

# VALUING AUSTRALIA'S NATIONAL HERITAGE



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Great Barrier Reef, Queensland

## Images of Australian heritage sites

The United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage List includes nineteen Australian properties, some of which represent the best examples of the world's cultural and natural heritage.

The images in the book are of Australian World Heritage listed sites and National Parks in New South Wales and South Australia. The images on the cover and title page are from Mimosa Rocks National Park.

### **World Heritage Listed Sites**

#### **Great Barrier Reef, Queensland**

The Great Barrier Reef is the world's largest coral reef, stretching over 2,300 kilometres in an area of approximately 344,400 square kilometres off the coast of Queensland in the Coral Sea. It is composed of over 2,900 individual reefs and 900 islands. The reef structure (the world's biggest single structure made by living organisms) is built by billions of tiny organisms known as coral polyps.

#### **Greater Blue Mountains Area, New South Wales**

The Greater Blue Mountains Area (1,032,649 hectares) is 60 to 180 kilometres inland from the Sydney, New South Wales. The area has rugged tablelands, sheer cliffs, deep inaccessible valleys, rivers and lakes full of life. It is home to rare plants, animals and Australia's unique eucalypt vegetation. The area includes vast expanses of wilderness.

**Sydney Opera House, New South Wales**

The Sydney Opera House is a multi-venue performing arts centre on Sydney Harbour. The building also houses a recording studio, cafes, restaurants, bars and retail outlets. It was designed by Danish architect Jørn Utzon, winner of an international design competition. The Opera House was opened in 1973 and is one of the 20th century's most famous and distinctive buildings.

**Lord Howe Island, New South Wales**

Lord Howe Island (14.55 square kilometers and located 780 kilometres north east of Sydney) is mostly untouched forest with plants and animals not found elsewhere in the world. It is the most notable of the 28 islands in the Lord Howe Island Group. The diverse landscape includes nesting birds, upper mantle and oceanic basalts and the most southern barrier coral reef.

**Tasmanian Wilderness, Tasmania**

The Tasmanian Wilderness is one of the largest conservation areas in Australia and one of the last expanses of temperate rainforest in the world, covering 1.6 million hectares (nearly a fifth of Tasmania). The region of parks and reserves with steep gorges has been subjected to severe glaciation. Remains found in limestone caves show human occupation of the area for more than 20,000 years.

**Port Arthur, Tasmania**

Port Arthur on the Tasman Peninsula in southern Tasmania is a village and historic site. It was a penal settlement in the 19th century and now an open-air museum. Included in the ruins

## IMAGES OF AUSTRALIAN HERITAGE SITES

are the remaining shell of the Convict Church built by inmates and the large penitentiary. Solitary confinement cells in the separate prison building inflicted mental punishment in place of floggings.

### **Royal Exhibition Building and Carlton Gardens, Victoria**

The Royal Exhibition Building in Melbourne, Victoria was designed by the architect Joseph Reed. Its location in the Carlton Gardens on 64 acres is surrounded by four city streets. Built in 18 months, the building hosted the 1880 Melbourne International Exhibition and the 1888 Centennial International Exhibition. It is one of the great enduring monuments to the nineteenth century International Exhibition movement.

### **Purnululu National Park, Western Australia**

Purnululu National Park (239,723 hectares) in East Kimberley is 300 kilometres south of Kununurra. It includes the Bungle Bungle Range, a stunning landscape of sculptured rocks that contains fine examples of beehive-shaped karst sandstone that have eroded over a period of 20 million years and rise 250 metres above the surrounding semi-arid savannah grasslands.

### **Shark Bay, Western Australia**

Shark Bay World Heritage Area (2.2 million hectares) is approximately 800 kilometres north of Perth, on the westernmost point of the Australian continent. It is two bays sheltered by peninsulas and a long island. The distinctive wildlife and flora includes one of the largest and most diverse seagrass beds in the world and stromatolites, which are said to be the oldest life forms on earth.

**Uluru-Kata Tjuta National Park, Northern Territory**

Uluru (also known as Ayers Rock) is a large sandstone rock formation, home to an abundance of springs, waterholes, rock caves and ancient paintings. It lies 335 kilometres south west of Alice Springs and is sacred to the Pitjantjatjara people. Uluru and Kata Tjuta (also known as the Olgas), are the two major features of the National Park.

**Kakadu National Park, Northern Territory**

Kakadu National Park (19,804 square kilometres) is 71 kilometres south of Darwin in the Alligator Rivers region. It includes wetlands, rivers and sandstone escarpments and is home to over 2,000 plant species and wildlife, including flatback turtles and saltwater crocodiles. Aboriginal rock paintings, dating to prehistoric times, are found at sites such as Ubirr.

**Naracoorte Caves National Park, South Australia**

Many of the 26 caves in the 3.05 square kilometre World Heritage area of Naracoorte Caves National Park, in the south east of South Australia, contain stunning stalactites and stalagmites. They act as owl roosting sites and pitfall traps, storing animals for at least 500,000 years and are our most complete fossil record for this period, including several ice ages and human arrival in the area.

**Mimosa Rocks National Park, New South Wales**

Mimosa Rocks National Park is in New South Wales, 329 kilometres south west of Sydney near the towns of Tathra and Bermagui. It embraces 20 kilometres of coastline and covers an area of 5,802 hectares. It is a diverse system of lagoons, beaches,

## IMAGES OF AUSTRALIAN HERITAGE SITES

sea caves, headlands, offshore stacks combined with spotted gums (*Corymbia maculata*) and prehistoric burrawangs.

### **Flinders Chase National Park, South Australia**

Flinders Chase National Park is on the south coast of Kangaroo Island. The park's coastal scenery includes Admirals Arch, a beautiful natural rock arch shaped by the powerful Southern Ocean, the sculptured granite boulders known as Remarkable Rocks, wild beaches, pristine Rocky River, vast wilderness areas and cultural heritage sites, including two lighthouses.

### **Budj Bim National Park, Victoria**

A volcanic eruption around 30,000 year ago altered the area's drainage, creating Budj Bim National Heritage landscape in south west Victoria. The lava flows from a distinctive shield volcano formed lava canals. Budj Bim (Gunditjmara name), a conical shaped peak, is a scoria hill tossed up next to three overlapping volcano craters and rises 178 meters. It includes Lake Surprise.



Mimosa Rocks National Park, New South Wales

## Part One

*... the Australian Government should see itself as the curator, not the liquidator, of the national estate.* Gough Whitlam, former Prime Minister of Australia

*By the time the Australian Heritage Commission legislation was enacted by the national parliament in the middle of 1975, all Australian states had specific national parks legislation and centralised national parks management agencies. About ten million hectares of land had been designated as national parks and a lesser amount of land devoted to nature reserves.*

## CHAPTER ONE

### What is the National Estate and why should we preserve it?

A country's heritage is central to the connections its people have with their land and culture. It shapes their sense of identity, binds them together in inexplicable ways, and is often evoked by seemingly trivial things. My father, a diplomat, was posted to Spain as British Minister just before the outbreak of World War II. During this time, my mother travelled from Madrid to Barcelona to help greet a shipload of repatriated prisoners of war. She took with her sprigs of eucalyptus to give to the Australians among the allied exchange prisoners. She later told me that many of them burst into tears when they touched and smelt the gum leaves, so evocative were their distinctive feel, smell and look.

The historian Graeme Davison has suggested that my mother possibly shed a tear or two herself at these meetings, such is the pull of the Australian landscape for expatriate Australians. I too grew up with constant reminders of the Australian landscape, since my parents had Elioth Gruner and Harold Herbert landscape paintings hanging on the walls of their houses wherever my father was posted. These were not trivial influences, since Gruner won the Wynne Prize for Australian landscape painting no less than seven times, and Joseph Brown, famous collector of Australian paintings,

pestered me constantly later in my life to sell him the Harold Herbert watercolour; it apparently had important associations for him too.

There are both tangible and intangible components of our heritage. The intangible elements include our folklore — the habits handed down by our families and friends, and our way of seeing and responding to the land. Our heritage also includes our written history, our musical traditions, our visual and dramatic arts, our literature, our political and legal culture, our patterns of community relationships, and our sporting traditions. Objects reflecting our natural and cultural history are some of the tangible parts of our heritage, but it is places of all kinds: grand natural areas; delicate ecosystems; terrestrial and marine environments; prehistoric sites, places of cultural significance to Indigenous people, historic buildings and structures; our finest gardens — in sum, Australia's National Estate, which people most strongly identify as their distinctive heritage. While all other aspects of our national heritage should be regularly in our minds, it is on the National Estate that this book concentrates.

Gough Whitlam first used the term 'national estate' in a speech in 1970, asserting that 'the Australian Government should see itself as the curator not the liquidator of the national estate'. Race Mathews, one of Whitlam's advisers, took the term from one of President John F. Kennedy's New Frontier speeches in 1960. In turn, Kennedy's speechwriters seem to have borrowed it from Clough Williams-Ellis, an eccentric Welsh environmentalist and architect.<sup>1</sup> The Committee of Inquiry into the National Estate, established by Whitlam in 1973, described it as 'a brilliant compression of

## WHAT IS THE NATIONAL ESTATE AND WHY SHOULD WE PRESERVE IT?

much in little'.<sup>2</sup> Eric Reece, then premier of Tasmania, described the term even more succinctly as 'things that you keep'.<sup>3</sup> It expressed a fresh concept that cultural and environmental heritage should be looked at together. This was a novel idea in heritage practice around the world, and a valuable extension of heritage thinking, since heritage conservation is best seen as a continuum from wilderness areas least affected by man to structures and objects with little direct relationship to nature. Along that continuum there is no obvious demarcation line that might conclusively justify separating a natural area with little human intrusion from a modified landscape. Both might be equally beautiful and both might include pockets of vegetation or habitats of ecological significance. Very many national parks in Australia include structures or features of cultural significance and are the richer for it. Today it is recognised that Australia's National Estate ranges from great areas of World Heritage standing, through to cave and rock art, and the smallest cottages and gardens. As the Committee of Inquiry into the National Estate noted, 'the idea of the National Estate is most easily grasped as one all embracing concept and most effectively promoted by one body'.<sup>4</sup>

Why should we preserve the National Estate?<sup>5</sup> The most scientifically valuable and the most beautiful natural areas must be preserved for future generations and the world as outstanding examples of Australia's environment. Representative examples of each of our various ecosystems and associations of plant species should also be preserved. They should include landforms and soils, plant communities and the breeding grounds and the habitats of all endemic fauna. The preservation of genetic diversity must be ensured

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for the health and stability of ecosystems, the maintenance of essential life support systems, the sustainable use of living resources and the ecosystems in which they are found, and the untapped and as yet unknown agricultural, pharmacological, industrial and other potentials of natural materials. Our finest natural areas should be preserved for the recreational, aesthetic and spiritual satisfactions they offer us. Many human designed or affected landscapes should be preserved for their beauty and interest and for the enjoyment they provide for people.

The most ancient archaeological sites provide vital evidence of the emergence of modern humans and of the colonisation of the Australian continent by Aboriginal and Torres Strait Islander peoples more than 50,000 years ago. Archaeological sites emphasise the richness of early Aboriginal society in Australia and its significance compared to other centres of early human development. Aboriginal rock engravings and paintings supply fascinating evidence of Aboriginal cultural values and creativity. They also provide records of Aboriginal perceptions of early foreign contact, including interactions with Macassan praus and European explorers and colonists. Contact sites where Aboriginal and white people met are not only of historical interest; some, such as massacre sites, are of particular significance to our national story. Many Aboriginal places, especially those where traditional life has persisted, have sacred or other symbolic significance to Aboriginal people.

Historic areas, structures and places provide us with tangible evidence of Australia's development over the last 250 years. They are the cultural roots of today's society. Historic places

## WHAT IS THE NATIONAL ESTATE AND WHY SHOULD WE PRESERVE IT?

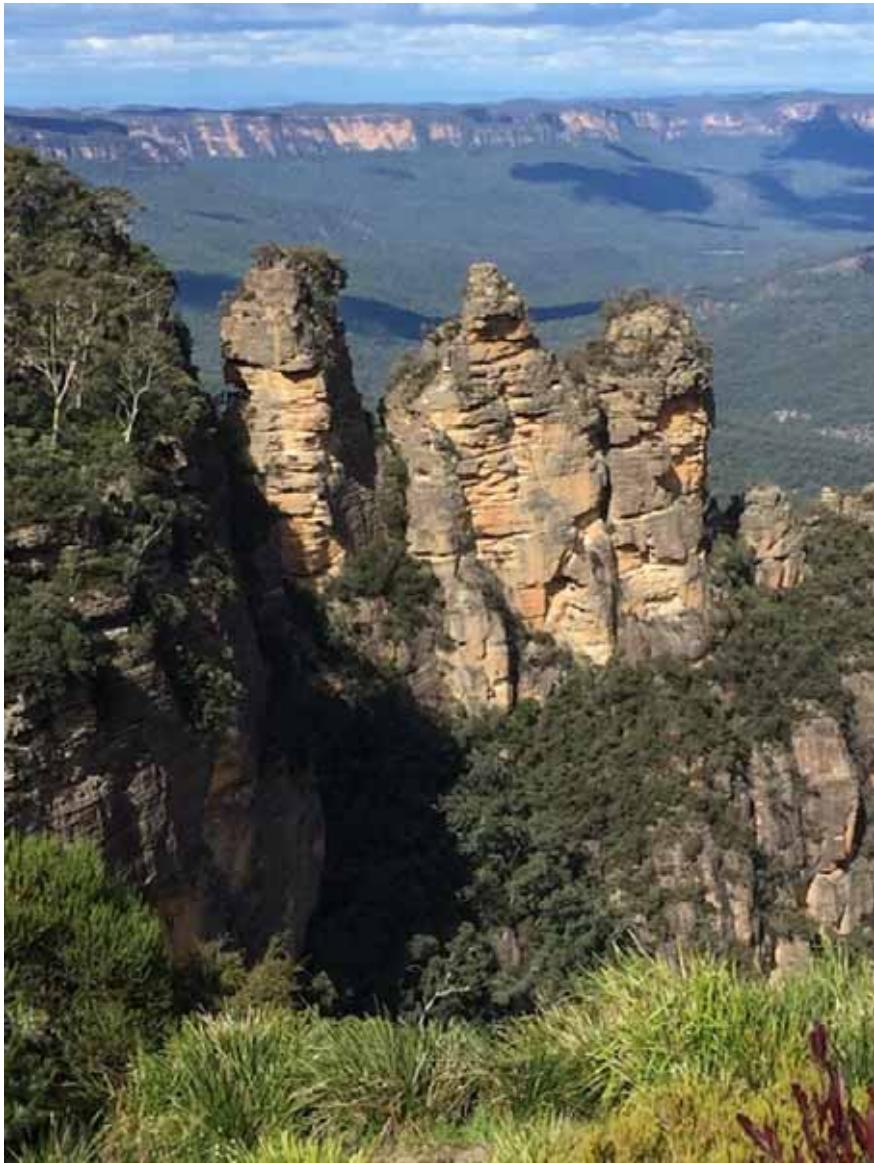
include both the artistic achievements of other times and examples of structures and places that are typical of regional life and work in Australia. Historic buildings, structures and places from other eras provide us with a diversity of building forms that give character and charm to our cities and countryside. Once destroyed, they can never be replaced.

To some people, the concept of the National Estate may seem abstract and remote, but for each of us there is some place, group of buildings, piece of country or natural bushland that is familiar, treasured and dear. Some groups such as our first Australians have special attachment to country. All of us look forward to enjoying some aspects of our national estate with our children and grandchildren. Sometimes the significance of the place is only recognised when it has been damaged or destroyed. This is the decisive personal reason why every Australian should have a concern for the conservation of Australia's National Estate. Finally, the National Estate has a priceless economic value; protecting it should not be seen as a burden on the economy, nor a restraint on development. The National Estate is a precious economic asset as a tourist attraction, as the untapped gene pool for new pharmacological and other resources and much more. A final powerful statement expressed in the Committee of Inquiry report is that even if all other arguments are put to one side, the supreme justification for conservation of the National Estate is the deep feeling of most Australians that their descendants have the right to at least as many options in the cultural and natural environment as they have enjoyed themselves.

These arguments might be summarised as the need for biological, cultural and intellectual continuity. To provide that

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continuity, a national heritage regime requires strong leadership, effective legislation and appropriate funding, backed by state and local initiatives. These guiding principles should inform the interpretation of Australia's past national heritage performance, any assessment of our current policies and the direction of future practice. The protection of Australia's national estate, will not take place without constant vigilance. It is the shared responsibility of all those who care. In telling the story of national heritage regimes from the first established in 1975 until that in force today, I hope the book will empower all those committed to the significance of our national estate to redouble their efforts to protect it.



Three Sisters, Blue Mountains, New South Wales



Sydney Opera House, New South Wales

## CHAPTER TWO

### Heritage protection in Australia prior to 1975

All initiatives, no matter how bold and novel, build in part on past achievements. I therefore begin my story of the creation of the Australian Heritage Commission in 1975 and the subsequent evolution of Australia's national heritage regime with a description of some of the more significant prior milestones in heritage protection in Australia and elsewhere in the world. I also add a few words here and there about some of the people who have been particularly influential in shaping this history.

#### **Nature conservation**

Formal nature conservation on any significant scale in Australia is usually traced back to the creation in 1879 of Royal National Park, just south of Sydney, where it was known as 'The National Park', although an earlier reservation of 5,000 acres had been made in the Jenolan Caves district of the Blue Mountains in 1866.<sup>1</sup> The title 'National Park' was almost certainly borrowed from the United States of America where, in June 1864, the government granted to the State of California the Yosemite Valley and the Mariposa Big Tree Grove, thereby bringing into being the world's first national park. The terms of the grant stipulated that 'the State shall accept this grant on the express condition that the premises shall be held for public use, resort and recreation and shall be inalienable for all time'.

Fredrick Law Olmsted, a man of multiple talents and achievements, was appointed as the first Chair of the Board of Commission.<sup>2</sup>

In 1865, Olmsted prepared a report that set down long-term guidelines for the management of Yosemite, which included a philosophy and set of working principles for the creation of state and national parks. This was an initiative of great significance for future conservation management since it set out the intellectual framework for the future development of the US national parks system. In 1872, Congress passed a bill to establish Yellowstone, a second park of comparable size to Yosemite.<sup>3</sup> Closely associated with the development and promotion of both these parks and others was John Muir, famous for his remarkable journeys on foot, such as his 1,000-mile (1,600-kilometre) journey from Indianapolis to the Gulf of Mexico, and his journey into the high country of California's Sierra Nevada and Yosemite. From 1874 Muir turned his hand to writing. His first book, *Our National Parks* (1901), captured the attention of President Theodore Roosevelt, which led Roosevelt to visit Yosemite, and prompted the subsequent development of Roosevelt's innovative conservation programs. In 1892 Muir also founded the Sierra Club, today the largest and most influential not-for-profit environmental organisation in the US with over 2.9 million members and supporters.<sup>4</sup> Yosemite and Yellowstone provided the practical examples, while men such as Muir and Olmsted provided the intellectual legacy from which Australia developed its national park system and activist environmental not-for-profit bodies.

Despite Royal National Park's claims to be one of the world's first national parks, it could not have been less like

Yosemite or Yellowstone. Yellowstone was truly national in the sense that it was established by special legislation in the national Congress on behalf of the whole nation and its people; it covered nearly a million hectares; it was a wilderness area situated far from major settlements; and it was created to protect the area's natural features, including its geysers, canyons and hot springs, as much as to provide a 'pleasuring ground for the benefit and enjoyment of the people'.<sup>5</sup>

By contrast, Royal National Park was a park of the colony of New South Wales; it was 7,300 hectares only; it adjoined the city of Sydney and was clearly proposed as a recreational park for its citizens, with little emphasis on nature conservation in its management guidelines.

