



Australian Government

Department of the Environment, Water, Heritage and the Arts

Submission form

Back ground to the ATSI HP Act 1

I would like to contribute a little background research to this Act as I think it can provide important political trends with respect to its present interpretation and reforms being reviewed.

Robert Tickner, the Minister for Aboriginal Affairs in the Keating Labor Government, took the view that the Aboriginal and Torres Strait Heritage Protection Act 1984 was not effective enough and therefore requested the Evatt Review to take place in 1995. Although the Evatt Review Recommendations were published as far back as 1996, they are still relevant today. An extensive consultation process was carried out which included representation from Aboriginal organisations throughout the country. However, since the Review took place, no reforms have been implemented, other than minor amendments.

The Indigenous Law Bulletin in 2000 criticised a proposed Bill introduced to amend this Act in 1999 by the government of the day (the Liberal Party), and refers to the recommendations of the Evatt Review. It had issues especially with the following aspects of the Bill,

- (i) that the requirement that an application for protection had to show that it was in the ‘national interest’ was incompatible with maintaining the Commonwealth procedure as a last resort mechanism;
- (ii) that the Bill provided for the accreditation of State and Territory heritage protection regimes without ensuring that they met the minimum standards detailed in the Review of the Act; and
- (iii) that there was no provision for Aboriginal people to exercise any control over the process, nor any provision for an Aboriginal Cultural Heritage Advisory Council as recommended in the Review¹.

¹ Culvenor 2000

Others² found the 1999 Bill as narrowing the responsibilities of the government and a walking away from International agreements. The Senate also introduced 179 amendments to the Bill, in order to reinforce the Evatt Recommendations. These included the introduction of an independent Commonwealth Aboriginal Heritage Protection Agency, a Heritage Registrar, and an Indigenous Cultural Heritage Advisory Council³. The above agency and council was to contribute towards a set of minimum standards to apply in the States and Territories, and therefore towards an accreditation process.

In the 1999 Bill, the last resort mechanism was also to be curtailed by a caveat that stated that it could only be used if it was in the national interest, by those applying from within ‘accredited’ States and Territories. This was criticised by Justice Evatt herself and others⁴ who saw the national interest as being subject to interpretation and not fulfilling the intention of the Act as being a last resort mechanism.

If the present review proposes to reintroduce the national interest caveat again, or place this in to the EPBC 1999 Act, and along with a scheme of accreditation it will significantly weaken the last resort mechanism of the Act.

A second Bill to reform the Act was introduced in 2005. Labor MP Brendan O’Connor (2007) criticised it for the following reasons,

[T]his bill does not come close to recognising the need to do that work which remains undone. Amongst other things, this bill fails to respect customary restrictions on information, including gender restricted information; guarantee access rights to sites of recognised significance for

² Albanese 2008

³ Sutherland 2001

⁴ As reported in the 1998 *Twelfth Report of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund: The Aboriginal and Torres Strait Islander Heritage Protection Bill 1998*

those allowed to do so under customary law; establish independent Indigenous cultural heritage bodies; and legislate for protection of all aspects of Indigenous heritage, including intellectual property⁵.

O'Connor indirectly refers again to the need for the setting up of independent Aboriginal cultural heritage bodies. The other issues here include "customary restrictions on information, including gender restricted information" and "guarantee access rights to sites of recognised significance" which are being addressed in this review, but not so the "protection for all aspects of Indigenous heritage". This last issue is addressed further in this submission.

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Tick if applicable:

Please tick this box if you do not want your address and other contact details included when your submission is posted on the department's website.

Web site (if applicable): _____

Are you making this submission on behalf of other people or an organisation?

⁵ O'Connor 2007

no

What is your interest in making a submission about this legislation? (optional)

I am presently doing research on Aboriginal heritage legislation as part of University studies..

Your overall comments

The Australian Government is proposing to reform the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* to improve Indigenous heritage protection laws nationally. The Act could be substantially amended or replaced. Details are in the discussion paper.

