparently, there is a general feeling that comments made by the public on EIS's are not taken into account when decisions are made. A number of witnesses were critical of the Commonwealth Government's decision to allow the Iwasaki tourist development in Central Queensland to proceed. The Committee is not in a position to comment on the proposal itself. A number of Members questioned whether or not it was appropriate for the Impact of Proposals Act to be invoked for proposals such as this. However, given that the Act was invoked and that the public were invited to comment on the proposal, it was unfortunate that the Government announced its decision approving the development three working days after the closing date for comments on the draft EIS. The Queensland Conservation Council stated that

66 public comments were received and that its own submission was 132 pages long. The Committee is of the view that these submissions could only have been given superficial examination before the decision was announced.

123. The Department of Science and the Environment advised that since the Procedures came into force 3,230 proposals have been regarded as being environmentally significant and of these 50 impact statements have been directed, which represents less than 2 per cent of the proposals considered. The Committee accepts that even though Commonwealth statements were directed for only a small number of proposals this does not mean that environmental considerations were not taken into account. The Committee was informed that environmental considerations could have been outlined in planning studies or in discussions with local government and in many cases impact statements under State procedures would have been required. The Committee notes, however, that the Department of Science and the Environment is not required to give reasons as to why an impact statement is not directed. The Committee believes that the present discretionary nature of the Procedures leaves the Department and the Minister open to accusations that decisions are based on administrative expediency rather than sound environmental considerations. To provide a check on the discretionary nature of these procedures the Committee recommends that:

> the Environment Protection (Impact of Proposals) Act 1974 be amended to require the Minister for Science and the Environment to provide, on request, details of the reasons for not directing an Environmental Impact Statement on particular proposals considered to be of environmental significance.

124. Section 10 of the Act requires that if a person seeks information from the Minister for Science and the Environment concerning action under the Act the Minister shall inform him promptly. The Australian Conservation Foundation has sought information under these provisions on a number of occasions and in its view the responses have been far from prompt. For example the Australian Conservation Foundation told the Committee of one case where the Minister took nearly two months to respond and nearly six months in another. The Department of Science and the Environment told the Committee that the Department is trying to respond promptly. It explained that one of the problems in replying quickly is that often information has to be obtained from other Ministers. The Committee considers that this section of the Act should be amended to require the Minister to reply within a specified period. Accordingly, the Committee recommends that:

> section 10 of the Environment Protection (Impact of Proposals) Act 1974 be amended to require the Minister to respond to requests for information within a period of three months.

Public Hearings

125. A major part of the Environment Protection (Impact of Proposals) Act 1974 is concerned with public inquiries. Section 11 of the Act allows the Minister for Science and the Environment to direct an inquiry into matters which affect the environment to a significant extent. To date two public inquiries have been held, the Ranger Uranium Inquiry and the Fraser Island Environmental Inquiry. The Commonwealth Government's current policies on uranium mining and export and the decision not to grant export permits for minerals derived from sand mined on Fraser Island are based on the recommendations of these two inquiries.

126. No funds are provided for public hearings in the 1978/79 Budget. The Australian Conservation Foundation considers that the reduction in funds has placed the public hearings provision in jeopardy. The Queensland Conservation Council commented that it seems the Commonwealth Government does not believe that there will be any major environmental issues requiring public appraisal through an inquiry in the foreseeable future.

127. The Committee considers that there is misunderstanding in two areas. First the Act provides for extensive public involvement other than through public hearings by allowing for comment on draft impact statements. The public is given the opportunity to comment on draft impact statements. The Committee believes that the public inquiry provisions should not be, and were never intended to be, invoked for matters other than those of significant national importance.

128. Secondly, funds can only be allocated in departmental appropriations for specific proposals. At the time of the Budget preparations there were no specific proposals for public inquiries during the 1978/79 financial year. Should the Minister direct that an inquiry be conducted funds would be made available from either the Advance to the Minister for Finance or from an additional appropriation.

129. The Committee concludes that the nil appropriation in the 1978/79 Budget does not of itself indicate a lack of commitment by the Commonwealth Government to public inquiries.

130. The high cost of conducting public inquiries may have the effect of discouraging the future use of the provisions. The cost to the Government of the Ranger Uranium Environmental Inquiry was $1.2 million. In

addition, participants in the Inquiry also incurred substantial costs. Peko Mines Ltd and Electrolytic Zinc Co. advised that the direct costs to the companies of the hearings have been estimated at over $1 million. The Committee does not suggest that these costs were unjustified but believes that consideration should be given to the development of an alternative for use in situations where public inquiry is desirable, but the proposal is not of sufficient complexity or national importance to warrant an extensive quasi-judicial inquiry of the Ranger Uranium type.

131. New South Wales has developed less formal and less extensive public hearing procedures. After receipt of submissions on a proposal round table discussions involving all interested parties are held. The record of discussions together with the EIS and submissions provide the basis for findings and recommendations.

132. The Committee considers that the Act and its Procedures should be amended to allow for the use in some instances of less cumbersome procedures in line with those in use in New South Wales and recommends that:

> the Environment Protection (Impact of Proposals) Act 1974 be amended to allow the Minister for Science and the Environment to direct round table discussions on proposals subject to the provisions of the Act.

133. The Committee notes that two public inquiries have been commissioned since the legislation was introduced. It is understood that significant projects involving substantial new investment are in the planning stages. These projects cover such fields as petro-chemical complexes, alumina smelters and natural gas development. Many of these proposals may have significant impacts, not merely in terms of the immediate effect on the environment but also through influences on energy resources and their exploitation. The

Committee acknowledges that many of these proposals may have been the subject of State environmental assessment or even Commonwealth assessment. However these assessments were carried out on a proposal-by-proposal basis. The Committee considers that the magnitude and the cumulative effect of the proposals themselves and in particular their implication for future energy use in Australia warrant the close examination that would be provided by a public inquiry and therefore the Committee believes that the Commonwealth Government should give consideration to the commissioning of such an inquiry.

134. The Committee believes that public inquiries would serve to evaluate these effects and provide directions for, and may resolve doubts concerning, future investments or expansion. The cost of such inquiries while considerable would normally represent a small percentage of the cost involved in the proposals and may serve to streamline future developments by ensuring that major questions are resolved.

