

## CHAPTER 2: WORLD HERITAGE AND THE COMMONWEALTH'S POWERS

### The Commonwealth's powers

2.1 Whether or not the proposal to restore Lake Pedder has merit and whether it is likely to be seriously considered as a possible course of action became threshold questions for the Committee's inquiry. Whether it is implemented may depend, in part, on the respective powers of the Commonwealth and the State of Tasmania. A submission from the Tasmanian Government made it clear that, not only did it strongly oppose the proposal, it had initial legal advice that the Commonwealth had no constitutional power to require the State to drain the lake. It considered that the decision on whether Lake Pedder should be drained was a matter for the Tasmanian Government. This view notwithstanding, Dr Daniel Norton, the Secretary of the Department of Premier and Cabinet, told the Committee:

To the extent that Lake Pedder is a part of the world heritage area, obviously the management of a world heritage area is a joint Commonwealth and state issue. So the Commonwealth certainly has a role in that respect. The Commonwealth has seen fit to investigate the issue, and I guess they can investigate any issue in that respect.<sup>1</sup>

2.2 If the Commonwealth has no powers in the matter and if the Tasmanian Government continues to oppose the proposal then there would be no prospect of the proposal proceeding. It would not therefore warrant further serious consideration by the Commonwealth. However, some of the submissions to the Committee argued that not only did the Commonwealth have the necessary powers but it also was under an obligation to act because of the world heritage status of the area.

2.3 The Tasmanian Government did not present its legal opinion to the Committee. It had been the Committee's intention to pursue this question with the Government at the public hearing in Hobart on 6 April 1995 but, in a letter received just before the hearing, the Premier of Tasmania said that the Government would not appear at the hearing. The Premier demanded that the Committee immediately wind up its deliberations. This uncooperative attitude to the Committee may have prevented the Tasmanian Government from presenting useful evidence in support of its arguments. The Committee received an authoritative submission from the Commonwealth Department of the Attorney-General and, in the absence of any further advice from the Tasmanian Government, based its assessment of the legal position largely on this submission.

### *Lake Pedder as world heritage*

2.4 The region containing Lake Pedder has been inscribed by the World Heritage Committee of UNESCO on the World Heritage List. This list was established under the Convention Concerning the Protection of the World Cultural and Natural Heritage (the World Heritage Convention).

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1 Evidence p 43.

2.5 Dr Bob Brown, co-convenor of Pedder 2000, suggested that consideration of the Lake Pedder restoration proposal should involve negotiation between the Commonwealth Government and the Government of Tasmania, and that the Commonwealth should take an active role in the matter:

This is part of the Tasmanian wilderness world heritage area. From my point of view as a bush lawyer, that means that basically the Commonwealth can intervene to protect an area and can stop things that are untoward or inimical to the world heritage area from happening. It is also charged under the World Heritage Convention with rehabilitating, where it can, world heritage assets, and this would appear to empower the Commonwealth to move towards rehabilitating Lake Pedder - particularly as this area with the lake in it was originally included with the hope that the lake could be restored at some future time.<sup>2</sup>

2.6 Referring to the Tasmanian Wilderness World Heritage Area Management Plan, Dr Brown suggested that there was an obligation on the Commonwealth and Tasmania to consider the draining of Lake Pedder.<sup>3</sup> Others went further than this and suggested that this obligation extended beyond a mere consideration of the possibility of restoration. These views depended in part on an interpretation of Article 5 of the World Heritage Convention which states:

To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as is possible, and as appropriate for each country:

...

- (d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage.

2.7 Dr Geoff Mosley presented evidence on behalf of the Australian Conservation Foundation and the Lake Pedder Study Group. He suggested that the Commonwealth has at least as much responsibility to restore Lake Pedder as it did to stop the construction of the Gordon below Franklin Dam. This opinion was based on the interpretation that the World Heritage Convention places an obligation squarely on Australia to act.<sup>4</sup>

2.8 Dr Mosley supported his submission with a legal opinion by Mr Caston QC and Mr Moore. This opinion rejected the stated position of the Tasmanian Government and expressed a contrary view:

In appropriate cases, the Commonwealth is empowered and, indeed, obligated to take steps to enhance the heritage potential of the property.<sup>5</sup>

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2 Evidence p 26.

