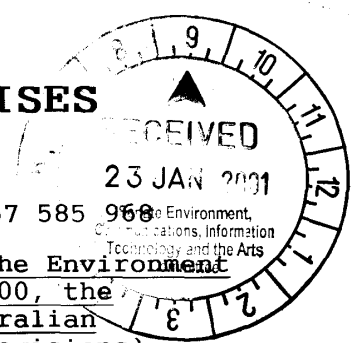


# PEAK ENVIRONMENTAL ENTERPRISES

and CONSERVATION CENTRE OF AUSTRALIA

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Submission to Senate ECITA Reference Committee re The Environment and Heritage Legislation Amendment Bill (No. 2), 2000, the Australian Heritage Council Bill, 2000 and the Australian Heritage Council (Consequential and Transitional Provisions) Bill, 2000.

1. Introduction. My qualifications and experience in respect of this submission are as follows:

- a) Consultant to the Inquiry into the National Estate- 1973-74;
- b) Director of the Australian Conservation Foundation - (1973-86) experience of all aspects of the working of the present legislation;
- c) In the above capacity led successful campaigns (1976 and 1980) to prevent the repeal of the Australian Heritage Commission Act, 1975;
- d) Since 1986 have worked as an environmental consultant engaging in heritage identification and protection work (with particular reference to wilderness, cultural landscapes and world heritage values); and
- e) Author of several publications on heritage matters.

2. Scope of Submission. This is a brief submission which deals with some of the substantive issues relevant to the proposed legislation, in particular I discuss - heritage nomination and evaluation (identification), assessment/listing, and protection. As a case study I also examine these matters as they apply to the External Territory of Norfolk Island. The comments in the body of this submission are based on experience in many parts of Australia, not just Norfolk Island.

3. Nomination. The existing nomination system involves the filling out of a complicated form and selecting from a plethora of possible criteria. It appears not to have been too off putting because apparently there have been at least 20,000 nominations. Judging by the draft criteria for the proposed national and Commonwealth lists these would be much simpler. Hopefully an effort will be made to make the nomination process simpler also. This could be done if persons interested in making a nomination were provided with straightforward information about the main categories of value.

4. Evaluation. In the existing system this can be a very drawn out process extending over several decades. The fact that some 7,000 nominations for the Register of the National Estate (RNE), over a third of all nominations made, are still awaiting assessment is clear evidence of this. It is during the prolonged evaluation phase that political factors are likely to emerge. Regrettably, these sometime affect both the evaluation and the assessment. Instead of the evaluation being limited to objective matters relating to value owners will endeavour to bargain, saying they will do this or that if the site is not listed and the Heritage Commission in making its decision will take the

conservation status of the site into consideration. The problem is greatest with regard to nominations of private property, or property where there are private rights. This has meant that the evaluation process for public sites has taken less time than for private sites. Another factor which has affected evaluation has been the possibility of including a site on a local list.

There appears to be nothing in the proposed legislation which is likely to eliminate or lessen these latter problems of consideration of matters other than values. The fact that the national heritage list will be more selective than the Register of the National Estate means that consideration of the alternative of the site being included on a local register is likely to figure more prominently in evaluations and assessments. A proscription in the legislation against consideration of any aspect other than value would be useful.

The new legislation as proposed should result in the evaluation/assessment process being speeded up. Strong points of the proposed legislation are: the requirement to specify the values for which the place is listed (324B (3) of the Environment and Heritage Legislation Amendment Bill); the requirement for the Minister to within 20 days ask the Heritage Council for a decision on a nomination (324D (2)); the requirement for the Council to make a decision within 12 months (324D (6)); and the provision for the Minister to invite nominations of places within a specified theme (324D (6)).

The latter is particularly good requirement since it will make it possible for there to be various thematically based categories (systems or series) of heritage areas across the nation. Obvious candidates are national systems of wilderness areas, cultural landscapes, and areas with particular types of vegetation or wildlife significance. This could be the the opportunity to establish the much recommended national wilderness system with jurisdiction and management remaining with the States and Territories.

5. Assessment/Listing. Assessment is the act of deciding whether or not to list. In terms of delay and rejection for reasons other than value the problems have been the same as for evaluation. Here also in making its decisions the Commission has tended to consider such matters as prospects for conservation with regard to such aspects as status of the land and management arrangements. Increasingly it has also considered the possibility of a site being placed on a local register instead of on the Register of the National Estate for which it has been nominated.