★ **Question 1: Overall, what do you think are the main problems with the current situation, and what improvements are needed?**

My impression is that it is a good thing to have this review and for public consultation to take place. In Tasmania there have been six applications to the Federal Minister to protect sites and objects. Several of these were declined under an emergency or longer term applications and no declarations have ever eventuated in Tasmania. This does not provide confidence in the Act which has proven difficult to access successfully in the past.

I am disappointed that the review does not interpret the Evatt Review Recommendations in the spirit they were intended to be taken. Instead, this review appears to be mostly concerned with a smooth State/Territory and Commonwealth process when dealing with heritage applications. This is of course important but not the main reason behind the introduction of this important legislation. Instead, much more attention should be given to ensuring that the legislation is a just and responsible Act that provides for the needs of the cultural heritage protection for Indigenous Australians as a last resort mechanism. Recommendations made in the Evatt Review strengthened the purposes of this Act. However the core Evatt reforms now appear to be jettisoned in this review although they were broadly supported and this is a backward step for Indigenous heritage protection in Australia.

Proposal 1: Purposes of the legislation

The new legislation could set out its overall aims. This could be done using the points set out on page 11 of the discussion paper.

★ **Question 1.1: Do these points adequately express the purposes of the legislation?**

] yes

[X] no - please explain why not

It is not enough to just say that Indigenous Australians are the primary source of knowledge having responsibilities for their protection of traditional laws and culture. This needs to be translated in to action that allows for this responsibility to take place. Therefore I support the implementation of the following Evatt Recommendation;

“6.3 Minimum standards for State and Territory legislation should include the establishment of Aboriginal cultural heritage bodies with responsibility for site evaluation and for the administration of the legislation. They should:

* be independent;

* be controlled by Aboriginal members representative of Aboriginal communities; “
(Evatt 1996)

And for the Commonwealth legislation,

“11.2 A new permanent independent agency ‘The Aboriginal Cultural Heritage Agency’ should be established to administer the Act in all matters leading to the exercise of discretion by the Minister “ (Evatt 1996).

As well, this review focuses exclusively on ‘traditional’ customs, practices, areas and objects. This concept of heritage needs to be broadened to include, for example, post contact sites and intangible cultural heritage.

Evatt and others⁶ did not agree, and nor do I, that the last resort mechanism should be ever denied to those seeking Commonwealth protection for heritage. I agree that

⁶ As reported in the 1998 *Twelfth Report of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund: The Aboriginal and Torres Strait Islander Heritage Protection Bill 1998*

minimum standards should apply to State and Territory legislation but that this should have no bearing on the ability to make applications to the Commonwealth legislation.

There should be a Register held by this Act holding the history of applications and their outcomes.

In the Environment Protection Biodiversity Act 1999, under 'Notes' (page 402) and number 3 of Schedule 2, it states that it is expected that the Director of Indigenous Heritage Protection will be established by the Aboriginal and Torres Strait Islander Heritage Protection Act in 2002 or a later year. The ATSIHP Act 1984 needs to appoint this person as well as an Aboriginal cultural heritage agency. Agencies need to be appointed/elected in the States and Territories.

In Tasmania, where a review is presently being conducted to reform the Aboriginal Relics Act 1975, it is hoped that a new advisory body, an Aboriginal Representative Body will be included in its draft Bill. Historically, a failed Advisory Council has not adequately represented Aboriginal Tasmanians (Tasmanian Government 2006, Information Sheet 6 2006, p 1). In fact it has not functioned since the early days of the Act (McGowan 1990, p 64) and this has been a noticeable failure of the present Act (Tasmanian Government 2006, Information Sheet 6 2006, p 1).

The other points on page 11 of the Discussion Paper are supported.

Proposal 2: Terminology – new definitions

New definitions could be put in the legislation. The definitions clarify the basis on which areas and objects can be protected under the legislation. The new definitions could use the concept of 'traditional laws and customs'. This would match the *Evidence Act 1995*. The definitions would no longer need to rely on the concept of 'particular significance', which is vague. Possible definitions appear on page 14 of the discussion paper.

