

8 December 2008

Secretariat to the Independent Review of the EPBC Act
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CANBERRA ACT 2601,
Via epbcreview@environment.gov.au

Dear Dr Hawke

My submission of on the review of the EPBC Act focuses on the area of cultural heritage conservation.

I raise a number of issues relating to:

- the preparation of management plans for cultural heritage places under the EPBC Act and Regulations,
- a problem with separating 'values' from 'place'
- the maintenance of up-to-date statements of heritage values, and
- the issue of poorly-defined concepts and language in the Act.

As some of these issues have been raised in recent studies and workshops commissioned by the Department, in which I have been directly involved, I draw on these inputs to articulate my own concerns.

I suspect many of the problems found in dealing with cultural heritage assessment and management under the EPBC Act blanket (particularly surrounding management planning) arise because the Act is based on the language and philosophies of natural environment conservation, onto which the cultural heritage issues have been tacked as a second thought. This has resulted, in my view, in the somewhat garbled absorption of the cultural heritage concepts into a natural environment framework that ill-suits it. I believe consideration should be given to separating the heritage conservation components from the EPBC Act, and their inclusion in a new Commonwealth Heritage Act.

1. Effectiveness of [heritage] management plans development under the EPBC Act

The effectiveness of management planning for National Heritage Places and Commonwealth Heritage Listed in complying with requirements of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), or the *Environment Protection and Biodiversity Conservation Amendment Regulations 2003 (No. 1)*, specifically Schedules 5A and 5B or 7A and 7B (the Regulations), has long been known to be poor. Management plans received by the Department and the Australian Heritage Council have often failed to meet all the requirements.

A study of all management plans for National Heritage Places (including World Heritage Places) carried out for the Department in 2006 by a team of consultants headed by myself (*Management Plans for National and World Heritage Places and Properties Investigating the status of existing management plans consistent with the EPBC Act*), found that the Regulation requirements introduced in 2003 were so prescriptive that none of the plans written before the regulations, and only three written subsequently, satisfied the requirements (that is 3 out of 41 plans). This was despite the assessment of the report that in over half the cases (23 of 41 plans) the plan could be judged as an adequate and professional basis for management of the place to conserve its National Heritage values.

A Round Table of invited experienced heritage managers and practitioners (including myself) was held on 5 May 2008 at the Canberra offices of the Heritage Division of the Department of the Environment, Water, Heritage and the Arts to discuss the suitability and practicality of heritage management planning arrangements for historic places on the National or Commonwealth Heritage Lists. The recommendations of this round table should be available to the review, but in summary those relevant to the issue of management planning were to:

Replace Regulation Requirements with more flexible guidelines

The management plan Requirements (Schedules 5A and 7A of the Regulations) were viewed as being overly prescriptive, and should be replaced with a set of clear and unambiguous yet flexible guidelines. The Principles (Schedules 5B and 7B of the Regulations) were considered to provide a useful overarching statement of what should be addressed in a plan.

Refocus Regulation Requirements to more emphasis on policies

The Regulations (Schedules 5A and 7A) promote a detailed "front-end" to management plans, with too little attention to management policies and strategies. The focus of plans should be shifted to useful and practical management policies.

Reorientation to performance/outcomes focused plans

Related to the two points above, the Regulations should be less prescriptive and formula-driven so that they allow for the preparation of plans tailored in size and content to the management needs of specific sites, and which are focused on producing practical management policies for those sites.

Establish an approval process for plans

Place managers would like a clear mechanism by which plans can be evaluated and "signed-off" by the Minister, and a process by which actions undertaken according to approved plans can be exempted, especially in relation to Sections 26 and 28 of the EPBC Act.

Cross-jurisdictional consistency required in plans

Management plans are often obliged to deal with legislation and guidelines across multiple jurisdictions – Commonwealth, state/territory, and regional/local. A concern was the need to address different statements of significance between jurisdictions, the need to reconcile statements of significance and official Commonwealth values, and the problems these could pose in facilitating the practical management of a property. These matters go to the Review's direction to be guided by the Australian Government's policies to work in partnership with the states and territories within an effective federal arrangement, and to reduce and simplify the regulatory burden on people, businesses and organisations, while maintaining appropriate and efficient environmental standards

2. Problems with decision making about 'values' rather than about 'place'

One of the concepts within the EPBC Act, based on natural environment conservation philosophy, that has been forced onto heritage conservation in a confusing way is the separation of 'values' from 'place'. Whereas concentration on natural systems and biodiversity is appropriate for natural conservation, concentration on place and physical associations with values is central to much cultural heritage conservation. I am not disputing the importance and usefulness of rigorously defining and assessing heritage values, but a seeming reluctance to relate values to the places actually being conserved and managed has caused much confusion in the heritage industry, and I suspect some damage.

