

Chapter 3

Heritage Listings and Nominations

Current law

3.1 The *Environment Protection and Biodiversity Act 1999* contains provisions dealing with the listing and protection of World Heritage properties and National Heritage properties. It also provides for the identification and protection of the Commonwealth's own heritage which encompasses important places within the Commonwealth's control.¹

3.2 As a signatory to the World Heritage Convention, the Australian Government cooperates closely with state and territory authorities to ensure the protection and promotion of state-managed world heritage, and this is consistent with Australia's national undertakings under the convention.

3.3 The Australian Heritage Council has responsibility under the Act for ensuring that places on the National Heritage List and the Commonwealth Heritage List have been adequately assessed for their heritage values. The Minister may refer a public nomination or a direct request to the Council for assessment, while the Council itself may initiate a heritage assessment. The results of these assessments are then provided to the Minister for a decision as to a heritage listing taking place.

3.4 The Act has provisions for ensuring that management plans are prepared that set guidelines for the protection and conservation of heritage sites. If these sites are within a state or territory then the Act provides that the Australian Government must endeavour to ensure that management plans are implemented by the relevant local authority.²

Rationale for the change

3.5 There is a need to increase efficiencies in the area of heritage management processes and also need to reduce duplication across heritage registers.³

3.6 The principal rationale for the amendments relating to the Register of the National Estate (RNE) is to complete the transition to a three-tiered arrangement for heritage within Australia. While the Australian Government is responsible for national

1 Second Reading Speech, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 2.

2 Department of the Environment and Heritage Annual Report 2005-06, *Operation of the Environment Protection and Biodiversity Conservation Act 1999*.

3 Second Reading Speech, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 2.

matters; the states are responsible for matters relevant to states, and local governments responsible for matters of local significance.⁴

3.7 Having a Register of the National Estate complicates the three tiered model, as it includes places with heritage significance at all three levels. This issue was identified as significant by the Council of Australian Governments in 1997.⁵

Changes proposed by the bill

3.8 The Environment and Heritage Legislation Amendment Bill 2006 allows for World Heritage properties to be transferred across to the National Heritage List without imposing any requirements for further assessment.⁶ This will ensure protection for those properties already listed, as they will not need to be reassessed prior to being shifted.

3.9 However, the repeal of section 324B of the Act has the effect that the National Heritage List will no longer be able to include places outside Australia's jurisdiction, and a new list called the list of Overseas Places of Historic Significance is being established under chapter 5A to record them.⁷

3.10 The bill also proposes changes that complete the transition to a three tiered heritage system, as proposed by the Council of Australian Governments in 1997, by enacting that the Register of the National Estate will cease to be a statutory register. This register will be abolished after a period of five years to allow sufficient time for heritage listings to be transferred to states and territory registers.⁸

3.11 The bill repeals sections 324E to 324J and inserts a new subdivision BA of division 1 of part 15 of the Act which will enable the Minister to set themes, following advice from the Australian Heritage Council focussing on places of potential heritage value, rather than being driven by the order in which public nominations are received.⁹

4 Second Reading Speech, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 5.

5 Mr Peter Burnett, Department of the Environment and Heritage, *Committee Hansard*, 6 November 2006, p. 56

6 Second Reading Speech, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 2.

7 Explanatory Memorandum, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 62.

8 Second Reading Speech, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, pp 5–6.

9 Explanatory Memorandum, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 62.

3.12 The bill also allows the Minister to set more than one heritage theme in an assessment period (section 342H). The Minister may seek advice from the Australian Heritage Council to assist in determining heritage themes.¹⁰

3.13 Under the amendments to the Act heritage listings will now occur on an annual cycle approval process, rather than on an ad-hoc basis as is currently the case. A new annual 12 month assessment cycle will commence within 12 months of the legislation coming into effect (new section 342E).¹¹

3.14 The role of the Australian Heritage Council will be expanded to better enable this strategic approach to be taken to listing. Advice will be provided to the Minister on annual work programs based on the strategic importance of the nominations rather than when they happen to be nominated.¹²