Notwithstanding all these differences and comparative shortcomings, Royal National Park became the model for the creation of reserves close to other cities in Australia and, through the creation of such reserves, for the eventual establishment of national parks developed and protected in the spirit of Yosemite and Yellowstone. In northern Sydney, Kuring-gai Chase Park was created in 1894. In Adelaide, an area of bushland south of the city (previously Old Government Farm at Belair), was dedicated as a reserve in 1891. It too became known in South Australia as 'The National Park'. In Western Australia, John Forrest National Park was established on the eastern side of Perth in 1900; it was also known in that state as 'The National Park'. In Queensland several recreational parks were created in the mountains surrounding Brisbane in the first two decades of the twentieth century. The first was Witches Falls National Park, proclaimed in 1908, followed by

Bunya Mountains National Park later that year, and Lamington National Park, the largest, in 1915.

A further development had been taking place in Victoria. Tower Hill, the crater of an extinct volcano, was designated a National Park in 1892 as protection for its spectacular scenery. From 1898 several other sites were set aside for national parks. They included Wyperfeld, Mallacoota Inlet and Wingan Inlet. This was a precursor to a shift in focus of the national park and reserve movement. The next example of a park reserved for its scenery and landscape features, as well as for its recreational potential, was Mount Warning in northern New South Wales. In 1909, an area of land centred around the mountain was reserved for public recreation and preservation of native flora. A larger reserve was set aside in 1928, and the whole became known as Mt Warning National Park. An area around Point Lookout at a high point on the New England Tablelands was reserved in 1931 and eventually renamed New England National Park in 1937. Another reserve created in 1927, called the Dorrigo Mountain National Park by its Trustees, formally remained a reserve until 1967. In Tasmania, Mount Field, initially known as National Park, was established in 1916. In this incremental way, national parks that were closer in concept to Yosemite and Yellowstone began to be established across the country.

As early as the 1890s, key groups encouraging parks development were the field naturalists and bushwalking clubs.<sup>6</sup> From the 1920s onwards, figures such as Myles Dunphy became prominent not only as bushwalkers but also as powerful advocates for the extension of national parks and nature reserves. In time, the bush-walking clubs came together to

form associations. In Sydney, the NSW Federation of Bushwalking Clubs (now known as Bushwalking NSW) was formed in 1932, and in the same year the National Parks and Primitive Areas Council was formed to campaign for the extension of national parks. The lobbying efforts of these bodies resulted in the establishment of national parks in such places as the Blue Mountains, the Kosciusko area and the Warrumbungles.

National parks associations were also formed in Queensland in 1930 and in Victoria in 1952. These associations did more than advocate for parks and new reserves. They constituted a powerful body of opinion pressing for appropriate legislation and management regimes for the national parks. In Victoria, a *National Parks Act* was passed in 1956. National Parks and Wildlife Acts were enacted in New South Wales in 1967 and in South Australia in 1972. In Queensland, legislation had been introduced as early as 1906, but parks management had been the responsibility of the Forestry Service. Management responsibilities were eventually transferred to the newly created National Parks and Wildlife Service in 1975. In Tasmania, where the Scenery Protection Board had controlled national parks from 1915 onwards, the National Parks and Wildlife Act of 1970 led to the transfer of management responsibility to a new parks and wildlife authority.

Growth in the number and size of national parks was paralleled in nearly all states by the development of nature reserves for the protection, propagation and study of native fauna and flora. In time, management responsibility for these reserves was transferred to the national parks and wildlife services. The network of these reserves was elaborate, even if the individual

areas of the reserves were not extensive. By 1999 in NSW, for example, there were 288 reserves covering more than 700,000 hectares.

These are the bare bones of the development of nature conservation practice in Australia prior to 1972. They need to be read alongside richer, more detailed parallel stories. One such source is Tom Griffiths', *Hunters and Collectors: The Antiquarian Imagination in Australia* (1996), a book of great subtlety with much that is valuable and challenging to say about the history of colonisation in Victoria and the interplay of environmental and heritage consciousness that accompanied it. The book is in three parts: Collection, Possession, and Preservation. It has a lovely story in its Epilogue about the weaving of an eel trap by Connie Hart, whose mother had lived at Lake Condah. Connie had watched her mother weaving baskets as a child but did not herself make one until her mother died forty years later. In Griffiths' words, 'She was, in a strange way, freed to rediscover her heritage. She remembered the stitch, she remembered the puung'ort grass, but she was frightened to do it. But she did do it and she taught others to do it.'<sup>7</sup>

Another example is *The Colonial Earth* (2000), written by Tim Bonyhady. In his Introduction, Bonyhady recalls a visit to the Tasmanian Museum and Art Gallery to see works by colonial artist William Charles Piguenit.

'I wanted to investigate whether Piguenit was an early advocate of environmental protection or was simply celebrating and promoting Tasmania's scenery,' Bonyhady writes, telling of his initial intention to trace the origins of Australian artists 'expressing conservation ideas in paint':

## HERITAGE PROTECTION IN AUSTRALIA PRIOR TO 1975

*Before long I was not only looking past Piquenit, into the early and mid-nineteenth century, but also past Streeton towards the present. I was [soon] writing a book about the significance of art and aesthetics to environmentalism in Australia ... As I soon realised, this Australian story was all the more significant because it was part of a much larger international story about the environmental aesthetic.<sup>8</sup>*

Each of *The Colonial Earth's* twelve chapters vividly describe some aspect of colonial life or attitudes. Bonyhady's overall research debunks many previous assumptions about early settlers' lack of environmental concern and negative responses to the Australian landscape.

By the time the Australian Heritage Commission legislation was enacted by the national parliament in the middle of 1975, all Australian states had specific national parks legislation and centralised national parks management agencies. About ten million hectares of land had been designated as national parks and a lesser amount of land devoted to nature reserves.

Of particular note is the progressive shift of 'ecology' during this time into a central position in formal protected area policies. These policies eventually evolved into the CAR ('comprehensive, adequate and representative') principles for the selection and management of protected area reserves, the terms being defined in the following way:

*Comprehensive: the inclusion in protected areas of examples of regional-scale ecosystems in each bioregion.*

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*Adequate: the inclusion of sufficient levels of each ecosystem within the protected area network to provide ecological viability and to maintain the integrity of populations, species and communities.*

*Representative: the inclusion of areas at a finer scale, to encompass the variability of habitat within ecosystems.<sup>9</sup>*

These were the main nature conservation achievements in the hundred years following the designation of Royal Park in Sydney. They were significant, but their composite outcomes could not yet be considered to represent a comprehensive reserve system.

Notably, however, in the decades leading up to the seventies, not only had national park associations been established across the country, but a broad range of other environmental bodies had emerged to campaign for the protection of the environment. They included national bodies such as the Australian Conservation Foundation, formed in 1965, offshoots of major international non-government organisations, such as the World Wide Fund for Nature, established in Australia in 1978, and many local environmental bodies loosely clustered under state environmental councils. These bodies were to be of profound importance to the Australian Heritage Commission when it started its work.

Although not specifically concerned with nature conservation, no description of the antecedents to the environmental initiatives of the Whitlam Government could ignore the huge significance of the United Nations Conference on the Human Environment held in Stockholm in June 1972. It was not only the matters discussed and the conclusions reached that were

influential; equally significant was all the preparatory work needed for the conference by the Australian delegation and the learning experience for both those who went and those who stayed behind. It was significantly due to the influence of these international trends that Gough Whitlam and the Australian Labor Party brought to the 1972 election a package of environmental policy commitments, which included promises related to the protection of the National Estate.<sup>10</sup>

### **Indigenous places and people**

Scientific knowledge and progressive challenges to common assumptions about Aboriginal people have developed hand-in-hand since first European contacts. Alongside this story has been the fascinating tale of the empowerment of Indigenous people in the protection of their own heritage.

Writing in 1961, A.P. Elkin described the development of scientific knowledge of Australian Aboriginal people as a progression of four distinct, though overlapping, phases.<sup>11</sup> The first phase, from 1788 and earlier, involved casual anthropological observation. The persons concerned were not anthropologists, a class of specialists that had not yet been formally distinguished; rather, they were observers who, in the course of their various occupations and professions, had contact with Aboriginal people. The second phase, from the 1870s onwards, was a compiling and collating phase. During this time, many publications appeared, some containing original material, while others anthologising previously published research. The period reflected a growing recognition of the importance of collecting information about Aboriginal people in the interest of science. The third phase, covering the last decades of the

nineteenth century and the early decades of the twentieth century, was one of fortuitous, individual field projects. They were fortuitous in that they accidentally brought together field researchers such as Lorimer Fison and A.W. Howitt, and Walter Baldwin Spencer (later Sir) and F.J. Gillen, the Alice Springs postmaster who was very well informed about the Arunta tribe, having lived among them. Baldwin Spencer before being appointed Professor of Zoology at the University of Melbourne, had been trained at Oxford in anthropology as well as zoology, He was a systematic field researcher and was well read in anthropological theory. He therefore brought many new skills to Australia. Baldwin Spencer and Gillen carried out well planned and organised field-work expeditions leading to two striking publications, *The Native Tribes of Central Australia* (1899) and *The Northern Tribes of Central Australia* (1904).<sup>12</sup> During this phase too, parallel studies were carried out by Pastor C. Strehlow from Hermannsburg Mission among the Western Aranda and neighbouring Loritja groups, which he published in German. This work in its turn promoted other research of a similar kind across Australia, leading to what Elkin describes as 'a comparative wealth of results from planned research'.

Elkin describes the fourth phase of organised, systematic research as being ushered in by the Pan-Pacific Science Congress held in Melbourne and Sydney in 1923. At this Congress, research findings and ideas generated from the earlier periods were crystallised in a number of resolutions that the Australian National Research Council was asked to take up with the Australian Government and research foundations. This led to the foundation of the Department of Anthropology

at Sydney University in 1925. Further opportunities were realised following the receipt of a grant to the Australian National Research Council from the Rockefeller Foundation for anthropological research. This, and further grants from the Foundation were administered by a Council committee chaired by the new Professor of Anthropology at Sydney, W.R. Radcliffe-Brown. His was an important appointment because of his interest in Australian anthropology and because of his previous experience in setting up a new Department of Anthropology in Cape Town. After the Australian National University formed in 1951, both staff and students began to carry out field research. Later again, the University of Western Australia established an Anthropology Centre, further adding to the cohort of field researchers.<sup>13</sup>

In 1960, W.C. Wentworth, a Liberal MP who later became Australia's first Minister for Aboriginal Affairs, proposed to the federal government that a national Indigenous research body should be established. The Cabinet sub-committee asked to examine the proposal sent it to the Vice-Chancellor of the Australian National University for technical study. The Vice-Chancellor in his turn set up a working committee, which, after studying Wentworth's proposal, concluded that while there was a strong case for a national research body, an intermediate step was needed. The committee's suggestion was that a conference should be held to review the state of scientific knowledge in all fields of research among Aborigines, to assess the shortcomings and to indicate the kinds of research that might fill the gaps. The committee recommended that Professor W.E.H. Stanner be invited to convene such a conference. Fifty-five persons attended the conference, representative of all states and

relevant disciplines. The 1961 Conference on Aboriginal Studies, as it came to be called, was judged an outstanding success and described as unique in the history of the human sciences in Australia. Immediately following the Conference, Prime Minister Robert Menzies appointed an interim council, called the Australian Institute of Aboriginal Studies, under the Chairmanship of Professor A.D. Trendall. The Interim Council's remit was to arrange a modest program of urgent research and advise the government on the structure, scope and functions of a permanent institute.<sup>14</sup>

In May 1964, following receipt of that advice, the government introduced a Bill to formally establish the Australian Institute of Aboriginal Studies. In his Second Reading speech, Senator Gorton, on behalf of the government, set out the principal arguments for such a body:

*In 1960, it was put to us that that unless some urgent action was taken to further Aboriginal studies, the source material for many aspects of study in this field would disappear to the great detriment of scholars in the future. In the fields of music and linguistics the need was particularly urgent because a great deal of the information was to be found only in the minds and memories of Aborigines who were nearing the end of their life span. On their deaths whole languages would disappear and so of course would all possibility of studying such languages. The same situation applied ... to many ancient tribal ceremonies, many Aboriginal legends and much material that would be of world interest to ... anthropologists. Senator Gorton, 7 May 1964<sup>15</sup>*

Of particular note are the prevailing assumptions of the time. One was that Aboriginal culture was a dying culture; an assumption present in all the speeches, but in particular running strongly through Wentworth's second reading speech. It is nicely illustrated by the story with which he chose to conclude his speech: 'I cannot help being reminded' he said 'of the story of Tarquin and the Sybilline books:

*When Tarquin was asked to buy a number of books at a high price and refused to do so, the Sybil who held the books burnt one and offered the remainder at the same price. This went on day after day until only one book remained that had to be bought at the price for which all could have been obtained earlier.*

*We are the Trustees for humanity in the last place where these things can be studied. That is how we stand. I support the bill.<sup>16</sup>*

The apparent implications of the story were that if nothing was done immediately, the future costs of recording and protecting the last remaining features of Aboriginal culture would be at least as high as the costs of recording and protecting all that were still available at the time.

Another assumption was that the Institute would be solely a body of professional white researchers carrying out scientific research into Aboriginal people and culture. The history of the Institute is the story of the challenges to these assumptions. The change began in late 1972 when the Institute undertook a review of membership. After the review the Council decided in April 1974 that membership could be offered to all those who had rendered services to Aboriginal Studies. Thus, for the first

time it was made explicit that elected membership was open to Aboriginal people. To implement the decision speedily the Council suspended some of the rules related to the election of members and at the biennial meeting of May 1974, thirteen Aboriginal people were elected out of the fifteen available membership positions. All but two accepted membership.

Side by side with these changes were increasingly strong assertions from Aboriginal people that their culture was not a dying culture but very much a living, if changing one. By 1981, at the time I left the Commission, the Institute had a distinguished Aboriginal director in Eric Willmot, and several young researchers such as Marcia Langton who would later become strong academic Indigenous leaders and voices. In this way, the Institute was transformed into an Indigenous managed and run body responsible for research about its own peoples, leading to the rejection of most of the earlier white assumptions. The Institute later also broadened its remit by changing its title to the Institute of Aboriginal and Torres Strait Islander Studies, thereby including Torres Strait Islander culture in its areas of research.

Alongside these developments a greater awareness of Aboriginal history and the frontier conflicts that accompanied white settlement was developing. Anna Clark identifies the Boyer Lectures of 1968 given by anthropologist W.E.H Stanner as a watershed moment for Australian history. Stanner argued, says Clark, that:

*Australia's sense of its past, its very collective memory, had been built on a state of [deliberate] forgetting... His lectures profoundly influenced historians partly because the image he captured...*

*of a whole-scale silence — ‘a cult of forgetfulness’, no less — indicated a bold re-imagining of national historiography on Stanner’s part. As Stanner insisted, this sort of silence was no ‘absent-mindedness’: the occlusion of Aboriginal people from Australian history wasn’t inevitable.*<sup>17</sup>

While Stanner was arguing for a new historiography that fully included the history of Aboriginal people, further weight was being given to these claims by the findings of pioneer archaeologists such as John Mulvaney, Isabel McBryde, Rhys Jones and Jim Bowler, whose digs put back the date of Indigenous occupation of Australia first by decade after decade and then by century after century. Full descriptions of these digs and the excitement of the finds are to be found in Billy Griffiths’ *Deep Time Dreaming: Uncovering Ancient Australia* (2018).<sup>18</sup> John Mulvaney went on to play other very important roles when the Australian Heritage Commission was established, and Isabel McBryde followed in his footsteps. Rhys Jones’s digs confirmed the existence of many Tasmanian links to the continent of Australia, even if they were very controversial in other ways. Jim Bowler’s finds at Willandra Lakes in 1968 put Australian archaeology firmly on the map worldwide and led to a successful World Heritage nomination.

### **Indigenous Site Identification and Protection**

Following earlier attempts to protect prehistoric monuments and other Indigenous sites across Australia, the Institute established a Sites Committee in 1973. The committee had executive power and was responsible for formulating a coordinated site recording program.<sup>19</sup>

As to the level of protection of Indigenous sites achieved by 1974, the report of the Committee of Inquiry into the National Estate noted that the first statutory protection of Indigenous sites resulted from the passing of the Northern Territory *Native and Historical Objects Preservation Ordinance* 1955. By October 1972, all states except Tasmania had legislated to protect Indigenous sites and relics and, at the time of the writing of the report, draft protection legislation was in preparation. Some protection was also available under national parks legislation.

There were many common elements to this protective legislation. All provided for wardens or rangers to enforce the acts; all provided for declaration of an Indigenous site with varying degrees of restriction as to access; all provided for the compulsory acquisition of land; all included offences and prescribed penalties; and all stated that the Act should not interfere with the individual and tribal rights of any Aboriginal person.

All state legislation allowed any piece of land to be declared an Indigenous site without change of ownership. This was not, however, the case in the Northern Territory, where the Ordinance required that acquisition, together with compensation, had to occur before a site could be designated or protected. The Committee of Inquiry Report also noted other deficiencies in the Northern Territory legislation and the consequent poverty of declarations of Aboriginal sites between 1955 and 1973, with only six being so declared.

The Report commented on two other areas of needed reform. The first was the need for uniform legislation covering the ownership, sale, transfer and custody of portable objects.

The second was the need for uniform and stronger penalties for offences under the various acts.

Indigenous site recording programs began in a few states in the late sixties on a limited scale. In 1972 this work was given a significant boost when the Australian Institute of Aboriginal Studies was given a special fund for site recording. This site recording work was of special value to the Heritage Commission when it began its work on the Register of the National Estate.<sup>20</sup>

During this period, Aboriginal land rights were also becoming increasingly the focus of social reform movements.

