



# **Australian Heritage Commission Act 1975**

**Act No. 57 of 1975 as amended**

**[Note: This Act is to be repealed by Act No. 86 of 2003]**

This compilation was prepared on 26 September 2003  
taking into account amendments up to Act No. 86 of 2003

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# An Act to establish an Australian Heritage Commission

## Part I—Preliminary

### 1 Short title [see Note 1]

This Act may be cited as the *Australian Heritage Commission Act 1975*.

### 2 Commencement [see Note 1]

This Act shall come into operation on the day on which it receives the Royal Assent.

### 3 Interpretation

(1) In this Act, unless the contrary intention appears:

**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.

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**Australia** includes the external Territories to which this Act extends.

**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 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.

**Chair** means the Chair of the Commission.

**Commission** means the Commission established by this Act.

**conservation**, in relation to the national estate, includes protection, maintenance and preservation, and **conserve** has a corresponding meaning.

**co-opted Commissioner** means a person appointed under subsection 21(1) to be a co-opted Commissioner.

**Department** means an Agency (within the meaning of the *Public Service Act 1999*).

**grants program** means the program referred to in paragraph 7(da).

**improvement**, in relation to the national estate, includes the restoration of places included in the national estate, and **improve** has a corresponding meaning.

**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.

**place** includes:

- (a) a site, area or region;
- (b) a building or other structure (which may include equipment, furniture, fittings and articles associated with or connected with such building or other structure); and
- (c) a group of buildings or other structures (which may include equipment, furniture, fittings and articles associated with or connected with such group of buildings or other structures);

and, in relation to the conservation or improvement of a place, includes the immediate surroundings of the place.

**presentation**, in relation to the national estate, includes:

- (a) the exhibition or display of;
- (b) the provision of access to; and
- (c) the publication of information in relation to;

places included in the national estate, and **present** has a corresponding meaning.

**Register** means the Register of the National Estate kept in pursuance of this Act.

**representative Commissioner** means a Commissioner whose appointment is authorized by subsection 12(1A).

**Territory** means an internal Territory or an external Territory to which this Act extends.

- (2) In this Act, a reference to public notice is a reference to notice published:

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- (a) in the *Gazette*;
- (b) in a local newspaper, if any, circulating in the area concerned; and
- (c) in each State and Territory, in a newspaper circulating throughout that State or Territory.

**4 National Estate**

- (1) For the purposes of this Act, the national estate consists of those places, being components of the natural environment of Australia or the cultural environment of Australia, that have aesthetic, historic, scientific or social significance or other special value for future generations as well as for the present community.
- (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.

- (2) For the purposes of this section, Australia includes the territorial sea of Australia and the continental shelf of Australia.
- (3) A place may form part of the national estate for the purposes of this Act notwithstanding that the conservation, improvement or presentation of the place is dealt with by another Act.

## **5 Extension to Territories**

This Act extends to every external Territory.

## **Part II—Establishment, functions and powers of the Australian Heritage Commission**

### **6 Australian Heritage Commission**

There is established by this Act a Commission by the name of the Australian Heritage Commission.

### **7 Functions of Commission**

The functions of the Commission are:

- (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) to encourage public interest in, and understanding of, issues relevant to the national estate;
- (c) to identify places included in the national estate and to prepare a register of those places in accordance with Part IV;
- (d) to furnish advice and reports in accordance with Part V;
- (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;
- (e) to further training and education in fields related to the conservation, improvement and presentation of the national estate;

- (f) to make arrangements for the administration and control of places included in the national estate that are given or bequeathed to the Commission; and
- (g) to organize and engage in research and investigation necessary for the performance of its other functions.

## **8 Consultation by Commission**

The Commission shall, in the performance of its functions in relation to any matter, and so far as it considers appropriate having regard to the nature of the matter, consult with Departments and authorities of the Commonwealth and of the States, local government authorities and community and other organizations and, in particular, without limiting the generality of the foregoing, shall consult with the Director of National Parks about any matter concerning the declaration or management of a Commonwealth reserve under the *Environment Protection and Biodiversity Conservation Act 1999*.