3 Evidence p 6.

4 Dr Geoff Mosley, Supplementary Submission p 2.

5 Dr Geoff Mosley, Supplementary Submission, attached legal opinion p 3.

2.9 A similar view was expressed in a submission from Mr Stephen Mattingley, a lawyer who has studied world heritage issues:

The High Court of Australia has repeatedly recognised that the World Heritage Convention imposes obligations on the Commonwealth. The Court has found that these obligations provide a basis for the exercise of the Commonwealth's external affairs power ...

... it is clear that the Commonwealth has both an obligation and the power to legislate 'for the ... protection, conservation, presentation and rehabilitation of world heritage, unless the Constitution prevents such legislation.'<sup>6</sup>

2.10 To clarify such views and to help determine whether it was appropriate for the Commonwealth to even consider the restoration proposal, the Committee sought a submission from the Attorney-General's Department. The Department submitted that Australia is not obliged to restore Lake Pedder but that it can do so if it chooses. The Department's view is best summarised by the following extract from its submission:

If the drainage and restoration of Lake Pedder was an 'appropriate' action in the terms of Article 5 of the World Heritage Convention, then the Convention would support legislation under the external affairs power relating to its 'rehabilitation' or 'presentation'. Whether an action is regarded as 'appropriate' in terms of Article 5, would depend upon the Government's consideration of economic, environmental, social and other factors.<sup>7</sup>

2.11 It is clear that the current Lake Pedder is part of the Tasmanian Wilderness World Heritage Area and that any provisions that apply to world heritage can be taken to apply to it. In 1982 the Western Tasmanian Wilderness National Parks area was inscribed on the World Heritage List. The inscribed area was extended by a revised nomination in 1989 which created the Tasmanian Wilderness World Heritage Area. Both the original and revised inscriptions included most of the current Lake Pedder.

2.12 According to the Department of the Environment, Sport and Territories<sup>8</sup> and the Attorney-General's Department there are few references to Lake Pedder in the nomination documents but the condition of the lake at the time of the two nominations was recognised.<sup>9</sup> The Department of the Environment, Sport and Territories could only find one reference in either the nomination or the technical evaluation documents that explained why Lake Pedder was taken as world heritage. This reference suggested that Lake Pedder was included because, unlike Lake Gordon which was not included, it is not subject to large fluctuations in water levels and it was advantageous for management purposes to include Lake Pedder. The Department of the Environment, Sport and Territories submitted that world heritage values *per se* were not a paramount consideration in the decision to include Lake Pedder.<sup>10</sup> This does not, however, detract from the lake's legal status as world heritage.

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6 Stephen Mattingley, Submission pp 2-3.

7 Attorney-General's Department, Submission p 8.

8 The Department of the Environment, Sport and Territories, Submission p 3.

9 Attorney-General's Department, Submission p 5.

10 The Department of the Environment, Sport and Territories, Submission p 3.

2.13 The IUCN provides the World Heritage Bureau of UNESCO with technical advice on world heritage nominations. In relation to the revised nomination of the Tasmanian wilderness in 1989 the IUCN said, in agreeing that Lake Pedder be retained as part of the world heritage area, that 'some have even suggested that its long term restoration as a natural lake should be considered'.<sup>11</sup> This does not establish eventual restoration as a condition of the inclusion of Lake Pedder in the world heritage area nor does it establish an obligation on Australia to restore it. It does suggest, however, that the current Lake Pedder was not seen by the IUCN to add much to the world heritage values of the region.

