

## 5 ACCESS TO THE COURTS

### Existing Rules of Standing

255. The question of extending standing (locus standi)<sup>1</sup> to allow greater public access to the courts in matters of environmental concern was raised by many environmental groups. The ability of members of the public to obtain standing to bring environmental matters to court was regarded by many witnesses as an essential aspect of public participation in environmental decision-making.

256. The courts have tended to restrict access by giving a very narrow interpretation of the standing requirements. In interpreting the law the courts have emphasised the rights of the individual and generally consider only matters directly affecting that individual's economic or personal interests, in determining his right to present a claim to the court. The result is that access to the courts is not generally granted on environmental grounds when the damage suffered has not specifically affected the personal or property interests of the individual or group bringing the action but merely affects the community at large.

257. Legislation may provide for standing for challenges either under a particular Act or may provide for general procedures for review of decisions made by administrators (e.g. Administrative Decisions (Judicial Review) Act 1977). However, statutory definitions of standing such as 'person aggrieved', 'person interested', 'person dissatisfied' and 'person affected'<sup>2</sup> have invariably been given restrictive

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1. locus standi: the legal entitlement of an individual or group to bring an action before the courts, tribunals and certain government bodies.

2. Law Reform Commission Discussion Paper No. 4 Access to the Courts - Standing: Public Interest Suits, p. 19.

interpretation by the courts. The criteria is still whether the plaintiff has proprietary or financial interest in the matter and so a person who is not directly involved will not be heard.

258. There remains the possibility that access to the courts can be gained by pursuing public interest suits. Individuals or groups concerned about public welfare may gain the necessary standing to proceed with their case by seeking a fiat<sup>3</sup> from the Attorney-General. Once the fiat has been granted the plaintiff does not need to establish damage.

259. Where the defendant is an individual, all that need to be proved is that the law broken was enacted for the benefit of the public. Where the defendant is a public authority, breach of the law is sufficient. However, the grant of a fiat is entirely discretionary, and environmental groups have pointed to incidents where they feel the Attorney-General's decision was subject to political interference.

260. Several witnesses suggested that the Environment Protection (Impact of Proposals) Act 1974 should be amended to enable members of the public to obtain standing to bring environmental matters to court and to ensure that the Act and Procedures are followed. The Act does not expressly provide for challenges to Ministerial decisions by members of the public. When the Bill was introduced, the then Minister for Environment and Conservation stated that the Act would not give individual citizens the power to stop environmentally damaging projects or set conditions upon

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3. Fiat: a grant of permission by an Attorney-General for proceedings to be taken by some person in his name.

them. So far, this has been the case. The actions of the Minister for the Environment in giving environmental clearance to the proposal of the Iwasaki Sangyo Co. at Yeppoon in Queensland without a final Environmental Impact Statement were challenged by the Australian Conservation Foundation. The Foundation has so far been unsuccessful in lower courts on the issue of standing. The High Court reserved judgement on the case in May.

261. Environmental groups argued that the opportunity should be given to concerned community groups and individuals to participate in environmental assessments and to aid informed government decision-making and that standing should be extended to allow this. One witness also advocated that there should be a private right of action available to any member of the public who wishes to sue a person for causing damage of a significant kind to the environment.

262. The Law Reform Commission has produced a working paper<sup>4</sup> which discusses and evaluates a number of alternatives for extending standing. These included an 'open door' policy whereby any person would be allowed to take proceedings. The Commission argued that the number of actions brought would be limited by the high costs involved. A second suggestion was to set up a preliminary screening procedure whereby standing would be determined before the substantive issues were considered. This was not regarded as a satisfactory alternative for a number of reasons including increased costs, the fact that standing would then be a separate issue from the substantive merits of the case and that it may lead to the plaintiff unnecessarily forfeiting standing in a private right.

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4. Law Reform Commission, Discussion Paper No. 4, Access to Courts - Standing: Public Interest Suits.

263. Finally, the Commission suggested and tentatively approved the adoption of a single standing rule to enable the courts to screen plaintiffs as part of the determination of the suit. The Commission supported the formula proposed by Dr G.D.S. Taylor that standing should be accorded where the controversial issues were 'matters of real concern to the plaintiff'.<sup>5</sup> The advantage of this test is that it would eliminate nuisance litigants but not restrict standing to the narrow legal connotation of the word 'interest' which has been restricted to economic consequences.

#### Reform of the Act

264. At present, the Act makes no provision for a challenge on the following matters:

- . the need for an Environmental Impact Statement;
- . the manner and preparation of the final Environmental Impact Statement;
- . the adequacy of the final Environmental Impact Statement; or
- . the compliance by the developer with the terms of the Environmental Impact Statement.

These matters are currently matters of Ministerial discretion and the merits of the Minister's decision are beyond judicial challenge. The courts will only consider whether the procedural requirements of the Act have been met and will not attempt to formulate environmental policy by considering the acceptability of a proposal.

265. Broadening the standing provisions would only allow actions based on non-compliance with the procedures of the Act, and not based on environmental considerations.

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5. G.D.S. Taylor, Seminar on Environmental Law (1974) Attorney-General's Department.

266. The issue of access to the courts is currently before the Law Reform Commission and the Committee agrees with the recommendation made by the Senate Standing Committee on Constitutional and Legal Affairs in their report 'Reforming the Law'<sup>6</sup> that law reform initiatives which may duplicate matters referred to the Law Reform Commission should be delayed until the Commission's recommendations are available.

#### The Role of the Courts in Environmental Review

267. Several witnesses suggested that courts of law were not the most appropriate place in which to challenge decisions made on environmental issues. Although the possibility of a public challenge ensures that the Act's procedures are taken seriously, courts do however have disadvantages. These include:

- . challenges are often made at a late stage in the decision-making process. Departments and developers may have committed considerable resources to projects which may have to be abandoned as the result of a successful action;
- . the courts will enforce only procedural requirements and will not interfere in policy decisions;
- . the legal costs; and
- . the present narrow rules on standing.

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6. Senate Standing Committee on Constitutional and Legal Affairs, Reforming the Law, Parliamentary Paper No. 90 of 1979, pp. 28-29.

268. It is in the interest of all parties concerned to investigate alternative means of debating and reaching agreement on environmental issues.

J.C. HODGES

Chairman

October 1979.

## APPENDIX 1

### LIST OF WITNESSES

AGNEW, Mr C.J.	Manager of Mines, Alcoa of Australia Limited, KWINANA.
ALFREDSON, Mr I.D.	Member of the Legislation Committee of the Queensland Chamber of Mines, BRISBANE.
ANDREWS, Mr G.	Assistant Chief Planner, Heritage and Conservation, New South Wales Planning and Environment Commission, SYDNEY.
ATTWOOD, Ms A.P.J.	Co-ordinator, Environment Action Group, Women's Electoral Lobby, ADELAIDE.
BARTHOLOMAEUS, Mr W.N.	Executive Member, Conservation Council of Western Australia Inc. and Campaign to Save Native Forests (Western Australia), PERTH.
BOLTON, J.C., Lt.-Col.	Senior Executive Officer (Environment), Defence Facilities Division, Department of Defence, CANBERRA.
BOURKE, Mr M.	Director, Australian Heritage Commission, CANBERRA.
BOURNE, Ms E.	Co-ordinator, Queensland Conservation Council, BRISBANE.
BOWEN, Mr B.K.	Director, Department of Fisheries and Wildlife, PERTH.
CALVERT, Mr R.G.	Acting First Assistant Secretary, Environment Protection Division, Department of Environment, Housing and Community Development, CANBERRA. Assistant Secretary, Proposals Assessment Branch, Department of Science and the Environment, CANBERRA.

CASSIN, Mr K.	Administrator, Corporate Affairs Division, Victorian Chamber of Manufactures, SOUTH MELBOURNE.
CHALLEN, Mr R.H.	Member, Environmental Committee, Australian Coal Association, SYDNEY.
COLE, Mr D.A.	Honorary Secretary, Conservation Council of South Australia Incorporated, ADELAIDE.
CONNELL, Dr D.W.	School of Australian Environmental Studies, Griffith University, NATHAN.
CORDNER, Mr J.P.	Director, Australian Chemical Industry Council, SOUTH MELBOURNE.
CORNISH, Mr P.C.	Acting Director, National Parks and Wildlife, Department for the Environment, ADELAIDE.
CRAWFORD, Dr P.J.	Acting First Assistant Secretary, Department of Environment, Housing and Community Development, CANBERRA.
CROOK, Mr R.D.	Executive Director, Petroleum Institute Environmental Conservation Executive, Australian Institute of Petroleum Ltd, MELBOURNE.
DENT, Mrs E.	Member, Women's Electoral Lobby, ADELAIDE.
DUNK, Mr W.P.	Assistant Director (Assessments), Ministry for Conservation, EAST MELBOURNE.
ECCLES, Mr P.B.	First Assistant Secretary, Coastal Services Division, Department of Transport, CANBERRA.
ELENIUS, Mrs E.	Project Officer, Nature Conservation Council of New South Wales, SYDNEY.



FREEMAN, Mr W.	Chief Executive Officer, Australian Chemical Industry Council, SOUTH MELBOURNE.
GAWAN-TAYLOR, Mr M.	First Assistant Secretary, Strategic Planning and Resource Allocation Division, Department of Transport, CANBERRA.
GILPIN, Dr A.	Assistant Director, Environment Control, State Pollution Control Commission, SYDNEY.
GRANO, Mr T.A.	Solicitor, Consultant to Murphyores Incorporated Pty Ltd, BRISBANE.
HARDY, Mrs B.R.	SEACLIFF, S.A.
HARE, Mr W.	Media Officer, Campaign to Save Native Forests, PERTH.
HENRY, Mr R.J.	School of Australian Environ- mental Studies, Griffith University, NATHAN.
HIGGS, Mr H.J.	Director of Environment, Department of Science and the Environment, CANBERRA.
HOLLICK, Dr M.F.G.	KALAMUNDA, W.A.
HUGGETT, Mr J.W.E.	Senior Assistant Secretary, Airport Planning and Development Branch, Department of Transport, CANBERRA.
HUNT, Mr P.	Assistant Secretary, Defence Facilities Division, Policy Development Branch, Department of Defence, CANBERRA.
INGLIS, Mr G.R.	Director, Projects and Assessment, Department for the Environment, ADELAIDE.
JAMES, Mr P.C.	Deputy Director, National Trust of Australia (New South Wales), SYDNEY.
JENKINS, Mr C.F.H.	President, National Parks Authority of Western Australia, NEDLANDS.

