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## Australian Heritage Council Bill 2000

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I N F O R M A T I O N   A N D   R E S E A R C H   S E R V I C E S

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No. 116 2000-01

Australian Heritage Council Bill 2000

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30 March 2001

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# Australian Heritage Council Bill 2000

**Date Introduced:** 7 December 2000

**House:** Senate

**Portfolio:** Environment and Heritage

**Commencement:** At the same time as the Environment and Heritage Legislation Amendment Bill (No.2) receives Royal assent.

## Purpose

To establish the Australian Heritage Council. This will replace the existing Australian Heritage Commission established under the *Australian Heritage Commission Act 1975*.

## Background

The Australian Heritage Council Bill 2000 (the Bill) is part of a package of three Bills designed to replace the *Australian Heritage Commission Act 1975*.

The Bill establishes the Australian Heritage Council (the Council) and sets out operational details such as membership, terms of office, meeting procedures etc. The role of the Council in assessing the heritage values of places nominated for possible inclusion on the National Heritage List and Commonwealth Heritage List is dealt with in the Environment and Heritage Legislation Amendment Bill (No.2) and readers are referred to [Bills Digest](#) no. 105, 2001–01 for discussion of this issue.

## Main Provisions

**Section 4** formally establishes the Council.

**Section 5** sets out the functions of the Council. Essentially these are:

- to make any assessments requested by the Environment Minister under the *Environment Protection and Biodiversity Conservation Act 1999*;
- to give any advice requested by the Minister on the conservation and protection of certain places with heritage values;

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- to give any advice requested by the Minister on a wide range of matters relating to research, education, policy issues, funding, monitoring and the Commonwealth's responsibilities for historic shipwrecks;
- to nominate places for inclusion in the National Heritage List or Commonwealth Heritage List; and
- to perform any functions conferred on the Council by the *Environment Protection and Biodiversity Conservation Act 1999*.

In comparison to section 7 of the existing *Australian Heritage Commission Act 1975* (AHCA), it is noticeable that many of the functions outlined above are exercisable only upon the request of the Environment Minister. This implies that the new Council will have considerably less freedom of independent action and initiative than the Australian Heritage Commission (the Commission). Its role will be similar to that of other expert advisory bodies under the *Environment Protection and Biodiversity Conservation Act 1999*. The Council is however able to research places for nomination and nominate places for inclusion in the National Heritage or Commonwealth Heritage List without direction from the Minister.

The scope of heritage matters that the Council may be involved in is broader than the current arrangements for the Commission. For example, the Council may provide advice on a number of heritage matters such as shipwrecks, international heritage etc.

**New section 6** provides that the Council will consist of a Chair and 6 other members, all part-time office holders. This is essentially the same as the existing the Commission. However, there is no requirement as in the AHCA that the Chair and not less than half the members be filled by non-Commonwealth officers. There is also no provision, as is the case in the AHCA, for the Secretary of a Department or the Chairman of a Commonwealth authority to be appointed a Commissioner.

**New section 7** sets out the qualifications of the members. The Chair must have 'experience or expertise concerning heritage'. Of the other six members, the Minister 'must ensure' that two have 'experience or expertise concerning natural heritage, two have 'experience or expertise concerning cultural heritage' and two have 'experience or expertise concerning indigenous heritage'. Of this last group of two, one must 'represent the interests of indigenous people'.

**New section 8** provides that Council members hold office for term specified at their appointment. Appointments may be up to 3 years, and members may only be appointed twice, given them a maximum term of six years. The AHCA allows for Commissioners to be reappointed for more than two terms, provided there is a break in service for twelve months.

**New section 10** prohibits a member from engaging in any paid employment, or any other activity, that the 'Minister is satisfied conflicts or may conflict with the proper performance of the member's duties'.

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**New section 13** sets out the grounds on which the Minister may terminate a member's appointment. They are standard grounds for this type of body and include misbehaviour or physical or mental incapacity, bankruptcy, absence from 3 consecutive Council meetings<sup>1</sup>, paid employment which conflicts or could conflict with the proper performance of the duties of his or her office, or the member fails, without reasonable excuse, to comply with the **section 19** disclosure requirement of 'indirect or indirect pecuniary interests'.