2.14 The officer of the IUCN responsible for preparing technical advice has recently advised the Pedder 2000 campaign that the IUCN had not initially suggested that Lake Pedder be excised from the nomination, because 'their evaluation in 1989 foreshadowed the eventual prospect of restoration and on that remote (at the time) prospect we left it in'.<sup>12</sup> The IUCN has since raised doubts about the inclusion of the current Lake Pedder in the world heritage area. The general assembly of the IUCN in 1994 adopted a resolution calling on Australia to investigate the feasibility of restoring the lake.<sup>13</sup> The resolution of the IUCN was adopted by consensus but the delegations from 19 state and government agency members indicated that they would have abstained in the event of a vote.

2.15 The Department of the Environment, Sport and Territories believes that there is no expectation on the part of UNESCO that Lake Pedder will be drained and that the international authorities are comfortable with the impoundment as part of a world heritage site.<sup>14</sup> Dr David Kay, the head of the branch within the Department of the Environment, Sport and Territories that deals with world heritage matters explained this view to the Committee:

The area was listed subsequent to the impoundment. The world heritage committee therefore was obviously of the view that the impoundment did not significantly detract from the nomination and included the area.<sup>15</sup>

2.16 The views of the IUCN cannot be taken as binding on Australia. Pedder 2000 argued that Lake Pedder was included in the world heritage area in the expectation that it would be restored. The World Heritage Convention identifies duties of governments in the same way as any other international treaty. It is the provisions of the Convention which need to be examined to identify the nature and scope of the responsibilities that Australia has in respect of restoring Lake Pedder. It is not at all clear that the World Heritage Bureau seriously considered the IUCN expectation that Lake Pedder would be drained or that it was included in the world heritage area on this basis.

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11 World Heritage Nomination - IUCN Technical Evaluation 507 Tasmanian Wilderness (Australia) 1989.

12 Exhibit 9, letter from Jim Thorsell to the Lake Pedder Restoration Committee, 17 March 1995.

13 The resolution adopted by the IUCN is at Appendix 5.

14 Evidence p 178.

15 Evidence p 177.

## *Obligations created by the World Heritage Convention*

2.17 Lake Pedder is indisputably subject to the provisions of the World Heritage Convention but the suggestion that the Convention obligates Australia to restore Lake Pedder is not sustainable if the terms of the Convention are given a standard interpretation. The implications of the Convention were discussed by the Attorney-General's Department in its submission to the Committee. The duties imposed by the Convention were explained in the following terms:

Article 4 of the World Heritage Convention refers to each Party's 'duty' of 'ensuring the identification, protection, conservation, presentation and transmission to future generations' of 'natural heritage' as identified under Article 3, and obliges each Party to 'do all it can to this end, to the utmost of its own resources and, where appropriate, with any assistance and co-operation, in particular, financial, artistic and technical, which it may be able to obtain'.<sup>16</sup>

2.18 The Attorney-General's Department emphasised that the expression 'to the utmost of its resources' should not be read to mean that the Commonwealth should take action at 'any cost'. The Department explained the nature of the duty relating to world heritage areas defined in section 5 of the Convention. It suggested that if the continued submersion was slowly destroying the old Lake Pedder, for example, the reference to protection might extend to the drainage and restoration.<sup>17</sup> It was also suggested in the Department's submission that 'presentation' of the submerged features could extend to exposing them to view. The more obvious category for action under the convention, according to the Department, is 'rehabilitation'.<sup>18</sup>

2.19 The Attorney-General's Department believes that, although the provisions of the World Heritage Convention appear to raise the possibility of draining Lake Pedder for its protection, presentation or rehabilitation, it also provides Party States with considerable discretion:

The language of Article 5 ('endeavour', 'in so far as is possible', 'as appropriate for each country', 'appropriate ... measures') does not constitute an absolute obligation and plainly gives some flexibility and discretion as to the means of implementing the obligations it refers to. This flexibility is given to the Convention Party, Australia, but it is a flexibility which must be exercised in accordance with the international law principle that treaties must be implemented in good faith.

As to the means of, for example, 'rehabilitation', Parties are not obliged to enact specific kinds of legal measures; there is once again, a significant deal of flexibility given to Parties as to the means by which they achieve the required result.