135. Conservation organisations in each State criticised the Commonwealth Government for not invoking the public hearing provisions of the Act more often. The Conservation Council of Western Australia was particularly critical of the decision not to undertake a public inquiry into proposals to expand the alumina industry in Western Australia. The Conservation Council objects to the proposal on the grounds that:

- the open cut mining operations destroy unique State jarrah forest when Western Australia is underforested by national and international standards;

- bauxite mining operations in the Darling Range water catchments have the potential to cause an increase in the salinity of water supplied to

Perth and the south west. Perth's water supply is already more saline than that of any other Australian capital city;

- the alumina industry in Western Australia places a major burden upon the limited local fossil fuel resources. The alumina industry consumes 20 per cent of all the energy used in Western Australia, while only employing 0.5 per cent of the work-force. Alcoa use 60 per cent of all of the local natural gas in circumstances where industrial demand exceeds supply.

136. The Conservation Council argued that the Impact of Proposals Act should be invoked and public hearings conducted because of the public concern over the proposal and the apparent lack of consideration of public attitudes when the decision to proceed with the proposal was made. The Conservation Council alleged that of 63 public submissions none was unequivocally in favour of the project. According to the Conservation Council, of 15 submissions from State Government agencies only two were in favour of the project.

137. Western Australian Government officials commented that to look at bauxite mining in isolation was to fail to recognise the ramifications of the rather complex interaction of water supply, forestry and dieback disease. The officials further explained that salination of water supplies for Perth is a result of rising salinity in the catchment streams wholly due to agricultural clearing over the last 50 years and in no way due to any mining operations. The State Government has made it clear that any mining operations which could affect the salinity of water in any of the catchments will not be permitted.

138. Dr Hollick of the University of Western Australia told the Committee that current mining operations in the western region do not pose a salinity problem. Alcoa informed the Committee that it would not undertake mining operations in the lower rainfall regions where salinity could be a problem until it can be proved that the project will not have a deleterious effect on water supplies.

139. State officials said that while only two Government departments were unequivocally in favour of the project it was incorrect to assume that the other 13 were opposed to the proposal. They stated that these other departments made comments that related to their own administrative responsibilities and were not critical of the project as such.

140. While the Committee agrees that there might be serious implications for Perth's water supply and the future use of energy in Australia, detailed impact assessment was undertaken and the impact statements were considered by both the Commonwealth and State environmental authorities. The Committee also notes that agriculture and urban development to date have had a greater impact on water salinity than the mining projects.

141. The Committee believes, however, that when the proposals were being developed greater opportunity should have been given for public input either under State legislation or the Environment Protection (Impact of Proposals) Act 1974. Given the significance of these proposals in terms of national energy considerations as well as local impacts the Committee believes that a public inquiry into these proposals under the terms of the Impact of Proposals Act may have been justified.

Compensation Provisions

142. The Australian Mining Industry Council commented that while the application of the Act can render the assets of a company valueless it contains no compensation provisions. Murphyores Incorporated Pty Ltd argued that compensation should be paid not only for capital costs of the development but also for loss of potential income.

143. The Committee believes that the Act should not be amended to provide for compensation.

Retrospectivity

144. The Committee considered the suggestion that the definition of 'proposals' be amended to preclude application of the Act to existing operations. It believes, however, that such a course poses many problems, not the least being defining the degree to which an existing operation can be altered or expanded before constituting essentially a new proposal. The existing situation allows latitude to consider the circumstances in each case and the Committee can see instances where in the national interest the Act may need to be applied to existing operations. The Committee proposes no amendments.

Standards

145. A valuable adjunct to any environmental protection legislation is a system of environmental standards. To efficiently manage our environment we need as a society to determine the type of environment in which we ultimately wish to live. The development of standards provides an objective measure against which existing and new activities can be assessed to ensure their compatibility with stated land use policies and long term environmental objectives.

146. The Department of Science and the Environment stated that environmental administration has not been unduly hindered by the lack of standards at the Commonwealth level. There is a large body of internationally accepted standards which can be drawn on to enable assessments to be made. However, the Committee believes that effective environmental management requires more than the assessment of individual proposals using overseas standards. The Committee acknowledges that valid conclusions can be reached by referring to overseas data and standards but it recognises that these conclusions can only be approximations when applied to the Australian environment. The development of minimum Australian standards is essential if accurate assessments are to be made of the effect of proposals on the Australian environment.

147. The Committee also believes that the present proposal-by-proposal approach to environmental assessment does not promote adequate consideration of the cumulative effect of development in an area. A system of general standards would facilitate the assessment of the environmental effects of each individual proposal together with existing environmental stress.

148. Industry, as well as the environment, may benefit from the establishment of minimum control standards. Manufacturing or development industries would be able to incorporate adequate safeguards into proposals at the outset of the investment decision and could avoid costly delays and alterations at later stages of development. It would seem inconsistent for Government to require the consideration of environmental effects without establishing guidelines within which both Government departments and industry can work.

149. The problem of setting standards is complex and must take into account the existing Federal structure and the division of environmental responsibility. Every State has enacted legislation to deal with existing or potential pollution problems and this has resulted in a diverse range of standards between the States. Any Commonwealth initiative in the field of standards should not have the effect of introducing yet another set of standards. The Commonwealth should attempt to determine standards derived from existing State legislation in consultation with the States. The Australian Environment Council would seem an appropriate forum in which to develop these standards. Commonwealth legislation could then be introduced to establish these agreed standards on a national basis and would be complementary to the State legislation. Existing State legislation would provide the means of enforcement and ensure that the States retained both administrative responsibility for the application of these standards and regional flexibility. The Committee acknowledges that environmental standards cannot be determined in isolation and consideration must be given to interactions with other social aims like energy conservation, transport and land use. This input is necessarily a State function.

150. The Committee is also aware that substantial gaps exist in our knowledge of our own environment and does not suggest that any attempt to define comprehensive standards should be undertaken. The process of establishing overall national standards is evolutionary and the Committee believes that in the first stage an attempt should only be made to establish standards that deal with air and water quality and noise pollution.

151. Accordingly, the Committee recommends that:

the Minister for Science and the Environment through the Australian Environment Council consult with his State counterparts with the aim of developing national standards relating to air and water quality and noise pollution.

4 THE AUSTRALIAN HERITAGE COMMISSION ACT

The Australian Heritage Commission

152. The Australian Heritage Commission Act 1975 established an independent statutory authority to act as the administrative body responsible for the National Estate and to offer policy advice to the Commonwealth Government.