3.15 A new section 324K simplifies the outline for emergency listing processes for properties with potential heritage value. In conjunction with new section 324JL this enables the Minister to emergency list a place in the National Heritage List if it may have National Heritage values, if any of those values is under threat of significant adverse impact, and the threat is both imminent and likely.¹³

3.16 The bill also amends the Act by repealing section 391A which requires that the Minister must consider information in the Register of the National Estate in making decisions relating to heritage listings.¹⁴

3.17 This amendment will no longer be required once the Register of the National Estate ceases to operate as a statutory heritage list five years from the commencement of the provisions of the bill.¹⁵

Comments and concerns

3.18 Some witnesses supported the streamlining provisions as they recognised the need for reform, but were concerned that emergency listing process for heritage value properties could be compromised:

10 Explanatory Memorandum, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 63.

11 Explanatory Memorandum, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 62.

12 Second Reading Speech, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 3.

13 Explanatory Memorandum, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 65.

14 Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 256.

15 Explanatory Memorandum, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 79.

We understand that the 10-day provision was very onerous for DEH. I know that when they got submissions it caused them grief. We are certainly happy for changes to be made, but, like with most contentious things, we would suggest that the changes have gone too far. Indeed, necessarily in an emergency, the minister should be obliged to make some sort of response somewhere to someone nominating and, even just within a reasonable time frame, to offer real protection for that place. Certainly we feel—it is in our submission—that there should be the possibility for the minister to say, ‘Yes, this place certainly does merit a heritage assessment, so it should be protected until we can conduct an assessment and discover what is there and what the heritage values are before we go ahead and develop it.’¹⁶

3.19 However, an amendment to the Act establishing new section 324K, which allows for the Minister to rapidly consider protection for properties with potential heritage value if they are deemed to be under threat, diminishes concerns about the provisions of the Act to deal with emergency listings.

3.20 Some witnesses argued strongly against the discontinuation of the Register of the National Estate (RNE) and the consolidation of existing heritage registers.

3.21 Australia ICOMOS stated during the committee hearings:

The problem from my view is that the process of moving from the RNE to a new regime which does that, which provides protection at different levels, at different places and identifies them—that process of transformation from one to the other—has not been thought through in terms of ensuring that there are not, in fact, things falling through the gaps in the exercise. What this amendment does is say: okay, you have basically got five years, and the RNE ceases to be something which is referred to in the act specifically as the RNE, and it seeks the states and local government processes to basically also follow that line. Many of the state and local government processes refer to RNE listed places as a trigger for consideration of heritage issues in development. If this amendment goes through, those safeguards will disappear. There will not be a formal thing to refer back to. But in that process there is no mechanism put in place by the Commonwealth to assist the states and, in particular, local government to fill that gap, to bring in provisions which protect it.¹⁷

3.22 More dramatically, the Australian Council of National Trusts argued:

The bill sees the statutory death of the Register of the National Estate. The Register has been compiled over the past 25 years by the Commonwealth and is a national treasure. It holds details of over 13 000 places of heritage significance, many of which are not protected by other legislation. Although its powers are limited the Register needs to be retained and sustained.¹⁸

16 Mr Tom Warne-Smith, Australian Council of National Trusts, *Committee Hansard*, 6 November 2006, pp 48–49.

17 Dr Michael Pearson, *Committee Hansard*, 3 November 2006, p. 16.

18 *Submission 68*, p. 5.

3.23 However, given that the RNE will continue to act as an archive reference list after the expiry of the five year statutory period, there appears to be no real need for the heritage properties currently listed on the RNE to be transferred to the National Heritage List. This would go against the purpose of streamlining the Act to move towards a three-tiered registry system across all levels of government, and create unnecessary work and duplication. Therefore, concerns that its removal will cause the loss of an important register are somewhat unfounded.