JOHNSTONE, Mr D.A.	Director, National Parks and Wildlife Service, SYDNEY.
KELLEHER, Mr G.	Acting First Assistant Secretary, Environment Division, Department of Science and the Environment, CANBERRA.
LENNON, Ms J.L.	Senior Planning Officer, Ministry for Conservation, EAST MELBOURNE.
LEWIS, Dr J.W.	Member of the Environmental Committee of the Queensland Chamber of Mines, BRISBANE.
LITTLEWOOD, Mr G.E.	Member of the Environmental Committee of the Queensland Chamber of Mines, BRISBANE.
LOWRY, Mr I.B.	Legal Officer, Australian Paper Manufacturers Ltd, SOUTH MELBOURNE.
MCCABE, Mr R.J.	Chairman, Queensland Conservation Council, BRISBANE.
MATTHEWS, Mr N.R.	Assistant Secretary, Road Projects Branch, Department of Transport, CANBERRA.
MOLESWORTH, Mr S.R.	Member of the Executive Committee, Conservation Council of Victoria, MELBOURNE. Chairman, Environmental Law Section, Law Institute of Victoria, MELBOURNE.
MOSLEY, Dr J.G.	Director, Australian Conservation Foundation Inc., MELBOURNE.
MUIR, Mr R.K.	Director, Rail Branch, Department of Transport, CANBERRA.
MURPHY, Mr W.	Managing Director, Murphyores Incorporated Pty Ltd, BRISBANE.
MURRAY, Mr P.J.	Chairman, Environmental Committee, Australian Coal Association, SYDNEY.

NORMAN, Dr N.E.	Chairman, Environment Committee, Victorian Chamber of Manufactures, SOUTH MELBOURNE. Chief Chemical Engineer, Australian Paper Manufacturers Ltd, SOUTH MELBOURNE.
PARKES, Mr B.J.	Member of the Industrial Environment Committee and the Automotive Emissions Committee, Petroleum Institute Environmental Conservation Executive, Australian Institute of Petroleum Ltd, MELBOURNE.
PATERSON, Mr K.F.	Assistant Director, Technical, Australian Mining Industry Council, CANBERRA.
PORTER, Mr C.F.	Director, Department of Conservation and Environment, PERTH.
PRATTEN, Mr C.H.	Chairman, Nature Conservation Council of New South Wales, SYDNEY.
REEVES, Ms A.E.	Member, Women's Electoral Lobby, ADELAIDE.
REEVES, Mr P.R.	Councillor, Conservation Council of South Australia Inc., ADELAIDE.
RUTHERFORD, Mr J.A.	Member, Environmental Law Section, Law Institute of Victoria, MELBOURNE.
SIBLY, Mr J.M.	President, Conservation Council of South Australia Inc., ADELAIDE.
SIMPSON, Mr G.	Member of the Queensland Legislative Assembly for the seat of COOROORA.
SINCLAIR, Mr J.	President, Fraser Island Defenders Organisation Ltd, MARYBOROUGH.
SOMERVILLE, Mr J.G.	Treasurer, Nature Conservation Council of New South Wales, SYDNEY.

STEVENS, Dr P.R.	School of Australian Environmental Studies, Griffith University, NATHAN.
STOCK, Mr E.	President, Australian Littoral Society (Member Body of the Queensland Conservation Council), ST. LUCIA.
SWARTZ, Mr G.L.	Deputy Director, Ministry for Conservation, EAST MELBOURNE.
TEDDER, Mr J.L.O.	Executive Director, Conservation Council of South Australia Incorporated, ADELAIDE.
TEMBY, Mr A.L.	Member of the Industrial Environment Committee and the Automotive Emissions Committee, Petroleum Institute Environmental Conservation Executive, Australian Institute of Petroleum Ltd, MELBOURNE.
WALKER, Mr R.N.	General Secretary, Australian Council of National Trusts, SYDNEY.
WALLIN, Mr K.C.	Executive Officer, Environmental Committee, Australian Coal Association, SYDNEY.
WILLCOX, B.A., Lt.-Cd. RANR.	Member, Environmental Committee, Australian Coal Association, SYDNEY.
YENCKEN, Mr D.G.D.	Chairman, Australian Heritage Commission, CANBERRA.

## APPENDIX 2

### LIST OF EXHIBITS

1. **MURPHYORES INCORPORATED PTY LTD**  
Extract "Fraser Island Environmental Inquiry Final Report - Findings October, 1976"
2. **MURPHYORES INCORPORATED PTY LTD**  
"Aboriginal Land Rights - An Opportunity to Contribute - Mining Review, April 1978"
3. **MURPHYORES INCORPORATED PTY LTD**  
"Fraser Island Environmental Inquiry - A Critique"
4. **VICTORIAN STATE GOVERNMENT**  
"Guidelines for Environment Assessment and Environment Assessment Act 1978"
5. **PETROLEUM INSTITUTE ENVIRONMENTAL CONSERVATION EXECUTIVE**
  - (a) "Oil Industry Environmental Costs and the Consumer".
  - (b) "Environment, Resource and Energy Conservation: Lead in Petrol".
  - (c) Reprint of a Paper Presented at a Technical Conference of The Institution of Engineers, Australia, Townsville 1976.
  - (d) Hydrocarbon Vapour Emission Survey in the Sydney Basin Area.
  - (e) Comments by Australian Institute of Petroleum Ltd on Proposed Amendments to Clean Air Regulations of the State Pollution Control Commission of NSW (SPCC) April 1978.
  - (f) Effect of Proposed Legislation on the Gasoline Marketing Industry.
  - (g) "Energy Conservation and Exhaust Gas Filter Developments 1978".
6. **PETROLEUM INSTITUTE ENVIRONMENTAL CONSERVATION EXECUTIVE**  
"Final Report on The Economic Impact of Environmental Regulations on the Petroleum Industry - Phase II Study".
7. **COMMONWEALTH GOVERNMENT DEPARTMENT OF DEFENCE**  
"Triad" - Autumn 1979 No. 13.

8. NEW SOUTH WALES STATE GOVERNMENT

- (i) An Assessment of Photochemical Smog in the Sydney Region.
- (ii) Environmental Impact Assessment of Flood Mitigation Works and Dams.
- (iii) Principles and Procedures for Environmental Impact Assessment in New South Wales: Environmental Standard E1-4.
- (iv) Annual Report of the State Pollution Control Commission: For the year ended 30 June 1978.
- (v) Australia's 100 Years of National Parks.
- (vi) 1978 Annual Report - National Parks.
- (vii) The Heritage Act, 1977.
- (viii) Two advertisements by the State Pollution Control Commission of N.S.W. dated 19 October 1977 and 20 December 1977.

## APPENDIX 3

### LIST OF SUBMISSIONS

The following individuals and organisations assisted the Committee by providing written submissions but were not required to appear at a public hearing.

Alcoa of Australia Limited  
Attorney-General's Department.  
Australian Council of National Trusts.  
Australian Greek Welfare Society.  
Australian Postal Commission.  
Australian Telecommunications Commission.

Blair Athol Coal Pty Ltd.  
Bird Observers Club, The.  
Bowden, Mr K.  
Broken Hill Proprietary Company Limited.  
Bruce, Mr I.A.

Challis, Mr L.A.  
Clean Air Society of Aust. & N.Z.  
Collinsville Coal Company Pty Ltd.  
Confederation of Australian Industry.  
Cooloola Committee, The.  
Cullen, Mr P.

Davis, Mr B.W.  
Department of Administrative Services.  
Department of the Capital Territory.  
Department of Construction.  
Department of Finance.  
Department of National Development.  
Department of Trade and Resources.  
Department of the Treasury.  
Driml, Ms S.M.

Electrolytic Zinc Company of Australasia Limited.  
Environment Council N.T. Inc.

Fisher, Ms M.  
Formby, Mr J.

Geelong Environment Council.  
Goldsworthy Mining Limited  
Great Barrier Reef Marine Park Authority.

Hancock, Mr K.W.  
Harris, Mr S.  
Horace Lamb Institute of Oceanography.  
Horne, Mr P.A.

Kamminga, Dr J.  
Kennedy, Mr P.R.

Middleton, Dr B.S.  
Miles, Mr E.J.  
Mineral Sands Producers' Association Ltd.  
Minister for the Environment, Tas. (Mr A. Lowrey, M.L.A.)

National Capital Development Commission.  
National Parks Association of N.S.W.  
National Parks Association of the A.C.T. Inc.  
National Parks & Wildlife Service.  
National Trust of Queensland.  
Native Forests Action Council.  
Nevill, Mr J.

Read, Mr J.M.  
Royal Australian Institute of Architects (N.S.W. Chapter).

Shell Australia Ltd.  
Smith, Mr B. & Ulph, Mr A.  
Soil Association of South Australia Inc.  
South Coast Conservation Society.  
Springell, Dr P.H.  
Stradbroke Island Management Organisation.

Texasgulf Australia Ltd.  
Thiess Dampier Mitsui Coal Pty. Ltd.  
Tree Society, The.

Wall, Mr L.E.  
Watershed Association of Victoria.  
Watson, Mr C.R.  
West Australian Petroleum Pty Limited.  
Whiteman, Dr P.C. & Evenson, Mr J.P.  
Wide Bay Burnett Conservation Council.  
Wildlife Preservation Society of Queensland.  
Wood, Mr E.J.  
Woodside Petroleum Development Pty Ltd.



## APPENDIX 4

### CONDUCT OF THE INQUIRY

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

the adequacy of legislative and administrative arrangements relating to environmental protection and resource management.

Submissions were invited from persons and organisations with an interest in the inquiry and the terms of reference were advertised in newspapers throughout Australia in 1978.

The Committee received over 80 submissions and took evidence from 70 witnesses representing Commonwealth and State Government departments, industry associations, environmental groups, academic interests and from citizens appearing in a private capacity. A list of witnesses appearing before the Committee is at Appendix 1.

The response by State governments to the Committee's inquiry was gratifying. All State governments, other than Queensland, participated by providing written or verbal evidence. The Committee was disappointed that the Queensland Government refused to provide a written submission or to make State officers available to speak to the Committee.

During the Inquiry the Committee held 9 public hearings at which over 1300 pages of evidence were taken. Copies of the evidence taken at public hearings are available for inspection in Hansard form at the Committee Office of the House of Representatives and the National Library.

ENVIRONMENT PROTECTION (IMPACT OF PROPOSALS) ACT 1974



**Environment Protection (Impact of  
Proposals) Act 1974**

**No. 164 of 1974**

TABLE OF PROVISIONS

Section

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2. Commencement
3. Definitions
4. Extension to Territories
5. Object of Act
6. Approved procedures
7. Orders to be notified and may be disallowed
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9. Modification of operation of laws
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11. Inquiries by Commissioners
12. Remuneration of Commissioners
13. Notice of inquiries
14. Procedure at inquiries
15. Power to summon witnesses
16. Failure of witness to attend
17. Power to administer oath or affirmation
18. Refusal to be sworn or to answer questions
19. Protection of Commissioners and witnesses
20. Contempt of court
21. Powers of Commission in relation to documents produced
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24. Power to enter on land, &c.
25. Regulations



## Environment Protection (Impact of Proposals) Act 1974

No. 164 of 1974

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### AN ACT

To make provision for Protection of the Environment  
in relation to Projects and Decisions of, or under the  
control of, the Australian Government, and for related  
purposes.