### **Historic places reflecting European exploration and settlement**

Australia has been the fortunate heir to many heritage ideas that came into common currency by the end of the nineteenth century. The practice and writings of the French restoration architect Eugène Viollet-le-Duc (1814–1879), the Swiss architect, painter and planner, Camillo Sitte (1842–1903) and of the US poet and philosopher Henry David Thoreau (1817–1862) are three such examples. But far exceeding their influence in nineteenth century England was that of John Ruskin (1819–1900). Ruskin was an art critic, painter, poet and more. His ideas influenced art, architecture, heritage protection, town planning and nature conservation to speak only of some of the fields about which he wrote and practised. Of particular interest to national heritage policy and practice in Australia is the way Ruskin's ideas inspired others to form citizen bodies that in time have had a profound influence on the British townscape and countryside. Both ideas and practice have been

exported around the English-speaking world. Four examples are briefly described here.<sup>21</sup>

William Morris (1834–1896), frequently called the father of the international Arts and Craft movement, was one of Ruskin's many admirers and was strongly influenced by his writings and actions. In 1877, Morris and Philip Webb were the prime movers in the creation of the Society for the Protection of Ancient Buildings to oppose what they saw as the damaging reconstruction of old buildings. Today the Society is still a significant organisation with a membership of around 8,500, and continues to operate according to Morris's original manifesto. Drawing on this legacy in Australia today, advocacy to prevent the inappropriate treatment of old buildings is primarily in the hands of the National Trusts and Australia ICOMOS (International Council on Monuments and Sites).<sup>22</sup>

Ruskin's views about the need to preserve historic buildings and open space also provided the inspiration for his friends Octavia Hill, Hardwicke Rawnsley and Sir Robert Hunter to found the National Trust for Places of Historic Interest or Natural Beauty (The National Trust) in January 1895. Hill was a prominent social reformer, Rawnsley a clergyman activist specifically interested in the preservation of the Lake District, and Hunter a lawyer, described by the Trust as its real inventor because he gave the Trust its legal reality. In 1896, the first building, Alfriston Clergy House, was bought. The purchase of its first nature reserve Wicken Fen, and its first archaeological monument White Barrow, soon followed. In 1923, the Great Gable in the Lakes District was given to the Trust and, after a national appeal, it was able to purchase the farmland around Stonehenge in 1931. The National Trust for Scotland was also

established in 1931. The first village, West Wycombe, was saved in 1934. A key event was the passage of the *National Trust Act*, which made it possible for the Trust to accept tax-free gifts and endowments. Another crucial event of a similar kind was the establishment of the National Land Fund in 1946 as a memorial to those killed in World War II. Many great country houses were transferred to the Trust with the help of this Fund. In 1965, a devolution of administration to the regions was followed by a remarkable growth in membership, from under 500,000 members progressively to 5,000,000 members by 2011. Today the Trust owns 200 historic houses, most of which have historic gardens attached to them. They include some of the most famous houses and gardens in England. More recently, the Trust has sought to acquire a broader range of properties, such as industrial sites and workhouses. It also has a fine painting and sculpture collection. Another Trust program of special note is Enterprise Neptune, established in 1965 to protect unspoilt coastlines. By 2015, under Enterprise Neptune the Trust had responsibility for the care of 775 miles of coastline all around the United Kingdom. The Trust also owns or has covenants over about a quarter of the Lakes District and significant portions of other national parks. It is an extraordinary success story. In becoming such a significant land and property owner, the Trust has ceased to be Britain's prime historic advocacy body. These roles are now played by a myriad of other bodies. But it is the Trust's original concept of a body combining property ownership with public advocacy that has been exported to Australia, albeit on a vastly reduced scale.<sup>23</sup>

The Council for the Protection of Rural England came into being in 1926 in response to the arguments set out in 'The Preservation of Rural England',<sup>24</sup> an article written by Sir Patrick Abercrombie, another Ruskin admirer. Sir Patrick became the council's Honorary Secretary. The Council has campaigned against the spread of ribbon developments and their effects on the countryside. It has also argued the case for the preservation of England's most beautiful countryside and for green belts to give town dwellers access to the countryside and to protect the character of towns. The Council, now called the Campaign to Protect Rural England, is a registered charity with more than 60,000 members. There is no precisely equivalent body in Australia, although other bodies have played related roles.<sup>25</sup>

In 1957, the Civic Trust was founded by Lord Duncan Sandys to work alongside the National Trust and other bodies. Its principal aim was to improve the protection of historic buildings, the quality of urban regeneration, the appropriateness of new buildings and public spaces, and to improve the quality of urban life. It was a body of real significance, widely recognised overseas, before it had to close its doors for lack of funds. Fortunately, several of the Civic Trust's programs have been passed on to other organisations. One of the most prominent is Civic Voice, a national charity promoting the cause of the civic movement in England. It is the umbrella organisation for hundreds of local Civic Societies. On many occasions there have been moves to create an equivalent to the Civic Trusts in Australia to play a role similar to the British body alongside the National Trusts. The need for such a body

is still as strong as ever. The achievements of these British voluntary bodies demonstrate the great power of citizen bodies and not-for-profit action.<sup>26</sup> Their relevance to Australia remains very significant.

In Australia, historical societies were formed in Sydney in 1901 and in Victoria in 1909, but it was the National Trust movement that was primarily responsible for taking the first steps to protect places reflecting European exploration of Australia and its settlement since 1788. New South Wales was the first state to establish a branch (1945), followed by South Australia (1955), Victoria (1956), Western Australia (1959), Tasmania (1960) and Queensland (1961). The Australian Council of National Trusts, the umbrella body for the National Trust movement, came into being in 1965.

Writing in 1974, the council described an overarching aim of educating the people of Australia about the need for the preservation of historic buildings and important landscapes. To achieve this objective the trusts acted in four principal ways.

First, they accepted responsibility for the ownership, management and trusteeship of a number of historic properties that would otherwise have been lost to posterity. Visitor attendance at some of these properties was remarkably high. Three properties owned by the National Trust of Victoria in the late 1970s, for example, had a composite annual visitation well over 100,000 people.

Second, by 1975 they had carried out extensive surveys of historic buildings and structures and begun to prepare detailed classifications of these places. This work of classification was of

singular influence and value for the eventual development of state heritage lists and for the creation of the Register of the National Estate.

Third, they acted as advocacy groups protesting against the destruction of heritage buildings and areas and promoting action to protect heritage property.

Finally, as part of their overall public education campaigns, the Trusts regularly published books on historic buildings and places.

A landmark state government initiative in 1974 was the passage of the *Historic Buildings Act* in Victoria and the establishment of the Historic Buildings Preservation Council. The National Trust in Victoria played a significant part in persuading the Victorian Government to draft and introduce the bill. This was the first historic protective legislation of its kind in Australia and provided an important model for other states to follow.

Alongside the National Trusts, key conservation roles were played by resident action groups formed in the inner suburbs of Australia's major cities. The creation of resident action groups needs to be understood in the context of the many transformations of Australia's inner cities since the end of World War II. The changes embraced loss of industry and employment as the inner suburbs lost their working-class residents alongside the loss of industrial jobs. The inner suburbs then became populated by post-war migrants who appreciated the opportunity to get a footing in Australia, afforded by cheap housing, and who found social connectivity of the inner suburbs conducive to many of the previous lifestyles they had enjoyed in their home countries. In turn, the

migrants became slowly displaced as the qualities of the inner suburbs were recognised by younger, well-educated, more affluent residents. These residents then found themselves fighting to preserve their newly adopted neighbourhoods from governments that frequently saw slums in need of clearing and thus suitable for major redevelopment.

Key to this progressive transformation was the re-evaluation of the architectural and heritage qualities of the inner suburbs. An example is the changing views of iron lace from ugly and unnecessary ornamentation to a distinctive and desirable feature of many inner suburban buildings. It was in this context that the resident action groups came into existence. Those interested in a detailed account of these changes, particularly those that occurred in Melbourne, are referred to Renata Howe, David Nichols and Graeme Davison's book *Trendyville: The Battle for Australia's Inner Cities* (2013).<sup>27</sup>

The first resident action group in Sydney was the Paddington Society, founded in 1964. It remains a vibrant and effective resident action group to this day. As interest in the historical and aesthetic qualities of the area increased, so too did the need to protect it. The stated aims of the Paddington Society were from the beginning and continue to be almost entirely concerned with preserving its environmental and social amenity, with a strong emphasis on conservation. Other resident associations soon formed around Australia. In Sydney, the Hunters Hill Trust and the Glebe Society were both formed in 1968. In Melbourne, the North Melbourne Association was formed in 1965. The Parkville Association was established in 1967, followed by the Emerald Hill Association in 1968 and the Carlton Association in 1969. In Adelaide, the

North Adelaide Society formed in 1970 and the Fremantle Society in Western Australia formed in 1972. Each of these bodies came into being in response to threats to the historic character of their neighbourhoods, which varied from city to city. In Melbourne, the Housing Commission's demolition of existing social housing and replacement with high-rise building was seen as out of scale and character with the existing precinct and careless of the real needs of the occupants. Whatever the nature of the threats, in each city they reflected the same insensitivity to local communities and the same lack of recognition and valuation of historic precincts. The part played by resident action groups in the protection of their historic areas was thus of crucial significance. The Parkville Association, for example, carried out a detailed assessment of all the historic buildings in its area. This work was of such quality that it was eventually used for the listing of the whole area many years later as a historic precinct under town planning legislation. Notwithstanding the significance of this role, it is doubtful how successful the resident action groups would have been in protecting their suburbs from the demolition of their historic buildings had it not been for the intervention of a powerful ally — the trade union movement.

The Green Bans movement in Australia is one of the most remarkable in the history of heritage protection, in Australia and across the world. It was an initiative taken by the Builders Labourers Federation (BLF) under the leadership of Jack Mundey. The Bans led to the most unlikely alliance between the union, local resident action groups and the National Trusts. The BLF exercised the traditional right of unions to withdraw their labour from projects that they did not support,

but did so in an entirely novel way and for an unusual reason. In Sydney, they declared that they would not proceed with the demolition of any building classified as historic by the National Trust. The first invitation to exercise this ban came from the Hunters Hill Trust. It related to an eight-acre site named Kelly's Bush and the Hunters Hill Trust's efforts to protect the site as a recreation park and playground for local people. It is not well known that the BLF did not ever take action on its own initiative. In all instances where it intervened to prevent the demolition of a heritage building or a major change to a historic site, it responded to a request from the National Trust or a local resident group before placing a green ban on the project.

The next major intervention leading to a green ban was over the proposed redevelopment of The Rocks in Sydney. In 1968, the NSW State Government established the Sydney Cove Redevelopment Authority to take charge of the redevelopment of The Rocks. In 1971 its plan was made public, to the fury of local residents. There was no provision for their future accommodation. The plan furthermore gave only token protection for a few historic buildings. Instead, it proposed high-rise buildings for commercial and residential uses. The Rocks Resident Action Group held several protest meetings. Finally, unsatisfied with the responses it had received, it approached the BLF, and in November 1971, a green ban was placed on the project. When demolition began to take place in 1972, five other unions joined the ban. The Rocks Resident Action Group then drew up a plan of its own, reflecting the wishes of the residents and the views of the National Trust. This eventually became the basis for the final development plan for The Rocks.

The fight for The Rocks was followed by another bitter struggle over a proposal to build a huge sports complex straddling Moore Park and a part of Centennial Park. Two mass meetings in Sydney's Town Hall called for a BLF green ban. The union agreed. Faced with this impasse, the Minister of Lands appointed an inquiry under architect Walter Bunning. The Inquiry recommended against the development plan and it was abandoned. The BLF was called in again over a plan to clear existing housing and develop high-rise buildings for low-income people in Waterloo. Another ban was placed on a Commonwealth proposal to build a complex of Commonwealth office buildings in Woolloomooloo. Yet another invitation was issued to the BLF over a proposal to pull down the existing buildings and build high-rise towers in Victoria Street, Kings Cross. These are examples of successful heritage protection outcomes arising from the placement of green bans in Sydney. James Colman's recent book, *The House that Jack Built: Jack Munday, Green Bans Hero* (2016),<sup>28</sup> provides a rich account of the period. Many other bans were later placed on development proposals in Melbourne, for similar reasons and with similarly successful outcomes.

The Green and Black Bans, union bans applied in Melbourne similar to the green bans in Sydney, did more than achieve heritage objectives by stopping the demolition of historic precincts and buildings, and preventing the resumption of parklands for inappropriate development. They put governments on their mettle, causing some to introduce legislation to protect historic buildings and precincts, and avoid the shame of being trumped by union action. They demonstrated to developers that if they put up proposals that would destroy

the historic fabric of the city and countryside, they could expect a real battle that they would not always win. They gave citizens, community groups and bodies such as the National Trusts immense encouragement to act with greater conviction and courage. It was a remarkable achievement, the more remarkable in that it took place over a relatively short period of time, until an alliance of other parts of the union movement, developers and governments conspired to bring it to a close.

This is a brief picture of heritage protection actions that had been undertaken across Australia by the time the *Australian Heritage Commission Act* was introduced into the Parliament in 1975. It might be said of them that while many valuable natural and cultural heritage initiatives had been undertaken, they were piecemeal in nature and lacked any systematic structure. No national inventory of places of heritage value had been assembled. Above all else, there was no national heritage regime in place.<sup>29</sup>



Budj Bim National Park, Victoria

## Part Two

*Our surroundings are more than their physical form and their history. Places can be the embodiment of our ideas and our ideals. We attach meanings to places — meanings known to individuals and meanings shared by communities. This is the essence of Social Value. It is about the special meanings attached to places by groups of people (rather than by individuals) and how we can take account of these values in our heritage assessment processes..*

*The principal task given to the Commission was to prepare a Register of the National Estate that embraced heritage places of all kinds, including natural areas, Indigenous and historic sites.*

## CHAPTER THREE

### The steps leading to the creation of the Australian Heritage Commission

A major new political initiative needs an influential sponsor. Tom Uren was such a person. In 1972 he brought to his role as Minister for Urban and Regional Development in the newly formed Whitlam government a deep concern about the loss of places of heritage value, and a conviction that something needed to be done about it. This was the first time that a senior minister had come into the federal government with such a commitment. The story that follows is an illustration of the power of a strong political instinct. Of this instinct I later wrote:

*The very best things often come from instincts, intuitions and feelings. The formal elaboration of the ideas, the logic and rationality come later. Tom Uren's feelings for his surroundings, his passionate espousal of native trees — both their preservation and planting (especially his love of angophoras) — became widely known to readers of Sydney newspapers and to his parliamentary colleagues long before the Whitlam government came to power in 1972. It was thus entirely appropriate that Tom Uren should have been given a portfolio that gave him opportunity to express these strongly held instincts and feelings in innovative policies and programs.*

He was, however, more than originator. He was also the most solid and consistent supporter of the initiatives that finally brought the Australian Heritage Commission into being, often acting against the advice of his department, trusting his instincts and the advice of people he had asked to develop the program. The result has been acclaimed in Australia and overseas. The Commission, its Act and its work survived many changes of government. That too was part of his statesmanlike vision.<sup>1</sup>

When Whitlam selected his first ministry in 1972, Uren was disappointed that he was not allocated the Environment portfolio (for which he had been shadow minister) alongside his Urban and Regional Development portfolio, in itself a very large ministry. He did, however, persuade Whitlam to appoint his close colleague Moss Cass as Minister for the Environment. So close was the relationship between Uren and Cass that Uren, when frustrated in his ambition to hold the Environment portfolio, arranged for his principal environmental adviser, Peter Ellyard, a major contributor to the policy proposals brought to office by the Whitlam government, to move to Cass's office. From this time, all heritage initiatives of the government became joint initiatives of the two ministers, with Uren, the senior minister, responsible for the cultural programs and Cass responsible for the natural area components. Cass proved himself to be an equally supportive minister of the heritage programs.<sup>2</sup>

Uren used his influence to obtain a significant sum of money for the protection of the National Estate. The question then was how to ensure that this funding was wisely and responsibly distributed. On the recommendation of his advisers and with

the support of Prime Minister Whitlam, Uren decided to appoint a Committee of Inquiry into the National Estate. The Committee of Inquiry became the first body ever to carry out a full national survey of places of natural and cultural heritage in Australia.

Prime Minister Whitlam announced the appointment of the Committee of Inquiry on 11 May 1973. The terms of reference for the Committee were that it should examine: the nature and state of the National Estate; the measures presently being adopted; the measures that should be adopted; the role that the Australian Government could play in the preservation and enhancement of the National Estate; and the manner in which the National Trusts of Australia and other appropriate conservation groups could be supported by public funds.<sup>3</sup>

The National Estate was not precisely defined, but implicit in its name was the understanding that the Committee should look at places of all kinds that might be considered of heritage value to the nation. The Committee of Inquiry was asked to report jointly to Tom Uren as the minister responsible for places of cultural significance, and to Moss Cass as the minister responsible for places of natural significance.

To head the inquiry, Whitlam chose Justice Robert (Bob) Hope, a New South Wales Supreme Court judge who had brought down a famous judgement that supported an environmental outcome (*Wyong Shire Council v. Associated Minerals Consolidated and Another*<sup>4</sup>). Other members were Judith Brine, an architect from the University of Adelaide; Milo Dunphy, a well-known environmentalist from Sydney; Keith Vallance an environmentalist from Tasmania; Reg Walker, General Secretary of the Australian Council of National Trusts,

and myself. I was possibly chosen for my unusual background: an entrepreneur with design and environmental credentials. Uren wanted to include Jack Munday from the Builders Labourers Federation, but the New South Wales Premier, Robert Askin, refused to release Bob Hope if Munday was included as a member of the Inquiry, so Uren had to give ground. Two later splendid additions were Len Webb, Australia's leading rainforest ecologist, and the poet and environmentalist Judith Wright. Judith Brine and Len Webb continued on as members of the Interim Committee that followed the Committee of Inquiry. From this group Reg Walker was the only person to join me later as a member of the new Commission. He made a fine contribution to it. George Brownbill was appointed as Secretary to the Inquiry and also made an important contribution.

If I had thought that the task would not involve too much time and commitment, I was quickly disabused. At the first meeting held on 31 May 1973, Bob Hope asked each person in turn to nominate how many hours a week he or she could devote to the task. I had in mind the equivalent of about half a day a week. I was the last to be asked. I listened with amazement as Milo and Reg nominated four to five days a week and others nearly as substantial commitments and was shamed into doubling mine from half a day to one day a week.

As soon as it was established, the Committee advertised for submissions, written or in person. Over 650 submissions were received, some of considerable length and many of high quality. The Inquiry held meetings in all capital cities across Australia. The meetings were kept as informal as possible. Many additional collective and individual trips were made by

the Inquiry members. We were therefore able to gain a good picture of issues affecting places of heritage significance and a sense of popular feeling about them.

There were also some more light-hearted moments. In Melbourne at one of the Inquiry meetings, the Committee had been put to sleep by a worthy but extraordinarily dull presentation from a conservation luminary when in walked a local Koorie man. 'The National Estate belongs to Indigenous people,' he said glaring at all of us. 'We know how to look after it. You destroy it.' Everyone woke up instantly, none more so than Milo Dunphy. On the nature conservation continuum of righteous to sinful, Milo had always seen himself far up the righteous end. The idea that someone should be suggesting that he belonged down the other end was like the proverbial red rag to him. The debate between the pair might have raged all afternoon if it had not been broken up. It was as if a fight had broken out on a football field and a group of team mates had to hold Milo back before he got into serious trouble and was reported by the referee and suspended from further play for the rest of the season.

In Tasmania, when we were hearing submissions on the South-West Wilderness area, subsequently declared a World Heritage property, a local forester made an impassioned presentation, denouncing the 'emotive' arguments used by conservationists. I was sitting next to Judith Wright who turned to me to smile at the absurd contradiction between his language and his message. 'Besides,' she said, 'there are not too many people who get through a day without any emotions.'

A small group of committee members visited sand mining sites on the southern Queensland coast. Prior to that, Bob

Hope and I had been asked out to dinner by the miners. They had clearly looked at the backgrounds of the committee members and concluded that Bob, as a supreme court judge, and I, the only committee member who had a business-entrepreneurial background, would be the softest touches. This amused us both very much. The next day we were flown to inspect the sand mining sites. We knew that they were going to be impactful and they certainly were. Judith Brine and I went to look at one site. We came on it unexpectedly. In front of us was a huge mound of sand. But at that particular moment, the angle of the sun and the part cloud cover make it look so beautiful that we both stepped back in amazement. I had a similar experience taking an English journalist interested in nature conservation to look at the wood-chipping mill opposite Eden on the southern side of Twofold Bay. We were delayed and arrived there just as the sun was setting. The vista was magical in its beauty. There can be as many facets to a lump of coal as there are to a diamond.

Len Webb was a magnificent mentor to me. He took my scientific and nature conservation education in hand. Every week I would receive material from him, photocopies of articles, extracts from books and other material. There would be a brief written explanation and a demanding 'Read this'. I would not have dared to do otherwise.