★ **Question 2.1: Overall, what do you think about this proposal?**

As previously noted, ‘traditional laws and customs’ are too rigid a definition and are archaic interpretations of the meaning heritage and do not respect or acknowledge an ongoing and vibrant culture.

- ★ ***Question 2.2: Would the proposed definitions leave out any areas and objects that are covered by the current legislation because they are ‘of particular significance to Aboriginals in accordance with Aboriginal tradition’?***

[X] yes – please explain why [] no

The word ‘tradition’ or ‘traditional’ does not adequately expresses what may be significant. It is too narrow a focus and perhaps the word ‘culture’ should be used as well of or instead of, the word ‘tradition’.

★ **Question 2.3: Would the proposed definitions apply to additional areas or objects that are not covered by the current legislation?**

[X] yes - please explain why [] no

For example post contact sites, and there would be other sites having intangible heritage.

Proposal 3: Accreditation

Accreditation is a method for promoting national standards for Indigenous heritage protection laws in the states and territories. The new legislation could allow the Australian Government to accredit individual states and territories if their laws are effective. Accreditation would mean the Australian Government would not intervene in a decision of an accredited state or territory. This would give the states and territories an incentive to meet the standards and have effective legislation. Details of how this could work are set out on page 15 of the discussion paper.

Note that the content of possible national standards is covered separately under Proposal 4.

★ **Question 3.1: Overall, what do you think about this proposal?**

Rather than accreditation, I support the position of ensuring that States and Territories are brought up to a set of minimum standards that are just, are in line with human rights, and are in line with the Racial Discrimination Act 1975, but do not impede the access to the Commonwealth Act.

★ **Question 3.2: Could the proposed method of accreditation be improved?**

[x] yes - please explain why [] no

Once again, the Evatt Review recommended that States and Territories be brought up to a minimum standard with regard to their Indigenous heritage legislation. With respect to accreditation it has this to say about its function, which is has a referral use only, and therefore differs from the proposed function of this present review ;

“5.3 The Commonwealth should accredit for the purposes of the Act determinations and procedures under State /Territory laws which comply with minimum standards. It should provide, where appropriate, for the referral of matters to State/Territory agencies or bodies which meet minimum standards”⁷.

⁷ Evatt 1996

- ★ **Question 3.3: If the Australian Government Minister could provide advice for ministers of accredited state or territories to consider when making decisions, could this help make accreditation work effectively?**

yes

no - please explain why not

Well yes but this should not disallow applications being made to the Commonwealth Act at all times to maintain the Act's last resort mechanism.

- ★ **Question 3.4: Do you think that periodic reviews would help make accreditation work effectively, especially if the Minister can add to the standards for accreditation?**

yes

no - please explain why not

Not in the context it is being introduced here as already stated. There does need to be periodic reviews for minimum standards.

Proposal 4: Standards

The new legislation could specify standards for the states and territories to meet before they could be accredited. Possible standards are set out on pages 18–22 of the discussion paper. The proposed standards aim to identify the positive outcomes that good legislation can achieve, including strong protection for traditional areas and objects, a central role for traditional custodians in decision-making, and efficient, fair and transparent decision-making processes.

- ★ **Question 4.1: Would these standards, if adopted, help to improve the ways that Indigenous traditional areas or objects are protected in your state or territory?**

yes

no - please explain why not

Minimum standards should be as recommended by the Evatt Review and to include amongst others,

“6.2 A minimum standard for State and Territory heritage protection legislation is that it provide automatic/blanket protection to areas and sites falling within the definitions outlined above, through appropriate and effective criminal sanctions.

“6.3 Minimum standards for State and Territory legislation should include the establishment of Aboriginal cultural heritage bodies with responsibility for site evaluation and for the administration of the legislation.”

“6.4 Minimum standards for State and Territory laws should provide for assessments relating to the significance of sites and areas to be separated from decisions concerning land use. The former should be the responsibility of Aboriginal heritage bodies; the latter the responsibility of the executive.”

