

# **Sydney Harbour Federation Trust Bill 1999**

**Report of the Senate Environment, Communications,  
Information Technology and the Arts Legislation Committee**

April 2000

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- Senator Alan Eggleston, Chair (LP, WA)
  - Senator Mark Bishop, Deputy Chair (ALP, WA)
  - Senator Andrew Bartlett (AD, QLD)
  - Senator the Hon Nick Bolkus (ALP, SA)
  - Senator Marise Payne (LP, NSW)
  - Senator John Tierney (LP, NSW)
- Participating Members:**
- Senator The Hon Eric Abetz (LP, TAS)
  - Senator Lyn Allison (AD, VIC) appointed for communications issues as at 30/09/99.
  - Senator Ron Boswell (NP, QLD)
  - Senator Vicki Bourne (AD, NSW)
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  - Senator Julian J.J. McGauran (NPA, VIC)
  - Senator The Hon Warwick R. Parer (LP, QLD)
  - Senator Aden D. Ridgeway (AD, NSW) appointed for arts issues as at 30/09/99
  - Senator the Hon Chris Schacht (ALP, SA)
  - Senator Tsebin Tchen (LP VIC)
  - Senator John O. W. Watson

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# **SYDNEY HARBOUR FEDERATION TRUST BILL 1999**

## **LIST OF RECOMMENDATIONS**

### **Recommendation 1**

The Committee recommends that the Senate pass the Bill with amendments as follows:

### **Recommendation 2**

That the Bill be amended to specify that the sites to be managed by the Trust are at North Head, Middle Head and Georges Heights, Woolwich and Cockatoo Island and any other sites which may come under the Trust.

### **Recommendation 3**

That section 6 of the Bill should specify that within ten years, all land on the harbour foreshores vacated by the Department of Defence should be transferred to the Sydney Harbour National Park.

### **Recommendation 4**

That section 7 (e) and section 59 of the Bill be amended to provide that the Commonwealth should make a diminishing appropriation to the Trust for a number of years at the end of which the Trust would become self-funding.

### **Recommendation 5**

That the Department of Defence should make a financial contribution towards the cost of decontamination and rehabilitation of the lands that it is currently vacating.

### **Recommendation 6**

That section 8 (2b) be amended so that, while the Trust would retain the power to lease real and personal properties, limits would be placed on its power to sell any real and personal property of heritage value and national significance.

### **Recommendation 7**

That section 30 (4) should be amended to provide that an invitation to the public to comment on the management plans should be published in a newspaper in the Sydney metropolitan area as well as the *Gazette* and a local newspaper.

**Recommendation 8**

That sections 31 to 33 of the Bill be amended so that the Federal Minister should consult with the relevant State Minister before any decision is taken on the draft management plans developed by the Trust.

**Recommendation 9**

That sections 50-56 of the Bill be amended to ensure greater transparency of the Trust's activities including public notification of dates and times of the meetings of the Trust.

**Recommendation 10**

That section 57 of the Bill be amended to specify that the Community Advisory Committees should include representatives of the local area including local government representatives with local knowledge and/or qualifications appropriate to membership of the Advisory Committee.

**Recommendation 11**

The Committee recommends also that the term of each member appointed to a Community Advisory Committee should not exceed 3 years.

**Recommendation 12**

That section 71 of the Bill should be amended so that the Trust and Trust property should be subject to State planning and environmental laws.

**Senator Alan Eggleston**

**Chair**

## **Introduction**

The Sydney Harbour Federation Trust Bill 1999 was referred to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee on 8 December 1999 by the Selection of Bills Committee (Report No 21 of 1999). The Committee was required to report to the Senate by 7 March 2000. The tabling date was subsequently extended to 3 April 2000.