When the time came to write the report, the committee initially agreed that while there were key parts that everyone should work on together, the balance of the tasks should be distributed around such that each member took responsibility for a chapter. This proved to be an unworkable formula; unsurprisingly, some members were not natural writers and proba-

bly found Judith Wright's presence and demand for a high standard of written expression very intimidating. While no written contribution to the report was received from several of the Committee of Inquiry members, that does not mean that they made no contribution to the Inquiry. Judith herself set the standard with a magnificent chapter on the natural heritage of Australia. Others, including our chairman, also made excellent contributions.

For my part, I worked on the chapter on historic conservation with Judith Brine. This chapter set out some of the important issues facing historic conservation at the time. I was, however, able to write about the built heritage of Australia reflecting European exploration and settlement, and indeed other parts of Australia's heritage with much greater richness and depth in my report for the Australian Heritage Commission some six years later at the conclusion of my term of office as Chairman of that body. In 1974, my main contribution to the Committee of Inquiry report as a member unable to devote much time to the task, was a survey of national heritage bodies in other countries, and flowing from that, recommendations for the Committee to consider about a permanent heritage body to follow the Committee of Inquiry. These recommendations were incorporated into Chapter 10 of the Inquiry report: 'New Tasks for the Australian Government'.

My contribution came about in this way. During the course of the Committee of Inquiry's work, I made a private trip to Europe. This gave me the opportunity to look at heritage regimes in a number of countries. I decided to come home via North America in order to look at heritage protection in Canada and the US. Their heritage arrangements seemed to be

of greatest relevance to Australia because both, like Australia, had federal systems of government. In Ottawa I met people from Heritage Canada. They had many useful things to say. Above all, they urged me to go to Washington to meet the Director of the Advisory Council on Historic Preservation (ACHP) and to look carefully at the Historic Preservation Act under which the Council was established. I did so and was impressed by the story given to me. My report of this study of heritage bodies was circulated to all members of the Committee of Inquiry. It was also included as an Appendix to the Committee's report to its two Ministers and the government. My colleagues on the Committee of Inquiry were also persuaded that the model offered by the ACHP and its Act was one that was applicable to Australia.

Once completed, our report described the concept of the National Estate 'as a powerful crystallisation of an emergent but hitherto almost unfocused idea'.<sup>5</sup> The chief merit of the report was that it itself was just such a crystallisation. It gave shape to the idea of the National Estate, described what should be included in it, and then gave a picture of its current state. From here onwards the National Estate had a standing, and the realm of the National Estate had to be recognised as broad and encompassing.

The findings and recommendations of the Report did not mince words about the state of the National Estate in 1974:

*The Australian Government has inherited a National Estate that has been downgraded, disregarded and neglected. All previous priorities accepted at various levels of government and authority have been directed by a concept that*

## THE CREATION OF THE AUSTRALIAN HERITAGE COMMISSION

*uncontrolled development, economic growth and 'progress' and the encouragement of private against public interest in land use, use of water and indeed in every part of the National Estate was paramount.*

There were, however, words of hope for the future:

*For the first time the Australian Government has declared its intention to identify, conserve and present the National Estate. We believe that this is among the most far sighted decisions the Government has made and that it will be seen as such not only by a large proportion of the electorate of today but particularly by younger people and Australians of the future.<sup>6</sup>*

The report emphatically dismissed the notion that the National Estate was a middle class issue, arguing forcefully that it was a concern for everyone and that the forces that threaten it directly affect the quality of life of less privileged people. (I shall have something further to say about this argument later.)

The report included extensive recommendations about natural areas and equally extensive recommendations about the built environment and Aboriginal sites and other special places. Cultural property was discussed but not explored in any detail because a parallel inquiry, the Committee of Inquiry into Museums and National Collections, had been established to carry out just this task.

One of the most significant sets of recommendations in the report concerned the future role of the Australian Government. The principal recommendation was that a National Estate Commission should be established 'to work with the states,

local government, voluntary groups and members of the public for the protection, conservation and preservation of the National Estate'. The recommended functions of the new Commission were that it should: 'advise the Australian Government on the allocation of National Estate grants; advise the Government on action, including legislation, needed to protect the National Estate; organise and commission studies, research work and investigations it considers necessary; prepare formal registers of National Estate property based on these studies; and advise the Government on all matters relating to international bodies with interests in National Estate issues.'

The recommended organisational structure was that the Commission should consist of an independent chairman, the permanent heads of six or seven Australian government departments, and a majority of experts or skilled or interested laymen from outside the Public Service. This structure was one that I had found in operation in Washington in the US, and which had been highly recommended to me by the Director of the Advisory Committee on Historic Preservation. The most important difference between the US system and that recommended in the National Estate report was that the proposed National Estate Commission would have responsibility for natural areas and Indigenous sites, as well as historic places. It was a very significant extension of the powers and responsibilities of the proposed new body.

The full set of findings and recommendations of the report deserve to be regularly revisited. Many are still unimplemented and many are as relevant today as they were when first set out in 1974 in the Committee of Inquiry report.

## THE CREATION OF THE AUSTRALIAN HERITAGE COMMISSION

When it came to writing the report, I thought that it would concentrate our minds wonderfully to work to a very tight deadline, and for personal reasons was keen that the task was not too protracted. I persuaded the others without much difficulty that this was possible. We submitted our report in mid-1974, not much over a year after the Inquiry was established. This turned out to be providential because it enabled a new interim body to be established to develop the legislation and provide a framework for the distribution of National Estate grants. It also made it possible for a Bill to be drafted so that an Act could be passed in mid-1975. By contrast, our sister inquiry, the Committee of Inquiry into Museums and National Collections, proceeded at a more leisurely pace. Its report was not submitted until late 1975, by which time the government's mind was fully occupied elsewhere, and so that report is buried in an archive, largely unimplemented. The instinct to get the National Estate Inquiry report done quickly was not prescience, but it did teach me a very important lesson about opportunities in government: that they have to be seized immediately and with both hands because circumstances can change so quickly; departmental heads, ministers, even governments can all change without warning.

While the Australian Heritage Commission's Act was being drafted, a question was passed on to me that had apparently been raised by Prime Minister Whitlam. It was: 'Would it not be better to combine the Australian Government's interest and responsibilities for heritage places with the Government's interests in movable heritage objects and museums and collections?' My reply was that in establishing two separate Committees of Inquiry, one examining places of heritage

significance of all kinds, and the other concerned with movable objects of heritage significance and the museums, libraries, archives and collections in which they were housed, a correct policy decision had been made. The heritage significance of places was not greater than that of objects; there were rather real differences in the protection and interpretation needs of places and objects and the management arrangements and skills required to carry them out. My recommendation, for what it was worth, was that it would be best to establish a separate Museums Commission as later recommended in the Committee of Inquiry for Museums and National Collections report.<sup>7</sup> The great misfortune was that this Commission was never established, because political events in late 1975 swamped any serious consideration of the drafting of an Act to bring it into being. When in 2012, thirty-seven years later, a discussion paper was released for public comment as part of a National Heritage Strategy initiative, an issue for many respondents remained just this lack of an effective national strategy for movable objects and collections and an administrative structure for its development. It is a sad reminder of what might have been.

### **The Interim Committee on the National Estate**

Following receipt of the Report of the National Estate, Uren and Cass appointed an Interim Committee to oversee the next phase in the development of the national heritage regime. The two main tasks determined for the Interim Committee were to provide advice on the drafting of the legislation to bring a new commission into being and to give advice on national estate grants. To my genuine surprise I was invited to become the

chair of the Interim Committee; I had fully expected that the Committee of Inquiry would be the limit of my involvement with the National Estate program. I went to see Uren. After I left, I thought further about the offer and realised that there was some uncertainty in my mind about the nature of the offer. While the invitation was very flattering, I still had a business to help run, the job would take up a lot of time and was not worth doing under any circumstances. To clarify the issues and to be sure that there was no room for misunderstanding, I wrote to Tom to set out the conditions under which I was prepared to take on the role. Tom was not amused; he certainly took some time to get back to me, and during this time, I have been told, looked for other people as an alternative chair. In the end he did appoint me and thereafter I had an excellent working relationship with him. It was one of the best things that I could possibly have done.

I have never met anyone who praised people publicly in the way that Uren did. He was extraordinarily generous, pointing people out in audiences to talk about the work they were doing. It was an admirable characteristic, which earned him great loyalty. He also took much trouble to find people appropriate for tasks he wanted carried out, and was never faintly concerned whether or not they had qualifications that he did not have. That is not to say that there were no disagreements. We fell out several times, but in each instance re-established a good relationship later. By the time the Australian Heritage Commission was effectively in operation, the Fraser government had come into power, and so my relationship with Uren changed, given the Commission was no longer working under his ministerial responsibility.

The Interim Committee travelled all over Australia, following in the Committee of Inquiry's footsteps. Such visits gave the new committee the opportunity to continue the investigations of the Committee of Inquiry, and to make further contacts with ministers, government agencies and non-government organisations with interests in heritage protection. In addition, our travels provided the chance to inspect properties of special significance needing funding attention or under threat in other ways. The Interim Committee's travels were thus closely related to the development of the National Estate grants program.

One of our visits was to Western Australia where we met Premier Sir Charles Court. After our return I received a letter from him. I looked it over several times but could make no sense of it. I rang through to the Premier's office and read the letter out to one of his advisers. He could make no more sense of the contents than I could. 'Don't worry,' he said. 'The Premier often wakes up in the middle of the night and dictates a letter. Sometimes the purpose of the letter is hard to fathom. I would just ignore it.' So I did.

We visited nearly all states and for the most part were well received. The exception was Queensland, where Premier Joh Bjelke-Petersen's government refused to have any dealings with us whatsoever.

### **The Australian Heritage Commission Bill**

The Interim Committee was able to ensure that the drafting instructions to the parliamentary draftsman drew upon the recommendations of the director of the US Advisory Council on Historic Preservation as set out in the *Historic Preservation*

*Act* (1966) and also drew upon other material borrowed from the *National Environment Policy Act* (1969). We were fortunate to have Justin Stanwix, a capable lawyer in the department, to prepare the drafting instructions, and an able parliamentary draftsman to prepare the Bill. It was a model of conciseness and clarity.

In the Bill presented to the Parliament, the National Estate was defined as consisting of 'those places being components of the natural environment of Australia or the cultural environment of Australia, that have aesthetic, historic, scientific, social or other special value for future generations as well as the present community'. The full definition of National Estate is given in the endnote.<sup>8</sup> It is splendidly broad.

The principal task given to the Commission was to prepare a Register of the National Estate that embraced heritage places of all kinds, including natural areas, Indigenous and historic sites. The Commission was required to advertise places that it proposed to put on the register, in order to invite comments and objections. Any objections had to be formally reviewed before the Commission could determine whether to list the place as advertised, modify the proposed listing or not to list at all.

Once a place was listed on the Register of the National Estate, Commonwealth ministers, departments and agencies were required under the Act to take no action that might adversely affect the place 'unless there was no prudent or feasible alternative'. The Act therefore gave limited protection to the listed place. The place was not directly protected from the actions of state agencies or from individuals within the states or territories. Nevertheless, in practice, the listing of a place on

the Register gave it a status that came to have a significant influence on the way it was treated.

There were other quite distinctive aspects of the Commission's Act. The Commission was left free to carry out its work without ministerial direction and interference. Only where a formal environmental inquiry had reached a finding about the heritage values of a place could the Minister direct the Commission to list or not to list. Fraser Island, the first place listed on the Register, was listed at the direction of the Minister following the Fraser Island Inquiry. No other place was later listed in this way. Thus, with this exception, the approach to listing was that places were considered by the Commission, which acted as an independent body of experts, and listed places solely for their National Estate values. Once listed, however, Commonwealth ministers, departments and authorities had the responsibility for protecting those values unless there was 'no feasible or prudent alternative'. This was a fundamental separation of powers and responsibilities. It was unusual and its acceptance required an open-minded minister. Tom Uren subsequently made much of his discussions with me as the chair of the committee and his eventual persuasion that this was the right way that listings should be carried out. It was a fine decision and he was right to feel proud of it. Over the 25 years of the currency of the *Australian Heritage Commission Act*, until it was repealed and replaced by the *Australian Heritage Council Act*, the division of responsibilities between the expert and the political in the Heritage Commission Act was core to its functioning. Each subsequent Commission that followed the two of which I was Chair took its responsibilities very seriously. That is not to say that there were

not political and industry complaints from those who held the view, so significantly castigated in the Committee of Inquiry report, that there should be no limitations placed on unfettered economic growth.

The Commission's other functions were broad ranging, including the responsibility to give advice to the minister, either of its own motion or upon request made to it by the minister on matters related to the National Estate, including advice relating to actions to conserve, improve and present the National Estate. Other functions included research, education and training. The Commission did not consider these responsibilities as simply ancillary to its main task. In my time the Commission went to extraordinary lengths to promote research, education and training across Australia, initially using the National Estate grants program for this purpose.

The Commission's reporting powers were also unusual. The Commission was required to prepare an annual report to the minister that included a review of the state of National Estate at the end of the year. The minister was required to table each annual report within a fixed number of days — a typical reporting requirement for a statutory body. In addition, the Commission had the power to prepare a report of its own motion at any time and submit this report to its minister or ministers, who then had to table the report in Parliament within a fixed number of sitting days. This was an unusual power, clearly one that should only be used with great discretion, most likely not until the Commission was well established. In the early days of the Commission I described it as akin to Odysseus's bow, unable to be strung by his son

Telemachus to defend his mother Penelope from the suitors because he had not yet grown to full manhood. I was the first Commissioner to make use of this power when I decided to write a report on the current state of the National Estate in 1981<sup>9</sup> when I was completing my six-year appointment as the Commission's Chair.

The *Australian Heritage Commission Act* and program were consistently praised by international colleagues. Several years after the passage of the Act, when chairman of the Commission, it was with some amusement that I received a call from a senior US official, who said that he had heard about the scope of Australia's Register and Act and was very keen to encourage the establishment of a similar regime in his country. He asked me, if he came to Australia in the next fortnight, could I meet him. I found this contact a delightful example of the ways we can all borrow profitably from each other and build upon each other's work. When drafting the Australian Heritage Commission Bill we had borrowed from two US Acts. Now a prominent US official was seeking to borrow from us the new formulation we had found to integrate natural and cultural heritage. Unfortunately, we could not find a mutually convenient time for him to come, so I have no idea what happened to his proposal.

### **The National Estate grants program**

The main work of the Interim Committee related to the grants program. The establishment of the National Estate grants program was nearly as important as the bringing into being of the Australian Heritage Commission itself since it was through the National Estate grants program that the Commission was

able to stimulate heritage activity and protection across the country. This was despite the fact that the amount appropriated under the National Estate grants program diminished very rapidly following the change from the Whitlam to the Fraser government.

It was not only that money was available from the program in its early years for urgent protective action. More important was the opportunity the program offered to stimulate new initiatives across the full range of heritage activity: identification, protection, restoration, enhancement and interpretation. The Interim Committee, and the Commission following it, worked hard to use such grants as were available to ensure that the program was not just responsive, but also strongly proactive.

One part of the grants program involved capital works, building restoration, and property purchases. This part was severely restricted in its scope by the limitations of the size of the program. Grants for purchase of properties were therefore discouraged, except where great urgency could be demonstrated. Funding for restoration work was similarly confined wherever possible to buildings of the greatest significance where work was urgently required to prevent serious further deterioration. In the short run this may not have been a bad thing since it was important that appropriate codes of practice were developed before restoration work was attempted. There was a real danger that money would be used unwisely and sometimes even to cause serious damage to National Estate properties.

The intangible achievements of the National Estate grants program were its greatest success. An example was the effort

put into the encouragement of studies both of the natural and the cultural environment where we and other experts thought that the information base was inadequate. These were not studies to lie part read and largely ignored on departmental shelves. They were purposefully aimed to stimulate local action, to identify and protect places of heritage value, to use thematic approaches to enrich the Register of the National Estate or to promote awareness of different aspects of Australia's heritage of places and structures.

The National Estate in 1981 had this to say about the benefits of the grants program:

*The grants program was able to stimulate many small cells of expertise around Australia. The flowering that followed this fertilization was extraordinary. The program was also able to bring together people scattered around the country who had been working on a particular theme or subject. Some had been working alone; many were unaware of others with similar interests. In some of these early conferences, the sense of excitement vibrated throughout the whole meeting. The grants program brought about a different attitude to the National Estate. Work begun in local areas has begun to provide new models and ideas. The change in community attitudes has sometimes been remarkable. Local authorities have begun to think more positively about their own segment of the National Estate. The overall increase in awareness has led to many spontaneous actions, including new courses and new projects which have been brought into being without the use of National Estate funds.<sup>10</sup>*

As is discussed in the next section, those interested and engaged in heritage protection around Australia were acutely aware of the importance of this work, and generous in their recognition of it. But all the time we were faced with efforts within the Department of Urban and Regional Development (DURD), the Interim Committee's host department, and other such bodies to limit the scope of its work.<sup>11</sup> We were constantly reminded of the poverty of thinking in so many quarters about Australia's national heritage program and indeed about the importance to the nation of a rich appreciation of its natural and cultural heritage.

### **The objections within the department**

I was aware that many people in the Department of Urban and Regional Development were generally opposed to the establishment of the Commission, specifically opposed to the independence given to the Commission in the Commission's Act, and likely opposed to my appointment as chair of the new Commission. Only recently have I learnt more about the nature of that opposition. The conclusion seemed to be that the Commission would be quite uncontrollable as a consequence of its independence and the likely behaviour of its Chairman designate.

The Commission was often to hear arguments that it should not be taking sides with conservation interests. The argument is curious on many counts, first because it implied that there should be constraints on the Commission's work when no such constraints applied to the economic agencies of governments, and second because it denied the primary conservation role of the Commission. When responding to statements of this

kind where they related to the development of the Register, I would simply reply that the Commission's Act was explicit that listing on the register should be based solely on the 'aesthetic, historic, scientific, social and other special values' of the place, and that while the Commission was solely responsible for listing, it did not make decisions about impacts of proposed actions on listed places. This was the responsibility of the relevant minister or ministers, departments or authorities.

Fortunately, there were other views about the achievements of the Interim Committee on the National Estate. They might best be summarised by the award to the Committee of the Robin Boyd Environmental Medal for its work in the years 1974–75. The citation for the award read:

*The Interim Committee on the National Estate during a lifetime of two years translated the initial conclusions of a governmental committee of inquiry into the enduring reality of the Australian Heritage Commission.*

*While administering an extensive grants programme with limited technical staff, it established overall objectives for the future, encouraged an enormous array of activities from government bodies through to private individuals, coordinated many disciplines and activities for the first time on a national scale, and developed and argued into being the Australian Heritage Commission Act 1975.<sup>12</sup>*

Defeated on the independence given to the Commission in legislation, other efforts were made to influence the appointment of the other Commissioners in my absence overseas, but

Uren insisted that the appointments await my return to enable me to give him my advice about them.<sup>13</sup> In order for the Commission to function effectively, I felt strongly that it was essential that its members included people who were expert in the principal components of Australia's heritage. These included Australia's natural history, its prehistory, its recent Indigenous history, and its built history since white settlement. No single individual could be expected to have an encyclopedic knowledge of these different facets of Australia's heritage, but a group of experts with specialist knowledge and skills in the particular areas of the Commission's work would know of other experts working in the same area, and how best to enlist their help with identification, listing and interpretation. I indeed travelled all over Australia seeking the views of experts about people with these qualifications.

