



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 14 2002–03

Australian Heritage Council Bill 2002

ISSN 1328-8091

© Copyright Commonwealth of Australia 2002

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database. On the Internet the Department of the Parliamentary Library can be found at:
<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2002

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

Bills Digest
No. 14 2002–03

Australian Heritage Council Bill 2002

Angus Martyn
Law and Bills Digest Group
23 September 2002

Contents

Purpose	1
Background	1
Main Provisions	1
Endnotes.	5

Australian Heritage Council Bill 2002

Date Introduced: 27 June 2002

House: House of Representatives

Portfolio: Environment and Heritage

Commencement: The operational sections of the Bill commence at the same time as Schedule 1 of the Environment and Heritage Legislation Amendment Bill (No.1) 2002. Sections 1 and 2 of the Bill commence on Royal Assent.

Purpose

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

Background

The Australian Heritage Council Bill 2002 (the Bill) is part of a package of three Bills (the 'Heritage Bills') designed to replace the *Australian Heritage Commission Act 1975* (the AHCA). The Bill establishes the Australian Heritage Council (the Council) and sets out operational details such as membership, terms of office, meeting procedures etc.

Further background is contained in the Bills Digest to the main Bill of the three, Environment and Heritage Legislation Amendment Bill (No.1) 2002.

Main Provisions

New Section 4 formally establishes the Council.

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

- to make assessments of places as to whether they meet National Heritage or Commonwealth Heritage criteria under the *Environment Protection and Biodiversity Conservation Act 1999*

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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

Two of the key issues in the Senate debate regarding the 2000 version of the Bill were:

- Whether the Register of the National Estate should continue to have statutory recognition, and
- What degree of independence the Council should have from the Minister, particularly whether the Council should be able to undertake heritage assessments and associated advisory functions only at the request of the Minister as opposed to on its own initiative.

In relation to the first issue, the Bill now requires the Register to be maintained by the Council, with places being to be added or removed under a process outlined in the Bill: see **new sections 22-24**.

On the second issue, the Bill has been amended to remove the proviso that the Council can only undertake heritage assessments and associated advisory functions regarding prospective National and Commonwealth Heritage places at the request of the Minister. By way of comparison, the existing Australian Heritage Commission is virtually completely independent, and makes the final decision as to whether a place should be listed on the Register of the National Estate.¹

New section 6 provides that the Council will consist of a Chair and 6 other members, plus any associate members that have been appointed. There can only be two associate members at any one time: **new subsection 7(4)**. The provision for associate members was not in the 2000 Bill. Whilst neither the Explanatory Memorandum nor the second reading speech shed any light on the rationale for associate members, presumably they are designed to be short-term appointments to supplement Council expertise where required, in the same way 'co-opted' Commissioners are provided for under the AHCA.

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

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

'experience or expertise concerning cultural heritage' and two have 'experience or expertise concerning indigenous heritage'. Of this last group of two, both must be themselves indigenous persons' and one must 'represent the interests of indigenous people'. These requirements are the same as the 2000 Bill, except that the 2000 Bill did not require the indigenous heritage representatives to actually be indigenous persons. Associate members must have experience or expertise in one of the three heritage categories.

New section 8 provides that Council members hold office for term specified at their appointment. Appointments may be up to 3 years (1 year for associate members), but a member cannot be appointed for more than two consecutive terms. In theory, a member could be again reappointed say a week after their second consecutive term ends. By comparison, the AHCA requires a break for twelve months before reappointment after two consecutive terms. All appointments are part-time, as they are under the AHCA.

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'. This is a standard legislative provision for Commonwealth advisory bodies.

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, 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 **new section 19** disclosure requirement of 'direct or indirect pecuniary interests'. Termination may occur if the Minister is satisfied the member does not have the heritage experience or expertise as required in **new section 7**.

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 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 legislative provision. The member must be excluded from discussion and decision on the matter unless the Council decides otherwise.

New section 21 requires the Council to keep the Register of the National Estate. Regulations may be made regarding the detail about how it is to be kept.

As proposed under the Environment and Heritage Bill Legislation Bill (No.1) 2002, the main legislative function of the Register will be that Commonwealth Environment Minister will have to consider any relevant information contained in the Register when making decisions in relation to the application of existing sections 26 (actions impacting

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

on Commonwealth land) and 28 (actions by Commonwealth agencies) under the *Environment Protection and Biodiversity Conservation Act 1999*.

New section 22 sets out how places may be included on the Register. The Register will initially consist of those places that are on the existing register when the Bill first commences. Before including another place on the Register, the Council must take 'all practicable steps' to identify and advise owners and occupiers, and all indigenous persons who have rights or interests in the place of the fact that the Council is giving consideration to including the place on the register. Persons so advised must be given a reasonable opportunity to comment, although **new section 22** does not require that they be actually invited to do so.

The Council can only include a place on the Register if it considers it has a heritage value. **New subsection 22(3)** states a place may have a heritage value because of:

- (a) the place's importance in the course, or pattern, of Australia's natural or cultural history; or
- (b) the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history; or
- (c) the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history; or
- (d) the place's importance in demonstrating the principal characteristics of:
 - (i) a class of Australia's natural or cultural places; or
 - (ii) a class of Australia's natural or cultural environments; or
- (e) the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group; or
- (f) the place's importance in demonstrating a high degree of creative or technical achievement at a particular period; or
- (g) the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons; or
- (h) the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history.

However, this list is not exhaustive.

Under **new section 23**, the Council may remove a place, or part of a place, if it considers it no longer has a heritage value. It may also remove a value assigned to a place on the Register if it considers that value no longer exists. The Council must go through the same identification and notice process for removals as for inclusions under **new section 22**

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

New section 24 provides that any person can request that the Minister review a decision by the Council to include, not to include, or to remove a place part of place or heritage value from the Register. The Minister must then confirm the decision, or direct it to include or remove the place. The Minister's decision must be based on whether he or she 'considers' the place to have heritage value or not. There is no express requirement that this be based on reasonable grounds. The Minister must give written reasons for his or her decision within a reasonable time of anyone asking for them.

New section 25 allows regulations to be made, including 'prescribing matters necessary or convenient' for the carrying out, or giving effect' to, the Bill.

Endnotes

- 1 Under the Bill, the Council remains the decision-maker in relation to the Register of the National Estate.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.