153. The functions of the Commission as prescribed by section 7 of the Act are:

- to furnish advice to the Minister either of its own motion or upon request made to it by the Minister, on matters relating to the National Estate, including advice relating to action to conserve, improve and present the National Estate;

- to encourage public interest in, and understanding of issues relevant to the National Estate;

- to identify places included in the National Estate and to prepare a register of those places;

- to furnish advice and reports concerning the protection of the National Estate;

- to further training and education in fields related to the conservation, improvement and presentation of the National Estate;

- to make arrangements for the administration and control of places included in the National Estate that are given or bequeathed to the Commission; and

- to organise and engage in research and investigation necessary for the performance of its other functions.

154. The legislation requires that the Commission, in pursuing its functions shall, as appropriate, consult with Commonwealth and State authorities, local government and community and other organisations (s.8).

155. The Commission is composed of six Commissioners and has 14 staff members. Four members of staff have technical expertise in fields in which the Commission operates and the remainder are administrative.

156. The Australian Heritage Commission Act implements recommendations contained in the Report of the Committee of Enquiry into the National Estate (Hope Committee) concerning the need for the Commonwealth Government to take a lead in conserving the National Estate. The extent and diversity of the places that come within the concept of the National Estate emphasised the need that the work of recognising such places be carried out by a continuing body. The Hope Committee believed that the presentation and promotion of the National Estate could best be pursued by an independent central body which could oversight the recognition and management of a vast number of disparate yet interrelated components in accordance with an overall policy.

157. By developing general preservation policies for the National Estate, and through close consultation with the States and local government the Commission contributes to the development of effective and complementary policies and procedures at State and local government level. This approach recognises that to a large extent constitutional authority for environmental protection resides with the

States and if a comprehensive national policy is to be developed it is essential that State powers be used.

158. The primary role of the Commission at present is the compilation of the Register of the National Estate. In 1976, the Prime Minister said:

> As the first task the Commission will proceed urgently with the preparation of the register of the national estate so that priorities can be examined on a factual and systematic basis and not piecemeal. The register is an important planning document because it will provide essential information for the Government in making decisions on policies and programmes.[1]

The Register of the National Estate

159. The Register serves three basic yet essential purposes:

- it is the foundation of the National Estate and is an important educational and cultural device;

- by identifying important sites, the Register helps Government agencies, private corporations and individuals to act effectively and in a way that will serve to conserve, as far as possible the National Estate; and

- it leads to a much clearer identification of what is significant and ensures an objective measure for assessment and comparison.

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1. Hansard 4 June, 1976, p. 3066.

160. By formal recognition of those components forming the National Estate the legislation attempts to ensure that cultural and conservation considerations are adequately accounted for in the development of projects for which the Commonwealth acts as an approving authority.

161. In compiling the Register the Commission has sought to maintain a policy of objectivity. The decision to include places has been based solely on the National Estate merits of that place. The Commission stressed that it does not make judgements on the ownership, management, or use of a place in compiling the Register. The Register is intended to be purely a comprehensive inventory or catalogue of places which by the best available standards can be considered of National Estate value. It is not intended to serve as a preservation order nor is it a limited list of places which might have special national significance. The definition of the 'National Estate' (s. 4) encompasses the criteria suggested by the Hope Committee and acknowledges that local and regional interests are to be considered as equal with national and international interests in the preparation of the Register.

162. The Commission believes that the Register should contain:

- a representative list of those places which demonstrate the main stages and processes of Australian geological and biological history;

- rare or outstanding natural phenomena, formations, features, including landscapes and seascapes;

- habitats of endangered species of plants or animals;

- wilderness, forests and selected habitats and phenomena which, being readily accessible to *populated areas are as valuable as the rarer yet* less accessible places in the same category;

- significant rock-art galleries, ceremonial grounds and sacred sites, quarries and shell mounds, rock and earth arrangements, and important historical and archaeological sites of the Aboriginal peoples;

- representatives of the main stages of Australia's architectural and building history;

- monuments and historical landmarks, buildings, urban conservation areas and precincts which possess architectural, social, cultural, aesthetic, historic or biographical importance or other special values; and

- buildings, bridges, roads, fences, urban and rural settings and other structures or ruins which especially illuminate past ways of living, working or travelling.[2]

163. At present there are 4,855 places listed on the Register and approximately another 1,000 have been advertised as proposed for inclusion in the Register.

164. The Victorian Chamber of Manufactures expressed concern that the Commission was listing places as broad areas of land and questioned whether it was a misuse of the Act to employ it as a land planning or zoning instrument.

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2. Australian Heritage Commission, Annual Report 1977-78, p. 7.

The Committee considers that the listing of broad areas of land is consistent with the powers of the Commission and its stated aim of listing significant areas and does not constitute a departure from the intent, or a misuse of, the legislation. The question of the extent to which the Act imposes limitations on land use is discussed later in this Report.

165. Given the range of items that may be incorporated into the Register under the term 'place' the Committee does not believe it practical or desirable to more closely define the term.

Identification and Listing of Places

166. Although nominations for the Register of the National Estate may be made by any person, the Commission has only sought nominations from Commonwealth departments, State Governments and a few expert groups such as State National Trusts and major conservation groups. The Commission stated that priority was being given to nominated places and that at present the Commission lacked the resources to carry out the necessary professional and administrative operations on places identified by surveys funded under the National Estate Grants Programs. Even with the existing priorities the Commission stated that:

> We have several thousand nominations pending. We have not even taken them out of their envelopes... Some of them would be a couple of years old.[3]

The Commission estimated that with current staffing arrangements removal of the backlog will take between five and seven years.

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3. Transcript, p. 1063.

167. Following nomination of a place for inclusion in the Register the Commission undertakes a complex procedure of assessments. The Commission refers nominations, other than those from State Governments or National Trusts concerning classified sites, to specially appointed expert panels established by the Commission in each State. These panels report to the Commission prior to any decisions being made on the listing. The Commission refers nominations made by independent groups to the respective State Governments for comment and to the Australian National Parks and Wildlife Service and to the State National Trusts in the case of buildings.

168. The consideration of these independent reports and comments will indicate a prima facie case that the nominated place merits listing. After having determined that a place merits listing the Commission is required to advertise its intention to list a place on the Register. The nominated place is then incorporated on a 'list of places that might be entered in the Register' and for the purposes of the Act such places are deemed to be included in the Register and the obligations imposed under the Act attach to them.

