



**Submission to inquiry on Environment and Heritage Legislation Amendment Bill (No. 2) 2000, Australian Heritage Council Bill 2000 and Australian Heritage Council (Consequential and Transitional Provisions) Bill 2000**

The Australian Heritage Commission (AHC) considers that the Bills represent a long overdue reform of heritage protection and management at the national level. Whilst the *Australian Heritage Commission Act 1975* was a major national heritage protection initiative in its day, the practical reality is that listing under that Act on the Register of the National Estate (RNE) confers limited effective protection. RNE listings are duplicated in State, Territory and local government heritage lists. Now that all States and Territories have heritage protection legislation, the Commission considers it timely for the national government to concentrate on the identification and effective protection of national heritage. The Commission is also critical of the failure of successive federal governments to protect Commonwealth heritage and, as a result, many important heritage assets have been lost. The Bills redress this longstanding deficiency.

Since 1996 the Commission has been promoting the need for a fresh approach to the identification and protection of heritage at the national level. A national consultation program known as *Future Directions* began in August 1996, resulting in three publications: *A National Future for Australia's Heritage: Discussion Paper*, *Australia's National Heritage: Options for Identifying Heritage Places of National Significance and National Heritage Standards*. These publications were designed to stimulate public discussion on heritage reforms. In May 1997, the Commission produced a paper synthesising broad community views gathered through the *Future Directions* process and specifying a preferred heritage places system.

The Commission's next key initiative was convening the **National Heritage Convention** at Old Parliament House in August 1998. The Convention brought together heritage practitioners and stakeholders from all States and Territories, covering all aspects of the historic, cultural and natural heritage environment, to develop a national approach for the identification and management of Australia's heritage places.

The Commonwealth Government drew on the Commission's *Future Directions* process and outcomes from the **National Heritage Convention** to begin drafting national strategy for Australia's heritage places that was put to State and Territory heritage Ministers in February 1999. A Commonwealth Consultation Paper ensued in April 1999, entitled *A National Strategy for Australia's Heritage Places* (the National Heritage Places Strategy).



Following an AHC Commission meeting in September 1999 the Commission advised the Minister for the Environment and Heritage Senator Hill, of the Commission's preferred position in the light of the Commonwealth's National Heritage Places Strategy. In doing so the Commission strongly supported the Government's initiative and offered a willingness to continue to facilitate public discussion of the issues involved.

The Bills, which are the subject of this inquiry, largely reflect the Commission's 1999 preferred position. The Bills deal with some of the issues in a different way to the Commission's preferred position however the outcomes are not dissimilar to the Commission's views. The elements of the September 1999 AHC position were:

- Legislation should provide an international and national leadership role for the commonwealth;
- The Strategy should envisage a regional role for States and local governments, noting the need for accreditation of State heritage regimes;
- Mandatory standards should be provided for in legislation;
- The legislation should provide Commonwealth protection and management of a national list and Commonwealth heritage places with the power to protect listed sites;
- Management regimes for national heritage places should be through bilateral agreements with States or Territories;
- Assessment of the Commonwealth and States should use the RNE to produce an initial list;
- List nominations should be assessed by the AHC following referral by the Minister;
- There should be no veto power of a State government on listing;
- The regime should be implemented by amendments to the EPBC Act and the AHC Act;
- The AHC role should include an assessment and advisory role on national and Commonwealth lists;
- The AHC should continue its current role with RNE (as modified), extended to international roles (such as overseas places of Australian significance, and maintain advice to international bodies);
- The Minister should appoint Commissioners in any new regime;
- The Commonwealth should implement the national heritage strategy and standards, including the need for the adoption of standards for places of local, State and National heritage significance;
- The AHC should be the custodian of the Australian Heritage Places Inventory (AHP I);
- The AHC should provide an accreditation and monitoring advice role to the Minister and accredited States;
- The AHC should provide a custodian role for national and Commonwealth lists;
- As States are accredited, RNE listing and s30 AHC Act roles should be removed;
- State and other authority lists should be included in the AHPI;
- The RNE should remain as safety net protection measure and national resource;
- The RNE should continue to be maintained by the AHC but RNE places should be assessed for entry of places on other lists - mainly State and local lists, an independent assessor should be appointed to settle dispute with States, the RNE should be revived where accreditation fails;

- The RNE should be able to be modified through accreditation but otherwise it should be maintained and extended to include overseas places of significance to Australia;
- The RNE listing role of the AHC should be removed subject to accreditation of State regimes; States to implement mandatory standards;
- AHPI to be an overarching database linked to the RNE and maintained by the AHC;
- The Commonwealth should seek agreement with States to the fullest extent to allow accreditation, bilateral agreements and AHPI proposals to proceed;
- The AHC Act (s30) should be amended to substitute EPBC Act mechanisms for protection of places on national and Commonwealth lists;
- The AHC should have an advisory role on applications for approval of actions to Minister. AHC Act (s30) to not operate for accredited States listings (safety net role for RNE);
- The Commonwealth should comply with State heritage and planning laws;
- The AHC should have a technical advisory role for the *Aboriginal and Torres Strait Islander Heritage Protection Act*;
- The AHC Act should be amended to allow Minister to refer any heritage matter, including shipwrecks, to the AHC for advice; and
- Legislation should include moveable cultural heritage where such moveable heritage is located in or associated with places on national or Commonwealth lists.

The key area of difference between the Commission and the position reflected by the Bills is the role of the RNE. There was vigorous discussion within the Commission for the RNE to be maintained and indeed extended to provide for the further listing of places where State regimes were unwilling to list a place of state or local significance. The Commission however is aware that the RNE will continue as a technical resource for the operation of section 28 of the EPBC Act and thus places on the RNE will enjoy a greater level of protection than is the case under section 30 of the AHC Act.

The Commission undertook an early and a proactive role in encouraging the development of the national heritage reforms that are reflected in the Bills before the inquiry. The areas where the Bills fall short of the Commission's preferred position are those areas where the Commonwealth has little or no constitutional capacity to manage heritage in States. Uniform national heritage protection standards remain an ideal for governments to aim for however the Commission noted that not only was there little State or Territory agreement on this issue there was even more fundamental disagreement on whether heritage should cover the natural, historic and cultural environment.

The Commission's latest role was to assist in a national briefing program for persons interested in the new Commonwealth heritage regime from May to November 2000. Over 60 briefings were held in capital and regional centres, involving stakeholders, governments, indigenous groups and the interested public. AHC Commissioners strongly identified themselves with the briefing process with an AHC Commissioner attending many of the sessions in support. I as AHC Chairman chaired the Sydney briefing sessions.

Whilst this submission reflects the collective views of the Commission as expressed by formal resolution I am aware that individual Commissioners may hold opinions on

the heritage legislation based on their personal perspective. For example Commissioner Jane Lennon, who has a long and distinguished record in Australian heritage management, will I am sure put her views to the inquiry. Her views will be a valuable input to the Committee's deliberations.

A handwritten signature in black ink, appearing to read "Peter King". The signature is written in a cursive style with a large, looped initial "P".

Peter King  
Chairman  
Australian Heritage Commission

29 January 2001