



## **Australian Council of Professional Historians Associations Inc.**

### **Submission to the Senate Committee Inquiry into the Environment and Heritage Legislation Amendment Bill (No. 2) 2000 and the Australian Heritage Council Bill 2000.**

#### **AUSTRALIAN COUNCIL OF PROFESSIONAL HISTORIANS ASSOCIATIONS**

The Australian Council of Professional Historians Associations (ACPHA) was formed in 1996 as a voluntary organisation to promote the cultural values of history; provide a national voice for professional historians and to develop dialogue with governmental agencies.

It is the peak national body for historians and the umbrella organisation representing professional historians' associations. Membership consists of the peak body for professional historians in each state and territory. The term 'professional historian' generally refers to historians who have appropriate academic qualifications but who work outside the academy. Most individual members work in the heritage field, often as freelance consultants, but also within cultural institutions such as museums.

#### **KEY POINTS OF SUBMISSION**

##### **1. Membership of the Australian Heritage Council**

The requirement for membership of the Council to be based on expertise is welcomed. However, that expertise should be better defined, the number of members broadened, and provide for the inclusion of a historian with expertise in heritage.

##### **2. Role and functions of the Australian Heritage Council**

The advisory role of the Council is unnecessarily restrictive. The Council should be making decisions on assessments and listings and it should be able to provide independent advice without the need for a referral from the Minister.

##### **3. Retention of the Register of the National Estate**

The Register of the National Estate has evolved over a quarter of a century and provides the most comprehensive listings of heritage items in Australia. It is almost an item of cultural heritage in its own right, and must be retained

#### **4. Bringing together natural, cultural and Indigenous heritage**

While the proposed new legislation appears to move towards a more integrated and holistic understanding of heritage, its basis in measures for the protection of natural resources ignores the social constructions of significance as well as the development of an extensive body of heritage expertise since the 1970s. This should not be discarded so lightly.

#### **5. Appropriateness of a 'National' list to Indigenous heritage**

There is not a single Indigenous culture in Australia, but many cultures both historical and contemporary. The proposed National list should not try and force Indigenous heritage into a Eurocentric mould, but should respect and accommodate Indigenous understandings of heritage and nation.

#### **6. Separation of Heritage Assessment and Heritage Management**

The identification and assessment of heritage items must be clearly separated from the conservation and management of heritage items. The former must occur independently of, and before, the latter.

#### **7. Thematic and regional assessment frameworks**

The concept of using thematic frameworks for assessing places for heritage listing is welcomed. However, in some areas regional frameworks are better understood than thematic frameworks, and the legislation should provide for both approaches to be used.

#### **8. Movable, documents and shipwrecks excluded**

It is not clear why the proposed legislation is restricted to places and structures only. Heritage assessment in some of the more advanced state jurisdictions provides for movables and documents to be included, while shipwrecks and maritime archaeology will necessarily contribute to an important historical theme in Australia's development. The legislation should explicitly provide for these types of items to be included.

#### **9. Significant impacts**

The concept of prohibiting 'significant impacts' on listed items in the proposed legislation is ambiguous and possibly counter-productive. This term needs definition. It is suggested that a concept of 'minimum standards' would be useful.

#### **10. Definition of defence or security criteria**

The concept of removing an item from a list on 'defence or security' grounds is similarly ambiguous and open to abuse. The terms need precise definitions and triggers.

#### **11. Community education**

The Council seems to have no role or function in providing or promoting community education and understandings of heritage. This is a significant weakness in the proposed Council, which should be a best practise institution in this field.

### **COMMENTARY ON EACH KEY POINT**

#### **1. Membership of the Australian Heritage Council**

1.1 The requirement for membership of the Council to be based on expertise is welcomed.

1.2 Membership should consist of persons with recognised expertise in cultural, Indigenous and natural heritage. The total of six members as proposed appears to be too small for the breadth of experience required, and should be broadened.

1.3 The provisions relating to Council membership need to clearly stipulate that membership will include a historian with experience in cultural heritage, and a historian with expertise in Indigenous heritage and history.

1.4 There needs to be provision for the Council to establish specialised committees, especially with regard to Indigenous heritage.

1.5 The statutory inclusion of such expertise in the area of history and heritage will be a best practice approach, recognise that history is a vital component of heritage, and ensure that the Council has an adequate level of historical skills available for its deliberations on, especially, assessments of heritage items.