[Assented to 17 December 1974]

BE IT ENACTED by the Queen, the Senate and the House of  
Representatives of Australia, as follows:—

1. This Act may be cited as the *Environment Protection (Impact of  
Proposals) Act 1974*. Short title.
- 5     2. This Act shall come into operation on the day on which it receives Commence-  
the Royal Assent. ment.
3. In this Act, **unless** the contrary intention appears— Definitions.
- “ Australia ” includes the Territories to which this Act extends;
- 10     “ authority of Australia ” does not include a court but includes an  
authority of a Territory and all authorities and bodies (not being  
companies or societies) established by or appointed under the  
laws of Australia and of the Territories and also includes a  
company in which the whole of the shares or stock, or shares or  
stock carrying more than one-half of the voting power, is or are  
15     owned by or on behalf of Australia;

“environment” includes all aspects of the surroundings of man, whether affecting him as an individual or in his social groupings, and “environmental” has a corresponding meaning;

“Territory” means an internal Territory or an external Territory to which this Act extends.

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Extension to Territories.

4. This Act extends to all the external Territories other than Papua New Guinea.

Object of Act.

5. (1) The object of this Act is to ensure, to the greatest extent that is practicable, that matters affecting the environment to a significant extent are fully examined and taken into account in and in relation to— 10

(a) the formulation of proposals;

(b) the carrying out of works and other projects;

(c) the negotiation, operation and enforcement of agreements and arrangements (including agreements and arrangements with, and with authorities of, the States); 15

(d) the making of, or the participation in the making of, decisions and recommendations; and

(e) the incurring of expenditure,

by, or on behalf of, the Australian Government and authorities of Australia, either alone or in association with any other government, authority, body or person. 20

(2) The matters referred to in sub-section (1) extend to matters of those kinds arising in relation to financial assistance granted, or proposed to be granted, to the States.

Approved procedures.

6. (1) The Governor-General may, from time to time, by order, approve, and approve variations of, administrative procedures for the purpose of achieving the object of this Act, being procedures that are consistent with relevant laws, as affected by regulations under this Act. 25

(2) Without limiting the generality of sub-section (1), the approved procedures may provide for— 30

(a) the supplying to the Minister of information for the purpose of consideration, by him or on his behalf, of the necessity for environmental impact statements;

(b) authorizing the Minister to direct the preparation or obtaining, and the submission to the Minister, of statements to be known as environmental impact statements; 35

(c) defining, or authorizing the Minister to determine, the matters to be dealt with by, and the form of, those statements;

(d) the making of those statements available, in cases or circumstances specified by or in accordance with the procedures, for public comment; 40

- (e) inquiries in accordance with this Act, and action to be taken in respect of reports resulting from such inquiries;
- (f) the revision of those statements;
- 5 (g) the examination of those statements by or on behalf of the Minister and the making by or on behalf of the Minister of comments, suggestions or recommendations concerning the matters to which those statements relate, including suggestions or recommendations concerning conditions to which approvals, agreements and other matters should be subject; and
- 10 (h) exemptions from all or any of the requirements of the procedures.

7. (1) Where an order is made by the Governor-General under section 6—

Orders to be notified and may be disallowed.

- (a) notice shall be published in the *Gazette* of the order having been made, and of the place where copies of the order can be purchased;
  - 15 (b) the order shall, subject to this section, take effect from the date of publication of the notice or, where another date is specified in the order, from the date specified; and
  - (c) the order shall be laid before each House of the Parliament within 15 sitting days of that House after the making of the order.
- 20 (2) If an order is not laid before each House of the Parliament in accordance with sub-section (1), it shall be void and of no effect.

(3) If either House of the Parliament, in pursuance of a motion of which notice has been given within 15 sitting days after an order has been laid before that House, passes a resolution disallowing the order or part  
25 of the order, the order or that part of the order, shall thereupon cease to have effect.

(4) If, at the expiration of 15 sitting days after notice of a motion to disallow an order or part of an order has been given in a House of the Parliament, being notice given within 15 sitting days after the order has  
30 been laid before that House—

- (a) the notice has not been withdrawn and the motion has not been called on; or
  - (b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,
- 35 the order, or part of the order, specified in the motion shall thereupon be deemed to have been disallowed.

(5) If, before the expiration of 15 sitting days after notice of a motion to disallow an order or part of an order has been given in a House of the Parliament—

- 40 (a) that House is dissolved or, being the House of Representatives, expires, or the Parliament is prorogued; and

(b) at the time of the dissolution, expiry or prorogation, as the case may be—

(i) the notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of, 5

the order or part of an order shall, for the purposes of sub-sections (3) and (4), be deemed to have been laid before that House on the first sitting day of that House after the dissolution, expiry or prorogation, as the case may be. 10

**Duties of Ministers.**

8. Each Minister shall give all such directions and do all such things as, consistently with any relevant laws as affected by regulations under this Act, can be given or done by him—

(a) for ensuring that procedures for the time being approved under this Act are given effect to in and in connexion with matters dealt with by the Department administered by him and that any authority of Australia in relation to which he has ministerial responsibilities observes, and assists in giving effect to, those procedures; and 15

(b) for ensuring that any final environmental impact statement formulated in accordance with those procedures, and any suggestions or recommendations made in accordance with those procedures, are taken into account, in matters to which they relate, in the Department administered by him and by any authority of Australia in respect of which he has ministerial responsibilities. 25

**Modification of operation of laws.**

9. Without prejudice to any right, power or duty of any authority of Australia, apart from this Act, to take into account matters relating to the environment in the exercise of any power or function, the regulations may— 30

(a) make provision for or in relation to requiring or permitting a prescribed authority of Australia to take into account, either generally or in accordance with the regulations, matters affecting the environment in the taking of any action or the making of any decision or recommendation; and 35

(b) prescribing matters necessary or convenient to be prescribed as incidental to provision so made, including matters relating to procedures and times,

and regulations so made have effect notwithstanding any other law.

**Minister to furnish certain information.**

10. In respect of a particular matter of a kind referred to in any of the paragraphs of section 5, any person may, by notice in writing, require the Minister to inform him in writing as to what action, if any, has been 40

taken, or is proposed, for ensuring consideration of the environmental aspects of the matter, and the Minister shall promptly inform the person in writing accordingly.

5 11. (1) For the purposes of procedures approved under this Act or for achieving the object of this Act, the Minister may direct that an inquiry be conducted in respect of all or any of the environmental aspects of a matter referred to in any of the paragraphs of section 5, whether or not an environmental impact statement has, in accordance with procedures under this Act, been furnished to the Minister.

Inquiries  
by Com-  
missioners.

10 (2) The Minister shall appoint a Commissioner or Commissioners to be a Commission to conduct an inquiry under this section and may appoint a person or persons to advise the Commission.

(3) Where there is more than one Commissioner, the Minister shall appoint one of the Commissioners to preside at the inquiry.

15 (4) The Commission shall report its findings and recommendations to the Minister and shall, after so reporting but subject to sub-section (5), make public those findings and recommendations.

(5) The Commission shall not make public any evidence or matters in respect of which directions have been given under paragraph 14 (2) (b) or matters the publication of which is excepted from sub-section 14 (5).

(6) Subject to sub-section (1), a Commission is not subject to directions by the Minister, or otherwise by or on behalf of the Australian Government, in or in relation to the conduct of an inquiry.

25 12. (1) A Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

Remunera-  
tion of  
Commis-  
sioners.

(2) A Commissioner shall be paid such allowances as are prescribed.

30 (3) This section has effect subject to the *Remuneration Tribunals Act* 1973-1974.

13. Before a Commission commences to hold an inquiry, the Commission shall give reasonable notice, by advertisement published in the *Gazette* and in such newspapers as it thinks necessary, of its intention to hold the inquiry, the subject of the inquiry and the time and place at which the inquiry is to be commenced.

Notice of  
inquiries.

14. (1) Subject to this section, an inquiry by a Commission shall be held in public and evidence in the inquiry shall be taken in public on oath or affirmation.

Procedure at  
inquiries.

(2) Where a Commission is satisfied that it is desirable to do so in the public interest by reason of the confidential nature of any evidence or matter or for any other reason, the Commission may—

- (a) direct that an inquiry or a part of an inquiry shall take place in private and give directions as to the persons who may be present; or 5
- (b) give directions prohibiting or restricting the publication of evidence given before the Commission or of matters contained in documents lodged with the Commission.

(3) A Commission may, if it thinks fit, permit a person appearing as a witness before the Commission to give evidence by tendering, and 10 verifying by oath or affirmation, a written statement.

(4) Where a Commission considers that the attendance of a person as a witness before the Commission would cause serious hardship to the person, the Commission may permit the person to give evidence by sending to the Commission a written statement, verified in such manner as the 15 Commission allows.

(5) Where evidence is given to a Commission by a written statement in accordance with sub-section (3) or (4), the Commission shall make available to the public in such manner as the Commission thinks fit the contents of the statement other than any matter as to which the Commission 20 is satisfied that its publication would be contrary to the public interest by reason of its confidential nature or for any other reason.

(6) Subject to this section, the regulations and orders under section 6—

- (a) the procedure to be followed at an inquiry by a Commission is within the discretion of the Commission; and 25
- (b) a Commission is not bound by the rules of evidence.

(7) Nothing in this section derogates from any law relating to Crown privilege.

**Power to  
summon  
witnesses.**

15. A Commissioner may, by writing signed by him, summon a person to appear before the Commission at a time and place specified in the 30 summons to give evidence and produce such books and documents (if any) as are referred to in the summons.

**Failure of  
witness to  
attend.**

16. A person served with a summons to appear as a witness at an inquiry by a Commission shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or 35
- (b) fail to appear and report himself from day to day unless excused or released from further attendance by or on behalf of the Commission.

Penalty: \$1,000 or imprisonment for 6 months.

**Power to  
administer  
oath or  
affirmation.**

17. A Commissioner may administer an oath or affirmation to a 40 person appearing as a witness before the Commission.



18. A person appearing as a witness at an inquiry by a Commission shall not, without reasonable excuse—

Refusal to be sworn or to answer questions.

- (a) refuse or fail to be sworn or to make an affirmation;
- 5 (b) refuse or fail to answer a question that he is required to answer by the Commissioner presiding at the inquiry; or
- (c) refuse or fail to produce a document that he was required to produce by a summons under this Act served on him.

Penalty: \$1,000 or imprisonment for 6 months.

19. (1) A Commissioner has, in the performance of his duties as a Commissioner, the same protection and immunity as a Justice of the High Court.