## **The Bill**

The purpose of the Sydney Harbour Federation Trust Bill 1999 is to establish the Sydney Harbour Federation Trust as a transitional body formed to ensure that the Commonwealth of Australia fulfils its duty of rehabilitating current defence sites before returning them to the people of Australia “in good order and with a sustainable base for their ongoing management.” The Trust is the mechanism chosen by the Commonwealth Government to fulfil its 1998 election commitment to manage and preserve for future generations those sites on the Sydney Harbour Foreshore currently occupied by the Commonwealth Department of Defence and about to be vacated by the Defence department.

The Committee notes that the objects of the Trust as stated in section 6 of the Bill are:

- (a) to ensure that management of Trust land contributes to preserving the amenity of the Sydney Harbour region;
- (b) to conserve the environmental and heritage values of Trust land;
- (c) to maximise public access to Trust land;
- (d) to establish and manage suitable land as a park on behalf of the Commonwealth as the national government;
- (e) to cooperate with New South Wales and local government bodies in furthering the objects of the Trust.

The sites in question are listed in the explanatory memorandum as being at North Head, Georges Heights, Middle Head, Woolwich and Cockatoo Island.<sup>1</sup>

The Trust will consist of a Chair and five Members, appointed by the Minister for the Environment and Heritage. Two of the members may be nominees of the government of New South Wales.

The Bill requires that the Trust develop management plans for the sites with full community participation. The plans are subject to approval by the Minister for the Environment and Heritage.

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1 Explanatory Memorandum, Sydney Harbour Federation Trust Bill 1999, p.2

An important aspect of the Bill is that it provides for the establishment by the Trust, of a community advisory committee in respect of each management plan area, for the purpose of providing advice to the Trust on issues relevant to the management plan area. The Trust must consider the advice or recommendation of the community advisory committees.

The Bill also provides for the actions undertaken by Commonwealth in relation to a management plan, on behalf of the interim Trust (established by the Commonwealth in March 1999), to be considered as having been performed by the Trust.

### **The Committee's Inquiry**

The Senate Environment, Communications, Information Technology and the Arts Committee advertised its inquiry in *The Sydney Morning Herald*, *The Australian* and *The Australian Financial Review* and contacted a number of organisations with an interest in the conservation of lands around Sydney harbour inviting them to make submissions. The Committee received 25 submissions. A list of the submissions is at Appendix 1.

### **Issues raised in Submissions**

All 25 submissions expressed similar concerns about the Bill as it now stands, with a few submissions, such as the ones from the Friends of Cockatoo Island, the Foreshore 2000 Woolwich and from the various local councils, raising in addition concerns specific to their own areas.

The individuals and groups who made submissions to the inquiry expressed themselves very eloquently and were united in seeking a number of major amendments to the Bill. The Committee will not reproduce all the arguments here but instead, refers readers to the submissions themselves which are available from the Committee Secretariat. The major concerns common to submissions included:

- that the Bill does not list the land which will be vested in the Trust;
- that Trust lands should be managed in such a way that “establishes a sustainable financial base in furthering the objects, and performing other functions of the Trust (section 7 (e)) and consequently;
- that no Commonwealth funds are allocated to the Trust for its operations;
- that the Trust can dispose of real and personal property (section 8 (2b));
- that the federal Minister for the Environment is given “far too much power” in the bill<sup>2</sup>;
- that the bill does not make specific provision for a member of the local community be appointed to the Trust;

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2 Submission No.6 Defenders of Sydney Harbour Foreshores, p.7



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- that the bill exempts the Trust, Trust lands and the actions of the Trust from State laws;
  - that the Trust is set up parallel to (and in competition to) the Sydney Harbour Foreshore Authority and the NSW National Parks and Wildlife Service, a situation that might lead to duplication and confusion.
  - that the Trust is only obliged to “consider” the representations and recommendations of the Community Advisory Committees to be established under the legislation;
  - that the Management Plans to be developed for the sites should be tabled in Parliament as Regulations;

In their submission, the Friends of Cockatoo Island put forward a proposal for that site to be developed as a marine maintenance centre for Sydney Harbour, servicing all types of boats. No other submissions made any suggestions for commercial development and all have expressed concern about how the Trust is to establish a financially sustainable base.