“6.5 Minimum standards for State and Territory planning and development processes should include these elements:

- * integration of Aboriginal cultural heritage issues with the planning and development process from the earliest stage;
- * an effective consultation/negotiation process for reaching agreement between developers and the Aboriginal community facilitated by a responsible Aboriginal heritage body;
- * the objective of negotiation should be to reach agreement on work clearance or site protection; legislative recognition of agreements between land users/developers and relevant Aboriginal groups;
- * minimum disclosure of confidential or gender specific information through the use of a work area clearance approach;
- * separate consultation of Aboriginal women;
- * an independent Aboriginal heritage body should determine whether a site is significant and should make recommendations concerning its protection; “ (Evatt 1996).

Other recommendations include a need for a broad interpretation for Aboriginal cultural heritage, the provision for confidentiality and the ability to access important sites which are supported (Evatt 1996).

★ **Question 4.2: Do the standards need to be specified differently, or in more detail?**

yes - please suggest changes no

Please see as above, Q4.1.

Proposal 5: Traditional custodians

The new legislation could recognise that many traditional custodians have achieved legal entitlements to their heritage, for example native title rights. Other people should not be able to apply to protect that heritage. Details of how this could work are set out on page 23 of the discussion paper.

★ **Question 5.1: Overall, what do you think about this proposal?**

I am not qualified to reply to this proposal and would be up to Aboriginal communities to decide who are to represent them as their traditional custodians, rather than through legislation.

★ **Question 5.2: Does it make sense to rely on existing legal processes like native title processes to identify traditional custodians?**

yes

no - please explain why not

As above.

★ **Question 5.3: Is it fair to allow only recognised traditional custodians, using their representative bodies and processes, to apply to protect traditional areas and objects, if there are recognised traditional custodians?**

yes

no - please explain why not

As above in Q5.1..

- ★ **Question 5.4: Should Indigenous persons who are not native title parties be able to apply for Commonwealth heritage protection over areas where native title rights and interests have already been recognised?**

yes - please explain why no

As above in Q5.2.

- ★ **Question 5.5: Are prescribed bodies corporate the appropriate organisations to apply for Commonwealth heritage protection over areas where native title rights or interests have been recognised?**

yes no - please explain why not

As above in Q5.2.

Proposal 6: Indigenous land use agreements (ILUAs)

The new legislation could support native title holders by not overriding a registered ILUA. Details of how this could work are set out on page 25 of the discussion paper.

- ★ **Question 6.1: Overall, what do you think about this proposal?**

If the ATSI HP Act 1984 is to remain as a last resort mechanism then it does need to override other acts.

★ **Question 6.2: Is it fair to stop applications to protect traditional areas and objects from an activity if the activity is allowed under a registered ILUA?**

yes

no - please explain why not

If the ATSI HP Act 1984 is to remain as a last resort mechanism then it does need to override other acts.

★ **Question 6.3: If not, is some other reform needed to prevent applications from impacting on ILUAs?**

yes - please suggest reform

no

As above in Q6.2.

★ **Question 6.4: Would this proposal complicate ILUA negotiations by encouraging people who are not native title parties to become involved in negotiations?**

yes - please explain impacts

no

As above in Q5.2.

- ★ **Question 6.5: (a) Would ILUA negotiations be more difficult if native title parties could not ask the Minister to protect traditional areas and objects from activities permitted under an ILUA?**

yes - please explain why no

If the ATSI HP Act 1984 is to remain as a last resort mechanism then it does need to override other acts.

- ★ **(b) Or would the ILUA be a stronger agreement as a result?**

yes no - please explain why not

As above as in Q6.5.

Proposal 7: Discovered remains

To reduce duplication of state and territory laws, the requirement to report all discoveries of Indigenous personal remains to the Australian Government could be removed, except for discoveries on land that is managed by the Australian Government. Details are set out on page 26 of the discussion paper.

- ★ **Question 7.1: Overall, what do you think about this proposal?**

In agreement but minimum standards would have to be ensured within State and Territory legislation, and be subject to review.