Protection of Commissioners and witnesses.

(2) Subject to this Act, a person appearing before a Commission as a witness at an inquiry has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, in any  
15 civil or criminal proceedings as a witness in proceedings in the High Court.

20. A person shall not—

Contempt of court.

- (a) insult or disturb a Commissioner in the exercise of his powers or the performance of his functions or duties as a Commissioner;
- 20 (b) interrupt an inquiry by a Commission;
- (c) use insulting language towards a Commissioner;
- (d) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where a Commission is holding an inquiry; or
- 25 (e) do any other act or thing that would, if a Commission were a court of record, constitute a contempt of that court.

Penalty: \$1,000 or imprisonment for 6 months.

21. (1) A Commissioner, or a person assisting a Commission and authorized by a Commissioner to do so, may inspect any books or  
30 documents furnished to the Commission for the purposes of the performance of its functions under this Act or produced at an inquiry and may make copies of, or take extracts from, those books or documents.

Powers of Commission in relation to documents produced.

(2) Books or documents so furnished may be retained by the Commission for such reasonable period as the Commission thinks fit.

35 22. A witness summoned under this Act to appear at an inquiry by a Commission is entitled to be paid by Australia such allowances for his travelling and other expenses as are prescribed.

Allowances to witnesses.

Witness not  
to be  
prejudiced.

23. (1) A person shall not—

- (a) use violence to or inflict injury on;
- (b) cause or procure violence, damage, loss or disadvantage to; or
- (c) cause or procure the punishment of,

a person for or on account of his having appeared, or being about to appear, as a witness at an inquiry by a Commission or for or on account of any evidence given by him before a Commission. 5

Penalty: \$1,000 or imprisonment for 6 months.

(2) Without limiting the generality of sub-section (1), an employer shall not— 10

- (a) dismiss an employee from his employment, or prejudice an employee in his employment, by reason that the employee has appeared as a witness, or has given any evidence, at an inquiry by a Commission; or
- (b) dismiss or threaten to dismiss an employee from his employment or prejudice, or threaten to prejudice an employee in his employment, by reason that the employee proposes to appear as a witness or to give evidence at an inquiry by a Commission. 15

Penalty: \$1,000 or imprisonment for 6 months.

(3) In any proceedings arising out of sub-section (2)— 20

- (a) if it is established that the employee was dismissed from, or prejudiced in, his employment and that, before he was so dismissed or prejudiced, he appeared as a witness, or gave any evidence, at an inquiry by a Commission—the burden lies on the employer of proving that the employee was not dismissed or prejudiced by reason that he so appeared as a witness or gave evidence; or 25
- (b) if it is established that the employee was dismissed, or threatened with dismissal, from his employment, or was prejudiced, or threatened with prejudice, in his employment and that, before he was so dismissed, threatened with dismissal, prejudiced or threatened with prejudice, he proposed to appear as a witness, or to give evidence, at an inquiry by a Commission—the burden lies on the employer of proving that the employee was not so dismissed, threatened with dismissal, prejudiced or threatened with prejudice by reason that he proposed so to appear as a witness or to give evidence. 30 35

(4) This section binds Australia as an employer, but does not render Australia liable to prosecution.

24. For the purposes of an inquiry under this Act, a Commissioner, or a person acting with the authority of a Commissioner, may, after giving reasonable notice to the occupier of any land, building or place—

*Power to enter on land, &c.*

- (a) enter and inspect the land, building or place; and
- 5 (b) inspect any material on the land, or on or in the building or place.

25. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*Regulations.*



## Environment Protection (Impact of Proposals) Act 1975

No. 36 of 1975

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### AN ACT

To amend the *Environment Protection (Impact of Proposals) Act 1974*.

[Assented to 19 May 1975]

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

1. (1) This Act may be cited as the *Environment Protection (Impact of Proposals) Act 1975*. Short title and citation.
- 5 (2) The *Environment Protection (Impact of Proposals) Act 1974*\* is in this Act referred to as the Principal Act.
- (3) The Principal Act, as amended by this Act, may be cited as the *Environment Protection (Impact of Proposals) Act 1974–1975*.
- 10 2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.
3. Section 5 of the Principal Act is amended by inserting in sub-section (2), before the word “financial”, the word “direct”. Object of Act.

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\* Act No. 164, 1974.

4. Section 24 of the Principal Act is repealed and the following section substituted:—

Power to  
enter on  
land, &c.

“ 24. (1) A Commissioner, or a person acting with the authority of a Commissioner, may, with the consent of the occupier of any land, building or place, enter the land, building or place for the purposes of an inquiry 5 under this Act.

“ (2) Where a Commissioner has reason to believe that it is necessary or desirable for the purposes of an inquiry under this Act for him, or a person authorized by him, to enter any land, building or place, the Commissioner may make application to a Justice of the Peace for a warrant 10 authorizing the Commissioner or that person to enter the land, building or place for the purposes of the inquiry.

“ (3) If, on an application under sub-section (2), the Justice of the Peace is satisfied by information on oath or affirmation that the issue of the warrant is reasonably required for the purposes of this Act, the 15 Justice of the Peace may grant a warrant authorizing the Commissioner, or that person, with such assistance as he thinks necessary, to enter the land, building or place for the purposes of the inquiry.

“ (4) A warrant under sub-section (3) shall specify a date after which the warrant ceases to have effect. 20

“ (5) Where a Commissioner, or a person acting with the authority of a Commissioner, enters any land, building or place in pursuance of sub-section (1) or of a warrant granted under sub-section (3) for the purposes of an inquiry under this Act, he may—

(a) inspect the land, building or place; and 25

(b) inspect any material on the land, or on or in the building or place.

“ (6) A person shall not, without reasonable excuse, obstruct or hinder a Commissioner, or a person authorized by a Commissioner, acting in pursuance of a warrant granted under sub-section (3) or in pursuance of 30 sub-section (5).

Penalty: \$200.

“ (7) In this section, ‘ occupier ’, in relation to land, a building or a place, includes the person in charge of the land, building or place, as the case may be.”. 35

AUSTRALIAN HERITAGE COMMISSION ACT 1975



**Australian Heritage Commission  
Act 1975**

**No. 57 of 1975**

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## Australian Heritage Commission Act 1975

No. 57 of 1975

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### AN ACT

To establish an Australian Heritage Commission.

[Assented to 19 June 1975]

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

#### PART I—PRELIMINARY

1. This Act may be cited as the *Australian Heritage Commission Act* Short title.  
5 1975.
2. This Act shall come into operation on the day on which it receives Commence-  
the Royal Assent. ment.
3. (1) In this Act, unless the contrary intention appears— Interpretation.
- 10 “Australia” includes the external Territories to which this Act  
extends;
- 15 “authority of Australia” does not include the Commission or a  
court, but includes an authority of a Territory and all authorities  
and bodies (not being companies or societies) established by or  
appointed under the laws of Australia and of the Territories and  
also includes a company in which the whole of the shares or stock,  
or shares and stock carrying more than one-half of the voting  
power, is or are owned by or on behalf of Australia;
- 20 “Chairman” means the Chairman of the Commission;
- “Commission” means the Commission established by this Act;
- “conservation”, in relation to the national estate, includes protection,  
maintenance and preservation, and “conserve” has a correspon-  
ding meaning;



“co-opted Commissioner” means a person appointed under subsection 21 (1) to be a co-opted Commissioner;

“Department” means a department of the Australian Public Service;

“Environment Protection Act” means the *Environment Protection (Impact of Proposals) Act* 1974–1975;

“improvement”, in relation to the national estate, includes the restoration of places included in the national estate, and “improve” has a corresponding meaning;

“place” includes—

(a) a site, area or region;

(b) a building or other structure (which may include equipment, furniture, fittings and articles associated with or connected with such building or other structure); and

(c) a group of buildings or other structures (which may include equipment, furniture, fittings and articles associated with or connected with such group of buildings or other structures),

and, in relation to the conservation or improvement of a place, includes the immediate surroundings of the place;

“presentation”, in relation to the national estate, includes—

(a) the exhibition or display of;

(b) the provision of access to; and

(c) the publication of information in relation to,

places included in the national estate, and “present” has a corresponding meaning;

“Register” means the Register of the National Estate kept in pursuance of this Act;

“representative Commissioner” means a Commissioner referred to in paragraph 12 (1) (b);

“Territory” means an internal Territory or an external Territory to which this Act extends.

(2) In this Act, a reference to public notice is a reference to notice published—

(a) in the *Gazette*;

(b) in a local newspaper, if any, circulating in the area concerned; and

(c) in each State and Territory, in a newspaper circulating throughout that State or Territory.

National  
estate.

4. (1) For the purposes of this Act, the national estate consists of those places, being components of the natural environment of Australia or the cultural environment of Australia, that have aesthetic, historic, scientific or social significance or other special value for future generations as well as for the present community.

(2) For the purposes of this section, Australia includes the territorial sea of Australia and the continental shelf of Australia.

(3) A place may form part of the national estate for the purposes of this Act notwithstanding that the conservation, improvement or presentation of the place is dealt with by another Act.

5     5. This Act extends to every external Territory, other than Papua New Guinea. Extension to Territories.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE  
AUSTRALIAN HERITAGE COMMISSION

6. There is established by this Act a Commission by the name of the Australian Heritage Commission. Australian Heritage Commission.

10     7. The functions of the Commission are— Functions of Commission.

(a) 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—

15         (i) action to conserve, improve and present the national estate;

(ii) expenditure by Australia for the conservation, improvement and presentation of the national estate; and

20         (iii) the grant of financial or other assistance by Australia to the States, local governing bodies and other organizations or persons for the conservation, improvement or presentation of the national estate;

(b) to encourage public interest in, and understanding of, issues relevant to the national estate;

25         (c) to identify places included in the national estate and to prepare a register of those places in accordance with Part IV;

(d) to furnish advice and reports in accordance with Part V;

(e) to further training and education in fields related to the conservation, improvement and presentation of the national estate;

30         (f) to make arrangements for the administration and control of places included in the national estate that are given or bequeathed to the Commission; and

(g) to organize and engage in research and investigation necessary for the performance of its other functions.

35     8. The Commission shall, in the performance of its functions in relation to any matter, and so far as it considers appropriate having regard to the nature of the matter, consult with Departments and authorities of the States, local government authorities and community and other organizations. Consultation by Commission.

40     9. (1) All Departments and all authorities of Australia shall give to the Commission such assistance in the carrying out of its functions as is reasonably practicable. Departments and authorities to assist Commission.

(2) All Departments and all authorities of Australia shall comply with all reasonable requests for information made to them by the Commission in the performance of its functions.