3.24 Others arguments put forward said that the system could work if additional steps were taken to manage the process. As the Australian Council of National Trusts said:

I think one useful exercise could be for somebody to analyse the Register of the National Estate, see how many places that have national significance are listed on that register but are not listed on the National Heritage List and move them across from the Register of the National Estate onto the National Heritage List. It might save everybody a lot of time and effort—that is, if that is the way the government is going.¹⁹

3.25 The Australian Archaeological Association also highlighted the issue of deficiencies at state level, stating:

The time-frame and rationale for the abolition of the RNE assumes that over this period state and territory governments will work to redress statutory deficiencies in their legislation regarding the capacity to protect and manage all aspects of heritage. However, it is by no means certain that this will take place, or that archaeological sites and relics in particular will be included in this process.²⁰

3.26 But as the Tasmanian Government pointed out:

Tasmania, as part of its extensive review of state Heritage legislation and procedures, is already in the process of amending its heritage register and developing a three tiered register of items of local, state and national significance. This process, although underway, will take several years to complete.²¹

3.27 This is evidence that state governments are working proactively to engage in the heritage listing process under the provisions of the Act and the changes contained in the bill, and are working towards improvements.

3.28 Of note to the committee were specific concerns that were raised by the Australia ICOMOS in regards to heritage listings and nominations within the ACT:

19 Mr Colin Griffiths, *Committee Hansard*, 6 November 2006, p. 41.

20 Australian Archaeological Association Ltd, *Submission 29*, p. 3.

21 Tasmanian Government, Department of Tourism, Arts and the Environment, *Submission 20*, p. 4.

On designated land the planning authority is the National Capital Authority. There are at least 20 places around the central national area which are within designated land. While the ACT can put them on its register it has no impact, no effect, in terms of the ACT planning laws. They cannot go on the Commonwealth Heritage Register because they are not managed by a Commonwealth authority. They are not of sufficient significance to go onto the national register. If the RNE goes into demise there will be no formal recognition at Commonwealth level of those places within 200 metres of Parliament House. What we are saying, and have been saying for a while, to the Commonwealth is: 'Let's talk about mechanisms to fill this gap.' I am not saying these places are at imminent risk, but they do not have the same protection and the same clear, transparent planning processes that other places have, and it is because there has not been enough thinking through of the transferral from the RNE type protection to a much more rigid Commonwealth-state/territory protective mechanism.²²

3.29 These concerns were reiterated by the Australian Council of National Trusts:

I think it goes to a peculiarly ACT situation because of the responsibilities of the National Capital Authority, which operates under federal legislation, and the way in which the local territory heritage protection operates. There is a gap in coverage and the only protective mechanism available to the certain group of buildings that Mike Pearson mentions is the Register of the National Estate. If my understanding is correct, and I think it is, any vestige of protection that those buildings will get from the register will disappear with this repeal.²³

3.30 This issue was also of concern to the committee.

3.31 Witnesses expressed concern that it was a lack of resources that was instrumental in the removal from the Act of the RNE as a statutory list:

My own observation would be that the department has done its best in difficult circumstances. I know departments are always constrained, and it has had very tight timetables to get things done. I would have liked to have seen more resources devoted to converting the register into a much more proactive document to take advantage of the 25 years of investment of public money in that register that has been going on since 1976.²⁴

3.32 There was no evidence presented to the committee however, that a lack of resources was in fact the reason for the abolishment of the RNE as a statutory register.

3.33 As Australia ICOMOS emphasised, the primary objective was the education and engagement of the community in the heritage listing process:

22 Dr Michael Pearson, Australia ICOMOS, *Committee Hansard*, 3 November 2006, p. 16.

23 Mr Colin Griffiths, *Committee Hansard*, 6 November 2006, p. 44.

24 Mr Colin Griffiths, Australian Council of National Trusts, *Committee Hansard*, 6 November 2006, p. 48.

Certainly our primary objective is to ensure that the mechanisms by which the community can identify the significance of places that it values and mechanisms by which it can see those places recognised by government at all levels is the key consideration. We are concerned that the current amendments remove what at community level is seen as a mechanism for identifying places which it values, and we need something to put in its place. So it is about working through the mechanism of ensuring protection at all levels. I think one of the problems with discussing the amendments and everything else is that the attention of people is at the top end. It is about the Burrup Peninsula; it is not about the town hall in Upper Woop Woop—but that is the heritage that most of the community in fact engages with. That is the side of this that we think is at risk.²⁵

3.34 However, the evidence shows that the Australian Government is committed to protecting properties of national heritage value at both ends of the scale.