169. The Committee agrees with the suggestion made by the Australian Mining Industry Council that the wording of the legislation in this instance may lead to inequitable results. As the Act is now worded a place may be included on the 'interim register' and be indefinitely protected by the legislation without being subject to the normal review process. Nominated places merit the provisional protection of the Act until the Commission decides whether or not to list a place on the Register. The Committee accepts that the legislation could allow the listing of places that have not been nominated. Nominated places are evaluated by the Commission and are subject to objection procedures and

possible removal, while places on the interim Register which have not been nominated are not subject to these procedures.

170. The Committee recommends that:

section 26 of the Australian Heritage Commission Act 1975 be amended to provide that only nominated places be included on the interim list.

171. The Act requires the Commission to wait a minimum of 3 months after advertising its intent to list a place on the Register. During this period any person or body may provide comment or object to the inclusion of a place. The Australian Coal Association claimed that the Commission had never extended the objection period past the minimum requirement. The Committee did not receive any evidence to suggest that in past cases the rights of objectors had been impaired because of the application of minimum requirements. The Committee does not believe that a longer minimum period is warranted.

172. In commenting on the listing procedures, the Australian Mining Industry Council argued that the Act does not require the Commission to consider the rights of existing or potential land users. The Commission advised that it has adopted a policy of writing to local authorities and to owners where they can be identified. The Committee believes that it is reasonable that identifiable property owners be fully advised of any action proposed, or taken, by the Commission which relates to their properties. The Committee acknowledges the action of the Commission in introducing this additional procedure and believes it has acted responsibly, but considers that such notification should not be seen as a discretionary procedure.

173. The Committee believes that it is the duty of the Commission to inform parties with identifiable existing interests in an affected property. Local authorities too, have a special interest arising from zoning responsibilities and land use control.

174. Accordingly, the Committee recommends that:

the *Australian Heritage Commission Act* 1975 be amended to provide:

- **that property owners, and persons and organisations with identifiable interests and local authorities be notified in writing by the Commission of a decision to proceed with the listing of a nominated place; and**
- **that notification of a decision by the Commission should be made no later than the time at which the Commission advertises its intention to take action in relation to a nominated place.**

175. Consideration was given to the interests of people who could be affected by a decision of the Commission but who have no direct interests in a place. The Committee believes that any responsibilities in this direction are adequately discharged by compliance with the general notification provisions of the legislation. The Commission advised that it advertised all proposals to list and any subsequent decisions to list places in the Register in the Government Gazette, a national paper and a local paper. To require the notification of people who may be affected would be an almost impossible task and would place an onerous and unjustifiable burden on the Commission.

176. The procedure for nomination requires the provision of detailed information concerning the place and justification of the need to list that place. In evidence to the Committee the National Trust of N.S.W. outlined the process it followed in determining the suitability of a place for

pomination. The procedure involves four separate appraisals by Trust Committees and the Trust Council leading to the Trust accepting that place as a 'classified' site. The Trusts have adopted a policy of nominating only those places to which they have assigned a 'classified' rating in their own registers and the Committee was informed that of the places considered only one place in twelve was nominated for listing in the Register of the National Estate.[4]

177. While accepting that all nominations may not be so closely scrutinised prior to submission to the Commission the Committee believes that similar careful consideration would be given in the majority of cases. This belief, coupled with the procedures adopted by the Commission to assess nominations and seek independent comment, clearly indicates that places ultimately considered for listing have not been arrived at in a haphazard manner nor without considerable forethought. The Committee does not consider that it is a relatively simple task to have a place included on the Register of the National Estate as was suggested by the Australian Mining Industry Council. Nor are the procedures overwhelmingly in favour of preservationist activities as suggested by the Queensland Chamber of Mines and the Confederation of Australian Industry.

Objections

178. The Commission is required by the Act to give due consideration to objections to proposals to list nominated places (s. 23(2)(c)) and the Committee was informed that the Commission considers objections very carefully.

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4. Transcript, p. 1219.

179. In examining objections the Commission contacts objectors and arranges for an inspection of the nominated place. An independent expert and a senior member of the Commission's staff inspect the place and discuss the objection with the objector. The Commission pointed out that a number of objections were withdrawn when the intent of the Act and the meaning of registration had been fully explained to objectors. The assessors report, together with the objection and nomination, is considered at a meeting of the Commission and a decision to list or not list is taken.

180. The mining industry has criticised the method of reviewing objections as being an internal process and it was described as 'an appeal from Caesar to Caesar'.[5] In responding to the comment the Commission acknowledged the internal nature of the process but stressed the objectivity and the thoroughness of the search for other information following an objection. The objection and review process was likened to an appeal from a single judge to a full bench court.

181. It was further argued by the Australian Mining Industry Council, Queensland Chamber of Mines and the Mineral Sands Producers' Association that there was no opportunity for appeal against decisions of the Commission. The Commission explained that under the Act the opportunity does exist for appeal to the Minister by persons dissatisfied with the Commission's actions although this was described as an untried and cumbersome process.

182. The Australian Coal Association was particularly concerned with what was seen as a lack of information available to an objector, especially in cases where the

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5. Transcript, p. 1064.

Commission proposed to list broad areas of land. It said that:

> When the Heritage Commission nominates areas of country and in particular ... nominates vast areas as a blanket area to cover certain specific sites within it which are not specifically nominated it becomes difficult for a person to make an objection adequately.[6]

183. The Commission advised that the need to list large areas to serve as buffer zones to protect specific sites was the subject of some concern and was under review. The problem centres around the listing of sacred or secret Aboriginal sites and the provisions of the Act which requires that all records be public. The Committee was informed that the approach adopted by the Commission was the same as that used to protect Aboriginal sites under State legislation. In terms of the information available to people or companies wishing to make objections, the Commission stated that on occasions nomination forms had been provided to companies to enable the preparation of objections and that the Commission would certainly take steps to satisfy any development group, whether it be a mining company or any group, of the location of these sites.

184. Given the difficulties relating to Aboriginal sites the Committee considers that some consideration should be given to listing such sites on a confidential register not generally available to the public. To avoid any criticism that may attach to the creation of a non-published list, provision should be made to continue the listing of general areas containing specific sites as a general information service to the public with advice readily available to

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6. Transcript, p. 1288.

objectors on the reason for the nomination of the listed place. With the consent of the Commissioners and upon written application more detailed information would be made available to persons on the location and nature of the place actually listed.

