

Environment and Heritage Legislation Amendment Bill (No. 2) 2000

Australian Heritage Council Bill 2000

Australian Heritage Council (Consequential and Transitional Provisions) Bill 2000

MINORITY REPORT BY GOVERNMENT SENATORS

Introduction

1.1 The main Committee report addresses a broad range of issues and arrives at some thirty-five separate recommendations. In this minority report, the Liberal Senators do not intend to address all of these recommendations, but rather to focus on several central issues. However, in so doing, the Liberal Senators should not be taken to agree with the remaining conclusions or recommendations of the main report.

Australian Heritage Council – Listing powers

1.2 Government Senators do not agree with the recommendation at Chapter 3 that the AHC should have the power to autonomously list places on the Commonwealth or National Heritage Lists. This power should remain with the Minister as envisaged by the bills.

1.3 Government Senators agree with the concept that there must be a separation between the assessment of heritage values and the management of heritage places. However, it does not necessarily follow that this requires the AHC to have a listing power. The model proposed by the bills provides this separation of roles, in that the AHC is responsible for the assessment of heritage values and in so doing, is precluded from taking into account anything other than heritage issues. The Minister is then responsible for the consideration of whether to enter a place on one of the two new lists, and to administer subsequent management actions through approvals and management plans.

1.4 Government Senators consider that the major implications of listing and the often controversial subject matter, make the listing decision an inherently political decision. It is therefore considered appropriate that the decision maker should be an elected representative answerable to the Parliament.

1.5 In addition, evidence to the inquiry showed that no other regime in Australia that provides for an independent body to make the listing decision in circumstances where:

- the relevant legislation covers natural, cultural, historic and indigenous heritage; and
- the listing attracts substantive protection of the kind offered by the EPBC Act and the proposed heritage reforms.

1.6 We also note that this mechanism is based on the process for listing nationally threatened species (a science-based approach), which has worked well in practice.

Australian Heritage Council – composition and functions

1.7 Government Senators consider that there may be grounds for amending Section 5 of the Australian Heritage Council Bill 1999 to allow the AHC a more proactive role in terms of public education and promotion of heritage conservation. However, the proposed membership and qualifications of members of the Council are considered appropriate and should not be changed.

1.8 However, for the reasons stated above, the Government does not believe that these changes should extend to allowing the Council to nominate and assess a place on its own motion.

1.9 It should be also be emphasised that the bill provides for the AHC to act under the direction of the Minister, by which means, the agency is answerable to the Minister who is in turn accountable to the Parliament. In this respect, Government Senators reject the implication that to work to the direction of the Minister implies that the agency will be prevented from carrying out its tasks effectively and professionally.

Future role of the Register of the National Estate

1.10 Chapter 4 of the report addressed the future of the RNE. Government Senators do not agree with the need to maintain the RNE as a statutory list in addition to the proposed National and Commonwealth Lists.

1.11 Firstly, the RNE will continue as a public reference source and will be transferred in its entirety into the National Heritage Places Inventory. None of the work put into developing the RNE will be lost.

1.12 Secondly, the bills are premised on a particular allocation of roles between the Commonwealth and the states and territories, based on extensive negotiations leading to the COAG Agreement. For the Commonwealth to maintain a list of heritage places not directly the responsibility of the Commonwealth (as distinct from coordinating a combined register like the NHPI) would defeat the purpose of the bills.

1.13 The Government Senators do not believe that all Commonwealth places on the RNE should automatically go on the new Commonwealth List (Recommendation

5.1). To do so would undermine the integrity of the regime which is based on expert assessment before listing against rigorous criteria (yet to be settled).

Transparency

1.14 The Government Senators endorse the comments of the main report relating to the transparency of the process, and note that the Government will seek public comment on the draft ‘heritage management principles’ and criteria when they are finalised. In general, the bills provide a very high level of transparency and accountability. The opportunities for public participation and comment are greater than in any comparable legislation, and certainly represent a significant advance over the *Australian Heritage Commission Act 1975*.

Funding for heritage properties

1.15 Sections 324Y and 341ZA of the Environment and Heritage Legislation Amendment Bill (No. 2) 2000 will not have the effect of limiting Commonwealth funding to places on the National or Commonwealth list. The provisions authorise expenditure of Commonwealth funds on Nation or Commonwealth Heritage list places, but do not preclude other expenditure under the Cultural Heritage Projects Program or the Natural Heritage Trust administered by Environment Australia.

Definition of ‘action’

1.16 It is not agreed that either grants or disposal of a property should be included within the definition of ‘action’ (Recommendation 6.1). In relation to grants it is not necessary to provide for funding as an ‘action’ to trigger the EPBC Act, since the project being funded will itself trigger the EPBC Act if it affects a matter of National Environmental Significance.

1.17 In relation to disposal, where the heritage values of a property are known, the covenant provisions of sections 324X and 341Z provide the necessary protection as discussed below. It should also be noted that the function of the word ‘action’ in the AHC Act triggers consultation, in contrast to its function in the EPBC Act which is linked to enforcement provisions.

Protection on sale or lease

1.18 Government Senators do not agree that there is a need for additional administrative measures to protect properties on sale or disposal (Recommendation 6.7). The bills provide a mechanism for attaching covenants to properties with heritage significance, which is a major initiative not in the existing *Australian Heritage Commission Act 1975*. This is considered adequate protection.

Definition of significant impact

1.19 Government Senators note the discussion in Chapter 6 relating to the definition of ‘significant impact’. The Government will develop administrative guidelines dealing with the significant impact test, and in doing so, will consider

whether more effective administration of the Act and greater certainty can be achieved by placing these guidelines in regulations as recommended by the main report.

John Tierney (Deputy Chair)

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