### **Public Hearing and Site visit**

The Committee held a public hearing in Sydney on 29 March 2000 and heard from 23 witnesses. A list of the witnesses who appeared before the Committee is at Appendix 2.

On that same afternoon (29 March 2000), members of the Committee went on a tour of the harbour sites including Cockatoo Island and the dock at Woolwich. The Committee visited a number of buildings at various sites and was able to assess at first hand which ones had been maintained or were dilapidated and which were in need of major conservation work. Senators were also able to assess the state of the bushland in many of the areas visited. Throughout the visit, the Committee was able to appreciate the beauty of Sydney Harbour and the heritage value of the areas under consideration. The Committee wishes to thank Mr Geoff Bailey of the Interim Trust for his assistance in making the site visit possible.

The Committee recognises the strong feeling of commitment to maintaining public access to the foreshores of Sydney Harbour that motivated the individuals, local Municipal Councils and resident groups who made submissions and appeared as witnesses to this inquiry. The Committee accepts the view put to it that this is not simply a local issue and that the sites have immensely important heritage and cultural values for all Australians:

All of those things mean that it is an immensely important historic site not only for New South Wales and Sydney Harbour but for Australia. It must be preserved, in our view, because of this heritage value.<sup>3</sup>

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3 Transcript of Evidence, p.14, (Mr Clark)

In the early days of our group we did a survey at Clarkes Point which is, as I said already a park. Every weekend for about six months we asked visitors where they came from. Over that whole time, 88 per cent of all visitors at Clarkes Point on the harbour foreshores came from outside the Hunters Hill, Gladesville, Ryde area.<sup>4</sup>

There were repeated calls in submissions, including from Mr Tom Uren<sup>5</sup> for the Fraser-Wran Agreement of 1979 to be honoured. This agreement would have seen all Commonwealth lands on the Sydney Harbour Foreshores transferred to the Sydney Harbour National Park as the Department of Defence vacated them. The Agreement was supposed to be ongoing over a period of ten years. In the Committee's view there is nothing in the Bill that prevents the fulfilment of the spirit of that Agreement and the Committee notes that the Explanatory Memorandum to the Bill states that:

The intention is that the Trust should complete its task within ten years. After that time, the Commonwealth intends to transfer suitable lands to the New South Wales government for inclusion in the Sydney Harbour National Park.<sup>6</sup>

### **Working relationships with the Trust**

In relation to the current proposal for a Trust to be established to develop management plans for the lands prior to eventual transfer to the New South Wales government, the Committee notes that there is already a spirit of cooperation between the local Municipal Councils, resident and community groups and the Interim Sydney Harbour Federation Trust:

Mayor Harvey: We do need the Trust. That is why Mosman Council has made this submission suggesting just how it can be accomplished with this present bill if we had those modifications...We have been meeting with them regularly.<sup>7</sup>

We will be having an on-site meeting, and our local community groups will be briefing the Trust on what happened at Woolwich and Cockatoo in the next couple of weeks. So there is a good spirit of cooperation between the Trust and the Councils already.<sup>8</sup>

In the Committee's view it is important for all the groups to continue to develop that spirit of cooperation in order to work towards the conservation of the environmental and heritage values of the lands that will be vested in the Trust.

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4 Transcript of Evidence, p.15, (Ms Ryves)

5 Submission No. 11 Mr Tom Uren, p.2

6 Explanatory Memorandum, Sydney Harbour Federation Trust Bill 1999, p.10 (Cl. 66)

7 Transcript of Evidence, p.33, (Mayor Harvey)

8 Transcript of Evidence, p.33 (Mr Smith)

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## Funding

The question of funding and the subsequent ability to put good structures in place for the Trust to develop a financial base is crucial to its ability to fulfil its charter as stated in the legislation.