## **9 Departments and authorities to assist Commission**

- (1) All Departments and all authorities of the Commonwealth shall give to the Commission such assistance in the carrying out of its functions as is reasonably practicable.
- (2) All Departments and all authorities of the Commonwealth shall comply with all reasonable requests for information made to them by the Commission in the performance of its functions.

## **10 Powers of Commission**

- (1) The Commission may do all things that are necessary or convenient to be done for or in connexion with the performance of its functions and, in particular, without limiting the generality of the foregoing, the Commission may:
  - (a) enter into contracts; and
  - (aa) despite section 37, obtain goods or services on credit from any person by the use of a credit card; and

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- (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.
- (2) Notwithstanding anything contained in this Act, any moneys or property vested in the Commission upon trust shall be dealt with in accordance with the powers and duties of the Commission as trustee.

## **Part III—Constitution and meetings of the Commission**

### **11 Nature of Commission**

- (1) The Commission:
  - (a) is a body corporate with perpetual succession;
  - (b) shall have a common seal;
  - (c) may acquire, hold and dispose of real and personal property; and
  - (d) may sue and be sued in its corporate name.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the Commission. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

- (2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Commission affixed to a document and shall presume that it was duly affixed.

### **12 Membership of Commission**

- (1) The Commission shall consist of:
  - (a) the Chair; and
  - (b) not fewer than 4 nor more than 6 other Commissioners.
- (1A) A person who is the Secretary of a Department or the Chair of an authority of the Commonwealth may be appointed as a Commissioner, but not more than 2 such persons shall hold office as Commissioners at the one time.
- (2) The Commissioners shall be appointed by the Governor-General as part-time Commissioners.
- (3) The Chair and not fewer than one-half of the other Commissioners shall be persons who are not persons appointed or engaged on a full-time basis under the *Public Service Act 1999* or full-time

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members, officers or employees of an authority of the Commonwealth.

- (4) The Commissioners, other than the representative Commissioners, shall be persons having qualifications relevant to, or special experience or interest in, a field related to the functions of the Commission.
- (5) For the purpose of making recommendations to the Governor-General for the appointment of Commissioners referred to in paragraph (1)(b), other than representative Commissioners, the Minister shall:
  - (a) have regard to the desirability of the membership of the Commission including persons resident in different parts of Australia; and
  - (b) consult, so far as he or she considers appropriate, with Ministers and authorities of the States, local government authorities and community and other organizations.
- (7) The performance of the functions or the exercise of the powers of the Commission is not affected by reason only of more than one-half of the Commissioners, other than the Chair, being, during a period of not more than 6 months, persons who are officers or employees of the Australian Public Service or members, officers or employees of an authority of the Commonwealth.
- (8) For the purposes of this section, where an authority of the Commonwealth is constituted by one person, that person shall be deemed to be the Chair, and a member, of the authority.
- (9) For the purposes of this section, where an authority of the Commonwealth is constituted by 2 or more persons none of whom is called the Chair, the person who normally presides at meetings of the authority shall be deemed to be the Chair.
- (10) The appointment of a Commissioner is not invalidated and shall not be called in question by reason of a defect or irregularity in, or in connexion with, his or her appointment.

**13 Term of office**

- (1) Subject to this Act, a Commissioner, other than a representative Commissioner, holds office for such period, being not more than 3 years, as the Governor-General specifies in the instrument of his or her appointment, but is eligible for re-appointment.
- (2) A person shall not hold office under subsection (1) for a continuous period exceeding 6 years.
- (3) A person who has held office under subsection (1) for a continuous period of 6 years is not eligible for re-appointment for a term of office commencing within 12 months after the expiration of that period.
- (4) A representative Commissioner holds office during the pleasure of the Governor-General.

**14 Remuneration and allowances**

- (1) A Commissioner, other than a representative Commissioner, and a co-opted Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he or she shall be paid such remuneration as is prescribed.
- (2) A Commissioner shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**15 Resignation**

A Commissioner, other than a representative Commissioner, may resign his or her office by writing signed by him or her and delivered to the Governor-General, but the resignation does not have effect until it is accepted by the Governor-General.

