

31 January 2000

The Secretary
Senate Environment, Communications, Information Technology and the Arts References
Committee
S1.57
Parliament House
CANBERRA ACT 2600

Dear Secretary

Environment and Heritage Legislation Amendment Bill (no 2) 2000 (Biodiversity Bill)

Sydney Water Corporation appreciates the opportunity to comment on the Bill. It is presumed that Sydney Water would be likely to have some of its assets proposed for inclusion on the National Heritage List, so the Corporation is pleased to be able to forward comments to the Senate Inquiry.

Under the proposed legislation, Sydney Water needs to consider implications for its operations on its own assets of national significance and for its operations affecting external items of national environmental significance or on the Commonwealth Heritage List, (e.g. in supplying water and sewerage services to a listed lighthouse, say).

Sydney Water acknowledges that a main driver for this legislative activity is the need to establish a complementary and streamlined heritage management system in Australia across levels of Government. Sydney Water encourages legislators to ensure that the heritage management regime is indeed both complementary (i.e. without overlap) and streamlined (i.e. not protracted). Such a regime needs to ensure minimal administrative burdens on organisations in their operations while ensuring adequate protection of heritage assets.

Sydney Water is certainly concerned about cost and time implications in the overlapping of compliance with requirements of items on the proposed National Heritage List, NSW's State Heritage Register and relevant s170 Heritage and Conservation Register, and Local Government Environment Plans. As many details relevant to the National Heritage Register, (e.g. National heritage values, items on the National Heritage List, National Heritage Management Principles) are not yet available, the focus in this submission has leant towards identifying the issues which Sydney Water believes need to be effectively taken account of in the legislation.

Sydney Water is concerned about the *potential* under the Bill for lengthy delays in its planned operations. The full assessment process provided for in Part 9 of the Bill will apply unless the process is truncated by the implementation of relevant parts of a Bilateral Agreement between the Commonwealth and NSW Governments or the action is part of an exempt class. Assessment involves several mandatory administrative steps. Although subject to a time limitation on the part of the decision-maker, it is possible (s130) for the Minister to extend the ultimate deadline for any specified period in designated circumstances. Given that the Bill contains its own environmental assessment and inquiry process, a worst case scenario approval process could extend up to two years.

Exemptions and Exceptions

The NSW Heritage Act has provisions which are, in the main, focussed on the conservation and maintenance of buildings. Sydney Water has a substantial underground infrastructure (pipes) which is in excess of 50 years old and consequently classified as "relic". Under a strict interpretation of the provisions of the Heritage Act, Sydney Water's routine operations and maintenance of such infrastructure would be subject to inappropriate and time-consuming approval procedures. This has been understood by the NSW Heritage Council in that there are stated official exemptions published and Sydney Water has negotiated specific exceptions with the Heritage Council so that those specified routine operations and maintenance may be undertaken without further formal approvals being required from either the Heritage Office or local government. Section 15B is relevant to this issue with reference to the approvals needed before taking an action likely to have a significant impact on the national heritage values of a national heritage place. Sydney Water submits that such exemptions and exceptions allowed under NSW legislation should be carried through by the Commonwealth to items on the National Heritage List. It would be advantageous for organisations in general, and certainly for Sydney Water, were the Bilateral Agreement to be specific on this matter.

Similarly, Sydney Water recommends that works associated with directives (upgrades at a Sewage Pumping Station, say) from the NSW EPA, Sydney Water's environmental regulator, be able to be carried out without referral to/approval of the Commonwealth.

Nominations for National Heritage List (NHL)

Provision is allowed (s324D) for third parties to put forward nominations for the National Heritage List (based on national heritage values, as yet unspecified). Under s324D(3)(a), the Minister may ask for further information on the nomination. Sydney Water recommends that a sound explanation of the rationale for nomination ought to accompany the nomination and there should be a requirement for the nominator to advise the owner of the nominated item simultaneously.

S324F requires the Australian Heritage Council to make *reasonable* efforts to notify the owner of any place being considered for inclusion on the NHL and that owner then must be given *reasonable* opportunity to comment on the proposed inclusion. "*Reasonable*" needs to be defined so that owners are assured of not being treated iniquitously.

S324G requires the Minister to invite public comment on proposed NHL inclusions. Information is needed on where the notices would be published in such cases.

No provision is made for a linked removal of National Heritage Listings from State or local listings. As set out above in the section *Exemptions and Exceptions*, Sydney Water is concerned to avoid the time and cost implications of allying for consents/approvals which do not lead to improved heritage outcomes. Sydney Water recommends that consideration be given, in discussion on the Bill, to a regime being established where the nexus between the three levels of government achieves appropriate heritage protection without unnecessary burdens being imposed on organisations or their operations.

Minister's Report to Parliament

Section 324Z requires the Minister to report to each House of Parliament. Such things as condition of places and the status of management plans and agreements are to be included in the report. No details are given for the intended mechanism for the information needing to be

provided to the Minister to be included in the report. Sydney Water already reports on such matters to the NSW Heritage Council/Office. Sydney Water recommends that the Commonwealth and States liase so that the reporting format suitable for reporting to the Parliament is such that the State information can be forwarded to the Minister for inclusion in the report to Parliament, thus avoiding further duplication of reporting by an organisation.

Actions having "significant impact"

Persons will be guilty of an offence if they take an action that has, will have, or is likely to have, a significant impact on the national heritage values of a place on the NHL. Presently, the national heritage values are not declared and no guidance has been given as to what might constitute "significant impact". Sydney Water recommends that more details need to be given on both matters before the Bill is passed.

Bilateral Agreements

Officers of Sydney Water have been in discussion with officers from Environment Australia on a number of matters relating to the Bill. To many enquiries, the assurance was given that "it will be taken account of under the Bilateral Agreement". It is clear that the final form of that Agreement is to be crucial for the implementation of the Amended Act. As there is no information currently publicly available on the content of the Bilateral Agreement between the Governments of the Commonwealth and New South Wales, Sydney Water's submission on the Bill deals specifically with what the Corporation submits should be included in the Bilateral Agreement.

Sydney Water's contact on this matter is Tony Richards, Manager Environmental Strategy. Any enquiries can be directed to him on tel (02) 9350 6721 or email: <tony.richards@sydneywater.com.au>.

Yours faithfully

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