The Committee was interested to hear the evidence of Ms Bergin of the Headland Preservation Group who suggested that there may be some similarities between the role of the Sydney Harbour Trust and that of the Presidio Trust in San Francisco.<sup>9</sup> The Presidio Trust manages the buildings and lands of a former US military base as an urban national park. According to Ms Bergin, the Presidio is funded through US federal appropriations, “federal loans, large contributions from the Army for infrastructure and decontamination, and leasing of buildings. Because Congress is worried about endless costs, it requires the Presidio Trust to be self-funding in 15 years.”<sup>10</sup>

The Committee recognises that the two situations are not identical and that different countries have different approaches and different needs. However, the Presidio example sets a precedent for a program of cooperation between a Defence department and a body charged with managing lands previously occupied by that department as well as providing a model for diminishing appropriations from a Federal government until a conservation and heritage trust becomes self funding.

## Transparency of Trust’s activities

A number of submissions expressed concerns about the legislative provisions governing the processes of the Trust and the development of management plans.<sup>11</sup> The Committee is fully supportive of greater transparency of Trust activities and of a full community consultation process before the adoption of any management plan for the lands administered by the Trust.

The Committee notes that section 58 of the Bill provides for the appointment of Technical Advisory Committees. The importance of such a Committee was emphasised by Councillor Colless of the Sydney Coastal Council Group who told the Committee:

It would be one of our recommendations that the Trust be supported by a technical committee composed of expert officers who could provide that kind of detailed technical background for the work of the Trust.<sup>12</sup>

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9 Transcript of Evidence, p.11 (Ms Bergin)

10 Bergin, L, Sydney Harbour Defence Sites, Lessons from the United States, Presented to the National Trust of Australia, NSW, 27 April 1999.

11 Submission No 6, Defenders of Sydney Harbour Foreshores, Submission No 3, Manly Council, Submission No 4, Friends of Cockatoo Island, Submission No 7, Headland Preservation Group, Submission No 21, Mosman Council.

12 Transcript of Evidence, p.27 (Cr Colless)

The Committee is persuaded that such a Committee would be of great assistance in enabling the Trust to make an accurate evaluation of what needs to be done for the proper management of each of the sites during the development of the management plans. The Committee would support the establishment of such a Committee as soon as possible after the legislation has been passed.

### **Conclusion**

The Committee supports the establishment of the Trust but it believes that the Bill needs to be amended if the Trust is to be able to meet its objectives of management and conservation in a spirit of cooperation with the community. Accordingly,

### **Recommendation 1**

The Committee recommends that the Senate pass the Bill with amendments as follows:

### **Recommendation 2**

That the Bill be amended to specify that the sites to be managed by the Trust are at North Head, Middle Head and Georges Heights, Woolwich and Cockatoo Island and any other sites which may come under the Trust.

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**Recommendation 12**

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**APPENDIX 1 LIST OF SUBMISSIONS**

1	Mr Stuart Read
2	Sydney Harbour Foreshore Authority
3	Manly Council
4	Friends of Cockatoo Island Inc.
5	Nature Conservtion Council of NSW Inc
6	Defenders of Sydney Harbour Foreshores
7 & 7a	Headland Preservation Group Inc
8	Hunters Hill Trust
9	The Vaucluse Progress Association
10	Sydney Harbour and Foreshores Committee
11	Mr Tom Uren
12	Mr Keith Bennett
13	Foreshore 2000 Woolwich
14	Public Interest Advocacy Centre
15	National Parks Association of NSW Inc
16	North Head Alliance
17	Ryde Hunters Hill Flora and Fauna Preservation Society
18	National Trust of Australia (NSW)
19	Ms Elizabeth Jean Alexander
20	Mosman Parks & Bushland Association Inc
21	Mosman Municipal Council
22	Hunters Hill Council
23	Woollahra History and Heritage Society Inc (WHHS)
24	NSW Government
25	Sydney Coastal Councils Group Inc





