



Australian Heritage Commission Amendment Act 1990

No. 17 of 1991

An Act to amend the *Australian Heritage Commission Act 1975*, and for related purposes

[Assented to 21 January 1991]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title etc.

1. (1) This Act may be cited as the *Australian Heritage Commission Amendment Act 1990*.

(2) In this Act, “Principal Act” means the *Australian Heritage Commission Act 1975*¹.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. Section 3 of the Principal Act is amended:

(a) by omitting the definition of “authority of the Commonwealth” from subsection (1) and substituting the following definition:

“ ‘**authority of the Commonwealth**’ includes:

- (a) all authorities and bodies (not being companies or societies) established by or appointed under the laws of the Commonwealth or of a Territory other than the Australian Capital Territory, the Northern Territory or Norfolk Island; and
- (b) a company (other than Australian Airlines Limited) in which the whole of the shares or stock, or shares and stock carrying more than one-half of the voting power, is or are owned by or on behalf of the Commonwealth;

but does not include the Commission or a court;”;

(b) by omitting the definition of “Aboriginals”;

(c) by inserting in subsection (1) the following definitions:

“ ‘**appropriate Minister**’, in relation to a State or an internal Territory, means:

- (a) the Minister designated by that State or Territory for the purposes of this Act; or
- (b) any other Minister of that State or Territory for the time being acting for and on behalf of that Minister;

and includes a delegate of the Minister referred to in paragraph (a) or (b);

‘**approved body**’ means a body approved by the Minister for the purposes of this Act, being:

- (a) an authority or body established by or under a law of the Commonwealth;
- (b) an authority of a State or of a Territory; or
- (c) a local governing body; or
- (d) any body corporate constituted for purposes other than the acquisition of gain by its individual members;

‘**grants program**’ means the program referred to in paragraph 7 (da);

‘**Interim List**’ means the list kept under section 26;

‘**National Estate project**’ means a project relating to:

- (a) the identification of a place included in the National Estate; or
- (b) the conservation, improvement or presentation of a place entered in the Register or in the Interim List;

‘owner’, in relation to any real property, means:

- (a) if the property is held in fee simple—the person in whom the fee simple is vested; or
- (b) if the property is held under a lease from the Crown (other than a lease for the exploration or exploitation of minerals or a lease of a similar limited nature)—the lessee of the property;”.

National Estate

4. Section 4 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Without limiting the generality of subsection (1), a place that is a component of the natural or cultural environment of Australia is to be taken to be a place included in the national estate if it has significance or other special value for future generations as well as for the present community because of any of the following:

- (a) its importance in the course, or pattern, of Australia’s natural or cultural history;
- (b) its possession of uncommon, rare or endangered aspects of Australia’s natural or cultural history;
- (c) its potential to yield information that will contribute to an understanding of Australia’s natural or cultural history;
- (d) its importance in demonstrating the principal characteristics of:
 - (i) a class of Australia’s natural or cultural places; or
 - (ii) a class of Australia’s natural or cultural environments;
- (e) its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
- (f) its importance in demonstrating a high degree of creative or technical achievement at a particular period;
- (g) its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- (h) its special association with the life or works of a person, or group of persons, of importance in Australia’s natural or cultural history.”.

Functions of Commission

5. Section 7 of the Principal Act is amended:

(a) by omitting paragraph (a) and substituting the following paragraph:

“(a) on its own motion or on the request of the Minister, to give advice to the Minister, on matters relating to the national estate, including advice relating to:

- (i) action to identify, conserve, improve and present the national estate; and

- (ii) expenditure by the Commonwealth for the identification, conservation, improvement and presentation of the national estate; and
 - (iii) the grant of financial or other assistance by the Commonwealth for the identification, conservation, improvement or presentation of the national estate;”;
- (b) by inserting after paragraph (d) the following paragraph:
- “(da) subject to Part VA, to administer the National Estate Grants Program, being the program devised for the grant by the Commonwealth, in accordance with that Part, of financial assistance to the States and internal Territories and to approved bodies for expenditure on National Estate projects;”.