- Powers of Commission.** 10. (1) The Commission may do all things that are necessary or convenient to be done for or in connexion with the performance of its functions and, in particular, without limiting the generality of the foregoing, the Commission may accept gifts, devises and bequests made to it, whether on trust or otherwise, and act as trustee of moneys or other property vested in it on trust. 5
- (2) Notwithstanding anything contained in this Act, any moneys or property vested in the Commission upon trust shall be dealt with in accordance with the powers and duties of the Commission as trustee.
- Nature of Commission.** PART III—CONSTITUTION AND MEETINGS OF THE COMMISSION 10
11. (1) The Commission—
- (a) is a body corporate with perpetual succession;
  - (b) shall have a common seal;
  - (c) may acquire, hold and dispose of real and personal property; and
  - (d) may sue and be sued in its corporate name. 15
- (2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Commission affixed to a document and shall presume that it was duly affixed.
- Membership of Commission.** 12. (1) The Commission shall consist of not fewer than 12 nor more than 19 members, namely— 20
- (a) the Chairman;
  - (b) not more than 6 Commissioners each of whom is the Permanent Head of a Department or the Chairman of an authority of Australia; and
  - (c) not more than 12 other Commissioners. 25
- (2) The Commissioners shall be appointed by the Governor-General as part-time Commissioners.
- (3) The Chairman and not fewer than one-half of the other Commissioners shall be persons who are not full-time officers or employees of the Australian Public Service or full-time members, officers or employees of an authority of Australia. 30
- (4) The Commissioners, other than the representative Commissioners, shall be persons having qualifications relevant to, or special experience or interest in, a field related to the functions of the Commission.
- (5) For the purpose of making recommendations to the Governor-General for the appointment of Commissioners referred to in paragraph (1) (c), the Minister shall— 35
- (a) have regard to the desirability of the membership of the Commission including persons resident in the several States and in the Northern Territory; and 40
  - (b) consult, so far as he considers appropriate, with Ministers and authorities of the States, local government authorities and community and other organizations.
- (6) The Commission may commence to perform its functions and exercise its powers when the Chairman and 3 other Commissioners have 45

been appointed and, during the period of 6 months immediately following its so commencing, the performance of the functions or the exercise of the powers of the Commission is not affected by reason only of there being fewer than 12 members.

- 5 (7) The performance of the functions or the exercise of the powers of the Commission is not affected by reason only of more than one-half of the Commissioners, other than the Chairman, being, during a period of not more than 6 months, persons who are officers or employees of the Australian Public Service or members, officers or employees of an authority  
10 of Australia.

(8) For the purposes of this section, where an authority of Australia is constituted by one person, that person shall be deemed to be the Chairman, and a member, of the authority.

- (9) For the purposes of this section, where an authority of Australia  
15 is constituted by 2 or more persons none of whom is called the Chairman, the person who normally presides at meetings of the authority shall be deemed to be the Chairman.

- (10) The appointment of a Commissioner is not invalidated and shall not be called in question by reason of a defect or irregularity in, or in  
20 connexion with, his appointment.

13. (1) Subject to this Act, a Commissioner, other than a representative Commissioner, holds office for such period, being not more than 3 years, as the Governor-General specifies in the instrument of his appointment, but is eligible for re-appointment. Term of office.

- 25 (2) A person shall not hold office under sub-section (1) for a continuous period exceeding 6 years.

(3) A person who has held office under sub-section (1) for a continuous period of 6 years is not eligible for re-appointment for a term of office commencing within 12 months after the expiration of that period.

- 30 (4) A representative Commissioner holds office during the pleasure of the Governor-General.

14. (1) A Commissioner, other than a representative Commissioner, and a co-opted Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of  
35 that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed. Remuneration and allowances.

(2) A Commissioner shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973-1974.

- 40 15. A Commissioner, other than a representative Commissioner, may resign his office by writing signed by him and delivered to the Governor-General, but the resignation does not have effect until it is accepted by the Governor-General. Resignation.

Acting  
Chairman.

16. (1) The Minister may appoint a Commissioner, other than a representative Commissioner, to act as Chairman—

- (a) during a vacancy in the office of Chairman; or
- (b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or, for any reason, is unable to perform the functions of his office, 5

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Chairman; and 10
- (b) at any time terminate such an appointment.

(3) Where a person is acting as Chairman in accordance with paragraph (1) (b) and the office of Chairman becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens. 15

(4) The appointment of a person to act as Chairman ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Minister, but the resignation does not have effect until it is accepted by the Minister. 20

(5) While the appointment of a person to act as Chairman remains in force, he has, and may exercise, all the powers and shall perform all the functions of the Chairman.

(6) The validity of anything done by a person acting as Chairman shall not be called in question on the ground that the occasion for his appointment had not arisen or that the appointment had ceased to have effect. 25

Deputies.

17. (1) A representative Commissioner who is the Permanent Head of a Department may, in writing, authorize an officer of that Department to represent him at a meeting of the Commission. 30

(2) A representative Commissioner who is, or is deemed for the purposes of section 12 to be, the Chairman of an authority of Australia may, in writing, authorize another member of the authority (if any) or an officer or employee of the authority to represent him at a meeting of the Commission. 35

(3) A person authorized under sub-section (1) or (2) to represent a Commissioner at a meeting is entitled to attend the meeting in the place of the Commissioner and, when so attending, shall be deemed to be a Commissioner.

Termination  
of appointment  
of Commis-  
sioner.

18. (1) The Governor-General may terminate the appointment of a Commissioner, other than a representative Commissioner, by reason of misbehaviour or physical or mental incapacity. 40

- (2) If a Commissioner—
- (a) not being a representative Commissioner, is absent, except with the permission of the Minister, from 3 consecutive meetings of the Commission;
  - 5 (b) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
  - (c) fails to comply with his obligations under section 19,
- 10 the Governor-General shall terminate the appointment of the Commissioner.

19. (1) A Commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, otherwise than as a member of, and in common with the  
 15 other members of, an incorporated company which consists of more than 25 persons and of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission. Disclosure of interest.

(2) A Commissioner who is the member of an organization that has  
 20 a direct or indirect pecuniary or other special interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to his knowledge, disclose his membership of that organization and the nature of that interest at a meeting of the Commission.

25 (3) This section applies to and in relation to a person deemed to be a Commissioner under sub-section 17 (3) and a co-opted Commissioner.

20. (1) The Commission shall hold such meetings as are necessary Meetings.  
 for the performance of its functions.

(2) The Chairman may at any time convene a meeting and shall  
 30 ensure that at least 4 meetings are held in each year.

(3) Where the Minister requests the Chairman to do so, the Chairman shall forthwith convene a meeting.

(4) At a meeting, a quorum is constituted by a number of Commis-  
 35 sioners equal to a majority of the Commissioners for the time being holding office.

(5) The Chairman shall preside at all meetings at which he is present.

(6) If the Chairman is not present at a meeting, the Commissioners present shall elect one of their number to preside at the meeting.

(7) Questions arising at a meeting shall be determined by a majority of the votes of the Commissioners present and voting but the vote shall be void and of no effect unless the majority of deliberative votes are made by Commissioners referred to in sub-section 12 (3).

(8) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote. 5

(9) In relation to a time when a person is acting as Chairman, references in this section to the Chairman shall be read as references to that person.

Co-opted  
Commissioners.

21. (1) Subject to this section, the Commission may appoint a person to be a co-opted Commissioner for such period, not exceeding 12 months, as the Commission determines. 10

(2) A person appointed under sub-section (1) may take part in the deliberations of the Commission, but has no power to vote.

(3) For the purposes of the provisions of this Act, other than this section and sections 14 and 19, a person appointed under sub-section (1) shall not be regarded as a Commissioner. 15

(4) Not more than 2 persons shall hold office as co-opted Commissioners at any one time.

#### PART IV—THE REGISTER OF THE NATIONAL ESTATE

Register of  
the National  
Estate.

22. (1) The Commission shall keep a register, to be known as the Register of the National Estate, in which will be listed places included in the national estate. 20

(2) A place shall not be entered in the Register otherwise than in accordance with section 23 or sub-section 25 (2).

(3) The Commission shall enter a place in the Register by causing to be entered in the Register a description of the place sufficient to identify it and the date on which the entry is made. 25

(4) A place shall not be removed from the Register otherwise than in accordance with section 24 or sub-section 25 (5).

(5) The Commission shall remove a place from the Register by causing to be entered in the Register, against the description of that place, the statement that the place has been removed from the Register and the date on which the statement is entered. 30

Entry of  
place in  
Register.

23. (1) Subject to this section and to section 25, where the Commission considers that a place that is not in the Register should be recorded as part of the national estate it shall enter the place in the Register. 35

(2) The Commission shall not enter a place in the Register in accordance with sub-section (1) unless—

(a) it has, by public notice—

(i) stated that it intends to enter the place in the Register; 40

- (ii) given a description of the place sufficient to identify it;
    - (iii) notified persons of their right to make written objection to the entry of the place in the Register;
    - 5 (iv) specified the date by which such objections are to be made, not being earlier than 3 months after the date of publication of the notice in the *Gazette*; and
    - (v) specified an address to which such objections may be forwarded;
  - (b) the date specified in that notice has passed; and
  - 10 (c) if a person has, not later than the date specified in that notice, made written objection to the Commission to the entry of the place in the Register, the Commission has given due consideration to that objection.
- (3) Where, after the giving of a public notice referred to in paragraph
- 15 (2) (a) in relation to a place but before the place has been entered in the Register, the Commission becomes of the opinion, whether by reason of its consideration of objections or otherwise, that the place, or a place forming part of the place, should not be recorded as part of the national estate, the Commission shall—
- 20 (a) by public notice—
- (i) state that it has decided not to enter the place, or that part of the place, in the Register;
  - (ii) notify interested persons of their right to make written objection to the decision;
  - 25 (iii) specify the date by which such objections are to be made, not being earlier than 3 weeks after the date of publication of the notice in the *Gazette*; and
  - (iv) specify an address to which such objections may be forwarded; and
- 30 (b) if a person has, not later than the date specified in that notice, made written objection to the Commission to the decision, reconsider that decision giving due consideration to that objection.
- (4) Where a place is entered in the Register in accordance with sub-section (1) or sub-section 25 (2), the Commission shall by public notice
- 35 state that the place has been so entered.

24. (1) Subject to this section and to section 25, where the Commission considers that a place in the Register should not be recorded as part of the national estate, it shall remove that place from the Register.

Removal of  
place from  
Register.

- (2) The Commission shall not remove a place from the Register in
- 40 accordance with sub-section (1) unless—
- (a) it has, by public notice—
- (i) stated that it intends to remove the place from the Register;
  - (ii) notified persons of their right to object, in writing, to the removal of the place from the Register;



(iii) specified the date by which such objections are to be made, not being earlier than 1 month after the date of publication of the notice in the *Gazette*; and

(iv) specified an address to which such objections may be forwarded;

5

(b) the date specified in that notice has passed; and

(c) if a person has, not later than the date specified in that notice, made written objection to the Commission to the removal of the place from the Register, the Commission has given due consideration to that objection.