- ★ **Question 7.2: Do the states and territories have adequate processes for reporting discovered human remains that are suspected to be those of Indigenous people, and to ensure that discovered Indigenous personal remains are treated in a culturally sensitive manner?**

yes

no - please explain why not

In agreement but minimum standards would have to be ensured within State and Territory legislation, and be subject to review.

- ★ **Question 7.3: If not, how could Commonwealth legislation be used to encourage improvements without always overlapping state and territory responsibilities?**

Perhaps there could be agreed uniform statutory rules for this responsibility.

Proposal 8: Secret sacred objects and remains

The new legislation could address key Indigenous concerns about some traditional objects by making it an offence to display these objects in public. Probably this would require new definitions such as 'secret sacred object' and 'Indigenous personal remains'. Details are set out on page 27 of the discussion paper, including examples of situations where it might be necessary to prohibit or allow display.

- ★ **Question 8.1: Overall, what do you think about this proposal?**

This is supported.

★ **Question 8.2: Are there other situations where it might be necessary to prohibit or allow display?**

yes - please describe no

Whenever Traditional Owners (TO's) agree. TO's need to be consulted when an organisation or person wishes to display objects.

★ **Question 8.3: How would prohibiting the public display of these objects affect your business?**

N/A

★ **Question 8.4: Would the proposed definitions exclude any objects that might need to be protected from public display because they have a special meaning in Indigenous traditions?**

yes - please explain why no

I am not in a position to reply to this.

Proposal 9: Applications

In states and territories that are not accredited Indigenous Australians could apply to the Australian Government to protect traditional areas and objects from activities that are not already dealt with in a registered ILUA. The new legislation could set out what information to include in applications and say when applications could not be accepted. Details are on pages 30 of the discussion paper.

★ **Question 9.1: Overall, what do you think about this proposal?**

The ATSI HP Act 1984 should remain as a last resort mechanism for applications. Applications should be allowed to have as many attempts as necessary to comply with application requirements.

★ **Question 9.2: Does the legislation need to specify the content of applications?**

yes

no - please explain why not

There needs to be guidelines set down but the legislation should not dictate content.

★ **Question 9.3: What other information might need to be included in an application?**

Applications should be accepted as oral applications. These could be written down but not in place of the oral application as per Evatt recommendations which states,

“10.23 Applications should be able to be made easily. A valid application is one that is `made orally or in writing by or on behalf of an Aboriginal or a group of Aboriginals seeking the preservation or protection of a specified area from injury or desecration.’

10.42 The Act should make it clear that written records of information provided orally to the agency do not constitute representations in writing to be attached to the report” (Evatt 1996).

★ **Question 9.4: Are there other reasons why the government might not be able to accept an application?**

yes - please describe no

The Commonwealth Government should err on the side of inclusiveness with respect to accepting applications. However any rejection of applications must be shown beyond doubt that they are vexatious and frivolous, as this may be subject to interpretation.

Proposal 10: Conferences

The new legislation could set out the procedures for responding to applications. The procedures could include specifying which people the government would need to contact, because their legal rights might be affected. Following this contact the government could hold conferences to try to resolve problems. Details are on pages 33 of the discussion paper, including details of the process for setting up and running the conferences.

★ **Question 10.1: Overall, what do you think about this proposal?**

Conferences and mediation are supported.

★ **Question 10.2: Are there other people whose legal rights and interests could be affected by a decision on the application?**

yes - please describe no

Every person's rights should be taken in to consideration. The situation is however that since colonisation it is evident that Indigenous rights have not been taken in to consideration which needs to be addressed and reversed. One way of doing this is to take seriously the protection of Aboriginal cultural heritage and make heritage protection legislation work in achieving this goal.

Question 10.3: Are conferences a good way to begin to resolve the issues raised by an application?

yes no - please explain why not

- ★ **Question 10.4: In practice would the process for setting up and running conferences be an efficient and fair way to decide how to respond to the issues raised by an application?**

yes

no - please explain why not

Only if parties feel that an agreement has been reached.