Powers of Commission

6. Section 10 of the Principal Act is amended by omitting from subsection (1) all the words after “Commission” (second occurring) and substituting the following word and paragraphs:

“may:

- (a) enter into contracts; and
- (b) accept gifts, devises and bequests made to it, whether on trust or otherwise, and act as trustee of moneys or other property vested in it on trust.”.

Register of the National Estate

7. Section 22 of the Principal Act is amended:

- (a) by omitting from subsection (5) “The” and substituting “Subject to subsection (6), the”;
- (b) by inserting at the end the following subsection:

“(6) The Commission is to remove from the Register a place that is part of a place that is in the Register (in this subsection called the ‘**registered place**’) by causing to be entered in the Register, against the description of the registered place:

- (a) a description of the first-mentioned place sufficient to identify it; and
- (b) a statement that the place so described, being part of the registered place, has been removed from the Register; and
- (c) the date on which the statement is entered.”.

Entry of place in Register

8. Section 23 of the Principal Act is amended:

- (a) by omitting “and” from subparagraph (2) (a) (iv);
- (b) by omitting subparagraph (2) (a) (v) and substituting the following subparagraphs:

- “(v) stated that although such objections may be made on any ground, the Commission will, in dealing with any objection, give upmost consideration to the significance of the place as part of the national estate;
- (vi) stated that the Commission will supply, on request:
 - (A) if the location of the place cannot otherwise be readily understood—a map of the place; and
 - (B) a statement regarding the significance of the place as part of the national estate; and
- (vii) specified an address to which such objections or requests may be forwarded;”;
- (c) by inserting after subsection (2) the following subsection:
 - “(2A) If:
 - (a) a person has, in accordance with a notice under paragraph (2) (a), made written objection to the entry of a place in the Register; and
 - (b) the Commission has not:
 - (i) if subparagraph (ii) does not apply—within a period of 12 months from the date specified in the notice; or
 - (ii) if, before the end of the period specified in subparagraph (i), the Minister has, at the request of the Commission, extended that period—within that period as so extended;made a decision whether or not the place is to be entered in the Register;the Commission is to be taken to be of the opinion that the place should not be recorded as part of the national estate.”;
- (d) by omitting “and” from subparagraph (3) (a) (iii);
- (e) by omitting subparagraph (3) (a) (iv) and substituting the following subparagraphs:
 - “(iv) state that, the Commission will, in dealing with any objection, give upmost consideration to the significance of the place as part of the national estate;
 - (v) state that the Commission will supply, on request:
 - (A) if the location of the place cannot otherwise be readily understood—a map of the place;
 - (B) a statement regarding the significance of the place as part of the national estate; and
 - (C) a statement of the reasons for the Commission’s decision in relation to the place;
 - (vi) specify an address to which such objections or requests may be forwarded; and”;

- (f) by omitting paragraph (3)(b) and substituting the following paragraph:

“(b) if a person has, not later than the date specified in that notice, made written objection to the Commission to the decision, reconsider that decision giving due consideration to the objection:

(i) if subparagraph (ii) does not apply—within a period of 12 months from the date specified in the notice; or

(ii) if before the end of the period specified in subparagraph (i), the Minister has, at the request of the Commission, extended that period—within that period as so extended.”;

- (g) by omitting from subsection (4) “state that the place has been so entered” and substituting the following word and paragraphs:

“state:

(a) that the place has been so entered; and

(b) that the Commission will supply on request sent to the address specified in the notice:

(i) if the location of the place cannot otherwise be readily understood—a map of the place; and

(ii) a statement regarding the significance of the place as part of the national estate; and

(iii) a statement of the reasons for the Commission’s decision in relation to the place.”;

- (h) by omitting subsection (5).