185. The Committee recommends that:

the Australian Heritage Commission Act 1975 be amended to provide for the establishment of a confidential register on which secret Aboriginal sites are to be listed.

186. Delays that may occur in making a final determination on the listing of a nominated place following the lodging of objections are a matter of concern to the Commission. Parties who have objections pending have a right to have that objection heard as quickly as possible and it was recognised that delays could have a detrimental effect on objectors.

187. The Confederation of Australian Industry and the Queensland Chamber of Mines suggested that a time limit of three months should be set for the final determination of the entry of a place on the Register after which the proposal to list a place on the Register would lapse automatically. The Commission agreed in principle with the suggestion and advised the Committee that consideration was being given to the introduction of a limitation which provided that if objections had not been dealt with within 12 to 18 months then the proposal would lapse.

188. The Committee supports the proposition to introduce a time limit within which objections must be considered to ensure that parties are not affected by lengthy delays. The Committee recognises the introduction of a time limit may mean that places which merit listing do not reach a final

192. The Committee believes that the delays are in part a result of the initial large number of nominations received following the introduction of the legislation. The Committee considers that in a few years the volume of nominations will decline and delays will no longer be a problem.

Scope

193. The Australian Heritage Commission Act 1975 gives the Commission a purely advisory role and does not attempt to confer direct authority to do anything in relation to the environment.

194. The direct effect of the legislation is on the Commonwealth's own internal processes. Each Commonwealth Minister is required to ensure that departments and authorities for which he has responsibility do not take any action that adversely affects a place on the Register unless the Minister is satisfied that there is no feasible and prudent alternative, and that all measures that can reasonably be taken to minimise the adverse effect will be taken. Commonwealth Ministers are similarly bound in relation to their own actions.

195. The entry of a place on the Register has no direct effect on that place or on the obligations of private owners or occupiers of that place. There is no provision for the acquisition of listed places and the Act does not control the use, sale or transfer of such places. The procedures in the legislation ensure that the Commonwealth acts in a responsible way towards places listed on the Register.

196. The Commission's role in protecting the National Estate is limited to making comments on any proposed actions. It is not empowered to make substantive decisions other than on the merit of a place for inclusion in the

Register. Decisions concerning proposals affecting listed places remains the responsibility of the appropriate Minister. The legislation makes it mandatory to consider National Estate matters but this is the only obligation. It remains the discretion of the Minister to define 'an adverse effect', 'feasible and prudent alternative' and 'actions that can reasonably be taken to minimise any adverse effect'. The Act does not require the continued or unaltered existence of a listed place as a pre-condition for the approval of a project. The Committee acknowledges that under the terms of the Act circumstances may arise where National Estate considerations are of such importance to warrant the cancellation of a proposal.

197. The Commission commented that listing of a place was not intended to constitute a preservation order and at times the national interest may best be served by the continuation of a development action even if the listed place will be adversely affected. Although a proposal affecting a listed place may proceed there may be considerations which require the justification of certain Ministerial decisions but this does not constitute an unnecessary brake upon development. The Committee believes that in instances where some element of the National Estate is to be significantly affected it is reasonable to expect the Minister to explain his actions.

198. Even though the Act is to a large extent discretionary in nature, the Committee believes it has had a beneficial effect in terms of protecting the National Estate. While the thrust of the legislation is aimed at Commonwealth activities there are significant secondary effects. Activities of Commonwealth agencies can have a significant effect on properties other than their own and the listing of a place can have a persuasive effect on proposed uses of a property. The Committee does not agree that such effects

are in any way harmful distortions. They ensure that appropriate weight is attached to social implications and contribute to the effective consideration of the competing interests sometimes involved in development proposals.

Conflict with Other Legislation

199. The Prime Minister, when announcing the review of the Act stated that 'there were some elements of the Heritage Commission Act as originally passed which do come into conflict with other Acts and which could stand in the way of matters which have been under full environmental review'.[7]

200. In commenting on the situation that had arisen over proposals to list in the Register of the National Estate areas that had been the subject of Mr Justice Fox's environmental reports, the Australian Council of National Trusts stated the belief that overlapping or duplication need not occur. It is in the hands of Commonwealth Ministers whether any delay, inconvenience or unreasonable problems arise.

201. The suggestion that duplication or delay could be avoided by consultation was supported by evidence taken by the Committee during the Urban Environment Inquiry when representatives of the then Department of Environment, Housing and Community Development stated[8] that a Memorandum of Understanding with the Commission was being developed on how the Department administering the Environment Protection (Impact of Proposals) Act 1974 would carry out investigations on behalf of the Commission and alternatively where

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7. Hansard, 22 February, 1979, p. 257.

8. Report, paragraph 353.

the Department would seek the Commission's views on whether a particular area is of heritage interest.

202. The Department of Defence outlined the consultation procedures it has adopted to co-ordinate the consideration of proposals and avoid a duplication of effort and any delays that may arise in complying with both Acts. Proposals that affect a listed place and that have a significant effect on the environment are considered by Regional Committees which review the heritage aspects of the proposal. Recommendations from these Committees are forwarded to the Commission for comment prior to overall environmental consideration of the proposal in accordance with the Environment Protection (Impact of Proposals) Act 1974. The Department stated that these procedures are included in the Memorandum of Understanding being developed between Defence and the Department of Science and the Environment for the consideration of matters in accordance with the Impact of Proposals Act.

203. The Impact of Proposals Act requires the consideration of a broad range of matters of which aspects covered by the Australian Heritage Commission Act are but a part, and although the potential for duplication may exist the Committee believes that effective administrative arrangements would remove the possibility of unnecessary conflict or delays without the need to limit the application of the Australian Heritage Commission Act. This course commends itself to the Committee and no amendment is considered necessary.

Commonwealth Departments

204. The Commonwealth Government through its departments and agencies owns or controls substantial numbers of properties, some of which form a vital part of the National

Estate. The Department of Administrative Services advised that approximately 300 Commonwealth properties had been listed on the Register of the National Estate. About 120 of these properties are held by Commonwealth departments and the remainder are controlled by various Commonwealth authorities.

205. In ensuring that these elements of the National Estate are managed responsibly, in accordance with the legislation, many positive steps have been undertaken. The Department of Administrative Services is the convenor of the Commonwealth Historical Sites and Buildings Committee which provides advice on how the Commonwealth and its instrumentalities can best undertake their responsibilities under the Act. The Terms of Reference of the Committee and the membership are at Appendix 8.