**APPENDIX 2****INDIVIDUALS WHO APPEARED BEFORE THE COMMITTEE****AT PUBLIC HEARINGS**

Wednesday, 29 March 2000, Sydney

**Defenders of Sydney Harbour Foreshores**

Mr Tom Uren

Mr Joseph Glascott OAM

Mr Philip Jenkyn

**Headland Preservation Group**

Ms Linda Bergin

Mr Donald H. Goodsir

**Sydney Harbour and Foreshores Committee**

Mr Michael Rolfe

**North Head Alliance**

Mr Doug Sewell

**Friends of Cockatoo Island**

Mr John F. Clark

**Foreshore 2000 Woolwich**

Mr Richard White

Ms Alysoun Ryves

**National Parks Association of NSW Inc**

Mr Peter Caldwell

**Public Interest Advocacy Centre**

Mr Gregory J. Kirk

Mr Jim Wellsmore

**Woollahra History and Heritage Society Inc**

Mr Peter L. Poland

**Hunters Hill Council**

Ms Susan R. Hoopmann (Mayor Hunters Hill)

Mr Barry R. Smith

**Mosman Council**

Mr John O. Carmichael

**Sydney Coastal Councils Group**

Councillor Shirley A. Colless

Mr Geoffrey M. Withycombe

Councillor Patricia J. Harvey (Mayor Mosman)

**Manly Council**

Ms Jennie Minifie

**Mosman Council**

Mr John O. Carmichael

**New South Wales Government**

Dr Deborah J. Dearing

Mr Philip Reed

- Afternoon      **Sites Visit**

**APPENDIX 3****DOCUMENTS TABLED AND AUTHORISED TO BE PUBLISHED****Wednesday 29 March 2000 – Sydney**

1. Mr Tom Uren, The Draft Sydney Harbour Federation Trust Bill 1999.
2. P. Jenkyn, Sydney Harbour, Statement of Significance.
3. P. Jenkyn, Statement in support of Defenders of Sydney Harbour Foreshores Submission.
4. Headland Preservation Group Inc. Statement
5. Sydney Harbour Foreshores Committee, Estimate of Costs
6. Letters from Cleaver Moore to Mr Poland, Woolahra History and Heritage Society
7. Foreshores 2000 Woolwich, The proposed Extension of Sydney harbour National park at Woolwich, A Place Called Moocooboola and Submission to Sydney harbour Federation Trust, The Village of Woolwich
8. Sydney Coastal Councils Group Inc. Presentation notes
9. Aerial Photograph of Middle Head and Georges Heights
10. Location Map, Tabled by Hunters Hill Council, Presentation from Hunters Hill Council.

**Correspondence Tabled:**

From Environment Australia to the Committee, received 31 March 2000.



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## SYDNEY HARBOUR FEDERATION TRUST BILL

### ALP Senators Minority Report

The Bill, as presented to the committee, is fundamentally flawed. It should not be passed by the Parliament, at least not without significant amendment.

The Bill fails to incorporate the intent of either the 1979 Fraser-Wran agreement, or the election promises made by the Prime Minister. The Prime Minister has misled the Australian community and has failed to deliver on his stated intent on this issue.

In September 1998 Prime Minister Howard announced that the Government would establish a Sydney Harbour Federation Trust to assume responsibility for the remediation and management of five foreshore sites being vacated by Defence, with the intention of transferral of the sites for inclusion in the Sydney Harbour National Park.

Evidence presented to the Senate inquiry has raised a number of serious concerns about the inadequacies of various aspects of the Bill.

Labor members believe that the following issues must be addressed:

- a. The Bill does not identify the key object of the act is to establish a Trust to facilitate the transfer of ownership and management of the land to the Sydney Harbour National Park.