This further illustrates how crucial was Uren's role, and how far sighted he was in his support of the proposals we put to him. He was well supported by fellow minister Cass.

My subsequent experience in government fully reinforced these views about the value of independent statutory bodies. I also came to see that the experience with the creation of the Australian Heritage Commission was only one example of constant attempts by the bureaucracy — and often politicians too — to limit the independence, scope and influence of statutory bodies, despite evidence of their efficiency and effectiveness.

I have already mentioned the need felt by the Committee of Inquiry to strongly rebut any arguments that the National Estate was solely a middle-class issue. This did not prevent the question being raised again and again during the full period of

existence of the Interim Committee of the National Estate. Indeed, I cannot recall a single public address or statement I made or press interview with which I was involved as the Chair of the Interim Committee when the question was not put to me. After the Whitlam government was dismissed in November 1975, lost the next election and Malcolm Fraser came to power, I was never asked that question again. The reason for this media behaviour is a conundrum that puzzles me to this day. Did the media assume that it was a middle-class issue that would have natural appeal to Fraser's conservative government? If so, how did they square that thinking with the fact that it was a Labor government and two ministers, both members of the left faction, who had introduced the legislation and supported it with valuable National Estate grant programs? Was there another reason, or did the media just get sick of asking the question? The question seems to be the expression of a rather strange perception that persisted long after my time, as I describe in a later chapter.

### **The Australian Heritage Commission — the interregnum 1975 to 1976**

In July 1975, following the passage of the *Australian Heritage Commission Act*, I was appointed Chairman of the Commission. On 11 November 1975, the other commissioners had been approved by Cabinet and the formal documents needed for their appointments were sitting on the Governor General's desk awaiting vice-regal assent. But the Governor General had other things on his mind that day and it took nearly another year for the rest of the commissioners to be appointed. In that time the Commission could not operate

because a quorum of four commissioners was needed to formalise any decision.

This was a difficult and eventful year. There were many efforts to disband the Commission and many challenges to the notion of a national program to help protect the country's natural and cultural heritage. It was a demanding year for me since, as the only commissioner appointed, I was left alone to carry the torch and present the arguments for the Commission's continuation. It had originally been planned that the Commission would have a staff of twenty people. During this interregnum year staff numbers were reduced to six. Fortunately, I was supported by a magnificent group of people consisting of, in the order of their arrival, Kerry Ashbolt, Christine Settle, Warren Nicholls, Lyn Leader, Mike O'Brien and Robert Bruce. Other than Christine Settle and Lyn Leader, all went on to work for the Commission. I say more about some of these and other people later.

Over the course of this year I wrote so many letters urging the retention of the Commission and the National Estate program that Kerry Ashbolt was moved to say (only partly in jest) that the extent of the lobbying and letter writing to the Prime Minister, state premiers, the media, conservation groups and any one else who I thought might be influential, left her with no time to carry out any of her other jobs.

Not the least of the frustrations in this time was to see people hand picked by Uren to hold senior positions in the Department of Urban and Regional Development (with the prime purpose of supporting the Commission) become among the first to argue for the Commission's abolition as soon as the government changed.

Nevertheless, when I look back on this interregnum period I see it now as a watershed. The justification for national involvement, a national body, a national register and a national grants program had to be argued over and over again from scratch, to sceptical and frequently hostile audiences. The work done by the Committee of Inquiry and the Interim Committee proved to be invaluable. It firstly provided many powerful arguments to use in discussion with people within the government system. It secondly helped to mobilise voluntary bodies such as the National Trusts and environmental groups, all of whom had participated actively in the work done to date. It thirdly helped to educate and interest the media. A source within the Prime Minister's department called one day to tell me that the Commission was likely to be disbanded. I rang newspapers across the country and the following day editorials in support of the Heritage Commission appeared in many leading papers. This support would have been unlikely without the prior work of the Committee of Inquiry, the Interim Committee, and the earlier debate about the passage of the Commission's act. It was therefore a triumph for the developing national consciousness of Australia's heritage that the Commission and the National Estate grants program survived the challenges and were finally endorsed by the Fraser government. No one could say that there had not been a searching review, nor a full justification that heritage protection was a matter of national significance. This did not stop the challenges, especially as listings on the new Register began to have progressive impacts on different vested interests. But it was an important trial by fire.

I learnt a lot in this time too. After finally securing a meeting with Sir Henry Bland, appointed by Prime Minister Fraser to review all government bodies and administrative arrangements, I was faced with a dilemma: how best to present the arguments for the retention of the Commission to him. If I sent something to him in advance, he might or might not read it carefully and, if he did, would likely form a fixed opinion before we even met. On the other hand, I did not want to have a discussion that strayed all over the place according to his dictates. I decided not to send him anything in advance. Instead, I wrote out the arguments for a national heritage regime and for the continuation of the Australian Heritage Commission as simply and succinctly as I could, starting from first premises and progressing as logically as I could. When we sat down to talk, I gave him a copy and told him that I would like to walk him through the argument point by point. It was a success. He said that generally he found the arguments persuasive and that they had given him some new insights. I could not have asked for more.

An important strategy that I used in this time was to develop close relations with a few Coalition backbenchers who were genuinely interested in the concept of the National Estate and in a national statutory commission such as the Australian Heritage Commission to protect and interpret it for all Australians. The alternative of trying to get to see ministers other than the minister to whom the Commission reported was close to impossible. My strategy was to make sure that these backbench members were fully briefed about the Commission's Act and any other matters of significance related

to the Commission. These connections paid off in many ways. Their principal value was to ensure that when, in party room discussions, government members and senators attacked the Commission on uninformed grounds, there were other members in the room who were fully informed and who could correct what had been said in a calm and rational way. This happened on many occasions. I doubt if the Commission would have survived without the help of these backbenchers.

Finally, after a year, I was successful in getting an interview with Fraser. I prepared myself with great care to present the case for the continuation of the Commission. I walked in. He sat me down. His first words were 'I have decided to proceed with the full appointment of the Australian Heritage Commission'. He then told me about some relatively minor changes he wanted to the Act. I had strangely mixed feelings; great pleasure of course, but also strong feelings of let down that all the preparatory work and the adrenalin charge for the presentation had not been needed. He then asked me if I was free to have dinner at the Lodge that night. I said that I would be pleased to accept the invitation.

At the Lodge that evening, before dinner I was talking to Fraser and another guest around the fire. Something came up in the conversation that reminded me of a story, whether true or not, I have always liked. It was of an interview with the poet and musician John Manifold following publication of a book of his poetry in England. When asked about the praise he had received for the book he demurred, saying that there were better poets than he in Australia, observing: 'In Australia we send our wool and our soldiers overseas and keep our wines and poets at home.' On hearing this story Fraser's face

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darkened, displaying great displeasure and the conversation soon ended. Over dinner I was sitting next to a minister in his cabinet who, like Fraser, came from the Western District of Victoria. I told him what I had said and asked him if he could explain Fraser's reaction to what I thought was a very good story. 'Yes', said the minister, 'it is indeed a very good story, but what you evidently don't know is that John Manifold comes from another well known Western District family. He is, however, considered in conservative circles as the black sheep in his family, as a one time and possibly continuing member of the Communist Party.' It was as well that Fraser had made his decision about the Heritage Commission before I told him the story.



Tasmanian Wilderness, Tasmania

## CHAPTER FOUR

### The Register of the National Estate

Before Prime Minister Fraser finally appointed the Australian Heritage Commission he introduced an amending Bill into the Parliament that was quickly passed.<sup>1</sup> The principal amendment was to reduce the size of the Commission by changing the formula for appointments. Originally the Commission was to have between twelve and nineteen members, with a maximum of six Australian public service heads and thirteen others. The amending Bill proposed to reduce the Commission to between four to seven members, two of whom could be public service heads.<sup>2</sup> Under this arrangement the Secretary of Environment became a member in 1990. Another amendment was to remove the Commission's power to give advice on the grants program, an amendment apparently sought by Fraser to stop the Commission making adverse comments about the reduced size of the grants program. If so, it was an amendment with little purpose since the Commission had many other ways of commenting adversely on the grants program should it have so wished. The last amendment of any significance related to the listing of Indigenous sites. The amendment confined the Commission to listing Aboriginal and Torres Strait Islander sites that were already protected under state law or recommended by a person or body approved by the Minister. This was nominally to ensure that there was appropriate consultation

about such listings, but thought at the time to have been introduced to avoid the strengthening of land rights claims through Register listing.

Although I had been an advocate for the original membership structure in the Act, my support had been based on the recommendations of the Director of the Advisory Council on Historic Preservation in Washington and the seeming success of the structure of its Act. The Interim Committee was established in a similar way, with representation from a majority of citizens and a number of different departments. These departmental members made helpful contributions to the work of the Interim Committee; I recall no serious obstructions from any of them. Nevertheless, having now had the experience of this structure in an Australian context, it did not seem to be working in quite the way the US council worked. In Washington, the level of government representation seemed to have been very much higher. I was also becoming conscious of the extent of departmental objection to the work of the Interim Committee and the independence of the Commission. It finally became clear that the fundamental reason why the original structure proposed for the Commission was not working was that the US and Australian Acts did not give the same roles to the Council and the Commission. The US Advisory Council had prime roles under the *National Historic Preservation Act 1966* to comment on federal government activities, including actions that might have serious impacts on listed places. (At the time of my visit the Council was celebrating its role in stopping a waterfront freeway planned for the famous Vieux Carré Historic District of New Orleans.) It made sense to have several senior members of different departments on the

Council alongside citizen representatives to play this role effectively. Since the principal role of the Australian Heritage Commission was a listing one, departmental membership was unnecessary. Thus, when Fraser decided to appoint a much smaller Commission whose members were virtually all independent of the public service, I was ready to agree that this was a much better structure for the Commission. Appointments to fill the places on the Commission quickly followed Fraser's decision, and on 9 July 1976, the Commission formally came into being. I continued in the role of Chair of the Commission following my appointment in 1975.

### **Membership of the first Australian Heritage Commission**

Six part-time Commissioners were appointed in July 1976: Professor Geoffrey Blainey, Ernest Scott Professor of History at the University of Melbourne and author of Australian history books; Miss Margaret Feilman, architect and town planner. Professor John Mulvaney, Professor of Prehistory in the Australian National University; Mr E.K. Sinclair, a company director, part-time director of the Industries Assistance Commission and Deputy President of the Libraries Council of Victoria; Mr Vincent Serventy, editor of *Wildlife in Australia*, author and conservationist; and Mr Reg Walker, General Secretary of the Australian Council of National Trusts. Mr Max Bourke, first Director of the Commission was appointed in late 1976..

Senator Ivor Greenwood was the first minister to whom the Commission reported. He was a senior minister and reputed to have had many arguments with Fraser over his principal task; namely the dismemberment of the Whitlam government's

Department of Urban and Regional Development and its programs. He unfortunately had a heart attack and died in office not long after his appointment, so I did not have the opportunity to work with him for very long. This was a pity because I found him very supportive of the concept of the Commission and its Register. The next four ministers were junior ministers. Fraser seemingly decided not to repeat the mistake of having a minister in the portfolio who would stand up to him. Two of these four ministers, Kevin Newman and Ray Groom, were from Tasmania. Their appointments were probably made, at least in part, to help shore up their electoral standing.

Ensuring that a Minister to whom the Commission reported was fully informed about the Commission and its Act was an essential task for the Commission. In turn, it might be expected that a minister taking up a portfolio and finding within it statutory bodies, each with individual Acts, would read the legislation carefully to make sure he or she fully understood its provisions. I never felt entirely confident that any of the next four ministers, Newman, Groom, Webster and Thompson, (with the possible exception of Newman) had grasped all the implications of the Commission's Act. Perhaps this was because most were junior ministers taking up their first portfolios and had much to absorb and learn. They all also had short-term appointments. It seemed they thought there were larger issues in their portfolio with which they had to deal. Given the Commission's statutory independence, they were probably right.

The fifth minister, Bob Ellicott, a lawyer of distinction, was a man of quite different mettle. Ellicott was Attorney General in the Fraser Government from 1975 to 1977, but reputedly fell

out with the Prime Minister over a matter of principle. On that account he had been demoted. On his subsequent appointment as the minister to whom the Commission reported, I sent him all the usual briefing material and then made a time to meet. I had barely sat down before he said, 'Mr Yencken, I want to tell you before we begin that I have read your Act and the other briefing material you have sent me and I understand everything fully.' 'What a change,' I thought.

Later in the meeting he said: 'If the Commission acts strictly within the confines of its Act I will support you fully, but if you stray outside those confines I will land on you like a ton of bricks.' For me it was a perfect working relationship. Ellicott was as good as his word, and the Commission in its turn behaved strictly in accordance with its Act; it had no reason to do otherwise. He did not stay long before he was moved; I was sorry to see him go.

I never had quite the right opportunity to get Ellicott to talk about his personal views about Australia's heritage. He nonetheless gave me very clear indications of his thinking about the rule of law and the separation of powers between the parliament, the executive and the judiciary. He made it clear that he believed that if the Australian Parliament had passed an Act, it was the duty of a minister to fully respect the determination of the parliament, irrespective of his or her personal views. Ellicott gave me the strong impression that this was a matter of deep principle to him.

During this time I had an encounter with another Liberal QC, Billy Snedden, who was the Leader of the Opposition at the time of the 1974 election, being defeated by Gough Whitlam. At this particular moment, Snedden was Speaker of the House of

Representatives. The Commission was well advanced with its listing project, having a large number of buildings already on the Register in every state. We put forward Parliament House, Canberra for listing, but ran into a fierce and unexpected objection from Snedden. Since he was a senior Liberal, I consulted Ellicott, explained why it was quite anomalous that Parliament House should not be on the Register given that every other parliament building in Australia was on it and asked him if he would talk to Snedden. He did so with no success and suggested I ring Snedden myself, which I did. It was a very strange conversation. Snedden clearly had a passionate view that the federal parliament building had a status, which somehow took it out of the realm of any other building in Australia. I pointed out to him that every other state and territory parliament building was by that time on the Register with the full support of parliaments and governments around Australia. I then asked what was his objection to the listing of Parliament House, Canberra. He spluttered down the telephone: 'Because it's the Parliament, the Parliament, the Parliament' and hung up. While Snedden might have attempted to argue that his stance reflected the same democratic principles that I had observed in Ellicott, they did not seem so to me. Rather, I perceived his behaviour as the attempt of a man who, having aspired to the highest political office and failed, now wanted to over-glorify the position in which he ended his political career. I understand that the current federal Parliament House on Capital Hill is still not on any heritage list, so perhaps Snedden's stance is shared by all subsequent Speakers and I do him an injustice.

### **What kind of Register?**

Going back a step, when the Commission members were finally assembled, the main task facing us was the establishment of the Register of the National Estate. Newman, our minister at the time, expressed his wish that we concentrate our efforts on the Register. It was evident to us too that the quicker we could build up a substantial register, the better the case would be for the continuation of the Commission and its work. But first we had to decide what kind of register it should be. There were many possibilities. We could, for example, have developed a very small register of places of outstanding national cultural and natural significance. Instead, we opted for a large register that we hoped in time would come to be representative of the whole of Australia's natural and cultural history. This was the goal we set ourselves, even though we all recognised that it would never be fully achieved. What justifies this choice?

In Chapter 1, when setting out the arguments for the protection and conservation of the National Estate, I noted that the most scientifically valuable and the most beautiful natural areas must be preserved for future generations and the world as outstanding examples of Australia's environment. In addition, I argued that representative examples of each of our various ecosystems and plant communities should also be preserved, including landforms and soils, plant communities and the habitats of all endemic fauna. Given that the widespread adoption of the CAR principles (comprehensive, adequate and representative) in ecological reserve management, and the need for the preservation of genetic diversity were by then such well known scientific principles, we felt that

the ambition to create a fully representative register of natural areas should brook little challenge.

The case for a fully representative register of cultural places is different, but equally compelling. When registers of cultural places are initially developed, almost without exception they tend to present a skewed picture of the society to which they relate because they place most of their emphasis on grand and architecturally distinguished buildings and structures. If we are to understand and value our past, we must keep and protect not just these places, but places that illustrate all other aspects of our society.

Representative lists are also important because cultural tastes change. An example is the changing attitude to iron lace on Victorian era buildings. When first used in the late eighteenth and nineteenth centuries it was considered the height of architectural fashion. By the 1950s iron lace was so looked down on that magazines such as *Women's Weekly* were full of articles illustrating what might be done to spruce up old buildings by removing it. Later, following the establishment of the National Trusts, along with spirited defence of iron lace by writers such as Graeme Robertson, Victoriana gradually came fully back into fashion again. During our early listings we came across many examples of a similar kind. We collectively reached the view that the only way to avoid bias in listing, caused by temporarily prevailing architectural likes and dislikes, was to seek to list the best examples of each style-period, whether or not they enjoyed architectural popularity at the time, the likelihood being that the heritage significance of each would almost certainly be better appreciated at some time in the future.

### **The initial listings**

There were some notable events associated with the early listings. When the heritage departmental officer heard about the size of our initial listing proposals he nearly fell off his chair. More dire warnings of the tidal wave of objections that the Commission, Minister and Department would face followed, but somehow the forecasted disasters never seemed to occur. We decided to tackle the listings strategically and thus began with places already 'classified' by the National Trusts; 'classified' being their highest designation. Our thinking was that all of these places had already been subject to detailed review and public scrutiny. We also included declared national parks and reserves in the initial listings for the same reasons.

There were objections to these initial listings, but far fewer than the departmental officers had predicted. Many were based on misunderstandings of the implications of listing; some were based on queries about the National Estate values of the place or out-of-date information — a building, for example, having been demolished. A few were based on an in-principle objection to governmental listings for any purpose whatsoever. It was ironic that one of the objections in this last category came from some members of my own family.

One of the very strange groups of objections to the first list of buildings came from the heads of the churches in South Australia, each objecting to the listing of all their churches. It was puzzling because there were no similar objections from the churches in other states or territories. I went across to Adelaide and in the course of one day met the Anglican Archbishop, the Catholic Archbishop, the head of the Lutheran

Church and the head of the Uniting Church. Until this series of meetings it had not occurred to me to what degree the different Christian denominations reflected different social groups in Australian society. My first call was to the house of the Anglican Archbishop and his wife, where I was very politely offered a cup of tea served on fine bone china. The second meeting was with the Catholic Archbishop. He could not have been more Irish, jolly and expansive. The Head of the Lutheran Church seemed to belong to another distinct social group and the Head of the Uniting Church to yet another. It was a most intriguing day. There was of course a reason why these disparate groups of churches with their disparate congregations had come together to object to our listings. It turned out that it had nothing to do with the Commission; it was rather related to fears about the possible introduction of heritage controls by the South Australian government. Fortunately, during the day I was able to dispel most of these fears insofar as they applied to the Commission.

When the dust had settled following the initial advertisements and the period for objection was over, each objection had to be followed up carefully. Given the relatively small number of objections to the first advertisements, the Commission felt that it could move on to potentially more difficult listings. It invited submissions for natural areas not already protected in national parks or reserves, an invitation actively taken up by nature conservation bodies. The Commission emphasised that all submissions had to be fully and scientifically documented before it would accept them. It then considered each nomination and, if it thought that the case was a good one, agreed to advertise it.

## THE REGISTER OF THE NATIONAL ESTATE

State governments were also invited to make submissions. Most of the national park nominations came from state governments. The Queensland government, under Premier Joh Bjelke-Petersen, refused to make any nominations and objected to every proposed listing in the state. We did not expect much better from Charles Court's Western Australian government, so it was with some surprise and delight that we received not only nominations for national parks, but also nominations from the Environmental Protection Authority of Western Australia's 'Redbook'. This publication identified places recommended as conservation reserves and included areas of great nature conservation significance.