9. After section 23 of the Principal Act the following sections are inserted:

Notification before publication of public notice

“23A. (1) Where the Commission intends to enter a place in the Register, the Commission must give notice of its intention to:

(a) all owners of real property situated at the place; and

(b) the local government authority for the area in which the place is situated;

at least 7 days before a public notice in respect of that place is published under paragraph 23 (2) (a).

“(2) Where the number of owners to be given notice does not exceed 50, the notice is to be given by personal letter sent to each owner.

“(3) Where the number of owners to be given notice exceeds 50, the notice may be given:

- (a) in accordance with subsection (2); or
- (b) in one or more of the following ways:
 - (i) by advertisement in local newspapers;
 - (ii) by letters addressed to 'The owner' and left at the address of each owner at the place;
 - (iii) by displays in public buildings at or near the place.

“(4) Notice to a local government authority is to be given by letter sent to the authority at its address.

“(5) Failure to give notice under this section does not invalidate any public notice under paragraph 23 (2) (a), or the entry of any place in the Register under section 23.

Appointment of assessors

“23B. (1) Where a person has made written objection to the entry of a place in the Register in accordance with subsection 23 (2), the Minister may appoint a person or persons (other than a Commissioner or a person who has been connected with the proposal to enter the place in the Register) as assessor or assessors in respect of that objection.

“(2) An assessor assists and advises the Commission in its consideration of the objection.

“(3) An assessor is paid such fees and allowances as are determined by the Commission.”.

Removal of place from Register

10. Section 24 of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsections:

“(1) The Commission:

- (a) may, of its own motion; or
- (b) must, if so directed by the Minister;

inquire whether a place, being a place or part of a place that is in the Register, is to continue to be recorded as part of the national estate.

“(1A) Subject to this section, where, after inquiring into the matter, the Commission considers that a place that is in the Register, or is part of a place that is in the Register, should not be recorded as part of the national estate, it must remove that place from the Register.”;

- (b) by omitting from subsection (2) “(1)” and substituting “(1A)”;
- (c) by omitting paragraph (2) (a) and substituting the following paragraph:

“(a) it has, by public notice:

- (i) stated that it intends to remove the place from the Register; and
 - (ii) given, in the case of a place forming part of a place in the Register, a description of the place sufficient to identify it; and
 - (iii) notified persons of their right to object, in writing, to the removal of the place from the Register; and
 - (iv) specified the date by which such objections are to be made, not being earlier than one month after the date of publication of the notice in the *Gazette*; and
 - (v) stated that the Commission will, in dealing with any objection, give utmost consideration to the significance of the place as part of the national estate; and
 - (vi) stated that the Commission will supply, on request:
 - (A) if the location of the place cannot otherwise be readily understood—a map of the place; and
 - (B) a statement regarding the significance of the place as part of the national estate; and
 - (vii) specified an address to which such objections or requests may be forwarded;”;
- (d) by omitting paragraph (2) (c) and substituting the following paragraph:
- “(c) if a person has, not later than the date specified in that notice, made written objection to the Commission to the removal of the place from the Register, the Commission has given due consideration to the objection:
- (i) if subparagraph (ii) does not apply—within a period of 12 months from the date specified in the notice; or
 - (ii) if before the end of the period specified in subparagraph (i), the Minister has, at the request of the Commission, extended that period—within that period as so extended.”;
- (e) by omitting from subsection (3) “(1)” and substituting “(1A)”.

11. After section 24 of the Principal Act the following sections are inserted:

Upmost consideration to be given to significance of a place as part of the national estate when dealing with objection

“24A. When dealing with an objection to any of its decisions under section 23 or 24, the Commission must give upmost consideration to the significance, as part of the national estate, of the place to which the decision relates.

Supply of materials by the Commission

“24B. (1) In this section:

‘relevant material’, in relation to a place, means any of the following:

- (a) a map of the place;
- (b) a statement regarding the significance of the place as part of the national estate;
- (c) a statement of reasons for a decision of the Commission in relation to the place.