*The Government should clearly state in the Bill that the Trust is being established to transfer ownership of the sites to NSW and provides a timetable and process for doing so. All land should be transferred to the Sydney Harbour National Park and no land retained in Commonwealth ownership.*

- b. The land to which the Bill applies is not clearly defined and nor is its tenure status.

*Each site should be specified and mapped, with ability to add additional sites by Regulation.*

- c. Ownership transition need not wait for 10 years

*Once contamination has been remediated, and disused buildings removed, there is no reason that a site could not be immediately transferred to Sydney Harbour National Park. Transferral of ownership to NSW should be undertaken as soon as remediation for each site is complete. Legislation should provide for handover in a staged manner following remediation.*

- d. The legislation does not identify that the function of the Trust is to remediate the land and prepare it for handover to NSW (as indicated in the Prime Minister's statement); nor does it provide for transparency in its operation.

*This function of the Trust should be clearly stated in the legislation should allow for staged handover as each area of land is remediated, and should provide for public notification and participation.*

- e. Under the draft bill, the land is exempted from State planning and environmental protection legislation.

*It is unacceptable for these sites to be exempt from state environmental protection and planning legislation. The commonwealth might wish to place additional requirements on the management of this land, over and above the state regime, however, the state planning framework should be followed as a minimum requirement.*

*Exemption from state legislation is in direct conflict with Attachment 3 of the 1997 Heads of Agreement on Commonwealth / State Roles and Responsibilities for the Environment..*

*In addition, management plans developed by the Trust should be consistent with SEPP 56, state regional planning and Sydney Harbour National Park management practices to ensure a smooth transition in ownership.*

- f. The Minister for Environment has sole discretion on the sale of land and is able to make commercial leasing arrangements beyond the 10-year existence of the Trust.

*Management plans for each area of land should only be after consultation with the State Government and should be subject to parliamentary approval. The fate of such significant areas of Sydney Harbour foreshore should not be decided at the discretion of the Minister with no opportunity for appeal. Sale of land should be for non-commercial use only, be subject to parliamentary disallowance, and a process of public notification.*

- g. Trust membership is weighted toward Commonwealth representation.

*The Trust is responsible to the Commonwealth Minister for Environment, and it is currently proposed that four of the six members be appointed by the Minister. There is no requirement for local government or community representation on the Trust. Labor supports 2 positions nominated by the Commonwealth Government, 2 by the NSW Government, 1 local government representative and 1 community representative.*

- h. Management plans are not required to be for the whole of site and the requirements of management plans are limited in extent.

*Legislation should require management plans for the whole of each site and should stipulate timeframes and costings within which the objectives of the management plan and the objects of the Act are to be met.*

- i. 10 year life span can be extended under the Bill.

*The legislation should have an automatic sunset clause and allow for early termination should all sites be transferred at an earlier date.*

- j. Current Trust member conflict of interests is too limited

*Broader conflict of interest provisions should be included in the legislation beyond paid employment conflicting with duties.*

- k. There was an expectation that funds would be provided to the Trust from the Commonwealth.

*This was a perception that the Prime Minister was keen to encourage before the 1988 election. It is our view that there should be such an allocation to the trust, the appropriate level to be established through a process of consultation with all relevant stakeholders, and that the Defence Department should be called upon to make a financial contribution to decontamination and rehabilitation of its lands with the subject areas.*

l. Current Trust membership is not of a defined period.

*This should be amended to provide for 3 or 5 year terms.*

m. Composition of Community Advisory Committee.

*Such Committees are inappropriately defined and should be amended to include representatives of the local area.*

The issues discussed above are those considered of most significance. There are many other minor amendments that should be considered and those recommended by Mosman Council and the NSW Government should be seriously considered for implementation.

Labor Senators are particularly concerned at the haste with which this legislation is to be progressed in the Senate after the tabling of this report. It is our view that the bill's consideration be deferred until sittings in May to allow adequate public consideration of any amendments to be proposed to the legislation.

SENATOR NICK BOLKUS

SENATOR MARK BISHOP