3.35 The Minister in September this year reinforced his recognition of the potential heritage value of the Burrup Peninsula as this extract from his media release shows:

The Minister for the Environment and Heritage, Senator Ian Campbell, today announced he would seek public comment on the proposed National Heritage List boundary for ancient indigenous rock art and stone arrangements on the Burrup Peninsula and Dampier Archipelago in Western Australia's north-west. *"The Australian Heritage Council has completed its assessment of the area and advised me of its opinion that the area meets the high threshold for inclusion in the National Heritage List,"* Senator Campbell said. *"The Council has also provided a potential boundary for a listing. Agreeing on the right boundary is a key element of ensuring the heritage and economic values of the area can co-exist into the future. I have previously publicly stated that I am fully aware of the significant heritage values of the area and of the need to protect these values. I am also very conscious of the enormous economic values of the area and its significance to the nation's economy. We have to get the balance right."*²⁶

3.36 And to highlight the Australian Government's commitment to somewhat less prominent heritage, the Minister recently announced \$10.5 million in funding over four years for the protection of diverse heritage properties, including:

- \$500,000 for works to Brush Farm House, NSW, a 19th century colonial built for explorer Gregory Blaxland.
- \$310,000 to support works to the interior of Sydney's Great Synagogue.
- \$454,545 for conservation works on the National Heritage listed Newman College, Vic, designed by Walter Burley Griffin and Marion Mahoney Griffin.

25 Dr Michael Pearson, *Committee Hansard*, 3 November 2006, p. 17

26 Senator the Hon. Ian Campbell, Australian Minister for the Environment and Heritage, *Minister extends heritage consultation on the Burrup Peninsula*, Press Release C243/06, 29 September 2006.

- \$95,909 to conserve the historic fabric of the National Heritage and World Heritage listed Royal Exhibition Building, where Australia's first Federal Parliament was opened in 1901.
- \$72,966 to uncover and restore the rare façade of St Kilda's Luna Park Carousel organ.
- \$45,000 for works to the former St Matthews Church, Tasmania, designed by noted convict architect James Blackburn.²⁷

3.37 Despite some witnesses' concerns, there is a strong commitment to preserving the heritage of both small and large heritage properties, and the proposed amendments to the Act are unlikely to impact on such a commitment.

Conclusion

3.38 As the explanatory memorandum outlines, the benefits arising from the proposed amendments to the Act's heritage provisions include:

- Improved efficiency of the heritage listing process by removing onerous statutory requirements and providing for strategic approaches to be taken;
- Increased ease of communication with owners or occupiers and people proposing listings by improving consultation mechanisms;
- Provision of greater certainty and removal of duplication for Australian Government agencies in relation to their responsibilities for protection of listed heritage places;
- Provision of greater certainty for owners of heritage listed properties in external territories; and
- More efficient administration and greater certainty through resolution of definitional and technical uncertainty and problems.²⁸

Committee view

3.39 While the Register of the National Estate has approximately 13,000 listings and will be retained for five years and beyond as a reference, it will cease to exist as a statutory list. This move is supported by the committee as there currently exists a number of heritage lists at state and territory and Commonwealth levels, and this will work towards streamlining and consolidating existing heritage lists to reduce duplication and facilitate adoption of the three-tier system.

27 Senator the Hon. Ian Campbell, Australian Minister for the Environment and Heritage, *More community funding to protect important heritage places*, Press Release, C277/06, 27 October 2006.

28 Explanatory Memorandum, Environment and Heritage Legislation Amendment Bill (No. 1) 2006, p. 13.

3.40 The committee does note that there is some concern that the Register of the National Estate is the only mechanism to protect sites in the ACT under the control of the National Capital Authority. The committee believes the Government should examine this particular issue to ensure that this anomaly is addressed.

Recommendation 1

3.41 The committee recommends that the Government investigate the issue of heritage properties within the Australian Capital Territory that are located on designated Commonwealth land to ensure their protection and heritage status is not compromised with the repeal of the Register of the National Estate.