1.6 Serious consideration needs to be given to the submission by ATSIC on this issue, especially its recommendation 6.

## **2. Role and functions of the Australian Heritage Council**

2.1 The referential and advisory role of the Council is unnecessarily restrictive, and should be proactive rather than reactive.

2.2 The Council should be making decisions on assessments and listings, providing independent and public advice (especially on questions of significance), providing an advisory role in heritage matters across the Commonwealth government and its agencies, and at least co-ordinating nationwide approaches to heritage education.

2.3 The Council should be able to provide independent advice without the need for a referral from the Minister - the only purpose in restricting the Council to acting on ministerial referrals seems to be to restrict the Council to only operating when a minister considers it politically opportune. The nation's heritage is of far greater fundamental importance than the expediencies of day-to-day administration.

## **3. Retention of the Register of the National Estate**

3.1 The Register of the National Estate has evolved over a quarter of a century and provides the most comprehensive listings of heritage items in Australia.

3.2 The Register of the National Estate is the only heritage list in Australia that has really tried to include items of social significance. This may be an outcome from such listings not invoking the consequent management responsibilities of State and Territory heritage lists, but an outcome that nevertheless is of great significance in many local communities where listing practices are still management driven.

3.3 The listing of items of social significance as part of the National Estate will, it appears, be prevented by the proposed legislation. It is unclear whether the Register of the National Estate is even to be retained. This can only be interpreted as retrogressive and a rejection of 25 years of combined community and professional endeavour.

3.4 The Register for the National Estate should form the basis of the Commonwealth heritage list.

3.5 The Register of the National Estate should be maintained as at least an indicative listing of heritage significance, and preferably as a comprehensive, integrated and continuing national inventory. This will be especially valued in communities where heritage listing is little utilised, or very restrictive, and will be seen to provide an independent level of assessment that is not possible in some communities.

3.6 The Register of the National Estate is almost an item of cultural heritage in its own right, and must be retained

#### **4. Bringing together natural, cultural and Indigenous heritage**

4.1 The proposed new legislation appears to move towards a more integrated and holistic understanding of heritage, and this is welcomed as a concept.

4.2 However, the basis of the new legislation lies in measures for the protection of natural resources. Such an approach, based upon scientific certainties, necessarily ignores the social constructions of significance as well as the development of an extensive body of heritage expertise since the 1970s.

4.3 The quarter century of experience, expertise and leadership developed by the Commission should not be lightly discarded, as appears to be the case.

4.4 The concept of the 'National Estate' is inclusive of all types of heritage, however they may be constructed and shaped from time to time. This concept should be retained as an underlying basis of the new legislation, rather than attempting to set in stone a particular turn of the 21st century understanding of heritage as the proposed National Heritage List seems to do.

4.5 Heritage is a constantly evolving and developing concept, as anyone with any familiarity with heritage in Australia would acknowledge. The proposed new legislation does not seem to allow for, or be cognisant of, this dynamism.

4.6 Heritage is now so much more than the mansions, churches and public buildings that characterised early understandings of heritage, and it will no doubt continue to evolve. The proposed legislation runs the risk of becoming irrelevant as time passes unless this can be acknowledged.

4.7 Indigenous understandings of heritage include intangibles such as folklores and the transmissions of ideas and practises. Despite its apparently integrative approach, the proposed legislation seems to have no ability to assess and conserve such heritage.

#### **5. Appropriateness of a 'National' list to Indigenous heritage**

5.1 There is not a single Indigenous culture in Australia, but many cultures both historical and contemporary.

5.2 The proposed National Heritage List should not try and force Indigenous heritage into a Eurocentric mould of the nation as being the political entity that currently constitutes the whole continent.

5.3 This submission generally supports the points on this issue made by Emeritus Professor Mulvaney and Sharon Sullivan in their respective submissions.

5.4 This submission generally supports the points made, and approaches suggested by, ATSIC in its submission, especially points 2 and 5 of that submission.

#### **6. Separation of Heritage Assessment and Heritage Management**

6.1 The identification and assessment of heritage items must be clearly separated from the conservation and management of heritage items.

6.2 Identification and assessment must occur independently of, and before, conservation and management regimes are determined

6.3 This is now the approach used in the more advanced State jurisdictions and, unless provided for in the proposed legislation, will quickly make it outdated.

6.4 Historians working in heritage are well aware of the demands made to produce analyses and assessments of heritage items that are driven by intended future management outcomes rather than adequate assessments of an items significance.