Proposal 11: Sensitive information

To address Indigenous concerns about traditional knowledge, the Australian Government could have a power to direct the people involved in an application to protect culturally sensitive information. This would also apply to commercially sensitive information. Details are on page 36 of the discussion paper.

- ★ **Question 11.1: Would this new power provide adequate protection for sensitive information?**

yes

no - please explain why not

Confidentiality of secret and sacred knowledge is the right way to proceed.

Proposal 12: Interim protection

There could be more clarity around the rules for providing protection on a short-term basis in an emergency. For example there could be more clarity around the reasons for providing and revoking this form of protection, the timing, and who would need to be informed. Details are on pages 37 of the discussion paper.

★ Question 12.1: Overall, what do you think about this proposal?

Emergency protection should be extended to at least 96 hours because it does take time to work through future directions that should be taken. The Evatt Review Recommendations are reasonable and should be supported because they allow for further consideration of applications,

“10.10 Emergency declarations under s. 18 should be able to be made for a period of up to four days (96 hours).

10.11 The standard of satisfaction as to significance and threat applying to decision-makers for the purposes of s. 18 and s. 9 declarations should be lower than that currently applying in relation to s. 10 (and other) declarations. It should be based on the decision-maker having ‘reasonable grounds to believe’ that an area or object is significant and that there is a ‘serious and immediate’ threat to it.

10.12 The Act should provide that the purpose of short-term (30-day) declarations under s. 9 where an application has also been made for a s. 10 declaration in relation to the same area (interim protection) is to maintain the status quo in relation to the area pending determination of the s. 10 application.

10.13 Section 9 declarations in the form of interim protection should be capable of extension for periods of up to 60 days at a time pending determination of the s. 10 application.

10.14 The agency should be required to determine an application for protection of an area under s. 9 as soon as is practicable and in any event, within 28 days” (Evatt 1996).

★ **Question 12.2: Considering proposal 9, is 48 hours sufficient time to lodge an application for protection?**

yes

no - please explain why not

Please refer to 12.1 above.

★ **Question 12.3: Would having up to 6 days (i.e. 48 + 96 hours) of short-term protection provide a reasonable balance between the need to ensure that heritage can be protected while the application is being lodged and the need for businesses to avoid excessive delays?**

yes

no - please explain why not

Please refer to 12.1 above.

★ **Question 12.4: Would the Secretary need to consider other factors before deciding whether to provide short-term protection?**

yes - please describe no

As per Evatt Recommendation 10.11 in Q12.1.

★ **Question 12.5: Would temporary protection in the form of ministerial orders that last up to 28 days at a time provide a reasonable balance between the need to ensure that heritage can be protected while the application is being processed and the need for businesses to avoid excessive delays?**

yes no - please explain why not

Having said yes, this may not be enough time for an s.10 application to be made however.

★ **Question 12.6: Would the Minister need to consider other factors before deciding whether to provide or revoke temporary protection?**

yes - please describe no

Considerations need to be made on 'reasonable grounds to believe' in making a temporary protection rather than on in depth reporting because there would not be time for the preparation of this information. Once again the Minister needs to err on the side of caution in revoking an application. Additional information can be provided as per reply in Q12.7.

★ **Question 12.7: Would any other people need to be consulted before a protection order is made, or notified after the order is made?**

yes - please explain why no

The following Evatt Recommendations refer to Question 12.6 (orders under s.9) and to Question 12.7,

“10.26 The agency should be required to take reasonable steps to identify persons with an interest (in procedural fairness terms) in whether a declaration should be made before deciding whether to make a declaration under s. 9 or providing a report to the Minister under s. 10.

10.27 The Act should require the agency to provide interested persons with an opportunity to make representations in response to specified notification requirements before deciding whether to make a declaration under s. 9 or providing a report to the Minister under s. 10.

10.28 The Act should reflect the principle that, unless expressly provided by the Act, the opportunity for interested persons to make representations in response to specified notification requirements is the only means by which they may comment on whether a declaration should be made. Any further processes should be entirely within the discretion of the agency “(Evatt 1996).

