

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

CONSERVATION LEGISLATION

AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for the Arts, Sport, the Environment, Tourism and Territories, Senator the Hon. Graham Richardson)

CONSERVATION LEGISLATION AMENDMENT BILL 1988

GENERAL OUTLINE

The Conservation Legislation Amendment Bill 1988 clarifies and strengthens the provisions of the World Heritage Properties Conservation Act 1983 (the Act). The Bill also makes it clear that the Environment Protection (Impact of Proposals) Act 1974 (the Environment Act) does not apply, and is to be taken never to have applied, to action taken under the Act or to the submission by Australia of heritage properties to the Committee for inclusion in the World Heritage List, in accordance with its international obligations under the Convention for the Protection of World Cultural and Natural Heritage.

The Bill amends the definition in the Act of 'identified property' (to which protection may be extended by a Proclamation made under the Act) to follow more closely the procedures which the Convention for the Protection of the World Cultural and Natural Heritage requires Australia to follow in protecting properties of cultural or natural heritage as defined in the Convention. The definition is extended to property the subject of an inquiry into whether it forms part of the cultural or th natural heritage.

The Bill simplifies the procedure to be followed when the operation of the Act results in an acquisition of property within the meaning of paragraph 51(31) of the Constitution. There will be two stages only: negotiation towards an agreement, between the Commonwealth and the person from whom property is acquired, on a reasonable amount of compensation; and, failing agreement, determination of the amount by the Federal Court.

The Bill provides for the Minister administering the Act to appoint inspectors, with powers of investigation and search to be used in the enforcement of the Act.

Finally, the Bill provides that the World Heritage Properties Conservation Regulations (Amendment), Statutory Rules 1988, No. 2, and the Proclamation under subsection 6(3) of the Act by His Excellency the Governor-General on 19 January 1988, which both extended the protection of the Act as it was then in force to the wet tropical rainforest areas in Queensland which have been nominated for inclusion in the World Heritage List maintained under the Convention, are to be taken never to have come into effect.

FINANCIAL IMPACT

The Bill is not anticipated to involve increased cost to the Commonwealth.

CONSERVATION LEGISLATION

AMENDMENT BILL 1988

NOTES ON CLAUSES

PART I

Clause 1

This clause cites the short title of the Bill.

Clause 2

This clause provides that the Bill will commence on the date of Royal Assent.

PART II

Clause 3

This clause defines 'Principal Act' to mean the World Heritage Properties Conservation Act 1983.

Clause 4

This clause inserts a definition of 'inspector' in subsection 3(1) and repeals subsection 3(2) of the Act, which contained the former definition of 'identified property'.

Clause 5

This clause inserts new sections 3A and 3B into the Act.

Section 3A deals with the 'identified property' which may be protected by a Proclamation made under the Act. 'Identified property' is property subject to one or more of the following:

- (i) An inquiry established by a law of the Commonwealth for the purpose of considering whether the property forms part of the cultural or the natural heritage (within the meaning of the Convention). The subsection to an inquiry is deemed to continue until 42 days have passed after the report, or final report, of the inquiry has been submitted to the appropriate person.
- (ii) World Heritage List nomination: this status lasts from the date on which the property is submitted to the World Heritage Committee, for inclusion in the World Heritage List under the Convention, until 7 days have passed after the Committee informs the Australian Government that it has decided to include, or not to include, the whole or any part of the property in the List.

- (iii) World Heritage listing : while the property is included in the List.
- (iv) A combination of two criteria :
 - the property forms part of the cultural or the natural heritage, within the meaning of the Convention, and
 - it is declared so to do by regulations under the Act.

Paragraph 3A(1)(b) provides that 'identified property' includes any part of property referred to in paragraphs (i) to (iv), above.

If a property ceases to be, or an 'Aboriginal site' as defined in section 11 of the Act is situated in property which ceases to be, 'identified property', it is provided by proposed subsection 3A(4) of the Act that any Proclamation under subsection 6(3), section 7 or subsection 8(3) which applies section 9, 10 or 11 of the Act to the property, and any regulations made under subsection 9(1) or paragraph 10(2)(m) or 11(1)(j) which prohibit certain acts to be done in relation to the property, cease to be in force.

Section 3B provides that an 'eligible Judge' under the Act - see new subsection 17A(5), inserted by clause 7 - means a Judge of a court created by the Parliament who is, with the Judge's consent, nominated as an eligible Judge. Eligible Judges will not be personally liable for their acts or omissions done in good faith in the actual or purported performance or exercise of their functions or powers under the Act.

Clause 6

This clause amends section 9 of the Act by repealing subsections (1) and (2). The substance of the repealed paragraph (1)(h) is incorporated into the introductory words of the new subsection 9(1), and references to subsection (2) are omitted from subsections (3) and (4).