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**16 Acting Chair**

- (1) The Minister may appoint a Commissioner, other than a representative Commissioner, to act as Chair:
  - (a) during a vacancy in the office of Chair; or
  - (b) during any period, or during all periods, when the Chair is absent from duty or from Australia or, for any reason, is unable to perform the functions of his or her office;but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) The Minister may:
  - (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Chair; and
  - (b) at any time terminate such an appointment.
- (3) Where a person is acting as Chair in accordance with paragraph (1)(b) and the office of Chair becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
- (4) The appointment of a person to act as Chair ceases to have effect if he or she resigns the appointment by writing signed by him or her and delivered to the Minister, but the resignation does not have effect until it is accepted by the Minister.
- (5) While the appointment of a person to act as Chair remains in force, he or she has, and may exercise, all the powers and shall perform all the functions of the Chair.
- (6) The validity of anything done by a person acting as Chair shall not be called in question on the ground that the occasion for his or her appointment had not arisen or that the appointment had ceased to have effect.

**17 Deputies**

- (1) A representative Commissioner who is the Secretary of a Department may, in writing, authorize an officer of that Department to represent him or her at a meeting of the Commission.
- (2) A representative Commissioner who is, or is deemed for the purposes of section 12 to be, the Chair of an authority of the Commonwealth may, in writing, authorize another member of the authority (if any) or an officer or employee of the authority to represent him or her at a meeting of the Commission.
- (3) A person authorized under subsection (1) or (2) to represent a Commissioner at a meeting is entitled to attend the meeting in the place of the Commissioner and, when so attending, shall be deemed to be a Commissioner.

**18 Termination of appointment of Commissioner**

- (1) The Governor-General may terminate the appointment of a Commissioner, other than a representative Commissioner, by reason of misbehaviour or physical or mental incapacity.
- (2) If a Commissioner:
  - (a) not being a representative Commissioner, is absent, except with the permission of the Minister, from 3 consecutive meetings of the Commission;
  - (b) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (c) fails to comply with his or her obligations under section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*;

the Governor-General shall terminate the appointment of the Commissioner.

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**19 Application of sections 27F to 27L of the *Commonwealth Authorities and Companies Act 1997* to deemed and co-opted Commissioners**

Sections 27F to 27L of the *Commonwealth Authorities and Companies Act 1997* (disclosure of material personal interests) applies to a person deemed to be a Commissioner under subsection 17(3), or to a person who is a co-opted Commissioner, as if the person were a Commissioner.

**20 Meetings**

- (1) The Commission shall hold such meetings as are necessary for the performance of its functions.
- (2) The Chair may at any time convene a meeting and shall ensure that at least 4 meetings are held in each year.
- (3) Where the Minister requests the Chair to do so, the Chair shall forthwith convene a meeting.
- (4) At a meeting, a quorum is constituted by a number of Commissioners equal to a majority of the Commissioners for the time being holding office.
- (5) The Chair shall preside at all meetings at which he or she is present.
- (6) If the Chair is not present at a meeting, the Commissioners present shall elect one of their number to preside at the meeting.
- (7) Questions arising at a meeting shall be determined by a majority of the votes of the Commissioners present and voting but the vote shall be void and of no effect unless the majority of deliberative votes are made by Commissioners referred to in subsection 12(3).
- (8) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (9) In relation to a time when a person is acting as Chair, references in this section to the Chair shall be read as references to that person.

- (10) If the Commission so determines, a Commissioner may participate in, and form part of a quorum at, a meeting of the Commission by means of any of the following methods of communication:
- (a) telephone;
  - (b) closed circuit television;
  - (c) another method of communication determined by the Commission.
- (11) A determination of the Commission under subsection (10) may be made in respect of a particular meeting, or in respect of all meetings of the Commission.
- (12) A Commissioner who participates in a meeting as provided by subsection (10) shall be taken for the purposes of this Part to be present at the meeting.
- (13) If the Commission so determines, a resolution shall be taken to have been passed at a meeting of the Commission if, without meeting, a majority of the number of Commissioners who would, if present at a meeting of the Commission and entitled to vote on the resolution at that meeting, have constituted a quorum of the Commission indicate agreement with the resolution in accordance with the method determined by the Commission.