10

(3) Where a place is removed from the Register in accordance with sub-section (1) or sub-section 25 (5), the Commission shall by public notice state that the place has been so removed.

Directions  
by the  
Minister.

25. (1) In this section, "environment report", in relation to a place, means a report of a Commissioner who has, or Commissioners who have, (whether by reason of a request under section 44 or otherwise) conducted an inquiry under section 11 of the Environment Protection Act that includes a finding or recommendation that the place be recorded as part of the national estate or a finding or recommendation that the place should not be, or continue to be, recorded as part of the national estate.

15

20

(2) Where, after considering an environment report in relation to a place that is not in the Register, the Minister is satisfied that the place should be recorded as part of the national estate, the Minister may direct the Commission to enter that place in the Register, and the Commission shall comply with that direction and shall not remove that place from the Register without the consent of the Minister.

25

(3) Where, after considering an environment report in relation to a place that is not in the Register, the Minister is satisfied that the place should not be recorded as part of the national estate, the Minister may direct the Commission not to enter that place in the Register without the consent of the Minister, and the Commission shall comply with that direction.

30

(4) Where, after considering an environment report in relation to a place that is in the Register, the Minister is satisfied that the place should be recorded as part of the national estate, the Minister may direct the Commission not to remove that place from the Register without the consent of the Minister, and the Commission shall comply with that direction.

35

(5) Where, after considering an environment report in relation to a place that is in the Register, the Minister is satisfied that the place should not continue to be recorded as part of the national estate, the Minister may direct the Commission to remove that place from the Register, and the Commission shall comply with that direction and shall not re-enter that place in the Register without the permission of the Minister.

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(6) Where the Minister is satisfied that an inquiry has been conducted, is being conducted or is likely to be conducted that will result in an environment report in relation to a place in the Register, the Minister may direct the Commission not to remove that place from the Register  
5 without the consent of the Minister.

(7) Where the Minister is satisfied that an inquiry has been conducted, is being conducted or is likely to be conducted that will result in an environment report in relation to a place that is not in the Register but in respect of which a notice has been given in accordance with  
10 paragraph 23 (2) (a), the Minister may direct the Commission not to remove that place from the list kept in pursuance of section 26 without the consent of the Minister.

26. (1) The Commission shall keep a list of the places that might be entered in the Register; List of places to be entered in the Register.

15 (2) Where a notice is issued in accordance with paragraph 23 (2) (a) in respect of a place, the Commission shall enter on the list a description of the place sufficient to identify it.

(3) The Commission shall strike out the description of a place on the list when—

- 20 (a) the place is entered in the Register;
- (b) subject to sub-section 25 (7), when, after compliance with sub-section 23 (3), the Commission has decided not to enter the place in the Register; or
- 25 (c) the Minister gives a direction in relation to that place under section 25 (3).

27. A person may inspect the Register or the list kept in pursuance of section 26 and may make a copy of, or take an extract from, an entry in the Register or that list. Inspection of the Register.

#### PART V—PROTECTION OF THE NATIONAL ESTATE

30 28. (1) The Commission may furnish to the Minister administering the Environment Protection Act such advice in respect of a matter relating to the national estate and to the operation of that Act as the Commission thinks fit. Advice by Commission.

35 (2) The Minister administering the Environment Protection Act may request the Commission to give advice to him in respect of a matter relating to the national estate and to the operation of that Act, and the Commission shall comply with such a request.

29. Where—

- 40 (a) a matter to which the Environment Protection Act is relevant affects a place that is in the Register; and Reports by Commission.

(b) the procedures under that Act relating to that matter do not require the furnishing of an environmental impact statement or other report by the Commission,  
the Commission may, if it thinks fit, furnish a report in relation to that matter to the Minister administering that Act, and such a report shall be deemed to be a recommendation referred to in paragraph 8 (b) of that Act. 5

Duties of  
Ministers  
and  
authorities.

30. (1) Each Minister shall give all such directions and do all such things as, consistently with any relevant laws, can be given or done by him for ensuring that the Department administered by him or any authority of Australia in respect of which he has ministerial responsibilities does not take any action that adversely affects, as part of the national estate, a place that is in the Register unless he is satisfied that there is no feasible and prudent alternative to the taking of that action and that all measures that can reasonably be taken to minimise the adverse effect will be taken and shall not himself take any such action unless he is so satisfied. 10 15

(2) Without prejudice to the application of sub-section (1) in relation to action to be taken by an authority of Australia, an authority of Australia shall not take any action that adversely affects, as part of the national estate, a place that is in the Register unless the authority is satisfied that there is no feasible and prudent alternative, consistent with any relevant laws, to the taking of that action and that all measures that can reasonably be taken to minimise the adverse effect will be taken. 20

(3) Before a Minister, a Department or an authority of Australia takes any action that might affect to a significant extent, as part of the national estate, a place that is in the Register, the Minister, Department or authority, as the case may be, shall inform the Commission of the proposed action and give the Commission a reasonable opportunity to consider it. 25

(4) For the purposes of this section, the making of a decision or recommendation (including a recommendation in relation to direct financial assistance granted, or proposed to be granted to a State) the approval of a program, the issue of a licence or the granting of a permission shall be deemed to be the taking of action and, in the case of a recommendation, if the adoption of the recommendation would adversely affect a place, the making of the recommendation shall be deemed to affect the place adversely. 30 35

Places  
deemed to be  
in Register.

31. For the purposes of this Part, a place on the list kept in pursuance of section 26 shall be deemed to be in the Register.

#### PART VI—STAFF

Staff of  
Commission.

32. (1) The Staff of the Commission shall be persons appointed or employed under the *Public Service Act* 1922–1975. 40

(2) For the purposes of this section, the Chairman has all the powers of, or exercisable by, a Permanent Head under that Act so far as those

powers relate to the branch of the Australian Public Service comprising the staff of the Commission as if that branch were a separate Department of the Australian Public Service.

(3) For the purposes of sub-sections 25 (5) and (6) of that Act, the Chairman shall be deemed to be a Permanent Head.

33. Arrangements may be made between the Commission and the Minister administering any Department of the Australian Government or with an authority of Australia, for the services of officers or employees of the Department or of the authority to be made available to the Commission.

Public servants to assist Commission.

#### PART VII—FINANCE

34. (1) There are payable to the Commission such moneys as are appropriated by the Parliament for the purposes of the Commission.

Moneys payable to Commission.

(2) The Treasurer may give directions as to the amounts in which, and the times at which, moneys referred to in sub-section (1) are to be paid to the Commission.

35. The moneys of the Commission shall be applied only—

Application of moneys.

(a) in payment or discharge of the costs, expenses and other obligations of the Commission; and

(b) in payment of remuneration, expenses, fees and allowances payable to any person under this Act.

36. (1) The Commission shall prepare estimates, in such form as the Minister directs, of receipts and expenditure of the Commission for each financial year and, if the Minister so directs, for any period specified by the Minister and the Commission shall submit estimates so prepared to the Minister not later than such date as the Minister directs.

Estimates of receipts and expenditure.

(2) The moneys of the Commission shall not be expended otherwise than in accordance with estimates of expenditure approved by the Minister.

37. The Commission shall not borrow moneys from any person.

Commission not to borrow.

38. (1) The Commission may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account.

Bank accounts.

(2) The Commission shall pay all moneys received by it into an account referred to in this section.

(3) In this section, "approved bank" means the Reserve Bank of Australia or another bank for the time being approved by the Treasurer.

Power to  
purchase  
and dispose  
of assets.

39. The Commission shall not, except with the approval of the Minister—

- (a) enter into a contract involving the payment or receipt by the Commission of an amount exceeding \$50,000 or, if a higher amount is prescribed, that higher amount; or
- (b) enter into a lease of land for a period exceeding 10 years.

5

Proper  
accounts to  
be kept.

40. The Commission shall cause to be kept proper accounts and records of the transactions and affairs of the Commission and shall do all things necessary to ensure that all payments out of the moneys of the Commission are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the Commission and over the incurring of liabilities by the Commission.

10

Audit.

41. (1) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Commission and the records relating to assets of or in the custody of the Commission, and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify his so doing.

15

(2) The Auditor-General may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

20

(3) The Auditor-General shall, at least once in each financial year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

(4) The Auditor-General or a person authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Commission relating directly or indirectly to the receipt or payment of moneys, or to the acquisition, receipt, custody or disposal of assets, by the Commission.

25

(5) The Auditor-General or a person authorized by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

30

(6) The Auditor-General or a person authorized by him may require a person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirements.

35

(7) A person who contravenes sub-section (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$200.

40

42. (1) Subject to sub-section (2), the Commission is not subject to Taxation. taxation under the laws of Australia or of a State or Territory.

(2) The regulations may provide that sub-section (1) does not apply in relation to taxation under a specified law.

5

## PART VIII—MISCELLANEOUS

43. (1) The Commission shall, as soon as practicable after each Reports. 30 June, prepare and furnish to the Minister a report of the operations of the Commission during the year ending on that date, together with financial statements in respect of that year in such form as the Treasurer 10 approves.

(2) The Commission shall include in each report prepared under sub-section (1) a description of the condition of the national estate at the end of the period to which the report relates.

(3) The report shall set out all directions given by the Minister to the 15 Commission under section 25 during the year to which the report relates.

(4) Before furnishing financial statements to the Minister, the Commission shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- 20 (b) whether the statements are in agreement with the accounts and records;
- (c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Commission during the year have been in accordance with this Act; and
- 25 (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(5) The first report and financial statements of the Commission under sub-section (1) shall be furnished as soon as practicable after 30 June 1976, and shall relate to the operations of the Commission during the period 30 that commenced at the commencement of this Act and ended on that date.

(6) The Commission may furnish to the Minister such reports relating to the national estate as the Commission thinks fit.

(7) The Commission shall furnish to the Minister such additional reports, as the Minister from time to time requires.

35 (8) The Minister shall cause—

- (a) the report and financial statements of the Commission furnished to him under sub-section (1), together with the report of the Auditor-General; and
  - (b) a report furnished to him under sub-section (6) or (7),
- 40 to be laid before each House of the Parliament within 15 sitting days of that House after having been received by the Minister.

## Inquiries.

44. (1) For the purposes of sub-section 11 (1) of the Environment Protection Act, a matter relating to the national estate shall be taken to be a matter in respect of which the Minister administering that Act may, under that sub-section, direct that an inquiry be conducted.

(2) The Commission may request the Minister administering the Environment Protection Act to direct, under sub-section 11 (1) of that Act, that an inquiry be conducted in respect of a specified matter relating to the national estate. 5

(3) For the purposes of this section, the question whether or not any place should be recorded, or continue to be recorded, as part of the national estate is a matter relating to the national estate. 10

## Committees.

45. (1) The Commission may appoint a Committee to assist the Commission in relation to a matter.