Clause 7

This clause inserts new sections 17 and 17A to C into the Act.

The present section 17 of the Act, which deals with the payment of compensation where the operation of the Act results in the acquisition of property within paragraph 51(31) of the Constitution, is repealed and a new section is substituted. The procedure for determining compensation is made shorter and simpler. The Commonwealth is made liable to pay compensation, being such reasonable amount as is agreed upon by the claimant and the Commonwealth. Should agreement not be reached, the Federal Court is to have jurisdiction to determine the amount at the suit of the claimant.

Proposed section 17A provides for the enforcement of the Act.

Proposed subsection 17A(1) empowers the Minister to appoint inspectors for the purpose of the Act.

Subsections (2) and (3) provide that, for an 'eligible purpose' as defined in subsection (6), an inspector may enter, search, photograph in and record occurrences in an 'eligible place' (also defined), and inspect, examine, photograph and measure an 'eligible thing' (with specific power to stop, detain, enter and search a vehicle for the latter purpose).

Subsections (3) to (5) empower the Minister to issue each inspector, other than a member of a police force, with a photographic identity card.

Subsection (4) restricts the power to enter an eligible place, other than a public place or a vehicle, to situations where

- the consent of the person in charge of the eligible place or vehicle is obtained,
- a warrant under subsection (5) authorises entry, or
- the inspector believes on reasonable grounds that entry is necessary to prevent the concealment, loss or destruction of any thing, and the circumstances are of such seriousness and urgency as to require and justify immediate entry without consent or a warrant.

Subsection (5) confers on an 'eligible Judge' - see clause 5, section 3B - the power to issue warrants authorising inspectors to enter and exercise powers under subsection (2), on information by the inspector that it is reasonably necessary to do so. The warrant may be executed with such assistance and force as is necessary and reasonable.

Subsection (6) requires that a warrant should specify the purpose of issue, the time(s) at which entry may be made, and the expiry date of the warrant (not to be later than one month after the date of issue).

Subsections (7) to (9) empower the Minister to issue each inspector, other than a member of a police force, with a photographic identity card. The inspector must produce the card on exercising a power under subsection (3). (Police not in uniform must produce written evidence that they are police). The inspector is to return the card to the Minister on ceasing to be an inspector; failure to do so will be an offence, punished by a fine of \$100.

Subsection (10) defines terms for the purposes of the section. An 'eligible purpose' means the purpose of determining whether an act, unlawful by virtue of section 9, 10 or 11 of the Act, has been, is being or is likely to be done, or of obtaining

information that may be relevant to the making of a Proclamation or of regulations under the Act. An 'eligible thing', the subject of search and examination under subsections (2) and (3), means a thing prescribed by regulations under the Act. An 'eligible place' is any land, building or structure, excluding a dwelling house - to which therefore the powers of entry and search will not extend.

Section 17B prohibits the obstruction, without reasonable excuse, of an inspector exercising powers under the Act. The penalty for this offence is a \$1,000 fine or 12 months' imprisonment or both.

Section 17C prohibits inspectors, during or after their service as inspectors, from recording or communicating information, or disclosing documents, acquired in exercising powers under the Act, except for the purposes of the Act; but the section does not prohibit communication or disclosure to the Minister, the Secretary of the Department administering the Act, an officer authorised by the Secretary to receive the information or documents or a court. A person to whom information is or documents are disclosed under the section is under a similar obligation of non-disclosure. Non-compliance with the section is an offence, with a penalty of a \$1,000 fine or 6 months' imprisonment, or both. The section is to operate in conjunction with the Freedom of Information Act 1982; it is provided that section 38 of that Act, dealing with secrecy provisions in other Acts, is not to apply to section 17C.

PART III

Clause 8

This clause defines 'Principal Act' in this Part as the Environment Protection (Impact of Proposals) Act 1974 (the 'Environment Act' in these notes).

Clause 9

This clause inserts a new section 4A into the Environment Act, providing that nothing in the Environment Act should apply in relation to action under the World Heritage Properties Conservation Act or the regulations thereunder, or to the submission by the Commonwealth to the World Heritage Committee of natural or cultural heritage properties under Article 11 of the World Heritage Convention. Section 4A is to have effect as if it had come into operation on the date of commencement of the World Heritage Properties Conservation Act, 22 May 1983.

PART IV

Clause 10

This clause provides that the Proclamation under subsection 6(3) of the Act made by the Governor-General on 19 January 1988, declaring that certain property in Queensland should be property to which section 9 of the Act applies, shall be taken never to have come into force.

Clause 11

This clause provides that the World Heritage Properties Conservation Regulations (Amendment), Statutory Rules No. 2, 1988, gazetted on 20 January 1988, shall be taken never to have come into effect.