**New section 14** requires the Chair to hold at least 4 meetings a year. While the Chair normally calls meetings, the Chair must call a meeting on the direction of the Minister or on the request of a majority of members then holding office. This is the same as the existing AHCA.

**New section 18** provides that decisions at meetings are to be made by a majority of the votes of the members present and voting.<sup>2</sup> By virtue of section 33B(3) of the *Acts Interpretation Act 1901*, a member participating in the meeting by phone or similar hook up is taken to be present at the meeting.

**New section 19** obliges Council members to disclose to the other members any 'direct or indirect pecuniary interests' in any matter that is being considered, or about to be considered by the Council. Disclosure must occur as soon as the interest becomes known to the member. It is a standard clause. The member must be excluded from discussion and decision on the matter unless the Council decides otherwise.

**New section 20** allows the Council to regulate its meeting procedures as it wishes, providing they conform to **new sections 14-19** of the Bill.

**New section 21** allows regulations to be made 'prescribing matters necessary or convenient' for the carrying out, or giving effect to, the Bill.

## Concluding Comments

### Council membership

**New section 7**, which sets out the required qualifications for membership of the Council, represents somewhat more precise criteria to appointment to the Commission than under the AHCA. Subsection 12(4) of the AHCA only requires that Commissioners are 'persons having qualifications relevant to, *or* special experience or interest in, a field related to the functions of the Commission'. Having a 'special interest' in some aspect of heritage hardly constitutes a rigorous criterion.

Some Senate Inquiry submissions suggested that **new section 7** could be further strengthened. For example, the submission of a former Executive Director of the Commission comments:<sup>3</sup>

I also consider that for the credibility of the Council its membership should be of the highest technical excellence. In the past this has not always been the case with the

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membership of the Australian Heritage Commission, due, alas to the tendency of some governments to appoint friends or supporters to what has appeared to be a sinecure. To ensure this I consider that the provisions relating to the expertise of members of the Council should be strengthened to include the stipulation that at least some of members of the Council should possess the appropriate technical qualifications. The [EPBCA] contains what seems to be a relevant precedent in this regard in specifications for the appointment of the Biological Diversity Advisory Committee. [Subsection] 504(5) stipulates that at least five members of this Committee should possess scientific qualifications the Minister thinks relevant to the performance of the Committee's functions. A similar provision, stipulating relevant technical or tertiary rather than scientific would be seen to be appropriate in the case of the Council.

Another submission suggests as an alternative that the Bill could provide for the creation of sub-committees, membership of which would require specific technical qualifications.<sup>4</sup>

Oral evidence to the Senate Inquiry also raised concern about the adequacy of **new section 7** in relation to indigenous interests:<sup>5</sup>

No single Aboriginal following the minister's direction under the act could be expected to evaluate and take responsibility for the whole continent, distinguishing so-called national from B-grade places. The responsibility for drawing up a national list would seem to me to be a terrible burden to place on a few Aboriginal people....

On the other hand, the Council **must** consult with indigenous people with rights and interests in the place if there is a possibility that the place has indigenous heritage value. In addition, the Council must ask the Director for Indigenous Heritage Protection to provide written advice on the place's indigenous heritage value.

## Endnotes

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- 1 There appears to be no power for the Chair to grant leave of absence.
- 2 Providing of course a quorum is present. A quorum is a majority of members holding office at the time.
- 3 Sharon Sullivan, submission to the Inquiry by the Senate Environment, Communications, Information Technology and the Arts Committee into the Environment and Legislation Bill (No.2) and related Bills (Senate Inquiry): submission 14 p. 9.
- 4 Professor Jane Lennon, submission no 11 p. 6.
- 5 Evidence by Emeritus David Yencken 28 February 2001 p. 28 of Committee transcripts. <http://www.aph.gov.au/hansard/senate/commtee/comsen.htm>

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