An example of the latter, in my view, was the 2005 decision of the former Minister Campbell rejecting the emergency National Heritage Listing of the Royal Australian Navy Transmitting Station in the ACT. In his interpretation of Criterion A for listing under EPBC, (that 'the place has significant heritage value because of the place's importance in the course, or pattern, of Australia's natural or cultural history'), the Minister argued that Criterion A:

'is a criterion related not so much to values inherent in the physical evidence of a place, but to its intangible qualities' (Statement of reasons para 63), and that:

'Given that the values of the place under criterion (a) reflect its historical association, rather than rest implicitly with the extant fabric, the decommissioning strategy proposed by Defence preserves the values of the place.' (Para 64)

This interpretation was despite the NHL nomination citation clearly identifying the physical 'attributes' of the place demonstrating the intrinsic values under this criterion. The Minister used this separation of values and place evidence to justify approving the demolition of major components of the historical fabric of the place, on the basis that it did not impact on the potential for NH listing and conservation of the place. The decision in my view, and that of many other heritage practitioners, was a farce, and caused considerable despair that the EPBC Act would ever result in a pro-conservation outcome for cultural heritage places.

The 2008 Round Table organised by the Department, referred to above, also raised this issue, and recommended:

Better connection between values and physical fabric

Concern was raised over official values being written in such a way that a link to the physical fabric of a place was often unmentioned. This has complicated the preparation of plans in two ways - significant fabric often cannot be considered in management policies that address official values, and practical management policies for official values can be difficult to prepare in the absence of a physical aspect to those values. It was recommended that the assessment of official values use a system by which values are [where appropriate] identified with physical attributes of a place. It was also recommended that the statement of significance and values could be collapsed into one. It was seen as confusing to require both when the values are the statutory component of listing.

The use of the term ‘condition of values’ (Schedule 5A (h) (ix) and its parallel in Schedule 7A) has also caused great confusion in heritage practice, where condition of fabric is an established concept, but no guidance has been given in the Act or by the Department about what the new requirement actually means.

3. Problems with refining the definition of heritage values

One of the problems imposed by the prescriptive rigidity of the EPBC requirements is that it is hard to refine the statement of values (and their association with fabric) after listing—once a place is National Heritage Listed it is a major hassle to change anything. The official listed values for places on the National or Commonwealth Heritage lists can be reassessed; but only after assessment and advice from the Australian Heritage Council and approval by the Minister.

However, the amount of research and assessment going into subsequent management planning is usually far greater than that which went into the initial listing, and it is not unusual for the management plan to present a modified statement of significance, and even to reject claimed values and introduce others. The result is that in some cases the management plan is based on a different understanding of values than the NHL listing itself.

The 2008 Round Table addressed this issue, and recommended that:

Information collected for plans needs to feed into official values

A streamlined procedure is recommended to permit dialogue between official listing and new information provided by competent professional heritage practitioners.

Perhaps an approach might be to allow NHL (and CHL) values and statements of significance to be updated in accordance with an endorsed management plan.

4. The meaning of ‘transmit’ in the EPBC Act is not clear

The meaning of ‘transmit’ in the Act is not clear, and so it is difficult to determine if a management plan achieves the ‘transmission of the National Heritage values of the place’ (Schedule 5 (a)). ‘Transmit’ is a term used in the National Heritage management principles (‘the objective in managing National Heritage places is to identify, protect, conserve, present and **transmit**, to all generations, their National Heritage values’).

‘Transmit’ is clearly differentiated from ‘present’, which might be taken to mean ‘interpretation’. Perhaps the concept of ‘transmit to all generations’ entails a combination of interpretation (telling the story) with ‘protect and conserve’ (conservation of fabric and other values), so that the values are both maintained and communicated now and into the future. Most plans have an interpretation section (to ‘present’ values, usually through an interpretation plan or program), and if added to a long-term commitment to conservation, these two components might result in the ‘transmission’ of values to all generations.

If the concept of ‘transmission’ of values is retained in the Act, it needs to be clearly defined.

I hope that you will be able to give due consideration to these matters in the review, and perhaps consider the desirability of separating the Commonwealth’s cultural heritage responsibilities into a new heritage Act, related to the EPBC Act, but couched in more appropriate ways to the needs of heritage management.

A handwritten signature in black ink, appearing to read "Michael Pearson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dr Michael Pearson

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