

THE UNIVERSITY OF
NEW SOUTH WALES



SCHOOL OF
BIOLOGICAL SCIENCE
UNSW SYDNEY 2052
AUSTRALIA

Facsimile: +61 (2)93851635
Telephone: +61 (2)93852076/1684

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

web.senate@aph.gov.au

Dear Secretary

Please find attached a submission to the Inquiry into the proposed Heritage legislation. I recognize that I have missed the deadline but hope that this submission can be accepted.

Yours sincerely

Paul Adam

The Secretary
Senate Environment, Communications, Information
Technology and the Arts References Committee

Re

- Environment and Heritage Legislation Amendment Bill (No.2). 2000
- Australian Heritage Council Bill 2000
- Australian Heritage Council (Consequential and Transitional Provisions) Bill 2000

Submission from

A.Prof. P. Adam
School of Biological Science
University of NSW
NSW 2052
day time telephone (02)93852076
fax (02)93851635
email p.adam@unsw.edu.au

The existing structures of the Australian Heritage Commission and the Register of the National Estate arose as a result of the response by Government to the Report of the Committee of Inquiry into the National Estate under the chairmanship of Justice Hope which was completed in 1974.

Although the arguments for protection of the National Estate are as strong now as they were in 1974 it is appropriate, given the passage of time to review, and if appropriate amend, the legal, bureaucratic and administrative structures for heritage conservation.

Unfortunately the Government proposals currently before Parliament represent a conceptual retreat rather embodying improvements.

Heritage Conservation and the EPBC Act

When the Government embarked on its review of federal conservation legislation it foreshadowed that biodiversity/environment protection functions would come under one legislative umbrella (which now exists in the form of the EPBC Act) and implied that amendments to the Heritage regime would remain separate.

What is now proposed would result in the EPBC Act encompassing all heritage and conservation functions.

Heritage conservation, encompassing the built and natural environment, deals with a different set of issues than those covered by the other aspects of the EPBC Act. While there may be merits in a single piece of legislation, in my opinion it would have been preferable to have retained separate legislation for heritage.

The National List

The biggest change proposed is for the Register of the National Estate to be replaced by the National List.

The proposed legislation is silent as to the size of the National List, but Senator Campbell in his Second Reading speech made clear it was the Government's intention that the National List contain only a small number of sites, possibly only a few hundred.

Such an approach in my view reflects a misunderstanding of the nature of our national heritage.

I agree that there are some items of exceptional significance and value which could stand alone. However, much that we value, and which collectively helps define the national identity needs to be seen in its context. Many sites and items which make up in the National Estate (in the sense

discussed in the Hope report) are like the pieces of a jigsaw and it is by their contribution to the total picture that their importance can be recognised. It would seem to me that in order to reflect the character of the National Estate the number of sites on the National Estate should be considerable.

Senator Campbell indicated that a major part of the Government's justification for this approach was that most items of heritage value would be protected by state and local government. While there has been an increase in heritage activity by state and local government, it is not clear how effective it is in most cases, and there are clear deficiencies (for example in NSW a number of Councils have yet to complete their heritage inventories, and in some cases have only included built environment items to the exclusion of the natural environment). It would be appropriate to first conduct an audit of the efficacy of state based heritage legislation - before the Commonwealth restricts its role by the extent intended.

Penalties

It is a valid objection to the present legislation that while it has helped raise appreciation of heritage issues it has been a toothless tiger in terms of enforcement.

The proposed legislation has a number of clauses specifying the circumstances which might trigger prosecution. However, these would only prevent a person from damaging or destroying a place of national significance if it were the purpose of international or interstate trade or commerce, or if the action will affect the indigenous heritage values of the place or if the place is one where Australia has obligation under the Biodiversity Convention. This would appear to allow many opportunities to damage or destroy with impunity.

The present legislation only has teeth in theory in relation to Commonwealth. Even in this case it hasn't been very effective. There is an urgent need to educate Commonwealth departments and agencies as to their obligations to protect heritage values.

In the built environment it has been recognized that 'demolition by neglect' is a major threat. There is a need to recognize that failure to manage can have the same effect in the natural environment. An example of this is provided by the failure of management by the Department of Finance and Administration at Malabar Headland, a site currently listed on the Register of the National Estate. Will management by the Commonwealth be improved under the proposed legislation? Without a substantial change in culture I would doubt it.