The qualifying words in Article 5 would legitimately allow Australia to take into account factors such as the costs involved in the project, and whether the money could more appropriately be spent in other areas, in determining whether it is appropriate to drain and restore Lake Pedder. Although there is clearly some dispute about the magnitude of the task involved in draining and restoration, it would clearly be a major effort, and it does not appear to this Department that the applicability of the World Heritage Convention to the submerged features implies any absolute obligation to enter into such an undertaking.<sup>19</sup>

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16 Attorney-General's Department, Submission p 6.

17 Attorney-General's Department, Submission p 6.

18 Attorney-General's Department, Submission p 7.

19 Attorney-General's Department, Submission p 7.

2.20 If the Commonwealth were to use its powers to require the draining and restoration of Lake Pedder it would probably first have to enact new legislation or amend the *World Heritage Properties Conservation Act 1983*. The current legislation gives effect to some of Australia's duties under the World Heritage Convention but it operates essentially to prohibit certain actions in its present form. The Act does not provide for 'rehabilitation or presentation' of world heritage areas. The Attorney-General's Department advised that the Act will apply to the Tasmanian Wilderness World Heritage Area only if a Proclamation is first made under the provisions of the Act, but such a step would not make the Act applicable to the restoration proposal unless the Act was first amended:

In any event, even if a Proclamation could be made, the *World Heritage Properties Conservation Act 1983* will not provide a mechanism for giving effect to the Lake Pedder proposal. The Act operates to *prohibit* a person from carrying out an act that is likely to damage or destroy a proclaimed property but it does not allow the Commonwealth to *compel* a person to rehabilitate a proclaimed property.

... It could not effectively impose a positive obligation on a person to perform a particular act, such as would be necessary to effect the rehabilitation of a world heritage area. In particular, section 9 could not effectively provide that a person must take steps to drain Lake Pedder.<sup>20</sup>

2.21 The Act does allow for the making of regulations but, as the Attorney-General's Department points out, this does not extend to regulations that go beyond the purpose of the Act itself, and this provision alone could not be used in relation to draining Lake Pedder. A regulation requiring the rehabilitation would go beyond the scope and purpose of the Act as it is currently framed, and would be invalid.<sup>21</sup>

2.22 Although it appears that the Commonwealth could introduce valid legislation and, if then necessary, make regulations for the restoration of Lake Pedder, there are certain constitutional limits that would need to be taken into account. The legislation would have to be drafted in such a way as not to discriminate against Tasmania by imposing a special burden that would apply only to it. It would also have to avoid any provision that would offend the implied constitutional limitation that the Commonwealth cannot legislate to impair the essential functioning of a State.

2.23 These matters could be accommodated in new or amending legislation. The Attorney-General's Department believes that it would be possible to enact legislation which would not discriminate against Tasmania, or impair its functioning as a State, particularly if the law was of general application to all world heritage areas and if Tasmania was not left to fund the restoration itself.

2.24 It would also need to be considered if legislation enabling the Commonwealth to direct the restoration of Lake Pedder amounted to an acquisition of property and if the Commonwealth would therefore then be liable to pay compensation.

### **Other legal considerations - Commonwealth and State legislation**

2.25 The *Environment Protection (Impact of Proposals) Act 1974* provides that matters affecting the environment to a significant extent are fully considered and taken into account

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20 Attorney-General's Department, Submission p 17.

21 Attorney-General's Department, submission p 19.

by the Commonwealth when it is involved in making decisions or taking action. If necessary, the Minister for the Environment, Sports and Territories can direct that an environmental impact statement (EIS) be prepared by the proponent of the proposal under consideration.

2.26 The Department of the Environment, Sport and Territories stated in its submission that the Commonwealth Environment Protection Agency (EPA) was of the view that to drain Lake Pedder would, on the face of it, be environmentally significant under the terms of the Act. Therefore if a Commonwealth decision is involved the matter would have to be referred to the EPA.<sup>22</sup> It is most likely, given the nature and scale of the restoration project that a detailed EIS would be required.