206. The Department of Defence, the Attorney-General's Department and the Australian Postal and Telecommunication Commissions have all undertaken projects aimed at preserving buildings or townscapes of National Estate significance. In commenting on the appreciation of National Estate considerations that is shown by some departments the Heritage Commission stated that it was not likely to see again the harsh or undesirable activities carried out years ago by departments like the then Postmaster-General's Department. The Australian Postal Commission has recently formulated a policy which aims at maintaining, preserving and restoring those buildings which are considered worthy of preservation.

207. The development of departmental attitudes has been assisted by the Heritage Commission which has acted to draw the attention of departments to the requirements of the Act. The Heritage Commission has provided all departments with a definition of 'adverse effect' and regularly circularises

departments with copies of Government Gazettes advising of places that have been listed or are proposed for listing in the Register.

208. The Heritage Commission also provides practical advice. In conjunction with the Department of Administrative Services the Commission is attempting to develop a means of disposing of Australia Post's redundant or obsolete post offices under covenants designed to safeguard their future. Similar negotiations have been undertaken with the Department of Defence. The Department of Transport and the Heritage Commission participated in a working party which examined every lighthouse in Australia and prepared a dossier of comments on each structure which is now used in programming work on the updating of these facilities. It has been the Heritage Commission's policy to encourage Commonwealth authorities and instrumentalities to incorporate maintenance or restoration programs in those proposals that affect a listed site or to properly record a place to be destroyed.

209. The Heritage Commission believes that departments in the main comply with the requirements of the legislation. In terms of significant proposals undertaken by the Departments with major works programs (e.g. the Departments of Defence and Housing and Construction) the Heritage Commission usually receives adequate notice to assess the proposals. The Departments of National Development and Trade and Resources generally refer matters for comment. Following the Heritage Commission's assessment of a proposal consultation takes place with the department, and the Heritage Commission was able to comment:

> In nearly three years, in every case where we have asked a department to do something, they have either completely complied, or else modified their action.[9]

9. Transcript, p. 1059-1060.

210. The Heritage Commission examined about 500 proposals received from the Foreign Investment Review Board during 1977/78. Assessment serves to alert both the foreign investor and the appropriate authorities of the National Estate significance of a proposal and 'in no cases known to the Heritage Commission have developers objected'[10] to comments made on the proposals.

211. The Committee sought departmental comment and attitudes towards the legislation. The Department of Transport stated that they have no problem with the Australian Heritage Commission Act and that the Department has had the utmost co-operation from the Heritage Commission. In summary, officers from the Department stated '... we have no problems at all in the implementation of the Act.'[11] The Department of Defence commented that in general it has no objection to places under its control being listed in the Register of the National Estate, subject to certain use criteria. It has been the practice of the Department to manage and maintain the properties in a manner compatible with their status in the Register. The Act allows reasonable use by the Department of any area recorded on the Register and already used by the Department. The Australian Telecommunications Commission advised the Committee that it had developed procedures which allow it to comply with the Act in the majority of cases without undue difficulty. The Committee sought advice from a number of other departments but was not advised of any opposition to the legislation or the manner in which it operates.

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10. Australian Heritage Commission, Annual Report, p. 9.

11. Transcript, p. 1331.

Maintenance of Commonwealth Property

212. In considering the degree of financial support, if any, which should be available for the maintenance and preservation of those components of the National Estate under the control of the Commonwealth, it is necessary to consider the uses of the properties and the degree of commercial viability or the extent of economic independence which may attach to those places.

213. Some listed sites may require no Commonwealth Government assistance to ensure their preservation. The Department of Transport advised that the costs of maintenance compatible with the status of the listed sites which are operational marine navigational aids (e.g. historic lighthouses) are fully recovered from the maritime industry. Cost recovery does not extend to redundant facilities or to the maintenance of buildings that are not essential operational structures. The Department of the Capital Territory instanced historic sites which have been leased under conditions which ensure the preservation of those places with the costs being borne by the lessees.

214. Many listed places are however occupied by Commonwealth departments and authorities and the cost penalties for maintaining historic buildings fall directly on Government. The Department of Administrative Services explained that current funding arrangements for the preservation of Commonwealth-owned and occupied National Estate properties are based on a philosophy of normality. That is, funds for such work are provided as part of departments' normal operational functions.

215. The Department of Defence commented that an increasing amount of expenditure is required to maintain buildings of historic significance and that these monies are

currently included in the Defence Budget allocation. The Department suggested that if work in addition to ordinary maintenance is carried out simply to preserve a Heritage site then a proportion of the repair and maintenance costs should be funded from a source outside the Defence Vote. This suggestion was supported by the Australian Postal Commission which commented that the additional costs involved in preserving historic buildings should be borne by the nation as a whole and should not be considered as an operational cost.

216. The Heritage Commission stated that the problem of providing funds for heritage properties is a vexatious one which concerns many departments and agencies. Consideration has been given to the possibility of establishing a 'heritage fund' to pay for the additional costs in the preservation of historic property, above and beyond normal maintenance costs. An approach to the problem was the introduction of a scheme similar to a United States program which made a special fund available to the Federal Agency charged with the maintenance of property, for use in the restoration or maintenance of designated properties. An analogy in Australia would be for the Department of Administrative Services in consultation with the Heritage Commission to manage an appropriation for the special maintenance of Commonwealth-owned and occupied places listed on the Register of the National Estate.

217. While the Committee acknowledges that the concept has merit, it believes that practical difficulties would, in this instance, prevent the introduction of such a scheme. The Department of Finance argued that it would be extremely difficult, if not impossible, to determine what proportion of costs should be regarded as relating to departmental usage and what part to National Estate requirements. It was suggested that if the responsibility for funding maintenance

was to be divided it would follow that departments must, to some extent, lose full control over their own properties.

218. The Department of the Capital Territory similarly suggested that it would prefer to seek funds in its own right for the preservation of buildings and sites under its control. It was seen as unreasonable for another body to have that responsibility or for the responsibility to be divided. The Department of Administrative Services envisaged difficulties with such a program especially in cases where an authority's or department's operational priorities conflicted with the Heritage Commission's preservation priorities.