Proposal 13: Longer-term protection

The rules for providing and revoking longer term protection could be clarified to strengthen the basis for the Australian Government Minister’s final decision. For example there could be more clarity around the reasons for providing and revoking this form of protection, including the factual basis of the decision. Details are on pages 41 of the discussion paper.

★ **Question 13.1: Overall, what do you think about this proposal?**

The Agency (as per Q1.1) being an independent Aboriginal Cultural Heritage Agency should be established to administer the Act and this Agency would be responsible for reports that are submitted to the Minister. As recommended by the Evatt Review the

Commonwealth Minister should continue to consult with the Minister at the State and Territory level.

★ **Question 13.2: Is it important to have a person who is independent from the Minister assess the facts?**

yes

no - please explain why not

Yes as per an independent Aboriginal Cultural Heritage Agency, or a Director of this agency who represents their views.

★ **Question 13.3: Is the proposed method for preparing the statement of facts a fairway to assess the facts about the situation?**

yes

no - please explain why not

As above in Q13.1 and Q13.2.

★ **Question 13.4: Would the Minister need to consider other factors before deciding whether to make a final protection order?**

yes - please describe

no

If so, the Minister would need to finally consult with the independent Aboriginal Heritage Agencies at the Commonwealth and State and Territory level.

★ **Question 13.5: Would the Minister need to consider any information that could not be included in the statement of facts?**

yes - please explain why

no

If so, the Minister would need to finally consult with the independent Aboriginal Heritage Agencies at the Commonwealth and State and Territory level.

★ **13.6: If so how this could be done fairly and without undue delay?**

As above.

★ **Question 13.7: Would the Minister need to consider other factors before deciding whether to revoke a final protection order?**

yes - please describe

no

The Minister would have to notify all people affected as well as consult with State and Territory Ministers and independent Aboriginal Heritage Agencies. The Minister should be able to continue protection after a section 10 order has reached its time limit. This can be carried out with new reports outlining any continuing or potential threats to site(s) or object(s). As it now stands with the Act, the Minister does not need Parliamentary approval to make declarations or revocations with, “(6) Nothing in this section limits the power of the Minister to revoke or vary a declaration at any time” (s. 13.6), and this

should remain, except for the disallowing of a protection order as recommended in this review (Australian Government n.d.).

Proposal 14: Penalties and enforcement

The discussion paper includes a range of suggestions for how to ensure that the new legislations enforced adequately. Details are on pages 46 of the discussion paper.

- ★ ***Question 14.1: Are there other, better ways to promote compliance and enforce protection?***

yes - please describe

no

The set of minimum standards should be implemented so that penalties for breaches would become a real deterrent.

Proposal 15: Reviews

The effectiveness of the legislation, especially the accreditation scheme, could be reviewed at regular intervals to ensure it is achieving its aims. Details are on page 49 of the discussion paper.

★ ***Question 15.1: What would be the best intervals for reviewing the legislation?***

Reviewing accreditation for referral purposes (as per comment in Q3.2) and for the set of minimum standards for States and Territories, should be carried out at regular intervals, possibly every five years, or on a needs basis.

★ ***Question 15.2: What would be the best way to review the effectiveness of accreditation?***

A public review.

★ ***Question 15.3: What specific aspects of accreditation would need to be reviewed?***

Whether States and Territories have incorporated minimum standards as per comments made in this review.

Additional space for comments

If the comment is about one of the proposals, please specify the number of the proposal.

The introduction of this legislation in 1984 went some way towards enabling the Federal government to carry out its responsibilities for Indigenous and Torres Strait Islander people as initiated by the 1967 referendum to the Constitution. It appears that consecutive governments are interested in devolving these powers back to the States and Territories thereby relinquishing important responsibilities gained. Also it needs to be noted that this Act refers to obligations to International agreements covenants in section 8 with,

“(2) This Act has effect subject to the obligations of Australia under international law, including obligations under any agreement between Australia and another country or other countries” (Australian Government n.d.).

Therefore, by interpreting the reforms of the Evatt Review Recommendations as commented above, the Government will be going some way towards fulfilling its responsibilities.

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