(2) A Committee appointed under this section shall consist of such persons (who may include Commissioners) as the Commission thinks fit. 15

(3) A Committee shall make such investigations, and furnish to the Commission such reports, in connexion with the matter in relation to which it has been appointed, as the Commission directs.

(4) A member of a Committee shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed. 20

(5) A member of a Committee shall be paid such allowances as are prescribed.

(6) Sub-sections (4) and (5) have effect subject to the *Remuneration Tribunals Act 1973-1974*. 25

## Consultants.

46. (1) The Commission may engage persons having suitable qualifications and experience as consultants to the Commission.

(2) The terms and conditions of the engagement of a person under sub-section (1) are such as are determined by the Commission with the approval of the Public Service Board. 30

## Delegation.

47. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a person any of its powers under this Act, other than this power of delegation. 35

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to be exercised by the Commission.

(3) A delegation under this section does not prevent the exercise of a power by the Commission.

48. The Governor-General may make regulations, not inconsistent Regulations.  
with this Act, prescribing all matters that are required or permitted by  
this Act to be prescribed or are necessary or convenient to be prescribed  
for carrying out or giving effect to this Act.

The Australian Heritage Commission Act 1975 is amended by the  
Australian Heritage Commission Amendment Act 1976, which follows  
on pages 140-2. It is also amended by the Administrative Changes  
(Consequential Provisions) Act 1978 (No. 36 of 1978) by omitting  
from sub-sections 34(2) and 43(1) 'Treasurer' and substituting  
'Minister for Finance'.





## Australian Heritage Commission Amendment Act 1976

No. 135 of 1976

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### AN ACT

To amend the *Australian Heritage Commission Act 1975*.

[Assented to 2 December 1976]

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

1. (1) This Act may be cited as the *Australian Heritage Commission Amendment Act 1976*. Short title  
and citation.

5 (2) The *Australian Heritage Commission Act 1975*\* is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the *Australian Heritage Commission Act 1975–1976*.

10 2. This Act shall come into operation on the day on which it receives the Royal Assent. Commence-  
ment.

3. Section 3 of the Principal Act is amended—

(a) by inserting in sub-section (1), before the definition of “Australia”, the following definition:—

“ ‘Aboriginals’ means persons who are—

15 (a) members of the Aboriginal race of Australia; or

Interpre-  
tation.

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\* Act No. 57, 1975.

(b) members of the race to which Torres Strait Islanders belong;"; and

(b) by omitting from sub-section (1) the definition of "representative Commissioner" and substituting the following definition:—

" 'representative Commissioner' means a Commissioner 5  
whose appointment is authorized by sub-section 12 (1A);".

Functions of  
Commission.

4. Section 7 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:—

" (a) to furnish advice to the Minister, either of its own motion or upon request made to it by the Minister, on matters relating to 10  
the national estate, including advice relating to action to conserve, improve and present the national estate; ".

Consultation  
by  
Commission.

5. Section 8 of the Principal Act is amended—

- (a) by inserting, after the word "authorities" (first occurring), the words "of the Commonwealth and"; and 15
- (b) by adding at the end thereof the words "and, in particular, without limiting the generality of the foregoing, shall consult with the Director of National Parks and Wildlife in relation to any matter that concerns the establishment or management of a park or reserve under the *National Parks and Wildlife Conservation Act* 20  
1975".

Membership  
of  
Commission.

6. (1) Section 12 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-sections:—
  - " (1) The Commission shall consist of— 25
    - (a) the Chairman; and
    - (b) not fewer than 4 nor more than 6 other Commissioners.
  - " (1A) A person who is the Permanent Head of a Department or the Chairman of an authority of the Commonwealth may be appointed as a Commissioner, but not more than 2 such persons 30  
shall hold office as Commissioners at the one time.";
- (b) by omitting from sub-section (5) the words "in paragraph (1) (c)" and substituting the words "in paragraph (1) (b), other than representative Commissioners";
- (c) by omitting from paragraph (a) of sub-section (5) the words "in 35  
the several States and in the Northern Territory" and substituting the words "in different parts of Australia"; and
- (d) by omitting sub-section (6).

(2) The person who was, immediately before the commencement of this Act, the Chairman of the Commission continues to be the Chairman 40  
of the Commission as if he had been appointed as the Chairman under the

Principal Act as amended by this Act and holds office, subject to the Principal Act as amended by this Act, for the remainder of the period of his appointment under the Principal Act.

- (3) A person who held office as a Commissioner other than the Chairman immediately before the commencement of this Act continues to hold office as a Commissioner as if he had been appointed as a Commissioner under the Principal Act as amended by this Act and, if he was appointed for a specified period, holds office, subject to the Principal Act as amended by this Act, for the remainder of the period of his appointment under the Principal Act.

7. Section 23 of the Principal Act is amended by adding at the end thereof the following sub-section:—

Entry of  
place in  
Register.

- “(5) The Commission shall not take any action under this section in relation to a place for reasons relating only to the association of the place with the history, culture or beliefs of Aboriginals unless—

- (a) the place is a site specially protected under a law of a State or Territory by reason of its association with the history, culture or beliefs of Aboriginals; or  
(b) the action is taken in accordance with a direction of the Minister under section 25 or the recommendation of a person or organization approved by the Minister for the purposes of this sub-section.”.

8. Section 32 of the Principal Act is amended by omitting sub-sections (2) and (3) and substituting the following sub-section:—

Staff of  
Commission.

- “(2) The use of the services of the Staff of the Commission by Commissioners is subject to the control of the Chairman.”.

9. Section 45 of the Principal Act is amended by inserting in sub-section (1), after the word “may”, the words “, with the approval of the Minister,”.

Committees.

10. The Principal Act is amended as set out in the Schedule.

Formal  
amendments

## SCHEDULE

Section 10

### FORMAL AMENDMENTS

1. The following provisions of the Principal Act are amended by omitting the word “Australia” (wherever occurring) and substituting the words “the Commonwealth”:

Section 3 (1) (definition of “authority of Australia”), 9, 12 (3), (7), (8) and (9), 17 (2), 30, 33 and 42.

2. Section 5 of the Principal Act is amended by omitting the words “, other than Papua New Guinea”.

3. Section 33 of the Principal Act is amended by omitting the word “Australian” and substituting the word “Commonwealth”.

## STATE ENVIRONMENTAL LEGISLATION

## New South Wales

Environmental impact assessment (EIA) in New South Wales is conducted through the State Pollution Control Commission Act 1970 and the Government's environmental impact policy, first announced in 1972. Whilst the EIA policy is not governed by law, its principles and procedures bind the Crown, and are applied and followed by all public authorities in N.S.W. when determining the acceptability or otherwise of their own proposals and those submitted to them by others. The State Pollution Control Commission Act provides for the prevention, control, abatement and mitigation of pollution, the control and regulation of the disposal of waste and the protection of the environment from defacement, defilement or deterioration. Through this Act aspects of EIA can be enforced.

In N.S.W. all proposals which may cause significant environmental impact or which may be controversial must be subjected to EIA. Proper assessment involves co-ordinated participation by the proponent, the determining authority, other public authorities and the public, in the preparation and assessment of an environmental impact statement (EIS).

Where the proposal is expected to cause only a minor impact on the environment the EIA procedure is simplified but the environment is still given due consideration. Responsibility for implementing EIA procedures lies with the determining authority (DA) except where it is also the proponent, in which case the State Planning Control Commission (SPCC) may also be involved. In practice however the SPCC

generally maintains liaison with proponents to ensure that account is taken of all environmental factors.

Where the environmental impacts of a proposal are far-reaching or extend beyond the administration of the DA the decision-making process may be assumed by the SPCC.

In conducting assessments, proponents are encouraged from the outset to gather environmental information which is adequate to enable all reasonable alternatives to be compared, and design projects to minimise environmental impact. All information on the environment and anticipated interactions with it, both adverse and beneficial, is presented in the EIS. The document is required to combine satisfactory presentation with sufficient information for the DA to become familiar with the project and its alternatives. It is required to identify all impacts likely to be important in decision-making and adequately display them for consideration by the DA, other interested authorities and the public. The DA arranges for comments from interested parties and makes the decision on whether to approve the proposal and what conditions, if any, to impose.

Section 23 of the State Pollution Control Commission Act provides for the Commission to hold inquiries into environmental matters. Under a procedure introduced in 1975, the EIS for a proposed project is placed on public display and submissions sought from interested parties. Round table discussions involving all interested parties are then held. The record of discussions, together with the EIS and submissions, provides the basis for findings and recommendations.

A Bill providing for comprehensive environmental protection is currently before the N.S.W. Parliament.

## Victoria

Environmental impact assessment (EIA) in Victoria is conducted in accordance with the Environment Effects Act 1978 and the Guidelines for Environment Assessment (November 1978) made pursuant to the Act. The Act is administered by the Victorian Minister for Conservation through his Ministry.

The Environment Effects Act applies to public works (not including municipal works) when they could have a significant effect on the environment; to any Ministerial decision or action when the relevant Minister responsible so decides; and to any decision by public, municipal, private or planning, bodies, made under any act or law of Victoria when the person or body required to make the decision either chooses to seek the advice and assistance of the Minister for Conservation or receives instructions from his own Minister to seek that advice and assistance. The Act must be applied before commencement, or as soon as possible after commencement of works.

The Act provides for the preparation of Environment Effects Statements on matters to which it applies, while allowing the Minister with the approval of the Governor in Council, to institute inquiries into the environmental effects of any such matters.

Where a proponent has doubts whether the Act applies to his proposal he prepares a Preliminary Environment Report for submission to the Minister for Conservation. The Report should provide sufficient detail for the Minister to decide whether an Environment Effects Statement (EES) is required.

If the proponent considers the Act applies to a proposal he prepares an Environmental Effects Statement and submits it to the Minister for assessment. The Minister may also call for a Statement if none has been provided and he is of the opinion that the Act applies. Proponents are advised to seek the advice of the Ministry of Conservation as early as practicable to determine the applicability to the Act. The Ministry is also consulted as to the form and content of the Statement. In general a Statement covers the following matters - objectives, need for the proposal, description and alternatives; a description of the existing environment, the effects of the proposal on the environment (for each alternative) and safeguards proposed to avoid or minimise adverse effects. Public comment, which is sought by the proponent in the course of preparing the Environmental Effects Statement is also included, as is an evaluation of the various alternatives and a discussion of the relationship of future options.

When the Statement has been submitted to the Minister, further public comment is normally sought by advertisement in the press. After allowing four weeks for public and official submissions, an assessment of the environmental effects of the proposal and alternatives is prepared by the Ministry.