219. The Committee accepts and concurs with the view of the Department of Finance that where Government departments, authorities or trading enterprises are required to meet the full cost of maintaining those properties which happen to be on the Register of the National Estate those costs should be met from departmental votes. This approach is consistent with the individual responsibilities placed on Ministers, departments and authorities to abide by the Act.

220. The Committee does however consider that it may be useful to establish a separate section within departmental repair and maintenance votes as suggested by the Department of Administrative Services. Under this approach the entire costs associated with the maintenance or restoration of listed places could be grouped. Estimates for these categories could be arrived at following consultation between the responsible department and the Heritage Commission. In formulating these estimates account would be taken of the status of the site and the priority of necessary work as seen in terms of National Estate requirements, the

operational needs of the user department and the availability of funds. This procedure would ensure that above-average maintenance costs for listed places were recognised and did not distort or inflate the operational section of departmental budgets. The special category and allocation would also serve to emphasise to the departments themselves the National Estate significance of their own properties. It would provide a ready check to ensure that while listed places were in the charge of a department, funding for maintenance programs compatible with their status was available. The approach suggested by the Committee would not necessarily entail additional Commonwealth expenditure. As indicated, funding for the maintenance of listed places is already included in departmental appropriations under other categories. An additional section within departmental appropriations would ensure that funds allocated for National Estate works were not re-allocated to satisfy other departmental objectives. Decisions taken to implement or defer programs within such a division would then be taken only in relation to competing National Estate priorities and not in competition with the wider range of departmental works.

221. Accordingly, the Committee recommends that:

the Department of Finance, the Department of Administrative Services and the Australian Heritage Commission examine the desirability of introducing a separate item into departmental appropriations or any other means to allow the independent grouping of all maintenance and restoration costs associated with Commonwealth properties listed on the Register of the National Estate.

222. The Committee is concerned that adequate arrangements do not exist to ensure the preservation of Commonwealth properties that have been declared redundant. Telecom informed the Committee that the Assistant Crown

Solicitor had advised that the maintenance of buildings or structures declared redundant or surplus and awaiting disposal was not required under the legislation. Australia Post advised that funding for the maintenance or preservation of historic buildings would only be available where expenditure is consistent with the objective of providing an efficient postal service at the lowest possible cost. The Committee believes that it is unlikely that any Commonwealth authority, particularly trading authorities would be willing to accept the substantial cost penalties involved in maintaining redundant buildings.

223. The Committee believes that in the case of redundant buildings there is a need to ensure that listed places *receive minimal maintenance to prevent unnecessary degradation*. The Committee considers that the creation of a fund outside normal departmental appropriations for the maintenance of redundant buildings would be appropriate.

224. Accordingly, the Committee recommends that:

a fund be established under the control of the Department of Administrative Services for the maintenance of redundant Commonwealth properties listed on the Register of the National Estate.

225. The Department of Administrative Services, which is responsible for the disposal of surplus Commonwealth properties, in consultation with the Heritage Commission, would be in a position to determine the future of listed places. The maintenance of individual properties under this scheme should not be regarded as a permanent arrangement. The Committee considers that should a place declared surplus be significant in terms of the National Estate it could be maintained until a suitable custodian is located or in other cases a place could be maintained until acquired for suitable redevelopment. The Committee would expect that

redundant buildings would be disposed of under conditions compatible with the buildings National Estate status.

The States

226. The Committee recognises that while valuable conservation efforts in the States can be pursued by virtue of the Commonwealth National Estate Program and the Australian Heritage Commission Act 1975, the principal responsibility for legislation for the management of important components of both the cultural and the natural environment resides with the States.

227. Specific legislation has been enacted in New South Wales, Victoria and South Australia and the Australian Council of National Trusts has advised that collaboration between the Council or State Trusts and State Governments on draft legislation has occurred in all States. Consultation is continuing on the preparation of draft legislation in Queensland, Western Australia and Tasmania.

228. The Heritage Commission has established working relations with State government agencies and has acknowledged that many positive developments have been achieved by the States in the preservation of the Australian Heritage. The Commission stated that, in preparing the Register of the National Estate it received considerable co-operation from the States and had received nominations from every State except Queensland.

229. Criticism of the legislation by industry groups has centred on the perceived Commonwealth intrusion into State jurisdiction. In commenting on the desirability of the Commonwealth legislation representatives from various State Governments described the activities of the Heritage Commission as 'vital', 'essential' and 'of importance'.

230. Officers from the South Australian Government stated that the activities of the Heritage Commission have greatly assisted the identification and preservation of the physical and cultural heritage. By increasing community awareness of the National Estate the Heritage Commission has stimulated action at the State level. Since the introduction of State legislation in 1975 there had not been one instance of conflict with the Commonwealth over the application of the Commonwealth Heritage Act.

231. The New South Wales Minister for Lands endorsed the liaison and working arrangements between the New South Wales Heritage Council and the Australian Heritage Commission as 'a model of co-operative federalism', and officers of his Department considered that it is of the utmost significance to the New South Wales Government that the Australian Heritage Commission Act provides control at the Commonwealth level over Commonwealth-owned properties and in respect of the activities of Commonwealth instrumentalities.

232. Representatives from the Victorian Government stated that the Act has in no way prejudiced the operation of Victorian legislation.

233. New South Wales and South Australia argued that as their legislation was complementary they would not advocate extensive alterations to the legislation. The New South Wales Government suggested that any review should take into account the great significance of the Heritage Commission's role and responsibilities for effective conservation of the States' environmental heritage.

234. The Commission pointed out an anomaly in the application of the Act to territories of the Commonwealth. The Northern Territory and Norfolk Island are treated as total instruments of the Commonwealth and hence all actions

taken by the Territorial administration are subject to the Act. The self-governing role of the Northern Territory and Norfolk Island is inconsistent with the continued application of Commonwealth legislation to entirely 'State' administrative decisions.

235. The Commission stated that it would be appropriate to amend the Act to place these Territories in a position similar to that of the States. While the Committee agrees with the Commission's suggestion it also recognises the need to introduce appropriate Territorial legislation before any limitations are made to the operation of the Act in those Territories.

236. The Committee believes that even with the development of a system of complementary legislation in the States it is vital that the Australian Heritage Commission Act 1975 remains, as State legislation is not binding on Commonwealth departments and instrumentalities.

