

SUBMISSION TO INQUIRY INTO PROVISIONS OF THE ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (NO 1) 2006 BY GEOFF MOSLEY

INTEREST IN INQUIRY I have an interest in heritage protection dating from the late 1940s and have been active in many aspects of promoting the cause of heritage identification and protection in Australia. I was for instance a technical adviser to the Task Force into the National Estate and as Director of the ACF led two successful campaigns to prevent the axing of the Australian Heritage Commission. As a professional heritage consultant since 1986 I have been involved with many heritage inquiries and assessments and have written a number of books and reports on the subject.

Coming now to the subject of the present inquiry, when the legislation was proposed in 2002-2003 it had my cautious support. I saw that it had the potential to provide a national dimension to heritage protection in Australia by, in effect, providing a series of theme-based national overlays to the largely state administered protected area systems. I made this point in my submission to the relevant parliamentary inquiry.

As a result, since January 2004 when the legislation came into operation, I have done my best to work with it and have devoted a lot of time (mainly unpaid) to making nominations. I have for instance made six nominations to the Commonwealth Heritage Emergency List, 17 nominations to the National Heritage List, and one nomination of a Threatened Ecological Community.

It will perhaps give you an idea about my present thinking about the administration of the legislation if I tell you that all six of my nominations to the Emergency List were rejected even though five of these areas were found to have Commonwealth Heritage values and that assessment has not been finalised in the case of the other nominations.

My National Heritage List nominations were for the following places: Norfolk Island (7 places); Australian Antarctic Territory; Greater Blue Mountains World Heritage Area; Alps and South East Forests (serial nomination); East Gippsland (3 places); Alpine National Park: Greater Wilsons Promontory Area; and Great Ocean Road and Otways region (2 places).

The serial nomination was rejected on the grounds that there is no provision in the legislation for serial nominations which is very arguable (see below). The nomination of the Victorian Alpine National Park was rejected on the grounds that it was 'vexatious, frivolous or not made in good faith' (see section 324E (b)) a decision to which I take great exception given the content of my nomination, the additional information I supplied and the role that I have played over a period of 45 years in identifying the heritage values of the alpine region and in working for their protection. In my view this case is a perfect example of factors beyond those of objective assessment influencing the attitude and outcome.

The failure of the administration of the legislation is also starkly exemplified by the case of my nomination of the Greater Blue Mountains World Heritage Area. I nominated this

place for the following values: 1) those accepted as world heritage values when the area was inscribed on the world heritage list; 2) two values which had been nominated for world heritage recognition but not accepted; and 3) one value for which a future world heritage nomination was foreshadowed in the nomination document. All of these values are well documented but I supplied additional relevant material. Given the amount of information available it beggars belief that in these circumstances it has been decided to put off the making of a decision on this nomination for another year.

TRANSFER OF WORLD HERITAGE PROPERTIES TO THE NATIONAL HERITAGE LIST In the second reading speech and in the introduction to the explanatory memorandum one of the claimed advantages of the bill is that it will provide for the transfer of the existing and future world heritage properties to the national heritage list. In point of fact the transitional provisions of the 2003 Act provided for this transfer but implementation of it was bungled. Why? Clearly it was possible under this arrangement for such areas to be also nominated for the national heritage list for values other than the accepted world heritage values. I cannot find any provision for the reintroduction of this provision in the proposed amendments but presumably it is there somewhere in which case there are a number of issues. First will such transfer in practice act to limit assessment of values other than those for which the area was inscribed on the world heritage list?, Clearly the thresholds/criteria for international and national significance are different. In any case recognition of national significance is a first step to consideration of nominating or renominating a value for the world heritage list.

A second point concerning the proposed transfers raises the issue of serial nominations. As mentioned above my serial nomination for the Alps and South East Forests was rejected on the grounds that the Act makes no provision for it. In point of fact the legislation makes no reference whatsoever to such nominations. They are neither provided for or against, so that it could equally well have been interpreted as allowing it. Several of the world heritage nominations such as the Central Eastern Rainforests of Australia (CERA) are the result of nominations under the explicit provision for serial nominations in the World Heritage Operational Guidelines. So if these are transferred onto the national heritage list this type of serial place will be on the list even though the national legislation has been interpreted as not allowing this type of nomination. This anomaly needs addressing.

THEMES. The Government has also claimed that there would be advantages in the provision in the new legislation for the identification of themes. In point of fact there is provision for the Minister to identify themes in the existing legislation. I have nominated a number of themes but was clearly wasting my time because neither the Minister nor the Australian Heritage Council has identified a single theme. This is in spite of the fact that a vast amount of administrative resources were devoted to developing themes in the 2001-2003 period.

PROPOSED CHANGES ITEM 550 SECTIONS 324E-324J The changes which are proposed would place more emphasis on the setting of themes by the Minister and the introduction of a priority assessment process. Seeing that the Minister has not announced

a single theme in nearly three years the prospects for any reasonable exercise of this new emphasis seem to be bleak. The priority assessment process involving the Australian Heritage Council will increase the likelihood of a politically driven approach.

CONCLUSION The committee of inquiry would do well to begin by inquiring into the reasons for the failure of this important aspect of Government. The people of Australia have been badly let down by the very limited outcome to date. I believe the main question to ask is whether the cause of this failure is the system (ie the legislation and the arrangements for implementation) or the lack of leadership by the Government.

I am strongly of the view that there is not much wrong with the existing legislation. Therefore the proposed changes are redundant. They have provided an excuse for the poor performance to date and will simply be another reason for procrastination in the future. If anything the proposed changes will increase the likelihood of a politically driven, minimalist approach. The wonderful Australian heritage deserves better.

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