2.27 The Act provides that the Minister can direct that a public inquiry be carried out to review proposals. This step has rarely been taken but some major proposals have been examined in this way. It is possible that a formal public inquiry under the provisions of the Act would be appropriate.

2.28 An EIS would have to be prepared by the proponent, which for all practical purposes in this case would have to be the Tasmanian Government because it is the owner and manager of Lake Pedder. The proposal would most likely need to be examined under Commonwealth and Tasmanian environmental assessment legislation. The Commonwealth would need to work jointly with the Tasmanian Government, as provided by the Intergovernmental Agreement on the Environment.

2.29 The cost of preparing the EIS could be shared. Mr John Ashe, Assistant Secretary of the Environment Assessment Branch of the Department of the Environment, Sport and Territories said:

In general, under our legislation the costs of preparing, say, an environmental impact statement, would be borne by the proponent. The question then would be: who would be the proponent in this particular case? I assume that it is likely that it would be some arm of the Tasmanian government. Even if the proponent were to bear the cost, that does not preclude the possibility that there could be some particular funding arrangements to meet the cost of the environmental assessment. Conceivably, if the federal government wished this proposal to go ahead, it may wish to fund the proposal including funding the environmental impact assessment.<sup>23</sup>

2.30 By the time the Commonwealth and the Government of Tasmania were to reach an agreement to proceed with the proposal it is likely that much more information would be available than has been provided to this Committee. An EIS, or a public inquiry under the Act, at that time would therefore advance consideration of the issues well beyond what has been possible to achieve so far.

2.31 Other Commonwealth legislation is relevant to the restoration proposal. The Department of the Environment, Sport and Territories submitted that the Australian Nature Conservation Agency had advised that if the Commonwealth was to be a party to a decision to drain Lake Pedder, the provisions of the *Endangered Species Protection Act 1992* would be relevant.<sup>24</sup> An endangered species of fish, the Lake Pedder Galaxias, is known naturally

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22 The Department of the Environment, Sport and Territories, Submission p 1.

23 Evidence pp 186-7.

24 The Department of the Environment, Sport and Territories, Submission p 1.

only from Lake Pedder and the Department warned that draining the lake could have a substantial impact on the species. Any Commonwealth action that threatened a species with extinction or significantly impeded its recovery would be contrary to the provisions of the Endangered Species Protection Act.

2.32 If the proposal were to proceed, attention would have to be given to Tasmanian legislation, some of which may have to be amended if it was not over-ridden by Commonwealth legislation. The *Hydro-Electric Commission Act 1944*, for example, requires that the Hydro-Electric Commission maintain the level of the lake between 306.93 and 308.46 metres above sea level and this would obviously have to be amended.

### **Implications for world heritage values**

#### *The 'world heritage in danger' list*

2.33 One witness who appeared before the Committee proposed that the Tasmanian Government would take action under the 'world heritage in danger' provisions of the World Heritage Convention, if the Committee were to continue its inquiry.<sup>25</sup> The Convention provides that the World Heritage Committee is to maintain a list of 'world heritage in danger', which identifies properties inscribed on the World Heritage List where major conservation operations are necessary and for which assistance has been requested under the Convention.<sup>26</sup> The Convention also provides that States Parties to the Convention may seek assistance in relation to world heritage properties.<sup>27</sup> In the case of the Tasmanian Wilderness World Heritage Area, the relevant State Party is Australia, not Tasmania.

2.34 The Committee's inquiry was essentially been an information gathering exercise and did not itself pose a threat to the world heritage area of the kind envisaged in the Convention for 'world heritage in danger'. Nor could it be said that Lake Pedder was in need of major conservation works, except to the extent that draining the lake would be necessary to reveal its significant geomorphological features. The proposal to seek 'world heritage in danger' status for Lake Pedder presumably therefore anticipated the situation that would arise if a decision to proceed is taken by the relevant authorities. The relevant authorities would include the Tasmanian Government and it is difficult to envisage that this Government would attempt

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25 Mr Guy Barnett, Evidence p 275.