## **21 Co-opted Commissioners**

- (1) Subject to this section, the Commission may appoint a person to be a co-opted Commissioner for such period, not exceeding 12 months, as the Commission determines.
- (2) A person appointed under subsection (1) may take part in the deliberations of the Commission, but has no power to vote.
- (3) A person appointed under subsection (1):
- (a) is to be regarded as a Commissioner for the purposes of section 14 of this Act and of sections 27F to 27L of the *Commonwealth Authorities and Companies Act 1997*; but
  - (b) is not to be regarded as a Commissioner for the purposes of any of the other provisions of this Act or of the *Commonwealth Authorities and Companies Act 1997*.

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- (4) Not more than 2 persons shall hold office as co-opted Commissioners at any one time.

## **Part IV—The Register of the National Estate**

### **22 Register of the National Estate**

- (1) The Commission shall keep a register, to be known as the Register of the National Estate, in which will be listed places included in the national estate.
- (2) A place shall not be entered in the Register otherwise than in accordance with section 23.
- (3) The Commission shall enter a place in the Register by causing to be entered in the Register a description of the place sufficient to identify it and the date on which the entry is made.
- (4) A place shall not be removed from the Register otherwise than in accordance with section 24.
- (5) Subject to subsection (6), the Commission shall remove a place from the Register by causing to be entered in the Register, against the description of that place, the statement that the place has been removed from the Register and the date on which the statement is entered.
- (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.

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**23 Entry of place in Register**

- (1) Subject to this section, where the Commission considers that a place that is not in the Register should be recorded as part of the national estate it shall enter the place in the Register.
- (2) The Commission shall not enter a place in the Register in accordance with subsection (1) unless:
  - (a) it has, by public notice:
    - (i) stated that it intends to enter the place in the Register;
    - (ii) given a description of the place sufficient to identify it;
    - (iii) notified persons of their right to make written objection to the entry of the place in the Register;
    - (iv) specified the date by which such objections are to be made, not being earlier than 3 months after the date of publication of the notice in the *Gazette*;
    - (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;
  - (b) the date specified in that notice has passed; and
  - (c) if a person has, not later than the date specified in that notice, made written objection to the Commission to the entry of the place in the Register, the Commission has given due consideration to that objection.
- (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.

- (3) Where, after the giving of a public notice referred to in paragraph (2)(a) in relation to a place but before the place has been entered in the Register, the Commission becomes of the opinion, whether by reason of its consideration of objections or otherwise, that the place, or a place forming part of the place, should not be recorded as part of the national estate, the Commission shall:
  - (a) by public notice:
    - (i) state that it has decided not to enter the place, or that part of the place, in the Register;
    - (ii) notify interested persons of their right to make written objection to the decision;
    - (iii) specify the date by which such objections are to be made, not being earlier than 3 weeks after the date of publication of the notice in the *Gazette*;
    - (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

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- (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.
- (4) Where a place is entered in the Register in accordance with subsection (1), the Commission shall by public notice 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.

**23A Notification before publication of public notice**

- (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.

### **23B Appointment of assessors**

- (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.

### **24 Removal of place from Register**

- (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

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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.

- (2) The Commission shall not remove a place from the Register in accordance with subsection (1A) unless:
- (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 upmost 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;
  - (b) the date specified in that notice has passed; and
  - (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.

- (3) Where a place is removed from the Register in accordance with subsection (1A), the Commission shall by public notice state that the place has been so removed.

#### **24A Upmost consideration to be given to significance of a place as part of the national estate when dealing with objection**

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.

#### **24B Supply of materials by the Commission**

- (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.

#### **24C Discretion of the Commission not to disclose precise location of a place**

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

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## Section 26

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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.

### 26 Interim List

- (1) The Commission must keep a list of places to be known as the Interim List for the Register of the National Estate.
- (2) Where a notice is issued in accordance with paragraph 23(2)(a) in respect of a place, the Commission shall enter on the list a description of the place sufficient to identify it.
- (2A) An entry is not to be made on the list except in accordance with subsection (2).
- (3) The Commission shall strike out the description of a place on the list when:
  - (a) the place is entered in the Register; or
  - (b) the Commission has decided not to enter the place in the Register, after complying with subsection 23(3).