Shortly after these nominations were received, a Commission staff member in Canberra called me in Melbourne, to tell me that the Western Australian government had asked that the nominations be returned 'so that copies could be made' and that the submissions had been returned as requested. On learning this, I arranged a dramatic recovery action. In commando style, the documents were taken off the plane on arrival in Perth before being delivered to the Premier's Office. They were returned to Canberra, photocopied, the original retained by the Commission and the copy sent back to Perth. The Commission then carried out a careful evaluation of the nominations and concluded that most if not all of the sites deserved to be on the Register of the National Estate and accordingly advertised them. Who objected? None other than the Western Australian government, the original nominator. We had a similar situation with a cork plantation in the Australian Capital Territory. It was nominated by one division of a federal department and objected to by another.

### **Dealing with objections**

The objections to the second round of interim listings were of a different order to those to the first group. It was not that they were very numerous but rather that many involved large areas and accordingly provoked strong feelings among those who thought that they would be affected. Panels of well-known scientists were commissioned to carry out reviews of the proposed listings, usually accompanied by commissioners or staff members. In addition, we all took on the task of talking to people who considered themselves adversely affected by the proposals. Often it turned out that objectors misunderstood the implications of listing. In other instances we were able to adjust boundaries to overcome the objectors' main concerns. In the meantime, however, we had to meet the objectors face to face and hear what they had to say and explain clearly what the Commission was doing and why it was doing it. I went up to Tully in North Queensland to meet objectors to a proposed listing in the area. The hall was full to overflowing. It was the most hostile meeting I have ever addressed. When the meeting ended, I was just beginning to relax, more than grateful that it was over, when three very large men came over and told me that they were taking me down to the pub. As we walked down one said casually that the last southerner who had come up to Tully had been unable to get out of bed for three days after they had finished with him. I realised that my ordeal was just beginning. I knew that the greatest danger would lie in being the last in a large group to buy my round of beers so I insisted on buying my round early and then at a suitable moment excused myself. I was not alone in facing such audiences. Max Bourke, the director of the Commission, told me he thought that he was

about to be personally attacked when speaking at a similar event in Deepwater in New South Wales. At Deepwater, too, a member of the Commission's staff and a scientific assessor were waylaid in a most confronting way, apparently by a group of protesters transported in to make trouble.

Based on expert advice about its natural heritage significance, we advertised a lava flow for listing in North Queensland. The land turned out to be owned by a person who was a prominent member of the League of Rights.<sup>3</sup> From then on he and fellow members of the League followed us around Australia making the most extraordinary claims about the purposes underlying our work and our international associations with the most bizarre and extremist bodies. What prompted the political objections? In Joh Bjelke-Peterson's government's instance, the objections were to any initiative of the Commonwealth government that might place restrictions on the freedom of action of the state government or on Queensland business enterprises. It was as simple as that.

### **The first list at the end of 1980**

We progressed systematically through the initial listings and quickly built up a register of considerable size. By the time my second term of office as Commission Chair had come to an end in June 1981, the Register of the National Estate had reached over 6,700 places.

At this point in the development of the Register of the National Estate, the task facing the Commission was a different one to that it had faced five years earlier. The second generation register, it was clear, would likely take a decade or more to complete and required a systematic national review of all categories of the National Estate in all regions of Australia. The

Commission invited the Division of Land Use Research of the CSIRO to carry out a study of a suitable methodology for the investigation and listing of natural areas.<sup>4</sup> At the time it seemed likely to begin with the division of Australia into biogeographic provinces, followed by an examination of the natural resources of each province. Historic listings required a completely different approach. Sharply focused histories had already proven to be a very useful technique. Thematic studies were also techniques of the greatest importance. The studies needed for Aboriginal and Torres Strait Islander places could profitably include thematic studies, but had to be developed by or in conjunction with Indigenous bodies. I describe the thematic studies used by the Commission in more detail in later chapters.

### **Strategic thinking**

Did we have a strategy that informed our actions in those early years? If by that question is meant: Did we attempt to set down a formal national heritage strategy printed out in glossy graphic style in the same way that the Commonwealth government has attempted to do with its Australian Heritage Strategy released in 2015, then the answer is no. If, however, by that question is meant: Did we have clear objectives broadly agreed within the Commission and very clearly understood between the Director of the Commission and myself as its Chair, the answer is most definitely yes. The four core elements of that strategy were, first, to get a Register of the National Estate of significant size up and running as quickly as possible and by this means to demonstrate that the Commission was a purposeful, effective body, and give it the material for its promotional and educational work. The second, critically important goal was to sponsor new professional groups and local heritage bodies wherever we saw

a latent, unfulfilled need and opportunity. Our intention was to create a body of experts in many different fields and a collection of local heritage groups across the country such that, whatever might be the fate of the Commission or any body replacing it in the future, there would be a strong heritage community ready to fight for heritage values and principled heritage practice. Three examples might help to illustrate what was accomplished by this strategy. One was the establishment, as is described later, of Australia ICOMOS as a local off shoot of the International Council on Monuments and Sites, now one of the strongest and most effective chapters of ICOMOS in any country around the world. Another was a meeting of historic archaeology experts organised for us by Dr Jim Allen and sponsored by the Commission. The excitement of specialists meeting colleagues from around Australia for the first time radiated over this seminar. It eventually led to the formation of the Australasian Society of Historical Archaeology. Another highly successful Commission-sponsored seminar, organised for us by Peter Watts, was the inaugural meeting of the Australian Garden History Society. The Society is today a vibrant organisation with around 1,800 members.

The third part of the strategy was to use the National Estate Grants Program to support these initiatives and the overall strategy. It was crucial that this was done right at the beginning because over time the amount available from the grants program diminished rapidly, and the areas in which the grants could be spent became increasingly restricted. The fourth part of the strategy was to develop a suite of promotional and educational initiatives described in the next chapter. It was of critical importance.



Port Arthur Penitentiary, Tasmania

## CHAPTER FIVE

### Interpretation and education and international connections

In those early years, we found much ignorance of the quality and distinctiveness of Australia's National Estate. Once the Register had reached a certain size and the Commission's work had achieved a certain momentum, there was, therefore, an evident need to tell Australians about their heritage of natural and cultural places in as engaging a way as possible. There was an equal need to show politicians and bureaucrats that a national heritage program, however poorly resourced, was an essential requirement for a civilized society and that the creation of the Australian Heritage Commission and its ongoing work was a valuable means of illustrating Australia's riches to visitors to our country. The establishment of the World Heritage Convention and Australia's part in the early development of the World Heritage List, described later in this chapter, were of signal assistance in helping to bring about this recognition. Indeed, the international context in which the Commission worked grew progressively more and more significant. First, however, it is important to say something about the educational and promotional work of the Commission.

The Commission decided it could best illustrate and promote the National Estate by producing three key works: *The Heritage of Australia* (1981), an illustrated volume of registered

places; *Investigating the National Estate* (1980), an education kit for use in secondary schools, and *The Things We Want to Keep* (1979), a short film that summarised the essence of the National Estate. Through these various actions we were determined to show that there was much more to the National Estate than the placing of restrictions on particular activities associated with listed sites. Recognising that exhibitions using combinations of the written word, the spoken word, music, painting, photography, graphic art, artifacts and direct public involvement could be very effective communication media, we also funded a study to examine in what way exhibitions could best be used to promote the National Estate. For example, I was aware of the great success of Swedish Travelling Exhibitions since its establishment in 1965. While the Commission did not have the capacity to put all these ideas into practice, the projects that we did carry out illustrated in what way inventive thinking could be used for heritage education and promotion.

### ***The Heritage of Australia***

The publication of *The Heritage of Australia*, a 1200-page volume featuring 8,500 images, was a massive undertaking. It required much supplementary research to ensure that the statement of significance for each of the 6,700 individual entries was accurate and of high quality. It also needed an appropriate photograph for each entry and high quality colour photography for the most significant entries. In this way the book was intimately connected to the refinement of the Register listings. We also determined that the listings required a strong contextual structure. As a backbone for this structure

we decided that there should be four major introductory essays written by eminent scholars in their fields. Professor J.N. Jennings' essay, 'Landform, rock and soil', covered Australia's geomorphology and geology. Professor John Turner's essay, 'Australia's Natural Legacy', described Australia's flora and fauna. Professor John Mulvaney's essay, 'The Aboriginal Legacy', covered Australia's indigenous prehistory and history. Professor Miles Lewis' essay, 'Architecture since Colonial Origins', discussed Australia's built history since European exploration and settlement. We then commissioned shorter background essays for each state. Given the size of the final volume, it was well beyond the Commission's means to publish it on its own. The Commission therefore sought proposals from major publishers. The bid from the Macmillan Company of Australia most clearly matched the Commission's objectives and was the most financially attractive. With this offer in hand, the Commission was able to seek other support. The last step in this three-year planning exercise was the receipt of two grants, one from H.C. Sleigh Ltd and the other from CRA Ltd. They enabled the Commission to publish *The Heritage of Australia* at a reasonable price.

Two anecdotes may help to illustrate the impact of the book when it was published and to what degree it met all our objectives at the time and later. A random encounter with a previous federal Deputy Prime Minister in a coffee shop some thirty years after the publication of the book led to a request on the spot for a signature on his copy after he had rushed home to pick it up. Later still, in 2016, a US researcher described it to me as the heaviest book that she had ever taken out of the library, but at the same time one of the most informative.

Not the least intriguing part of the story of the book's production was its political vetting before publication was allowed to proceed. I was called to a meeting with Ian Wilson, the Minister to whom the Commission was responsible at that time. He had with him his Head of Department, setting the tone for a very formal meeting. I was presented with a list of changes required by the Prime Minister's office and told that the book could not proceed unless the changes were accepted. Some were quite inconsequential and I readily agreed. There was one, however, that I said was ridiculous and to which I would not agree. It was to change or omit the opening sentence of one of the background essays written by Jim Davidson, then the editor of the literary journal *Meanjin*. The sentence began: 'The first time 11th November singled itself out as a date of significance in Australian history was ...'. I told the Minister and his departmental head that I would be a laughing stock if I asked the author to change this perfectly innocuous sentence and added that if he and the government wanted it changed because of political sensitivity about the Whitlam government's dismissal and the Governor General and Malcolm Fraser's part in it, the Minister would have to request the change himself because I certainly would not. After some further discussion it became reasonably clear that a change to the sentence would not be made.

### **Investigating the National Estate**

The school kit was developed by the Commission working in conjunction with the then Curriculum Development Centre of the Education Department. It was agreed that the kit would be best designed for junior secondary students and would consist of four units. 'Unit 1: Investigating the National Estate' defined

the National Estate and how that term has been used. It explained the role of the Australian Heritage Commission, the Register of the National Estate and the World Heritage Convention and how a country and its people might best decide what it might want to keep. 'Unit 2: The Importance of Aesthetics' contained materials designed to help students become more aware of the significance of aesthetics in both the natural and cultural environment. 'Unit 3: Investigating our Historic and Cultural Surroundings' contained materials on Indigenous history, historic archaeology, vernacular buildings, grander housing and other aspects of historic precincts and environments. 'Unit 4: Investigating our Natural Surroundings' contained material on landscapes, mountains, geological monuments, deserts, rivers, swamps, estuaries, desert vegetation, wildlife and many other features of Australia's natural heritage. In its first review, the kit was described as a 'cultural landmark'.<sup>1</sup> Following its completion it became the largest selling school kit ever produced by the Curriculum Development Centre.

### **The Things We Want to Keep**

The short film *The Things We Want to Keep* was commissioned with three main aims in mind: first, to illustrate the range and complexity of Australia's National Estate; second, to explain some of the problems affecting the National Estate; and finally, to encourage action to preserve and protect the National Estate by showing what citizens can do themselves. The film was given a warm reception at its launch at a conservation and tourism meeting in Bangkok. Subsequently it was in regular demand in Australia.

To do all the things I have described and to produce a Stage 1 Register of 6,700 places (the size of the Register by the end of 1981), a reader might assume that the Commission was very well resourced with staff and funds. The contrary is true. The Commission probably had fewer staff resources (around about 19 only) at that time than at any other time in its life. What it did have was a group of committed Commissioners and highly talented and qualified staff.

### **The House of Representatives Standing Committee on Environment and Conservation review (1980)**

During 1980, the House of Representatives Standing Committee on Environment and Conservation, chaired by John Hodges MP, carried out a review of the Commission's work, the first of many such reviews. In his report to Parliament, Mr Hodges summarised some of its key findings in this way:

*The principal role of the Heritage Commission at present is the compilation of a Register of the National Estate. The Register serves three basic yet essential purposes:*

- 1. It is the foundation of the National Estate and as such is an important educational and cultural device.*
- 2. By identifying important sites, the Register helps Government agencies, private corporations and individuals to act effectively and in a way that will serve to conserve, as far as possible, the National Estate.*
- 3. It leads to much clearer identification of what is significant and ensures an objective measure for assessment and comparison.*

By formal recognition of those components forming the National Estate, the legislation attempts to ensure that cultural and conservation considerations are adequately accounted for in the development of projects for which the Commonwealth acts as an approving authority.

This was helpful recognition of the national importance of the Heritage Commission, its Act and the Register of the National Estate. The Committee reported that it had sought the views of the states about the legislation and that they had variously described it as 'vital', 'essential' and 'of importance'. None suggested any amendments to the Commission's Act. The Committee also reported that it had found that no government department was having difficulty with the legislation. Most of the recommendations were for the improvement of procedures. These were suggested changes with which the Commission readily agreed and in several instances was already making. The endorsement of the Commission's work coming from the House of Representatives report constituted an important underwriting of Australia's national heritage program. We hoped that we were building up an unassailable case for the existence of the Commission and its work. This was further enhanced by the international context in which the Commission increasingly found itself working.

### **The international context of the Commission's work**

From the Commission's earliest days, its members were actively engaged with UNESCO's World Heritage Convention, either by virtue of membership of the World Heritage Committee, or through involvement in the nomination of Australian places for the World Heritage List. Over the course

of the Commission's existence its members also became more deeply involved with the International Union for the Conservation of Nature (IUCN) and the International Council on Monuments and Sites (ICOMOS), two bodies of great significance in international natural and cultural heritage affairs. Both work closely with the World Heritage Committee. The Committee relies on their expertise for all its expert assessments of nominations for natural and cultural listings on the World Heritage List.

In the Commission's first five years, offshoots of both IUCN and ICOMOS were established in Australia.

IUCN is a body composed of both government and civil society organisations. Created in 1948, it has evolved into the world's largest environmental network with 1,300 member organisations and the input of some 16,000 experts. IUCN is the global authority on the status of the natural world. Experts are organised into six commissions dedicated to species survival, environmental law, protected areas, social and economic policy, ecosystem management, and education and communication.<sup>2</sup>

The Australian Committee for IUCN (ACIUCN) was formed in 1979 'to contribute to the conservation and restoration of the natural environment in Australia and the appreciation of its diverse values.'<sup>3</sup> ACIUCN describes itself as an apolitical body championing good science and knowledge. While acting as a link to IUCN's parent body and its commissions, as well as regional bodies, it also acts as a forum for its Australian members. ACIUCN and its individual members regularly played a helpful part in the listing of natural areas on the Register of the National Estate. The later creation of the

Australian Natural Heritage Charter was an important joint initiative of ACIUCN and the Commission. It is described in the next chapter.

The Australian Heritage Commission had an even greater involvement in the creation of Australia ICOMOS, a branch of ICOMOS' parent body in Paris. ICOMOS is dedicated to the global application of 'theory, methodology, and scientific techniques to the conservation of architectural and archaeological heritage.' Its work is based on the principles enshrined in the 1964 International Charter on the Conservation and Restoration of Monuments and Sites (the Venice Charter). It is a network of experts such as architects, historians, archaeologists, art historians, geographers, anthropologists, engineers and town planners. The Venice Charter, is ICOMOS' agreed international standard for all restoration work.<sup>4</sup>

On an overseas trip in 1975, close to the time I was appointed Chair of the Commission, I called in to the offices of ICOMOS in Paris. I had read about their activities and felt that there was not only relevance of such a body to Australia but also a strong case for the establishment of an Australian national committee, not to compete with the work being done by the National Trusts, but to provide a forum for cultural heritage workers across the country to debate, foster and improve professional skills and practice. When I consulted other professionals working inside and outside the Commission following my return to Australia, I found there was unanimous support for such a proposal. Thus, an interim Australian National Committee of ICOMOS was formed in October 1976 in Melbourne. I still have the list of those who attended the Melbourne meeting. It was an impressive group.

The first full meeting, following ICOMOS's formal endorsement of the Australian branch, took place in Beechworth, Victoria in the following year. At that meeting it was agreed that Australia ICOMOS, the name adopted for the new body, should not break into state chapters but should at all times remain a national body. I took the role of Chair to help get the body off the ground but soon after withdrew so that the position could be held by a specialist in cultural heritage conservation work. Australia ICOMOS has gone on to become a body of considerable significance in Australia; many Australians associated with the Commission have also played important roles in the parent international body.

In the early days of the Interim Committee and the Commission's work we used ICOMOS' Venice Charter for the professional standards required for work carried out around Australia when using National Estate grants. It soon became clear that there were deficiencies in the Charter's application to Australian conditions. In 1979, the Commission sponsored a meeting of Australia ICOMOS in Burra, South Australia, an historic mining town. At this meeting a revised version of the Venice Charter was developed for use in Australia. The Burra Charter, as it came to be called, has now been adopted by all heritage authorities and National Trusts in Australia. Over time, its principal use in assessing individual historic structures has expanded to include archaeological sites and historic gardens. For some categories of places, such as historic towns, different versions of the charter have been developed. The Burra Charter has also made its mark in other countries and been used by the parent body of ICOMOS in Paris alongside the original Venice Charter.

### **The World Heritage Convention**

The World Heritage Convention was adopted in 1972. As an early signatory, Australia gained a seat on the World Heritage Committee. It also put forward some of the first places to be listed on the World Heritage List. Often in those early days I was asked to speak on heritage matters. I would regularly tell audiences about the World Heritage Convention. I would say that there were (at the time) just under a hundred properties on the World Heritage List. They included many areas of outstanding, universal, natural value and also many cultural properties of outstanding universal, cultural value such as the Nubian monuments of the Nile, the Centre of Rome, Chartres Cathedral, and the Mayan temples such as Tikal and Copan from Central America. I would note that the Great Barrier Reef and the South West Tasmanian Wilderness area were among Australian sites listed. I would then say that there were two Australian properties included on the World Heritage List for their outstanding, universal, cultural value. I would ask my audiences if they could identify either of them. Almost without exception I was met with silence. Very rarely Kakadu might be mentioned, but never Willandra Lakes. When I told my audiences what the names of these listed places were and then asked them why they might be of world heritage significance there was the same silence. This was the extraordinary state of knowledge about our most precious heritage at the time. I was no better informed myself until I became involved with the National Estate program. It was a great prompt to set in train all the educational programs described earlier in this chapter.

