

FEDERATION OF AUSTRALIAN HISTORICAL SOCIETIES INC.

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Review of *Environment Protection and Biodiversity Conservation Act 1999*

Notes for Presentation to Review Team in Brisbane on 11 March 2009

The Federation commends the Australian government on reviewing the operation of the *Environment Protection and Biodiversity Conservation Act 1999* and the extent to which its objects have been achieved. The Federation takes the opportunity to inform the Review Team on the intention and achievements of the Act with respect to cultural heritage and history but not the natural environment.

The Federation represents community history and heritage groups through Australia. There are around 1,000 of these groups with a combined membership of over 100,000. The Federation services these groups through its advocacy role, its website, *E-Bulletin, Newsletter*, and the Heritage Tourism publication on our website.

The Federation has the following observations on the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC) to assist the review team. They are presented in a general format indicating that the Federation has taken an overview approach in its consideration of the review:

- it is highly commendable and appropriate that cultural heritage is considered within the Act's definitions as an integral component of the 'environment' having aesthetic, historic, scientific or social significance for current and future generations of Australians. This also includes indigenous heritage. (Section 528(47) & (48));
- the implementation of the Act has not included sufficient commitment to the inclusion of cultural heritage in decision-making with respect to 'environment' and the integrated management of heritage landscapes. For this there ought to be greater relationship between the Natural Heritage Trust legislation to fully encompass the definition of 'environment' from the EPBC Act whereby cultural heritage can be protected through the operation of that legislation across Australia;
- the operation of the *Australian Heritage Council Act 2003* in providing advice to the Minister on heritage places ought to be strengthened to allow the Council to initiate consideration and identification of places of national and Commonwealth significance under the EPBC Act. (That power was removed in 2007);
- the EPBC Act is extremely complex in form and daunting to the history and heritage community, particularly as heritage provisions are scattered throughout the Act rather than consolidated. The Federation advocates that the Department of Environment, Water, Heritage and The Arts divert its attention from the narrow and bureaucratic role of listing places to raise awareness in the community of the Act's role in cultural heritage preservation and the role of the history community for that they have an ownership of the process of listing and preserving heritage places;
- the Federation and many historical societies are aware of the enormous asset that the department holds in the Register of the National Estate (RNE) database of 13,000 places compiled between 1975 and 2007. We advocate that it be retained in the public domain (EPBC Regulations may be required to be amended). The community has a very high regard for the Register which they had input into over decades;

- the EPBC Act is highly focussed on preserving areas / places as 'protected areas' which is not a familiar concept for community history groups seeking to protect their heritage places of iconic national significance or of the Commonwealth places such as post offices and lighthouses and quarantine stations;
- the EPBC Act collapses the heritage considerations for the Commonwealth to national and Commonwealth places in accordance with a policy of subsidiarity adopted by COAG in 1997. We consider that the Australian government is not demonstrating a leadership role in convincing the States, Territories and subsequently local government (under state and territory local government and planning legislation) to identify and protect state and local heritage. We believe there are opportunities to provide leadership in Australia in understanding and protecting Australian heritage and cultural heritage and telling its story. Thus identification of places of national significance is a shared responsibility between all levels of government and with the community. Furthermore the RNE could be utilised to assist local government agencies especially in preparing their cultural heritage studies and registers;
- we note that a significant number of Australian government agencies have not completed their agency heritage strategies, in accordance with the EPBC Act.
- we consider that the narrowness of the range of data considered relevant before triggering referrals under the EPBC Act may mitigate against preservation of historic places on development areas;
- the use of themes to gather nominations for the national heritage list is very restrictive and may lock certain cultural heritage out of the registration process;
- we note that the Overall Portfolio heritage funding was reduced by 5.7% in the Australian government 2008-2009 budget and the Portfolio Budget Statement made minimal reference to Commonwealth and National heritage and there was no budget press release promoting the cultural heritage theme. The Australian government policy objective to 'promote sustainable **economic** development is likely to stimulate reductions in subsequent budgets;
- There are opportunities for protection of indigenous cultural heritage under the reviews of the *Protection of Movable Cultural Heritage Act 1986* and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.
- we note the added processes of identifying relevant indigenous groups who can speak for the cultural heritage of particular places being considered for inclusion of the national or Commonwealth lists and consulting with them. This identification and consultation process can occur by taking advantage of the concurrent process under the state or territory indigenous cultural heritage legislation and/or the *Native Title Act 1993* (Cth);
- the twin issues of 'management circumstance' and the right of the Minister to consider not heritage significance values in deciding to list a place mitigate against preservation of Australia's cultural heritage. This is made more complicated and confused because there is separation between 'values' and 'place' and the right to consider the 'condition of values' without any definition of the terms. (Section 5A(h)(ix)) We believe it is an unwise compromise situation. Achieving conservation by agreement with the owner is the best outcome and could include grants to assist owners of heritage properties; and
- because the EPBC Act also plays a key role in the advancement of places for the World Heritage List we consider that the Act ought to be refined to ensure that it complies with the Burra Charter.