### 27 Inspection of the Register

A person may inspect the Register or the list kept in pursuance of section 26 and may make a copy of, or take an extract from, an entry in the Register or that list.

## **Part V—Protection of the national estate**

### **30 Duties of Ministers and authorities**

- (1) Each Minister shall give all such directions and do all such things as, consistently with any relevant laws, can be given or done by him or her for ensuring that the Department administered by him or her or any authority of the Commonwealth in respect of which he or she has ministerial responsibilities does not take any action that adversely affects, as part of the national estate, a place that is in the Register unless he or she is satisfied that there is no feasible and prudent alternative to the taking of that action and that all measures that can reasonably be taken to minimise the adverse effect will be taken and shall not himself or herself take any such action unless he or she is so satisfied.
- (2) Without prejudice to the application of subsection (1) in relation to action to be taken by an authority of the Commonwealth, an authority of the Commonwealth shall not take any action that adversely affects, as part of the national estate, a place that is in the Register unless the authority is satisfied that there is no feasible and prudent alternative, consistent with any relevant laws, to the taking of that action and that all measures that can reasonably be taken to minimise the adverse effect will be taken.
- (3) Before a Minister, a Department or an authority of the Commonwealth takes any action that might affect to a significant extent, as part of the national estate, a place that is in the Register, the Minister, Department or authority, as the case may be, shall inform the Commission of the proposed action and give the Commission a reasonable opportunity to consider and comment on it.
- (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).

Section 31

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- (4) For the purposes of this section, the making of a decision or recommendation (including a recommendation in relation to direct financial assistance granted, or proposed to be granted to a State) the approval of a program, the issue of a licence or the granting of a permission shall be deemed to be the taking of action and, in the case of a recommendation, if the adoption of the recommendation would adversely affect a place, the making of the recommendation shall be deemed to affect the place adversely.

**31 Places deemed to be in Register**

For the purposes of this Part, a place on the list kept in pursuance of section 26 shall be deemed to be in the Register.

## **Part VA—National Estate grants program**

### **31A Application for grant**

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.

### **31B Commission to give advice on selection etc. of projects**

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.

### **31C Grant of financial assistance**

- (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.

Section 31D

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**31D Variation of grants**

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.

**31E Appropriation**

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

## **Part VI—Staff**

### **32 Staff of Commission**

- (1) The Staff of the Commission shall be persons engaged under the *Public Service Act 1999*.
- (2) The use of the services of the Staff of the Commission by Commissioners is subject to the control of the Chair.

### **33 Public servants to assist Commission**

Arrangements may be made between the Commission and the Minister administering any Agency (within the meaning of the *Public Service Act 1999*) or with an authority of the Commonwealth, for the services of officers or employees of the Agency or of the authority to be made available to the Commission.

## Part VII—Finance

### 34 Moneys payable to Commission

- (1) There are payable to the Commission such moneys as are appropriated by the Parliament for the purposes of the Commission.
- (2) The Minister for Finance may give directions as to the amounts in which, and the times at which, moneys referred to in subsection (1) are to be paid to the Commission.

### 35 Application of moneys

- (1) The moneys of the Commission shall be applied only:
  - (a) in payment or discharge of the costs, expenses and other obligations of the Commission; and
  - (b) in payment of remuneration, expenses, fees and allowances payable to any person under this Act.
- (2) Subsection (1) does not prevent investment of surplus money of the Commission under section 18 of the *Commonwealth Authorities and Companies Act 1997*.

### 37 Commission not to borrow

The Commission shall not borrow moneys from any person.

### 39 Power to purchase and dispose of assets

The Commission shall not, except with the approval of the Minister:

- (a) enter into a contract involving the payment or receipt by the Commission of an amount exceeding \$200,000 or, if a higher amount is prescribed, that higher amount; or
- (b) enter into a lease of land for a period exceeding 10 years.

**42 Taxation**

- (1) Subject to subsection (2), the Commission is not subject to taxation under the laws of the Commonwealth or of a State or Territory.
- (2) The regulations may provide that subsection (1) does not apply in relation to taxation under a specified law.