As noted above there appear to be no safeguards in the proposed legislation to try to prevent these extraneous factors affecting the assessments. When a place is listed the current system makes no distinction about its geographic level of significance whereas the proposed list will be for places of national importance. This will increase the likelihood of political factors (relating to which list it should be on) coming into play.

With regard to the proposed Commonwealth list political factors are also likely to intervene in some cases. The original concept

was for all places on the RNE to be automatically transferred to the Commonwealth List. Now (Schedule 3) the Minister must make the transfer within 6 months otherwise the site will have to be renominated under the new legislation. Sites on Commonwealth land not transferred are more likely to be sold or transferred to a state/Territory. Areas already proposed for sale/transfer will most likely not be included on the Commonwealth List. This type of interaction is unhealthy.

There is a particular injustice involved with regard to the 7,000 sites nominated but not assessed for the RNE. Some of these will be of national importance but the nomination will have to be done all over again. The legislation should provide for the consideration of the data already compiled in connection with the nominations and the evaluations.

6. Protection. Protection of areas on heritage registers is provided in two ways: 1) increased public awareness of values; and 2) actual protection measures in the law.

The existing system was basically a device which alerted the public and the authorities to the existence and nature of the values. The descriptions of the values were of mixed quality (ranging from highly detailed, through insightful to skimpy). It did result in widespread public awareness and its main usefulness was probably in public education. RNE status was often used by environment groups as a lever to improve the conservation status by such means as acquisition and reservation. The Section 30 provision of the present Act is also essentially an alerting/information device. In my experience it has often not worked well. AHC staff have often been given only a few days in which to comment and their comments have often been ill informed.

7. The Case Of Norfolk Island How the existing system has been applied to Norfolk Island and how the proposed system might be applied will illustrate some of the matters discussed above. A more detailed account can be found in Chapter 18 of A Conservation Strategy For Norfolk Island (Mosley 2001).

**A. Nomination** At the 15th June 2000 the RNE listed 34 sites (one a nomination of a site already registered). The legal situation with regard to these items is: Registered 17, Indicative (not assessed) 16, Rejected 1 and Identified (decision to list deferred) 1. Three other nominations (not in the data base) were rejected in the early 1980s. Nine of the nominations were made in 1996 by a national environment group with detailed justifications. They include the whole of the coastline not already on the Register, and eight sites with cultural landscape values (including the oldest agricultural landscapes in Australia).

Sixteen of the 17 Registered sites were listed in 1980. An extension of one of these was listed in 1982. So, for nearly 20 years not another site has been added. Eleven of the Registered places are Crown land public reserves, 2 are Crown leasehold, 3 are freehold and 1 is a mixture of reserve, freehold and leasehold.

**B. Evaluation/Assessment.** The 9 nominations made in 1996 involve both leasehold and freehold land. AHC commenced evaluation in 1997 but then deferred assessment on the grounds that a local register should be developed first. A joint Commonwealth/ Norfolk Island Government evaluation of the nominations and a scheduled assessment by AHC broke down as a result of a breach of faith by the Norfolk Island Government. The latter manipulated public opinion against the nominations which acted as a further deterrent against timely assessment by the Commission.

The idea of a local register was proposed in 1972 (Coldham Plan) and endorsed by the 1985 Development Plan and the 1997 Norfolk Island Plan. The proposal has yet to be finalised. A part of the proposed process would involve the naming of the nominator. This and the development orientation of the local government would deter most nominations and result in few sites of any size being listed. Certainly the 1996 nominations would have little chance of being nominated/listed.

**C. Protection.** There is no interim protection for places on the indicative list on Norfolk Island and there is a major move afoot for the Commonwealth to hand over ownership of some Commonwealth land (540 is Commonwealth owned) to the local Government. In these circumstances of political dealing the prospects for inclusion of RNE places (other than the National Park and the Kingston Arthurs Vale Historic Area) on the proposed national and Commonwealth lists are not good. The prospects for the indicative places is very poor. Essentially the Commonwealth is contemplating abandoning places of national environmental importance without proper evaluation and assessment.

8. Conclusion. The new system promises an improved approach to the protection of areas with a national level of significance, but much will depend upon effective cooperation with the State/ Territory Government and this could be where it could break down. The Commonwealth must insist on objective evaluations/ assessments and be firm in its dealings with other governments.



Geoff Mosley

21st January, 2001