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Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002

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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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Australian Heritage Council (Consequential and
Transitional Provisions) Bill 2002

Angus Martyn
Law and Bills Digest Group
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Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002

Date Introduced: 27 June 2002

House: House of Representatives

Portfolio: Environment and Heritage

Commencement: The operational aspects of the Bill commence at the same time as schedule 1 to the Environment and Heritage Legislation Amendment Bill (No.1) 2002.

Purpose

To repeal the *Australian Heritage Commission Act 1975* and establish transitional arrangements in relation to the proposed new Commonwealth heritage regime.

Background

The Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002 (the Bill) is part of a package of three Bills (the Heritage Bills) designed to replace the *Australian Heritage Commission Act 1975*.

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

Schedule 1 - Repeals and Amendments

Item 1 repeals the *Australian Heritage Commission Act 1975*.

Item 2 repeals existing subsection 9(3) of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBCA). Subsection 9(3) provides that a decision or a granting of

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an approval under the EPBCA does not constitute an action under section 30 of the *Australian Heritage Commission Act 1975*.¹ **Item 1** makes subsection 9(3) redundant.

Item 7 removes reference to the *Australian Heritage Commission Act 1975* in subsection 6(3) of the *Regional Forests Agreements Act 2002*. Again, **item 1** makes the subsection 6(3) reference redundant.

Item 8 amends paragraph 14(b) of the *Resource Assessment Commission Act 1989*. Paragraph 14(b) currently requires certain persons - namely the presiding members of the Australian Heritage Commission (the Commission) the Australian Science, Technology and Engineering Council and the Industries Assistance Commission - to be consulted about who should be appointed as a Special Commissioner for Resource Assessment Commission (RAC) inquiries. **Item 8** deletes the reference to the Commission, since this body will be effectively be abolished by **item 1**. Interestingly, the body that is to replace the Commission - the similarly sounding Australian Heritage Council - is not substituted. Rather, it is proposed that it will be the Secretary of the Commonwealth Department administering the EPBCA that will have to be consulted. The question may however be somewhat moot as there has been no RAC inquiry for ten years.

Item 11 substitutes a new version of existing section 31 *Resource Assessment Commission Act 1989*. Section 31 currently requires the (Australian Heritage) Commission to give evidence to any Resource Assessment Commission inquiry on a matter relating to the Register of the National Estate. The effect of **item 11** is that it will be the Secretary of the Department administering the EPBCA, or a Departmental employee authorised by the Secretary, that is required to give evidence on heritage values. **As for item 8**, it is notable that Australian Heritage Council, is given no statutory role.

Schedule 2 - Transitional provisions

Item 3 provides that any rights, properties, assets, debts, liabilities or obligations of the Australian Heritage Commission become vested in the Commonwealth upon the Bill coming into force.

Item 4 allows for the registration by the relevant State or Territory's land titles office of the Commonwealth's right, title or interest in any land vested in it as a result of **item 3**. The Minister must provide written certification of the vesting in order for Commonwealth's right, title or interest to be registered.

Item 5 is similar to **item 4** but deals with assets other than land. In this case, registration would be by an 'assets official'. An 'assets official' is defined in **item 5** as the 'person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned'.

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Item 6 provides that the *Lands Acquisition Act 1989* does not apply to anything done under **Schedule 2**. Such a provision commonly appears in legislation dealing with the sale of Commonwealth assets or the winding up of Commonwealth statutory authorities.²

Item 7 exempts the Commonwealth from having to pay any State or Territory stamp duty or other tax as a result of the vesting or transfer of an asset or liability under **Schedule 2**.

Item 8 relates to any Court proceedings involving the Australian Heritage Commission at the time the Commission is abolished by **item 1**. In such cases, the Commonwealth is substituted as the relevant party in place of the Australian Heritage Commission.

Section 516 of the *Environment Protection and Biodiversity Conservation Act 1999* requires the Environment Secretary to prepare an annual report on the operation of that Act. **Item 9** provides that this report must include a report on the Australian Heritage Commission for the period from the last July 1 before the Bill commences to the date the Bill commences.

Item 10 is a standard item allowing regulations to be made, including to provide for arrangements to deal 'with any issues of a transitional nature arising as a result of the repeal of the *Australian Heritage Commission Act 1975*'.

Endnotes

- 1 The effect of subsection 9(3) is that a decision or a granting of an approval under the EPBCA *would not* trigger the Commonwealth's obligation under the *Australian Heritage Commission Act 1975* to avoid adversely affecting a place on the Register of the National Estate unless there is 'no reasonable or prudent alternative'.
- 2 For example, the *Airports (Transitional) Act 1996* which deals in part with the transfer of assets from the old Federal Airports Corporation to the Commonwealth.

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