## Part VIII—Miscellaneous

### 43 Extra reporting requirements

- (1) The annual report on the Commission under section 9 of the *Commonwealth Authorities and Companies Act 1997* must also include a description of the condition of the national estate at the end of the period to which the report relates.
- (2) The Commission may also give the Minister any other reports relating to the national estate that it thinks fit.
- (3) The Minister must cause any report the Commission gives the Minister under subsection (2), or under paragraph 16(1)(b) of the *Commonwealth Authorities and Companies Act 1997*, to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

### 45 Committees

- (1) The Commission may, appoint a Committee to assist the Commission in relation to a matter.
- (2) A Committee appointed under this section shall consist of such persons (who may include Commissioners) as the Commission thinks fit.
- (3) A Committee shall make such investigations, and furnish to the Commission such reports, in connexion with the matter in relation to which it has been appointed, as the Commission directs.
- (4) A member of a Committee shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he or she shall be paid such remuneration as is prescribed.
- (5) A member of a Committee shall be paid such allowances as are prescribed.

- (6) Subsections (4) and (5) have effect subject to the *Remuneration Tribunal Act 1973*.

**46 Consultants**

- (1) The Commission may engage persons having suitable qualifications and experience as consultants to the Commission.
- (2) The terms and conditions of the engagement of a person under subsection (1) are such as are determined by the Commission.

**47 Delegation**

- (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a person any of its powers under this Act, other than this power of delegation.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to be exercised by the Commission.
- (3) A delegation under this section does not prevent the exercise of a power by the Commission.

**48 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.



**Table of Acts****Notes to the *Australian Heritage Commission Act 1975*****Note 1**

The *Australian Heritage Commission Act 1975* as shown in this compilation comprises Act No. 57, 1975 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 16 July 1999 is not included in this compilation. For subsequent information *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Heritage Commission Act 1975</i>	57, 1975	19 June 1975	19 June 1975	
<i>Australian Heritage Commission Amendment Act 1976</i>	135, 1976	2 Dec 1976	2 Dec 1976	S. 6(2) and (3)
<i>Administrative Changes (Consequential Provisions) Act 1978</i>	36, 1978	12 June 1978	12 June 1978	S. 8
<i>Statute Law Revision Act 1981</i>	61, 1981	12 June 1981	S. 115: Royal Assent (a)	—
<i>Public Service Reform Act 1984</i>	63, 1984	25 June 1984	S. 151(1): 1 July 1984 ( <i>see Gazette</i> 1984, No. S245) (b)	S. 151(9)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Public Service and Statutory Authorities Amendment Act 1985</i>	166, 1985	11 Dec 1985	Ss. 1–3, 5, 30(8), 31, 35, 40 and 43: Royal Assent S. 24: 15 Mar 1981 Ss. 12 and 15: 22 Dec 1984 S. 44: 21 July 1985 Ss. 27–29: 1 Jan 1986 (see s. 2(5) and <i>Gazette</i> 1985, No. S563) Ss. 14, 18, 21, 22, 30(1)–(7) and 32: 1 July 1986 (see <i>Gazette</i> 1986, No. S310) Ss. 33, 34 and 36–39: 1 Apr 1986 (see <i>Gazette</i> 1986, No. S134) Remainder: 8 Jan 1986	S. 45(2)
<i>Arts, Territories and Environment Legislation Amendment Act 1989</i>	60, 1989	19 June 1989	Ss. 11 and 13: 7 Dec 1988 Part 5 (ss. 14 and 15): 11 May 1989 (see s. 2(3)) Remainder: Royal Assent	—
<i>Australian Heritage Commission Amendment Act 1990</i>	17, 1991	21 Jan 1991	21 Jan 1991	S. 17
<i>Arts, Environment and Territories Legislation Amendment Act 1992</i>	130, 1992	24 Oct 1992	24 Oct 1992	—
<i>Qantas Sale Act 1992</i>	196, 1992	21 Dec 1992	Schedule (Parts 1 and 2): 10 Mar 1993 (see <i>Gazette</i> 1993, No. GN17) (c) Schedule (Part 5): 30 Aug 1995 (see <i>Gazette</i> 1995, No. S324) (c)	S. 2(6) (am. by 60, 1993, s. 4; 168, 1994, s. 3)
<b>as amended by</b>				
<i>Qantas Sale Amendment Act 1993</i>	60, 1993	3 Nov 1993	10 Mar 1993	—
<i>Qantas Sale Amendment Act 1994</i>	168, 1994	16 Dec 1994	S. 3 (item 17): Royal Assent (d)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Arts, Environment and Territories Legislation Amendment Act 1993</i>	6, 1994	18 Jan 1994	S. 5: Royal Assent (e)	—
<i>Environment, Sport and Territories Legislation Amendment Act 1995</i>	25, 1995	6 Apr 1995	6 Apr 1995	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 5 (items 29–32): Royal Assent (f)	—
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (items 247–257): 1 Jan 1998 (see <i>Gazette</i> 1997, No. GN49) (g)	—
<i>Environmental Reform (Consequential Provisions) Act 1999</i>	92, 1999	16 July 1999	Schedule 3 (items 5–18) and Schedule 4 (item 40): 16 July 2000 (h)	Sch. 3 (item 17): [see Table A]
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 181–185): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (i)	—
<i>Corporate Law Economic Reform Program Act 1999</i>	156, 1999	24 Nov 1999	Schedule 10 (items 26–28): 13 Mar 2000 (see <i>Gazette</i> 2000, No. S114) (j)	—
<i>Australian Heritage Council (Consequential and Transitional Provisions) Act 2003</i>	86, 2003	23 Sept 2003	Schedule 1 (item 1): [see (k) and Note 2]	—