The assessment is then forwarded to the decision-maker and is taken into account fully when the final decision is made.

#### Queensland

Section 29 of the State Development and Public Works Organisation Act 1971-1978 provides a basis for the analysis of the environmental effects of development proposals. The Act states that it is the fundamental duty of the responsible authority (i.e. a Government or Semi-government

agency) to give appropriate and responsible consideration to the impact of any development likely to have major environmental effects and to have due regard to such matters in deciding whether the development should proceed and what, if any, conditions need to be imposed.

'Impact Assessment of Development Projects in Queensland', a booklet setting out administrative arrangements pursuant to the Act, was issued by the Co-ordinator-General's Department in March 1979.

Developers seeking approval for projects which may have major environmental effects initially submit to the responsible authority details of the existing situation, the proposed development and the anticipated effects of the development.

Where approvals from a number of responsible authorities are involved or where a development proposal raises relatively complex environmental issues the Co-ordinator-General is required to be consulted. In such instances the Co-ordinator-General may co-ordinate study requirements.

Where an impact assessment study appears to be warranted the responsible authority refers details of the proposal to any interested Government bodies or other relevant organisations for their guidance. The advisory bodies submit comments on the proposal to the responsible authority as soon as possible.

The responsible authority then decides whether any studies are required. If in the affirmative the responsible authority prepares guidelines for the study, with assistance from the advisory bodies if necessary.



Once an impact assessment study report is prepared the responsible authority again seeks comments from advisory bodies. Following receipt of any such comments the responsible authority decides whether to approve the proposed development and what conditions are to be imposed.

### South Australia

Environmental impact assessment (EIA) procedures in South Australia are operated under a Cabinet decision made in December 1973. This decision covers actions carried out by Government Departments and Statutory Authorities and actions funded by them.

South Australia's EIA procedures are administered by the South Australian Minister for the Environment through his Department (SADE).

The EIA process is generally initiated by the proponents notifying the SADE of their intention to undertake a project, providing brief details about it and its likely impact on the environment. In many cases this information (termed a Notice of Intent) suffices but the SADE may request further details about the proposal, its impact, alternatives considered, safeguards intended, etc., to enable a decision to be made whether an environmental impact statement (EIS) is necessary.

The SADE assesses the Notice of Intent and recommends to the Minister either:

- . that the proposal be approved (with or without conditions); or
- . that the proposal not be approved because of its likely impact; or

- . that an EIS is required to provide an adequate basis for a decision.

In practice, most proposals are dealt with at this stage and an EIS is required in relatively few cases.

If an EIS is required the SADE prepares guidelines and liaises with the proponent on content and preparation. Initially a Draft EIS is prepared and exhibited and the public is invited to comment on the proposal. The proponent may be requested to publicise the proposal and involve the public in discussions.

Following public review the proponent finalises the EIS by taking into account any comments received. The SADE then assesses the proposal on the basis of the EIS and recommends to the Minister either:

- . that the proposal be approved (with or without conditions); or
- . that the proposal not be approved.

The Minister or Cabinet takes the final decision about the proposal and the proponent is notified. To enable the public to trace the decision-making process, the SADE's assessment and recommendation are subsequently published.

In South Australia a bill has been prepared which is intended to complement the Commonwealth's Environment Protection (Impact of Proposals) Act 1974.

## Western Australia

Environmental impact assessment in Western Australia is conducted by the Environmental Protection Authority (EPA). The EPA is a 3-member Statutory Authority serviced by the W.A. Department of Conservation and Environment (WADCE). It derives its authority to be involved in environmental impact assessment through section 57(1) of the Environmental Protection Act 1971.

Section 57(1) calls on Ministers to report any proposed development, project or industry that might have a detrimental effect on the environment to the EPA for its advice. The EPA can then require the provision of aid, information and facilities to assist it in reporting on the environmental aspects of the proposal.

The WADCE has published 'Procedures for Environmental Assessment of Proposals in Western Australia'. These procedures have no legal force but are administered in line with Government policy.

In practice it is the responsibility of proponents to submit details of proposals which may fall within the ambit of the Act. Where doubt exists proponents contact the WADCE for advice. This is done at the earliest possible stage of formulation of the proposal.

Details of a proposal recognised as environmentally significant are submitted to the EPA as a Notice of Intent. A Notice of Intent is sufficiently detailed to enable the WADCE to recommend to the EPA that:

- . no environmental objections be raised to the proposal proceeding;

- . variations or conditions be imposed to enable the proposal to meet environmental requirements;
- . a more detailed environmental assessment is required (normally in the form of an environmental review and management program, or ERMP).

An ERMP consists of an Environmental Review Section, describing the objectives, need and alternatives to the proposed action and assessing its environmental effects; and a Management Program, detailing the environmentally deleterious effects of the proposal, how these effects will be managed and assessed and a commitment by the proponent to amend the operation of the proposal if necessary to protect the environment.

The assistance and advice of the WADCE is available to proponents preparing an ERMP. Before formal submission of the ERMP to the EPA a draft is made available for clearance by the WADCE.

On receipt of the ERMP the EPA seeks comments from relevant Government departments and the public in an appropriate manner. The EPA may request additional information from proponents as necessary.

After evaluating an ERMP the EPA makes a recommendation to the appropriate Minister or Statutory Authority such as to:

- . support the proposal;

- . support the proposal conditional on specified modifications to the proposal and/or the Management Program;

- . oppose the project.

## Tasmania

The Tasmanian Government has adopted a policy requiring an environmental impact study to be carried out before a decision is made to proceed with any development likely to have a significant effect on the environment of the State.

Co-ordination and evaluation of environmental impact studies (EIS) is carried out by the Director of Environmental Control; an Environmental Impact Study Assessment Group has also been established to assist the Government in the evaluation of environmental impact reports.

Responsibility for ensuring that the necessary study to determine environmental impact is undertaken lies with the decision-making authority.

Following the submission by a developer of a Development Application the decision-making authority determines the need for an EIS on the basis of the size and nature of the project and its potential for adverse environmental effects. Where new developments are proposed on premises prescribed in Schedule 1 of the Environment Protection Act 1973 the need for an EIS will be determined by the Director of Environmental Control in accordance with the provisions of the Act. Where there is doubt as to the need for an EIS the question is referred to the Director.

Having established the need for a study, the decision-making authority arranges for a Statement of Environmental Factors to be prepared and forwarded to the Director of Environmental Control. A Statement has three parts:

- . Section A describes the proposal and the existing state of the environment;
- . Section B seeks information concerning the effects of the development on the environment;
- . Section C provides for a statement of measures proposed by the developer to protect the environment.

The decision-making authority is advised by the Director of Environmental Control whether additional studies are necessary. Where no additional information is required the Statement of Environmental Factors is regarded as a final environmental impact statement.

If further studies are necessary they normally include information and evaluation of alternative schemes together with reasons for preferring the proposed scheme. A full EIS also takes into account the views of the public, which is given adequate opportunity to make submissions.

Assessment of an EIS is made by the Environmental Impact Study Assessment Group and an assessment report prepared. A copy of the assessment report is forwarded to the decision-making authority together with any recommendations of the Director of Environmental Control.

## APPENDIX 8

### COMMONWEALTH HISTORIC SITES AND BUILDINGS COMMITTEE

#### Terms of Reference

- (1) Provide advice on how the Commonwealth and its instrumentalities can best undertake their responsibilities under Section 30 of the Australian Heritage Commission Act in regard to Commonwealth-owned property entered in the Register and/or List of the National Estate.
- (2) Establish State/Regional sub-committees to deal with issues requiring examination at the local level. Sub-committees to be convened by the relevant Chief Property Officer of the Department of Administrative Services and to report to the central committee on their activities generally and particularly in cases where solutions acceptable to all parties cannot be found at the local level.
- (3) Provide advice on particular cases where there is unresolved conflict in regard to proposals that may have a significant effect on Commonwealth-owned property that is entered in the Register and/or List of the National Estate or is of merit as part of the National Estate.

#### Membership

Departments:     Administrative Services (Convenor)

                 Construction

                 Science and Environment

                 Finance

                 Prime Minister and Cabinet

                 Australian Heritage Commission

                 Other Departments and Authorities when issues of direct concern are being considered.

## APPENDIX 9

### PROPOSED RESEARCH PROJECTS BY THE AUSTRALIAN HERITAGE COMMISSION

#### Aboriginal Culture

Research projects in order of priority:

- 1 Research and synthesis of existing data on conservation techniques for the preservation and protection of Aboriginal art and other sites, leading to publication of a manual.
- 2 Formulation of a national plan on the protection and management of Aboriginal sites for cultural tourism, in conjunction with Commonwealth and State tourist and other authorities.
- 3 Development of educational programs concerning the importance of Aboriginal culture in our national heritage by means of (a) Aboriginal studies kits for schools (expanded version of that currently being developed by the A.C.T. Schools Authority with the help of the Australian Heritage Commission) (b) publication of educational handbooks (c) development of educational films.
- 4 Further identification of the main National Estate components of Aboriginal culture, and research into the wishes and requirements of Aboriginals concerning their heritage.

#### Built Environment

Preparation and, in some cases, publication of papers on:

- 1 Conservation manual for Commonwealth Authorities.
- 2 Conservation of specific major sites of historical archaeological importance.
- 3 Guidelines for the conservation of industrial sites.
- 4 The conservation of coastal fortifications.
- 5 The conservation of lighthouse groups and their settings.
- 6 The conservation of cemeteries.



- 7 The conservation of inaccessible or threatened vernacular structures.
- 8 Guidelines for the development of a common threshold for listing.
- 9 Taxation incentives for conservation action.
- 10 An examination of methods and relevance of compensation for conservation action.
- 11 The use of covenants in conservation.
- 12 The re-use of old buildings.
- 13 Proposals for amendment and interpretation of building ordinances related to National Estate property.
- 14 Restoration techniques.
- 15 Survey and recording techniques a) rapid b) comprehensive for individual structures and areas.
- 16 The listing procedure.
- 17 Role of Technical Advice Teams.
- 18 Administration of conservation bodies.
- 19 Conservation advice for local government.
- 20 The role of 'created' Australiana of industrial complexes in conservation.
- 21 The development of a common approach to historical archaeology and architectural history.
- 22 Guidelines for determining when a National Estate building should be moved.
- 23 Ways and means of stimulating craft trades and ensuring continuity of work.
- 24 Bibliographies and inventories kept up to date on the conservation of the built environment in Australia.
- 25 Case studies of seminal National Estate projects.

## Natural Environment

- 1 Suitability of Crown land for conservation.
- 2 Wilderness surveys.
- 3 Vegetation mapping so that the information is available for better based conservation planning.
- 4 The suitability/desirability of establishing and properly managing English-type national parks in Australia.
- 5 The concept, applicability and importance to Australia of Heritage Coastlines.