Other examples of Australian properties later placed on the World Heritage List include Lord Howe Island (NSW), Uluru-

Kata Tula National Park (NT), the Wet Tropics of Queensland, Shark Bay (WA), the Gondwana Rainforests of Australia (NSW/Qld), Fraser Island (Qld), Macquarie Island (Tas), Heard and Macdonald Islands (Antarctica), Australian Fossil Mammal Sites (Vic and Qld), Greater Blue Mountains Area (NSW) and Purnululu National Park (WA). All these areas have been listed for their natural values. Uluru-Kata Tula, together with Kakadu and Willandra Lakes, were listed for their archaeological or Indigenous art values as well as their natural values. It is only very recently that sites reflecting the last two hundred years of exploration and settlement have been listed. One is the Royal Exhibition Building and Carlton Gardens in Melbourne, another the Sydney Opera House (2007), and the third a group of convict sites including Port Arthur in Tasmania. We ought to know all these places and their remarkable characteristics like the backs of our hands.

In 1981, Australia hosted the fifth session of the World Heritage Committee at the Sydney Opera House. It was a splendid setting, but we were completely upstaged by the French. When a meeting was held in Paris, the World Heritage Committee was given a dinner at the Palais de Versailles, the great palace and garden of Louis XIV, *le roi soleil* and his successors. An earlier World Heritage Committee meeting to which I was invited as Australia's representative was held in Luxor, Egypt. A highlight was a guided tour of Nubian monuments along the Nile. Sadly I was unable to go to that meeting because it coincided with the birth of my youngest son.

The Paris meeting in 1982 was notable for other reasons. The Kingdom of Jordan had nominated Jerusalem for listing. When this part of the proceedings was reached, ambassadors

from Israel, many Arab countries, the US and other places flooded into our peaceful meeting. After some tough background negotiations, it was agreed that one of the Arab ambassadors would make a speech about the importance of Jerusalem to Arab and Muslim culture but would not insist that the nomination be dealt with at this meeting. An Arab ambassador duly made his impassioned speech. Unfortunately, at a crucial moment the interpreter made a small mistake, which seemed to suggest that the Arab delegates were backing down on the agreement. The US ambassador leapt to his feet in anger to denounce the Arab ambassador and the meeting broke up in disorder. It took another full day to sort it all out.

A procedural arrangement at these UNESCO meetings regularly impressed me. Before delegates departed at the UNESCO meetings I attended, a full day was always devoted to agreement of the formal minutes. From that time on I have tried to practise the same technique in meetings, no matter how small. It can be immensely valuable to summon up the extra energy after an exhausting discussion to get agreement to a minute before the participants disperse, particularly if the discussion has been contentious.

I have noticed wily operators doing something similar to me at different times in my life. At one stage I was approached by the architect Sir Osborne McCutcheon about a project he wanted carried out on a piece of land he owned in Mt Eliza. He had singled out my company as the one he wanted to work with. He used to invite me to regular early morning meetings with him in his office in St Kilda Road in Melbourne. He would write out notes of the matters we had discussed and the decisions we had taken during the meeting. As we stood up to

leave he would hand his secretary his notes and ask me to wait at the front door. Duly within a minute or so, she would arrive with a copy of the minutes. It did not make it easy to disagree with Sir Osborne's record, not that I ever had serious reason to.

The engagement of members of the Commission and of people associated with it in the international bodies and meetings I have described further helped to cement the Commission's role into the fabric of Australia's polity as part of a civilized, modern government. They did more too. They brought to international gatherings the new thinking and the wisdom gained from the different ways that the Australian Heritage Commission had approached traditional problems of heritage identification, protection and interpretation. Two examples are Max Bourke and Joan Domicelj. Max Bourke, the first Director of the Commission, following his research at the College of Europe, became a member of the Board of ICOMOS International and then its Deputy Chair. Later, Joan Domicelj, after serving as a Commissioner of the Australian Heritage Commission and holding other distinguished positions on Australian heritage related bodies, became ICOMOS Vice President, a member of the Council of the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) and was named in 2006 as one of '60 Women contributing to 60 Years of UNESCO'. During 2007 she acted as ICOMOS World Heritage Director and has worked in Europe, Asia and Latin America.

### **The National Estate in 1981**

In June 1981, my second three-year term as chair of the Commission came to end. The Australian Heritage Commission

Act stipulated that no person should hold the position as Chair nor act as a Commissioner for more than two terms. With the extensive help of many others, six years was plenty of time to oversee the work described in the preceding chapters. I was tired, too, of the endless political and industry battles, and was looking forward to a break to write a book on the subject of changing perceptions of Australia's National Estate, a subject that had come to intrigue me greatly and for which I had a publisher's contract. Before handing over the reins to others, I, however, decided to write a review of the state of the National Estate in 1981, as a follow-up to the initial Committee of Inquiry report. I wanted to leave behind a summary of the main achievements of the Commission and the National Estate program, together with an exploration of the principal issues with which future Commissions would likely be faced in the coming years. These matters were so much a part of my lived experience over the eight years of my involvement with the Commission that I was able to write this review, a book-length report of 225 pages, very quickly by devoting myself day and night to it. I finished writing it, sought input from commissioners and staff, and had it formally tabled at a Commission meeting before my term as Chair ended. This in turn enabled it to be presented to the Minister as an official report of the Commission, which, under the Commission's Act, he was obliged to table in Parliament within a fixed number of sitting days. I have already made several references to this small book. It was republished by the Commission, warts and all, as *The National Estate in 1981: The Role of the Commonwealth*. For those interested in a more detailed description of the work of the Commission in the first six years of its life I refer you to this

book and to *The Heritage of Australia*, the very large illustrated compendium of all of the listed places on the Register of the National Estate at that time.

These eight years were extraordinary in their richness. Little did I know, when I agreed to accept the invitation to join the Committee of Inquiry, what opportunities and experiences lay ahead for me, nor for how many years and in how many ways I would be involved with the National Estate programs and the bodies responsible for them. I learnt so much about my country that I would never have learnt without this experience. I learnt too, from my association with the World Heritage Committee, much about the characteristics and qualities of the great natural and cultural properties of the world. Before each meeting of that Committee I would scour issues of World Heritage newsletters to inform myself about properties being considered for listing and others of comparable quality to which they might be compared. It was an education *nonpareil* and a great prompt to find ways of sharing the same experiences with other Australians. After leaving the Commission I was asked to write an article for *Historic Environment* about my immediate reflections about the experience. Here are two excerpts from what I wrote in 1981:

*I have today two overriding impressions of my time with the Commission. The first is of the politics of the National Estate. The politics of the National Estate have at different times been lofty, mean, generous, absurd, confused, and ridiculous. Politics have dominated the whole of the Commission's life. There has hardly been a day when the Commission could relax and do its work*

*without concern for some political threat or misunderstanding. Allowing for different emphases, it might be thought that concern for the country's heritage would be an agreed policy of all parties, as it is in most places in the world. ... The very independence of the Commission, which has enabled it to be so effective despite its precarious standing, will, I'm sure, be recognised to have been of intrinsic importance. Why then has the Commission twice been close to extinction and several times been faced with the likelihood of major amendments to its Act? These are intriguing questions. The labyrinthine maze of misinformation, preconception, suspicion, State rights reaction, political bureaucratic and industry lobbies would need a small book to trace and unravel. Suffice it to say that when ideas and misconceptions get firmly lodged in politicians and leaders' minds it is difficult to dislodge them.*

I continued that the second powerful impression was of the learning experience.

*It has been a great personal enrichment for which I am profoundly grateful. But this learning experience has, I hope, been important for other reasons. If, as a reasonably well informed citizen who had taken an interest in conservation issues for a number of years, I could be as ignorant of so much that is interesting and exciting about Australia as I was in 1973, it must say something about general perceptions and awareness in Australia. Thus what I have learned and have needed to learn — and indeed what I still have to learn — has caused*

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*me and others to place the task of education and information at the forefront of the Commission's objectives. I don't need to recite in detail why it is important that Australians should have a greater knowledge and understanding of their National Estate. The personal rewards are well matched by the community benefits.*

I concluded that these were but two strong impressions in the immediate aftermath of the storm.

*Recollecting in tranquillity at some other time it may seem different. With such an experience to reflect upon during the wet days yet to come it will be of much interest to me to see if that is so.<sup>5</sup>*

Reading this now, thirty-six years after it was written, I have no reason to change a word.



Royal Exhibition Building, Melbourne, Victoria



Cathedral Gorge Bungle Bungle Range,  
Purnululu National Park, Western Australia

## CHAPTER SIX

### The National Estate in 2001: a twenty-fifth anniversary review

In the years that followed, the Commission continued to develop, expand and enrich what had been initiated during earlier periods. Some of the most significant of these achievements are described in this chapter. If I had hoped the Commission had survived its main trials by fire by the time the Hodges Parliamentary Committee had delivered its findings and the Commission had published *The Heritage of Australia* in 1981, it soon became clear that this was wishful thinking. Two main industry groups, mining and forestry, took up the cudgels against the Commission, leading to review after review. This was largely the consequence of the growing maturity of the Commission's natural area listings. As these listings grew in size and significance they became the grounds for protective conservation action in resource debates, and the Commission became the federal agency most closely arguing the case for such action. This led to continuous calls from bodies such as mining groups for the abolition of the Commission. There was similar conflict with forestry bodies over forest resources. The Commission and its Act survived all these challenges largely unscathed, but along the road there were many potholes and wheel ruts the Commission had to take great care to avoid.

In 1989, the Hawke government established the Resource Assessment Commission, which it hoped might more readily resolve these resource conflicts. The Commission proved to be no more capable of doing so than previous bodies had been and was short lived, with the Act finally repealed in 2008.

The forestry debate, as an example, ranged over a number of complex and conflicting issues: logging versus the protection of old growth forests and the safeguarding of endangered, threatened, vulnerable and rare species and ecological communities; woodchipping and issues associated with plantations; and other matters such as management on and off reserves, fire risks and multiple uses.

A further attempt to deal with these conflicting interests was made through the National Forest Policy Statement, which was signed by the Australian Government and all mainland state and territory governments in December 1992 (the Tasmanian government signed in April 1995). The policy committed all governments to the sustainable management of forests, informed by a recognition that forests contained important conservation values. This led to Regional Forest Agreements with the states that sought to achieve a middle ground between conflicting values. The Commonwealth and four state governments progressively signed ten- and then twenty-year Regional Forest Agreements between 1997 and 2001. The Agreements attempted to cover the full spectrum of each region's forest resources and values, including their complex ecosystems, heritage values, timber resources, mineral deposits and their importance to tourism and recreation. They led to many National Estate listings in a number of regions. The additional roles that the Commission was asked to play in carrying out

regional forest assessments led to an expansion in staff — from fifteen to around fifty — making a move out of Casey House necessary in 1989. Although it was not in my time, I was sorry to hear of their departure. Casey House was a distinctive small building in Yarralumla, and very suitable for a body such as the Australian Heritage Commission. As an aside, Dick Casey, the former member for Corio for whom the residence had been built, had been close friends with my father when they worked in London as diplomats for different governments before the second world war. Their early careers were curiously interlocked, so I had some small personal attachment to the building too.

To mark the anniversary of the passage of the *Australian Heritage Commission Act* in 1975 and the placing of Fraser Island, the world's largest sand island, on the Register of the National Estate in the following year (the first place of any kind to be listed on the Register), the Commission's annual report for 2000–2001 contains a short section commemorating the Commission's achievements over the twenty-five years of its existence.<sup>1</sup> The section begins by observing that the Commission was the child of the Inquiry into the National Estate under the chairmanship of Justice Robert Hope and that it was initiated at a time of growing public debate and concern about threats to Australia's heritage. It notes that in its findings, the Committee of Inquiry had recommended that a National Estate Commission be established. The Report might perhaps have paused to ponder why the Committee of Inquiry unanimously felt that 'National Estate' was so distinctive and appropriate a name for Australia's heritage of natural and cultural places, and why the Commission was not given that

name. Intriguingly too, it singles out for special mention the statement in the Committee of Inquiry report twenty-seven years earlier: 'It has sometimes been suggested that conservation is a "middle class" issue. Our hearings, observations and travels around Australia have convinced us that this is just not true.'<sup>2</sup> It seems that after all this time, someone associated with the Commission once more felt the need for this emphasis.

The report notes that the *Australian Heritage Commission Act 1975* was passed through Federal Parliament with the support of both major parties, and mentions that over the twenty-five years of its existence there were amendments made to the Act in 1976, 1990, 1999 (and by a series of other Acts concerned with administrative issues). It notes that for constitutional reasons the protective powers of the Commission in the original Act were limited; confined to the actions of the Commonwealth under Section 30 of its Act (as has been described in Chapter 2 and 3). The summary of this part of the 2001 Report, however, notes:

*... during its 25 years of operation, the Commission has attracted passionate supporters and equally passionate enemies. This "toothless tiger" has been the subject of seven reviews and the target of a number of intensive industry campaigns seeking its abolition. These reviews and campaigns stand as testament to the actual influence of the Commission on heritage conservation issues despite its legislatively toothless jaws.<sup>3</sup>*

It would therefore be quite wrong to suggest that the Commission lacked real influence, despite its limited scope to give full protection to listed places. Notably too, the core roles

of the Commission remained intact and its main protective powers, such as they were, remained unchanged despite the constant reviews and despite the many changes in the political parties in power over the quarter century of the Commission's existence. This continuity of legislation and performance is a striking tribute to the drafting of the original Act and the way it was interpreted and used.

By the end of its twenty-fifth year, 12,845 places had been listed on the Register of the National Estate and a further 391 places were on the Interim List awaiting the final decision of the Commission. Of the overall total of 13,236 places, there were 9,960 historic places, 2,362 natural places and 914 Indigenous places listed. This does not give a complete picture of listed places since the natural areas and in some cases the Indigenous places included some that were of considerable size. The assembly of a Register of the National Estate of such a size and complexity is an achievement of which any country might be proud.<sup>4</sup>

In discussing the development of the Register the report makes the following critically important observation:

*The process of entering places, grand and humble, throughout Australia in the Register year by year and publicly promoting the values of these places has given many hitherto unrecognized places status and placed them in the public mind as 'heritage'. This has helped shift public perceptions of heritage. With the promotion of some sites — like migrant heritage places — for their social value to communities the Commission has actively encouraged Australians to appreciate that there is more to historic heritage than architecture and aesthetics.*

*The Commission has been at the fore in following regional and integrated approaches to heritage assessment, taking both natural and cultural heritage attributes into consideration ... The Paroo and the Murray Mallee listings are excellent examples of integrated natural and cultural heritage assessments of large regions stretching across State boundaries.*<sup>5</sup>

In a report clearly slanted to justify the need for major changes to the Commission's Act, there could not have been a more eloquent argument put forward for the retention of the Register of the National Estate, whatever other changes might be useful to make.

The 2001 Report gives special attention to the national leadership role that the Commission played in developing best practice principles and standards for the identification, protection and conservation of natural and cultural places. In particular, it notes the Commission's collaboration with Australia ICOMOS to develop the Burra Charter of ICOMOS (1979) for the care and protection of Australia's built heritage. This was, as described in an earlier chapter, an adaptation for Australian conditions, of the principles and recommended practices of the Venice Charter of ICOMOS. Seventeen years later in 1996, working in association with the Australian Committee of the International Union for the Conservation of Nature (ACIUCN), and following two years of Australia-wide consultation, the Commission helped to produce a comparable *Australian Natural Heritage Charter* for the care and protection of Australia's natural heritage, subsequently revised and updated in 2002 (following a review carried out in 2001).<sup>6</sup> The Charter is

described as ‘a distillation of “best practice” conservation principles for the making of sound decisions for managing and restoring natural heritage places, based on the consensus of a broad range of experts’. Fundamental to the Charter are the principles and ethos on which it is based. Natural heritage is described as comprising both the living biodiversity and non-living natural geodiversity of the world humans inhabit as is defined below:

*By biodiversity is meant the variability among living organisms from all sources (including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part) and includes genetic diversity, diversity within and between species and the diversity of ecosystems.*

*By geodiversity is meant the natural range (diversity) of geological (bedrock), geomorphological (landform) and soil features, assemblages systems and processes. Geodiversity includes evidence of the past life, ecosystems and environments in the history of the earth as well as a range of atmospheric, hydrological and biological processes currently acting on rocks, landforms and soils.<sup>7</sup>*

Natural and dynamic *ecological processes, earth processes* and *evolutionary processes* and the ability of ecosystems to be self-perpetuating are also seen as fundamental to the concept of natural heritage.

The Anniversary Report also notes that *Ask First: A Guide to Respecting Indigenous Heritage Places and Values*, a supplementary resource for the care and protection of Indigenous places, had been prepared by the Commission working in

consultation with Indigenous Heritage officers. In the *Australian Natural Heritage Charter* there is a particularly valuable discussion about the relationship between natural and cultural values and the *Burra Charter* of ICOMOS, the *Australian Natural Heritage Charter* and the *Ask First* supplementary guide. This discussion makes a number of important points. The first is that a country's heritage of places is best seen as a continuum from the most remote untouched wilderness areas to places that are most clearly expressions of human activity, influence and culture. Along this continuum there is no easily definable division between natural and cultural heritage, and as such, a country's heritage is best seen and managed as a whole. Places may, however, combine different values. Natural areas may include natural existence values, values associated with just being there, combined with productive use values and cultural values. A tree, for example, may be a source of sawlogs for timber, a pleasing cultural feature in a garden, or simply a natural element whose value is based on its existence alone.

The Charter notes that many Indigenous people do not separate natural and heritage values; 'country' is a fusion of natural and cultural heritage. The Charter also asks us all to formally recognise the role that Indigenous people have played in using and shaping Australian landscapes for at least 50,000 years and possibly longer.<sup>8</sup>

Another part of the Commission's national leadership role is identified in the 2001 Report as the effort made by the Commission to develop model heritage legislation for use by the states and territories. Also mentioned is the work done in association with other agencies to develop the Australian

Places Inventory to make it easier for the community to search Commonwealth, state and territory lists on the internet.<sup>9</sup>

These and other publications have all been translated into accessible documents and web sites — this is precisely the valuable work a national heritage body should not only be mandated, but also adequately resourced, to undertake.

### **Thematic studies and publications**

As a natural consequence of the limitations of the knowledge of those preparing the lists, and of the sources relied upon to develop them, all early formulations of heritage lists tend to reflect significant biases and to have major gaps in their listings. So bodies such as the World Heritage Committee and keepers of national registers in other countries have found, and so has been the case in Australia. Thematic studies work to counter such biases. The absence of any discussion in the Anniversary Report of the many thematic studies carried out by the Commission over its lifetime is therefore a singular omission.

In the Commission's early years, it provided money through the National Estate grant program (to those states that would accept it), for prominent historians to write histories of their state. I recall how enlightening Dr (later Professor) Marilyn Lake's history of Victoria was in making us all conscious of key aspects of its history that were then unrepresented on the Register. I also recall a letter from Professor Ray Whitmore, an engineer with a deep interest in industrial history, the tenor of which was that, if a visitor from another planet arrived in Australia and used the Register of the National Estate to gain a picture of human life on Earth, what a totally skewed picture

the Register would give to such a being. To counter similar gaps in the natural listings, around the time I left the Commission we were in the middle of several discussions about thematic studies. One was with the CSIRO to carry out background thematic studies of natural areas to identify missing components on the then existing Register. I have already mentioned this initiative.