## Act Notes

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- (a) The *Australian Heritage Commission Act 1975* was amended by section 115 only of the *Statute Law Revision Act 1981*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (b) The *Australian Heritage Commission Act 1975* was amended by subsection 151(1) only of the *Public Service Reform Act 1984*, subsection 2(4) of which provides as follows:
- (4) The remaining provisions of this Act shall come into operation on such day as is, or such respective days as are, fixed by Proclamation.
- (c) The *Australian Heritage Commission Act 1975* was amended by the Schedule (Parts 1, 2 and 5) of the *Qantas Sale Act 1992*, subsections 2(2), (3)(a) and (c) of which provide as follows:
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
  - (3) A Proclamation may fix a day that is earlier than the day on which the Proclamation is published in the *Gazette* but only if:
    - (a) in the case of sections 30, 31, 35, 37, 39, 43 and 50 and Parts 1 and 2 of the Schedule—the day is not earlier than the substantial minority sale day; and
    - (c) in the case of sections 25, 36, 38, 44 and 51 and Parts 5, 6 and 7 of the Schedule—the day is not earlier than the 100% sale day.
- (d) The *Qantas Sale Act 1992* was amended by section 3 (item 17) only of the *Qantas Sale Amendment Act 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (e) The *Australian Heritage Commission Act 1975* was amended by section 5 only of the *Arts, Environment and Territories Legislation Amendment Act 1993*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (f) The *Australian Heritage Commission Act 1975* was amended by Schedule 5 (items 29–32) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (g) The *Australian Heritage Commission Act 1975* was amended by Schedule 2 (items 247–257) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (h) The *Australian Heritage Commission Act 1975* was amended by Schedule 3 (items 5–16 and 18) and Schedule 4 (item 40) only of the *Environmental Reform (Consequential Provisions) Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences when the *Environment Protection and Biodiversity Conservation Act 1999* commences.
- (i) The *Australian Heritage Commission Act 1975* was amended by Schedule 1 (items 181–185) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
  - (2) Subject to this section, this Act commences at the commencing time.