“(2) Where the Commission has, under a provision of this Act, received a request for the supply of relevant material in relation to a place, the Commission must, as soon as practicable:

- (a) if paragraph (b) does not apply—supply such material to the person who made the request; or
- (b) if the material requested is a map of the place—supply the map to that person if the location of the place cannot otherwise be readily understood.

Discretion of the Commission not to disclose precise location of a place

“24C. Where, in the opinion of the Commission, a place would be significantly damaged by the presence or actions of visitors if its precise location were disclosed in a public notice under subsection 23 (2) or 24 (2) or in a map that the Commission supplies under subsection 24B (2), it is sufficient compliance with the Act if the Commission:

- (a) gives in the notice published under subsection 23 (2) or 24 (2) a description of the place that indicates the general area in which the place is situated without disclosing the precise location of the place; or
- (b) supplies under subsection 24B (2) a map that indicates the general area in which the place is situated without disclosing the precise location of the place.”.

Interim List

12. Section 26 of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) The Commission must keep a list of places to be known as the Interim List for the Register of the National Estate.”;

- (b) by inserting after subsection (2) the following subsection:

“(2A) An entry is not to be made on the list except in accordance with subsection (2).”.

Duties of Ministers and authorities

13. Section 30 of the Principal Act is amended:

- (a) by inserting “and comment on” after “consider” in subsection (3);
- (b) by inserting after subsection (3) the following subsection:

“(3A) Where the Commission is informed of a proposed action by a Minister, Department or authority, the Commission shall, as soon as practicable, provide its comments on the proposed action to the Minister, Department or authority (as the case may be).”.

14. After Part V of the Principal Act the following Part is inserted:

“PART VA—NATIONAL ESTATE GRANTS PROGRAM

Application for grant

“31A. A State, an internal Territory or an approved body may apply to the Minister for grants of financial assistance under the grants program in respect of National Estate projects.

Commission to give advice on selection etc. of projects

“31B. The Commission may, on being requested by a State, an internal Territory or an approved body, give advice to it on the preparation of a National Estate project in respect of which an application is to be made under section 31A.

Grant of financial assistance

“31C. (1) The Minister may approve the grant, during a financial year, of financial assistance under the grants program, in such amount, and subject to such conditions, as the Minister determines:

- (a) to a State or internal Territory for expenditure by the State or Territory, or by an approved body, in respect of a National Estate project approved by the Minister; or
- (b) to an approved body for expenditure by the approved body in respect of a National Estate project approved by the Minister.

“(2) The Minister may not approve a grant of financial assistance to a State or an internal Territory without first consulting the appropriate Minister for that State or Territory.

“(3) In approving a grant, the Minister must have regard to such matters (if any) as are prescribed for the purposes of this section.

Variation of grants

“31D. The Minister may, after consultation with the appropriate Minister for a State or an internal Territory or with an approved body, vary:

- (a) the amount of any grant under the grants program to that State, Territory or approved body; or
- (b) any term or condition to which the grant is subject.

Appropriation

“31E. Any financial assistance under this Part is to be provided out of money appropriated by Parliament for the purpose.”.

Power to purchase and dispose of assets

15. Section 39 of the Principal Act is amended by omitting “\$50,000” from paragraph (a) and substituting “\$200,000”.

Committees

16. Section 45 of the Principal Act is amended by omitting “, with the approval of the Minister” from subsection (1).

Saving—notices under section 23 or 24 of Principal Act

17. In spite of any defects in a public notice given before 20 November 1979 purporting to be a notice under paragraph 23 (2) (a) or (3) (a) or 24 (2) (a) of the Principal Act, that notice has effect, and is to be taken always to have had effect, as if it had been given in accordance with the requirements of that paragraph.

NOTE

1. No. 57, 1975, as amended. For previous amendments, see Nos. 37 and 135, 1976; No. 36, 1978; No. 61, 1981; No. 63, 1984; No. 166, 1985; and No. 60, 1989.

*[Minister's second reading speech made in—
House of Representatives on 22 August 1990
Senate on 13 November 1990]*