Industry Attitudes

237. The Committee believes that the philosophy of a National Estate has received general acceptance by industry groups. The Confederation of Australian Industry stated that it has no quarrel with the basic intent of the Act which seeks to provide protection for those areas or places with important historic, cultural, environmental or scientific features. Similar sentiments were expressed by such representative groups as the Australian Coal Association, the Queensland Chamber of Mines and the Mineral Sands Producers' Association. The Committee received no criticism from any group directed at the purpose of the Act.

238. In commenting on industry attitudes the Commission stated that in practice companies do attempt to protect listed sites and occasionally this can involve those companies in considerable expense. The Committee acknowledges that among mining and other groups there is a growing awareness and an interest in the environment. The Heritage Commission informed the Committee that there are some companies that still have more of a 'frontier mind' in terms of environmental considerations.

239. While agreeing with the principal of the National Estate the mining industry in its representations to the Committee and in other forums has been vocal in its criticism of the manner in which the legislation was drafted and its administration. The industry concern centres on the fact that approvals for development proposals may depend on whether a Minister is satisfied that there is no feasible and prudent alternative and that all possible safeguards will be implemented. The Queensland Chamber of Mines argued that investment analysis was difficult in situations where the viability of a proposal depended on the value judgements of one man.

240. The Committee does not consider that the Act introduces an unacceptable degree of doubt into the investment decision. The Register serves to provide adequate notice of the significance of listed areas and the Committee would expect that feasibility studies associated with a proposal would include consultation with relevant departments and the Australian Heritage Commission. Through a process of consultation, proponents and departments would be able to determine if a proposal is acceptable in principle or likely to meet with objections because of the effect it may have on a heritage area. Given the success of consultation in eliminating conflict between Government departments and the Commission the Committee finds it difficult to imagine

circumstances where the approval of proposals, other than the most controversial, would be withheld or delayed because of heritage considerations. In these cases the closest scrutiny is justified to ensure that listed places are not unnecessarily affected.

241. The Heritage Commission is concerned that the operation of the Act is not widely understood. Misinterpretation of the Heritage Commission's role has undoubtedly generated widespread and unjustified criticism of the legislation. The Heritage Commission stated:

> The trouble is that a lot of miners seem to think it is legislation which is similar to that which exists in most States for national parks ... (and that it) excludes mining or even exploration in national park areas.[12]

242. The Heritage Commission has held discussions with the Australian Mining Industry Council and principals of companies throughout Australia to explain that it was not the Heritage Commission's responsibility to stop any mining on any site which has been identified as part of the National Estate. The Heritage Commission's view is that economic activity will continue to proceed in areas that are on the Register of the National Estate. This may involve the establishment of environmental safeguards, as in the Kakadu National Park, but with requirements appropriate to each case. The Heritage Commission accepts that it may well be prudent to allow a project to proceed in an area that is listed on the Register of the National Estate because there are significant social implications in not going ahead.

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12. Transcript, p. 1047.

243. The Committee recognises the importance of the consultation program undertaken by the Commission and accepts that this can help eliminate many criticisms arising from misunderstandings. The Committee is concerned that some criticism has been made with the aim of removing Commonwealth legislation regulating mining operations in listed areas. While the Committee has accepted that environmental awareness has been shown by sections of industry the Committee does not believe that the removal of the legislation and a reliance on the self-regulation of the industry would be in the best interests of the National Estate.

244. The Australian Mining Industry Council argued that the legislation was discriminatory and similar sentiments were expressed by individual companies. The Committee accepts that because of constitutional constraints the legislation is limited in its impact to certain types of industry. The Act however, is not only concerned with export-orientated or foreign investment-reliant industries. It affects Commonwealth Government operations which encompass the entire array of Commonwealth activities and even has a bearing on State works programs in which the Commonwealth is involved.

245. The mining industry also expressed concern that compensation provisions were not included in the legislation to recompense owners in the event of damage arising from the inclusion of a place on the Register of the National Estate.

246. The Australian Council of National Trusts suggested that compensation provisions should not be included in the legislation because the listing of a place on the Register does not, of itself, involve the Commonwealth Government in any action that directly affects other interests in that place. The Council contended that situations may arise

where the Commonwealth in exercising the powers under other legislation takes a decision, because of heritage considerations, that give rise to an obligation to pay compensation. This obligation does not arise from the Act but from executive action authorised by and carried out under other legislation.

247. The Committee agrees with the Council's argument and does not support the suggestion that compensation provisions be incorporated into the Australian Heritage Commission Act 1975.

248. In addition to its functions relating to the compilation of the Register of the National Estate and the provision of advice and maintenance of Commonwealth properties listed on the Register, the Commission carries out a number of other important roles.

National Estate Grants Program

249. The Commission acts in an advisory capacity to the Minister for Home Affairs in the administration of the National Estate Grants Program. Through this Program funds are made available to the States under the Urban and Regional Development (Financial Assistance) Act 1974 to assist in the conservation of the National Estate. During the 1977/78 financial year $2.6 million was provided for works programs developed by the State Governments in consultation with the Australian Heritage Commission and the former Department of Environment, Housing and Community Development. These programs were directed primarily at the protection of significant sites and buildings. In addition to actual works programs grants were made to fund long-term studies, in both the cultural and natural environment, to identify problems that concern the National Estate and to recommend ways of protecting places at risk.

250. The Commission believes that apart from aiding physical protection the Grants Program has helped increase awareness of the importance of our national heritage.

Grants to Voluntary Conservation Groups

251. The Commission acts in an advisory capacity to the Minister for Home Affairs on the granting of aid to State National Trusts and other major conservation groups. These funds are made available to assist with the administrative expenses of these organisations.

Education and Research

252. The Commission also has a statutory obligation to further training and education in fields relating to the conservation, improvement and presentation of the National Estate. To permit an understanding of the National Estate the Commission has developed, through the Curriculum Development Centre, curriculum materials for schools which act as a practical guide to investigation of heritage areas familiar to students. Additionally, the Commission publishes a Heritage Newsletter and is considering the production of a National Estate film and travelling exhibition.

253. The Commission has a policy of developing its own reference collection as a research and resource centre. Preliminary work has been carried out on a number of important studies in areas relating to the conservation of the National Estate namely:

- the role of local government planning and statutory controls in the built environment;

- taxation problems and incentives for the preservation of the National Estate;

- the economics and techniques of recycling buildings;

- covenants and easements as instruments of preservation; and

- the compilation of an inventory of study reports on the natural environment and on historic places.

254. The Commission provided the Committee with a list of research projects which it proposed to undertake. This list is at Appendix 9.