**Act Notes**

- (j) The *Australian Heritage Commission Act 1975* was amended by Schedule 10 (items 26–28) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2)(c) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
- (c) the items in Schedules 10, 11 and 12.
- (k) Subsection 2(1) (item 2) of the *Australian Heritage Council (Consequential and Transitional Provisions) Act 2003* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedules 1 and 2	At the same time as Schedule 1 to the <i>Environment and Heritage Legislation Amendment Act (No. 1) 2003</i> commences	[see Note 2]

**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part I</b>	
S. 3 .....	am. No. 135, 1976; No. 17, 1991; No. 196, 1992; No. 152, 1997; Nos. 92 and 146, 1999
S. 4 .....	am. No. 17, 1991
S. 5 .....	am. No. 135, 1976
<b>Part II</b>	
S. 7 .....	am. No. 135, 1976; No. 17, 1991
S. 8 .....	am. No. 135, 1976; No. 92, 1999
S. 9 .....	am. No. 135, 1976
S. 10 .....	am. No. 17, 1991; No. 25, 1995
<b>Part III</b>	
Note to s. 11(1) .....	ad. No. 152, 1997
S. 12 .....	am. No. 135, 1976; No. 63, 1984; No. 43, 1996; No. 152, 1997; No. 146, 1999
S. 13 .....	am. No. 43, 1996
S. 14 .....	am. No. 130, 1992; No. 6, 1994; No. 43, 1996
S. 15 .....	am. No. 43, 1996
Heading to s. 16 .....	am. No. 152, 1997
S. 16 .....	am. No. 43, 1996; No. 152, 1997
S. 17 .....	am. No. 135, 1976; No. 63, 1984; No. 43, 1996; No. 152, 1997
S. 18 .....	am. No. 43, 1996; No. 152, 1997; No. 156, 1999
Heading to s. 19 .....	am. No. 156, 1999
S. 19 .....	am. No. 43, 1996 rs. No. 152, 1997 am. No. 156, 1999
S. 20 .....	am. No. 60, 1989; No. 43, 1996; No. 152, 1997
S. 21 .....	am. No. 152, 1997; No. 156, 1999
<b>Part IV</b>	
S. 22 .....	am. No. 17, 1991; No. 92, 1999
S. 23 .....	am. No. 135, 1976; No. 17, 1991; No. 92, 1999
Ss. 23A, 23B .....	ad. No. 17, 1991
S. 24 .....	am. No. 17, 1991; No. 92, 1999
Ss. 24A–24C .....	ad. No. 17, 1991
S. 25 .....	rep. No. 92, 1999
S. 26 .....	am. No. 61, 1981; No. 17, 1991; No. 92, 1999
S. 28 .....	am. No. 43, 1996 rep. No. 92, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 29 .....	rep. No. 92, 1999
<b>Part V</b>	
S. 30 .....	am. No. 135, 1976; No. 17, 1991; No. 43, 1996
<b>Part VA</b>	
Part VA .....	ad. No. 17, 1991
Ss. 31A–31E .....	ad. No. 17, 1991
<b>Part VI</b>	
S. 32 .....	am. No. 135, 1976; No. 152, 1997; No. 146, 1999
S. 33 .....	am. No. 135, 1976; No. 146, 1999
<b>Part VII</b>	
S. 34 .....	am. No. 36, 1978
S. 35 .....	am. No. 152, 1997
S. 36 .....	rep. No. 152, 1997
S. 38 .....	rep. No. 152, 1997
S. 39 .....	am. No. 17, 1991
S. 40 .....	rep. No. 152, 1997
S. 41 .....	am. No. 43, 1996 rep. No. 152, 1997
S. 42 .....	am. No. 135, 1976
<b>Part VIII</b>	
S. 43 .....	am. No. 36, 1978; No. 43, 1996 rs. No. 152, 1997 am. No. 92, 1999
S. 44 .....	rep. No. 92, 1999
S. 45 .....	am. No. 135, 1976; No. 17, 1991; No. 6, 1994; No. 43, 1996
S. 46 .....	am. No. 166, 1985

## **Note 2**

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### **Note 2**

*Australian Heritage Council (Consequential and Transitional Provisions) Act 2003* (No. 86, 2003)

The following amendment commences on 23 March 2004 unless proclaimed earlier:

### **Schedule 1**

#### **1 The whole of the Act**

Repeal the Act.

As at 26 September 2003 the amendment is not incorporated in this compilation.

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**Table A**

**Table A**

**Application, saving or transitional provisions**

*Environmental Reform (Consequential Provisions) Act 1999* (No. 92, 1999)

**Schedule 3**

**17 Application**

The amendment made by item 16 applies only to a report for a period that starts after the commencement of the *Environment Protection and Biodiversity Conservation Act 1999*.