26 *Convention concerning the protection of the world cultural and natural heritage*, article 11.

27 *Convention concerning the protection of the world cultural and natural heritage*, articles 6 and 13, and section V.

to invoke the heritage in danger provisions of the Convention if it was itself a party to a restoration effort. In any event, the requirement that assistance first be requested by a State Party means that only the Commonwealth could initiate such action.

2.35 The witness who raised the 'world heritage in danger' proposal also suggested that restoring Lake Pedder would violate other parts of the World Heritage Convention which call on States Parties to protect world heritage within their territory (articles 4 and 5 of the Convention) and not to deliberately damage world heritage in the territory of other States Parties (article 6).<sup>28</sup> The Lake Pedder restoration proposal does not threaten world heritage in any other country and the latter provision is not relevant. This provision was apparently raised because of a misunderstanding of the Convention and need not be considered any further, but the concern that the proposal to drain Lake Pedder violates articles 4 and 5 of the Convention warrants examination.

2.36 The proponents of draining Lake Pedder argued that their proposal complies with provisions of the Convention that refer to protection and restoration of world heritage. It is a matter of judgement and interpretation whether restoring the original lake would comply with the restoration provisions or, alternatively, whether removing the current lake would violate the protection provisions. Draining the lake would probably not violate the Convention because, if it could be restored, the original lake arguably would have had greater world heritage values than the current lake.

2.37 From the evidence provided by the Department of the Environment, Sport and Territories it appears that Lake Pedder in its current form does not itself have any significant world heritage values. It may even detract from the value of the Tasmanian Wilderness World Heritage Area as a whole, as suggested by the IUCN. The lake may possess recreational, scenic, environmental and possibly wilderness values but it cannot be said that the loss of these values would diminish the world heritage values of the Tasmanian Wilderness World Heritage Area.

2.38 The Committee believes that the proposal to drain and restore Lake Pedder does not constitute a threat to the integrity of the Tasmanian Wilderness World Heritage Area, except to the extent that there is a risk that the restoration might fail and leave the area permanently in an unacceptable condition. The 'world heritage in danger' list is not a relevant consideration. The most significant world heritage values of Lake Pedder are the unique but submerged geomorphological features and the spectacular scenery these created. The geomorphological features would be presented only if the lake is drained. The world heritage values would be enhanced if the geomorphological features were successfully restored. The proposal that the area be nominated as 'world heritage in danger' is not only unwarranted, but it is based on a misunderstanding of the World Heritage Convention.

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28 Mr Guy Barnett, Evidence p 277.

## *Protection of world heritage values*

2.39 The suggestion that draining Lake Pedder would be contrary to the provisions of the World Heritage Convention is difficult to reconcile with the views of the IUCN. The IUCN resolution calling for the restoration of Lake Pedder suggested it would be a significant step to improving the integrity of the world heritage area. It cannot be said that the World Heritage Committee of UNESCO is of this view<sup>29</sup> but the views of the IUCN are taken as authoritative by the World Heritage Committee. The opinion of the IUCN's senior adviser on natural heritage is that, from a world heritage point of view, Lake Pedder ought to be restored.<sup>30</sup>

2.40 Dr Kay told the Committee that the Department of the Environment, Sport and Territories does not see any significant risk to world heritage values from the proposed draining of Lake Pedder, although there are some short term concerns and the restoration work would need to be effective:

In our analysis, we have not seen a significant risk. There are questions associated with the potential impacts on endangered species and rare threatened species are a component of world heritage values. I suppose there are pros and cons: there are obviously short-term impacts on aesthetic values resulting from a draining of the impoundment and those would be a concern. We have stated, I think, that the issues of the rehabilitation of the surrounding area, particularly the revegetation of the areas which have been inundated, would be a concern. We believe that further information is needed on our ability to rehabilitate those areas and the time frame in which rehabilitation might occur. In that sense there is a concern.<sup>31</sup>

2.41 The implications of the restoration proposal for world heritage values and Australia's duties under the World Heritage Convention would depend on the plans and arrangements that are made for rehabilitation and management of the site if it is drained. The rehabilitation task could be a major undertaking and there would be a need to carefully manage access to the site. The continuing management of the area would be carried out by the Tasmanian Government in accord with the management plan for the Tasmanian Wilderness World Heritage Area. This plan has been jointly adopted by the Commonwealth and the Tasmanian Governments. It envisages restoration works in the region but would need to be amended to specifically accommodate such an undertaking as the Lake Pedder restoration proposal.