6.5 The confusion of assessment and management needs to be prevented, and this can be done in the proposed legislation by clearly distinguishing the two functions and assigning identification and assessment to the Council independently of management functions which should be assigned to the minister.

6.6 Separate assessment and management decisions should be made publicly available, and the responsibility for making such separate decisions should be clear and unambiguous.

## **7. Thematic and regional assessment frameworks**

7.1 The concept of using thematic frameworks for assessing places for heritage listing is welcomed as a means for moving heritage understandings beyond a limited focus on individual items excluded from historical contexts.

7.2 Historical themes are primarily a means for providing understandings of the historical contexts for an item over time, and have been developed in Australia for some 20 years now. The use of themes will require that a historian with experience in heritage is a member of the Council.

7.3 The use of regional frameworks in some jurisdictions rather than thematic frameworks indicates that the proposed new legislation should allow for both approaches to be used.

## **8. Movable, documents and shipwrecks excluded**

8.1 It is not clear why the proposed legislation is restricted to places and structures only - the exclusion of many understandings of Indigenous heritage has already been noted in point 4 above.

8.2 Heritage assessment in some of the more advanced state jurisdictions provides for movable and documents to be included, and there is no reasons my the proposed new legislation should be restricted to a narrow, and now outdated, understanding of what elements of the physical environment can constitute a heritage item. The definitions should provide for movable items and documents to be considered in their own right and not just as elements of a place or structure.

8.3 Shipwrecks and maritime archaeology will necessarily contribute to an important historical theme or themes in Australia's development. Again, there seems to be no reason for the exclusion of such types of items from the proposed legislation. It also seems anomalous that the *Historic Shipwrecks Act 1976* has been excluded from this whole process.

8.4 These exclusions, when combined with the uncertainties regarding the future of the Register of the National Estate, suggest a rather myopic and limited vision of heritage is to replace the present system with its inclusiveness and inbuilt ability to change.

8.5 The legislation should explicitly provide for these types of items to be included.

## **9. Significant impacts**

9.1 The concept of prohibiting 'significant impacts' on listed items in the proposed legislation is ambiguous and possibly counter-productive.

9.2 It seems that the relevant provisions can be read as prohibiting any 'significant impact', whether that be positive or negative. Would conservation and interpretation measures for a heritage item be prevented if they were considered a 'significant impact'? There is a danger that the term will actually result in little being done to effectively manage or conserve a heritage item because to do so may involve a 'significant impact'. This terms needs a precise definition.

9.3 It is suggested that a concept of 'minimum standards' would be useful. Such minimum standards for the care and maintenance of a heritage item could be specified in a regulation or

similar manner, and provide an objective measure for the basic care of an item. This is a proactive approach that sets out the rules for minimum acceptable standards for caring for a heritage item.

## **10. Definition of defence or security criteria**

10.1 The concept of removing an item from a list on 'defence or security' grounds is similarly ambiguous and open to abuse.

10.2 This concept would seem to allow for any heritage item under the control of a defence or security agency (or transferred to such an agency for this purpose) to be removed from a list on the basis of that agency's planned management of the item (such as disposal, removal, transferral to another agency and so on) regardless of its heritage values.

10.3 Alternatively, are these provisions to allow for an item to be removed from a heritage list if their presence may prevent proper defensive measures being taken during a future war?

10.4 The terms need precise definitions and triggers if it is not to be open to abuse and contention.

## **11. Community education**

11.1 The Council seems to have no role or function in providing or promoting community education and understandings of heritage.

11.2 Heritage education is taking an increasingly prominent role in school curricula with an aim of providing future citizens with informed understandings of heritage, and promoting the involvement of people in civil society through their abilities to articulate heritage concerns and participate in heritage solutions.

11.3 Heritage education also plays a prominent role in some state jurisdictions when directed at heritage practitioners and agencies with significant heritage portfolios in the form of professional development approaches in heritage assessment and management.

11.4 Heritage education is also directed to the interested public through seminars, workshops and similar approaches, especially when considering any criterion of social significance.

11.5 The Council should be taking a leading role in such educational activities. It is a significant weakness that the proposed Council lacks any role of function in this area, which should be a best practise institution in this field

11.6 An active role for the Council in promoting or providing heritage education would make a significant contribution to facilitating collaborative and co-operative approaches to heritage between all levels of government and within the community.

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