2.42 The need to consider future management arrangements should the proposal proceed has been recognised by the Lake Pedder Study Group which commissioned Dr Mosley to examine management options. Dr Mosley's report to the Study Group suggested that a rehabilitation plan be produced and the management plan amended. In particular, Dr Mosley noted that, if the revised management strategies were to include a change in the land use

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29 The Committee was told by Dr Kay from the Department of the Environment, Sport and Territories that UNESCO did not appear to have a position on whether Lake Pedder ought to be restored, Evidence p 178.

30 Exhibit 9, letter from Jim Thorsell to the Lake Pedder Restoration Committee, 17 March 1995.

31 Evidence p 173.

zoning, the revisions might be treated as a proposed amendment of the plan.<sup>32</sup> Dr Mosley considered that the procedures that are currently available for revising the management plan are adequate and involve good opportunities for community consultation.<sup>33</sup>

## **The Commonwealth's role**

2.43 Proponents of the proposal to restore the original Lake Pedder argued that restoring the lake would enhance world heritage values, particularly by revealing significant geomorphological features. The risk to world heritage values posed by the possibility of a failed rehabilitation process emphasises the need for careful planning, environmental assessment, and monitoring. The world heritage values, should not be risked and the proposal should not proceed unless the environmental and technical merits of the proposal can be established.

2.44 The duties imposed on the Commonwealth by the World Heritage Convention and the extent of the powers that the Commonwealth has to enable it to carry out those duties have been given various interpretations in the evidence presented to the Committee. The Committee believes that restoring Lake Pedder would be within the bounds of the Convention and would not significantly detract from world heritage values, provided that the short term visual and aesthetic impacts during the rehabilitation phase could be minimised. The Commonwealth is under no legal obligation to force the restoration of Lake Pedder and there is no legally compelling reason for it to do so. The Commonwealth could act if it so chooses because it has the power to enact appropriate legislation or to amend the World Heritage Properties Conservation Act. It would need only to decide that it is appropriate to do so.

2.45 The legal question is only one part of the issue. In whatever action it might take the Commonwealth should recognise the rights and responsibilities of the State of Tasmania and should act in conjunction with the Tasmanian Government. The matter would then cease to be a legal question and become a matter for Commonwealth - Tasmanian negotiation. This should include consideration of cost sharing and compensation.

2.46 The positions of the current state government and of the opposition in Tasmania are quite clear: both are strongly opposed to draining the new Lake Pedder. There is no real prospect of the proposal being adopted by either of the two main political parties in Tasmania in the near future.

This then raises the question of how seriously the proposal should be considered. If the proposal were to proceed the Commonwealth would be involved because the area is world heritage. It would then be necessary to satisfy the provisions of the Environment Protection (Impact of Proposals) Act and the Endangered Species Protection Act. This would almost certainly require the completion of an environmental impact statement in accord with the Environment Protection (Impact of Proposals) Act and be subject to a joint Commonwealth - Tasmanian framework agreement on the administration of environmental assessment processes, as required under the Intergovernmental Agreement on the Environment. In the

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32 *Lake Pedder. Report on the Future Management of the Area Proposed for Restoration*, a study commissioned by the Lake Pedder Study Group and prepared by Dr Geoff Mosley, March 1995, p 34.

33 Evidence p 459.

absences of an agreement from the Tasmanian Government to favourably consider the proposal, any moves towards the preparation of a formal environmental impact statement would be premature. Preparation of an environmental impact statement should only be undertaken if both governments have agreed to develop a proposal with the intention of draining and restoring the lake.