In subsequent years, the Commission arranged to have many important thematic studies carried out. Descriptions of these studies might usefully begin with the work on social value. The 1975 Act specifies that listing on the register should be based on the 'aesthetic, historic, scientific, and social values' of the place. But what is social value and how is it best treated as a criterion for listing? To answer these questions, a landmark report was commissioned in 1992, carried out by Chris Johnston of Context Pty Ltd working with the National Trust of Victoria. In *What is Social Value: A Discussion Paper*, Johnston sets out the key components of social value in this way:

*Our surroundings are more than their physical form and their history. Places can be the embodiment of our ideas and our ideals. We attach meanings to places — meanings known to individuals and meanings shared by communities. This is the essence of Social Value. It is about the special meanings attached to places by groups of people (rather than by individuals) and how we can take account of these values in our heritage assessment processes.*

*To know these special values one needs to be part of that 'group'. This raises significant questions about the processes we use to help people articulate*

*these values and the lack of skills among heritage professionals to assist in this process.*<sup>10</sup>

The rest of Johnston's report is devoted to an exploration of these issues and the way that places having social value might best be identified and included in listings. It remains the standard Australian text on Social Value.

*Nourishing Terrains*, by Deborah Bird Rose is another important study carried out for the Commission.<sup>11</sup> It is an exploration of Indigenous views of landscape and of their relationship with the land. The text, supported by poems and songs, captures the spiritual and emotional significance of 'country' to Indigenous people. Another thematic study carried out by Jane Lennon and Michael Pearson was *Pastoral Australia: Fortunes, Failures and Hard Yakka*.<sup>12</sup> Yet another was Michael Pearson's study of coastal exploration and survey sites, *Great Southern Land: The Maritime Exploration of Terra Australis*, eventually published in 2005.<sup>13</sup> Three other thematic studies carried out towards the end of the Commission's life included 'Australia's Urban Planning' by Professor Robert Freestone. It is a review of the history of Australian urban planning as shaped by broader forces such as economics, urban and social development and technological change. It covers the main design ideas and paradigms that have influenced over two centuries of Australian planning and design. It was eventually published in 2010 by CSIRO as *Urban Nation: Australia's Planning Heritage*.<sup>14</sup> A second is 'Places of Politics' by historian Professor John Hirst. This study follows the creation and operation of a democracy through the buildings and places where political events occurred. It deals with

protests, elections, law-making and governing in all its aspects. It was published as *Building a Free Australia — Places of Democracy* in 2009.<sup>15</sup> The third is another thematic study, by Chris Johnston, 'Inspirational Landscapes', notable for its ten commissioned perspective essays written by artists, writers, environmentalists and scientists. The contributors, who included well-known writer Sally Morgan, were chosen for their ability to write with passion and skill, but also to ensure that the study included a diversity of cultural perceptions and responses to different landscapes and environments across Australia.<sup>16</sup> Robin Crocker and Associates and Planisphere carried out the second part of this study.<sup>17</sup>

These brief summaries do little justice to the richness of the material uncovered in the thematic studies. I say more about the way international bodies such as the World Heritage Committee, ICOMOS and IUCN have used thematic studies to improve and enrich the World Heritage list later.

Only one publication is mentioned in the 2000/2001 summary of Commission achievements, the 'award winning' *Protecting Local Heritage Places*, and related to it the website and training kit, *Protecting Heritage Places Information and Resources Kit*.<sup>18</sup> There is no mention of major publications such as *The Heritage of Australia*, described in the previous chapter. They all deserve reference as prime examples of the types of promotional and educational initiatives with which a national heritage commission or council should be concerned.

### **Protective powers**

A regular criticism of the *Australian Heritage Commission Act 1975* was that, under it, the Commission's protective powers

were limited. As already noted, the Act was drafted before two key High Court decisions clarified some of the constitutional powers of the Commonwealth and before the signing of an international biodiversity protection treaty offered a new opportunity to use these constitutional powers. The 2001 report gives much emphasis to this weakness in the Act and uses it as a prime reason for the need for a new national heritage regime.

Nevertheless, when I reflect on my time with the Commission, when we began the task of building the Register of the National Estate into a substantial list, it is my view that Australia was well served by the arrangements put in place in 1975. Some places might have been saved by stronger protective powers, but this would have been at the expense of many other accomplishments. It is unlikely, for example, that the Register would have been developed as a large and rich list reflecting the many different strands of the nation's natural and cultural history. That is not to say that a strengthening of protective powers for the most significant places was undesirable in 2001, but rather to reassert the fundamental principle that, when undertaking reforms, what is most valuable to retain should be retained and what most needs to be improved should be improved.



Monkey Mia, Shark Bay, Western Australia

## Part Three

*From the earliest days of the Australian Heritage Commission and the development of its Register of the National Estate, the Commission's primary long-term aim was to build 'a truly balanced, representative and credible list' of Australia's national heritage. During the Australian Heritage Commission's existence, many important thematic studies were commissioned to help achieve that aim. We need to question why similar systematic 'regional, chronological, geographical and thematic studies' have not been a priority for any recent Minister for Environment and Heritage.*

*The procedural right to negotiate afforded by the Native Title Act (NTA) does not extend to the right to say 'no' to developments that potentially impact on places of significance, thus undermining the ability of native title groups to enhance heritage management practices and outcomes in negotiations with non-Indigenous people.*

## CHAPTER SEVEN

### A new national heritage regime for Australia

Any celebrations of the Commission's achievements, no matter how well deserved, were increasingly tempered in its latter years by a storm tide gathering in the background, a tide that would ultimately see the AHC and its Act washed away.

In 2000, new heritage legislation was introduced into the national parliament by Senator Robert Hill on behalf of the Howard government. In his second reading speech in August 2001, Senator Hill argued that while the Register and the AHC Act represented best practice in 1975 and had made 'a very important contribution to the development of heritage conservation in Australia', the Commonwealth's existing heritage regime, based on the *Australian Heritage Commission Act 1975* (AHC Act) was now seriously outdated and subject to significant limitations.

The crux of the Minister's arguments was that there were new unused protective powers available to strengthen national heritage protection and that state and territory protective legislation had become much more extensive (thus removing the need for national action and supporting the elimination of duplicate listing across different jurisdictions).

The Bills presented to the Parliament proposed to repeal the *Australian Heritage Commission Act 1975*, abolish the

Australian Heritage Commission and take the first step to repeal the Register of the National Estate as a statutory list. Two new lists, the National Heritage List and Commonwealth Heritage List, were proposed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Enhanced protective powers were given to the National Heritage List.<sup>1</sup> This was achieved by the addition of 'national heritage' as an additional trigger, alongside the six<sup>2</sup> then existing matters of national environmental significance that acted as triggers to bring an environmental impact assessment (EIA) on a listed place into play. Only those heritage places on one of the two new lists would be given this protection. It was made clear that the number of places likely to be included on both lists would be a small fraction of the 13,000 places then on the Register of the National Estate. At this time the Howard government also sought to abolish the Register of the National Estate, and only temporarily backed down in the face of vociferous objection.

Under the proposed legislation a new body, the Australian Heritage Council, would replace the Australian Heritage Commission. Unlike the Commission, the Council would not be a statutory body and would be reliant on staff and funding from its host department. Unlike the Commission, the Council would have a largely advisory rather than decision-making role related to the new Lists.

**The Senate Environment, Communications,  
Information Technology, and Arts References  
Committee Report — Heritage Legislation, May 2001**

In December 2000, before the Bills were passed into law, the Senate referred the amending legislation to the Environment,

Communications, Information Technology and Arts References Committee for inquiry. The report, when submitted to the Senate on 8 May 2001, noted that the immediate impetus for the new Bills came from a decision made at a COAG (Council of Australian Governments) meeting in 1997, but that the Bills put before the Parliament in 2000 reflected over five years of discussions and consultations held between 1995 and 1999. The process had begun with a round of consultations with state and territory governments in 1995, followed by eight general workshops between November 1996 and March 1997, and concluded with Senator Hill's release of two consultation papers in 1999. The Committee's report, over 100 pages in length, is a valuable background reference document that records the arguments put from different positions about the most appropriate national heritage system for Australia: the views expressed by the Minister, the Chair and the Director of the Commission as the principal proponents of the reforms on the one hand, and the views of those who expressed their disagreement with aspects of the proposals or with the whole reform approach on the other.<sup>3</sup>

The report acknowledges the level of consultation undertaken prior to the introduction of the bills but does not distinguish between the consultations carried out by the Commission under Dr Wendy McCarthy's direction and those related to Senator Hill's proposals. This is misleading, since Dr McCarthy's proposals would have led to a completely different outcome to that envisaged by the government's reforms. The report is also at pains to note that the community of heritage professionals and other individuals with an interest in heritage protection were not party to the underlying COAG discussions

and agreement. It further notes that 'while there is general agreement (in submissions to the Senate Committee) about the need to strengthen the Commonwealth's heritage protection regime, there is considerable disagreement about whether the proposed reforms will actually achieve this, and about the shape the reforms should take.'<sup>4</sup> The report also observes that some submissions argued that it would have been preferable to start with the *Australian Heritage Commission Act* and strengthen it, given the success of the current regime and the twenty-five years associated with its operation. The report goes on to say that 'a large number of submissions consequently argued quite forcefully that the Bills should not be passed in their current form'.<sup>5</sup>

The chapter devoted to the appropriateness of the new legislation elaborates these arguments. The report notes that many submissions, particularly from conservation groups, highlighted the strengths of the current national heritage regime, which included: the Commonwealth's comprehensive approach to national heritage protection as characterised by the Register of the National Estate; the integrity of the National Estate due to the listing of sites based solely on the technical merits of each application; the independence of the Commission, its wide ranging powers, and its role in providing national leadership in heritage protection; and the significance of the Register of the National Estate to Australian people. There was much concern about the shift away from this model. Australia ICOMOS, for example, stated in its submission that it believed the integrated concept of the National Estate continued to be a powerful, important and world leading concept.<sup>6</sup>

Underlying these different positions was disagreement about the proper role of the Commonwealth government in the identification, listing, protection and interpretation of Australia's heritage of places. As clearly demonstrated in the Senate Committee Report, it is the underlying area of contestation between the Commonwealth, states and territories on the one hand and between heritage professionals, conservation groups and citizens, as well as different federal governments and the Commonwealth bureaucracy on the other. I will return to this fundamental issue later when I review approaches adopted in other countries.

A related hotly contested argument in the Committee hearings was that the extension of state and territory heritage protection legislation had removed much of the need for national action and now supported the elimination of duplicate listing across different jurisdictions. While this was one of the key planks in Senator Hill's and the government's case, the Senate Committee received several submissions drawing attention to the variability of standards in the states and the need for a national guarantor of standards. Associate Professor Paul Adam, for example, is quoted as saying: 'While there has been an increase in heritage activity by state and local government it is not clear how effective it is in most cases, and there are clear deficiencies'.<sup>7</sup> In its conclusions drawn from these discussions, the Committee stated that it recognised the need to reform Australia's heritage protection regime in order to strengthen the protection of the nation's heritage and to clarify the roles and responsibilities of each level of government. However, it added that in light of recent decisions of the High Court, the Commonwealth in fact had wide law-making

powers should it choose to exercise them and it could take the wider leadership role advocated by many of the witnesses as well as *by the Committee*. Accordingly, the Committee's principal recommendation was that the government should take a broader role in heritage protection than that being proposed, and its efforts should not be limited to sites on the proposed national and Commonwealth lists.<sup>8</sup> When discussing the powers available to the Commonwealth for environment and heritage protection, the Committee noted that the heads of power generally used for such purposes were: trade and commerce, finance and taxation, corporations, the 'people of any race', and external affairs powers.<sup>9</sup>

A major issue confronting the Committee, one of the central issues of the Inquiry, was whether listing should be based solely on heritage values and carried out by an independent expert group, as was the situation under the AHC Act, or whether listing decisions for the two new lists should now be primarily a ministerial responsibility. The Committee's conclusion, after carefully considering the arguments, was that there should be a separation between the assessment of heritage values and the management of heritage places. Accordingly, the Heritage Council should make the final decision on listing since it is the best qualified to make such technical decisions, and the minister should have responsibility for management plans. While this arrangement would leave management in the minister's hands, the committee recommended that the minister should be required to consult the Council before creating, amending or revoking such plans for listed national heritage places.<sup>10</sup>

When comparing the functions of the Australian Heritage Commission under its 1975 Act to those proposed for the new

Australian Heritage Council, the Committee noted the striking differences between these two sets of provisions. Accordingly, the Committee concluded that the roles and functions of the new Australian Heritage Council should be broadened to enable it to act independently of ministerial direction. Another Committee recommendation was that the reporting powers of the AHC Act should also be available to the Australian Heritage Council.<sup>11</sup>

Another critical issue for the Committee was the ongoing status of the Register of the National Estate. After hearing and reading the various submissions, the Committee recommended that 'the Government retain the Register of the National Estate and that the Register continue to be actively developed and expanded.'<sup>12</sup>

### **Heritage properties on Commonwealth land**

As for heritage properties on Commonwealth land, the Committee recommended that all such properties currently on the Register of the National Estate be transferred to the Commonwealth Heritage List, as a means of providing greater protection for them. The Committee had three other recommendations for the better management of Commonwealth Heritage property. The first was to require Commonwealth agencies to prepare inventories of their property portfolios in order to properly identify and assess heritage values; the second was to require these agencies to prepare heritage strategies for the management of their heritage places; and the third was to require them to carry out a survey of the heritage values of all newly acquired properties in accordance with standards set by the Heritage Council.<sup>13</sup>

### **Indigenous places**

The Senate Committee report also contains an important discussion of the unsuitability, as originally conceived, of the proposed national heritage regime for the treatment and protection of Indigenous places. Professor John Mulvaney explained that:

*each linguistic or 'tribal' grouping reveres its own fundamental creation/Dreaming places and inter-connected pathways ('Songlines'). Europeans, for example, rate Uluru as the supreme Aboriginal place... Yet its significance for Aboriginal people was limited to the people of that region, and it was not more important to them than many less impressive places. Indigenous elders in totally diverse regions (Cape York, Kimberly, Arnhem Land) would list many places which to them are as 'national' as Uluru.*<sup>14</sup>

Professor Sharon Sullivan expressed a similar caution: 'Many very significant Indigenous sites do not have such [national] significance, or, if they were deemed to do so, Indigenous people do not want them to be treated in this way — that is, turned into national icons.'<sup>15</sup>

The Aboriginal and Torres Strait Islander Commission (ATSIC, now defunct but in its day an important body) asserted that the Bills were flawed because of their inadequate protection of intangible heritage, 'such as singing of songs, stories, spiritual attachments, intellectual and cultural property'.<sup>16</sup>

Accordingly, one of the Committee recommendations was that the government investigate with Indigenous people the appropriateness of putting all Indigenous places currently

listed on the Register of the National Estate onto the new Commonwealth Heritage List. The recommendation would offer the full protection of the new laws, and enable Indigenous people to help decide the best way to protect Indigenous places in the long term, and to meet international Indigenous obligations.<sup>17</sup>

These are some of the more important conclusions and recommendations of the Senate References Committee Report on Heritage Legislation. They in no manner do justice to the full report, with its detailed coverage of all the submissions to the proposed change in national heritage regime. The report remains a valuable research document for those interested in alternative approaches to national heritage policy.

### **Senators' Minority Report**

The government's Senators' Minority Report supported the government's new legislation, particularly that listing power on the Commonwealth and National Heritage lists should reside with the minister, and that the Register of the National Estate should be archived. Government members also reserved the right to express dissenting views later if needed. For their part, the Labor senators expressed concerns about the loss of the statutory basis of the Register of the National Estate and asserted their support for listing powers to reside with the council, rather than the Minister.

### **Senator Nick Bolkus second reading speech - August 2001**

In his second reading speech following publication of the Senate References Committee Report, Senator Nick Bolkus, Labor Party shadow minister, argued that the legislation was a

significant step backwards.<sup>18</sup> While acknowledging the improvements, they were, in his view, more than outweighed by the flaws in the Bills. He also noted the many heritage bodies opposed the Bills unless they were significantly amended. He drew particular attention to the submission received from the seven previous Chairs and Commissioners of the Australian Heritage Commission<sup>19</sup>, including the set of principles designed to inform those who sought to make changes to Australia's national heritage regime.<sup>20</sup> 'These principles', he argued, 'guide the Opposition. They should guide the Parliament.'

- Heritage protection in Australian needs a strong national presence with national leadership from the Commonwealth. This requires a national register or list representing all key strands of Australia's natural and cultural history which acts as a signifier of important values to all Australians and an active statutory body charged with responsibilities to help protect, promote, educate, train and research.
- Complementary State and Territory heritage action should be strongly encouraged.
- Any amendment to Commonwealth Heritage Legislation should be progressively strengthening existing legislation, not weakening it in any way.
- Constitutional powers of the Commonwealth should be used to their full extent to protect places of heritage value to the nation.
- The decision to include or not include and to remove places from national registers or lists

should be vested in an independent professional body, not in the minister.

- Those parts of heritage systems that have worked well for a long time should not be lightly discarded.

Related to specifics, the Labor Party was concerned with the proposed treatment of the Register of the National Estate, the proposed development of the Commonwealth List, the vesting of final decisions about listing in the hands of the minister rather than the Council, and with the treatment of Indigenous places and the involvement of Indigenous people in decisions about these places. Finally, Senator Bolkus said, the Labor Party believed in national leadership related to heritage and environment; the Bills were taking Australia in the opposite direction.

### **Senator Lyn Allison, Democrats**

Senator Lyn Allison, Democrat spokesperson and chair of the Senate References Committee, began by confirming the Democrats' support for a number of new protective measures included in the Environment and Heritage Amendment Bill, including provision for emergency listing of places under threat, increased management planning of heritage places and more appropriate penalties.<sup>21</sup> Overall, the Democrats agreed that there was a need to significantly strengthen the legislation but did not consider that the Bills went nearly far enough. She gave examples of neglected, demolished or damaged sites as illustration of the need for better protection of heritage places. She noted that over the twenty-five years of the Australian Heritage Commission's existence, 148 places had been

removed from the Register and 194 from the Interim Register, but that these were only the places known to the Commission. As to the other proposed changes to Australia's national heritage regime, the Democrats were particularly troubled by the government's attempt to gut the powers of the new Heritage Council. They were also concerned by the provision in the *Environment Protection and Biodiversity Act* vesting the power to determine listings on the two new list in the minister rather than the Council, and also greatly concerned about the proposed abolition of the Register of the National Estate and the absence of any formal status for the balance of the 13,000 places currently on the Register when only a very small number of places, perhaps 200 or so at best, could be expected to be listed on the new National Heritage List. A further concern was the extent that the Bills provided for the long-term protection of Indigenous heritage. A specific Democrat recommendation was that the government establish an Aboriginal heritage protection agency, as recommended by the Hon Elizabeth Evatt QC. The Democrats would also seek to see the key recommendations of the Schofield Report<sup>22</sup> on the protection of Commonwealth-owned property implemented.

### **The Acts passed in 2003**

Following the presentation of the References Committee report to the Senate in May 2001 and further debate and consultation related to the proposed reforms, revised Bills were presented to Parliament in August 2002. In his second reading speech, Senator Hill was at pains to stress that while heritage was part of the identity of our nation and we all have an interest in ensuring that it is properly conserved, such

conservation would not occur without a level of legislative protection or without an attitude of recognition, appreciation and conservation by the broader community. He also argued that the various tiers of government, industry and the broader community needed to recognise that proper heritage conservation and protection is an expensive business, the cost of which must be met by the nation as a whole.<sup>23</sup>

In the revised Bills introduced to the Parliament in 2002 (that led to the passage of the new legislation in 2003), the government responded to some of the Senate References Committee findings and recommendations. Indigenous representation on the Heritage Council was strengthened to require two, not one, members of the Council to be Indigenous representatives 'with substantial experience or expertise concerning indigenous heritage, at least one of whom represents the interests of indigenous people.'<sup>24</sup>

The functions of the Heritage Council were expanded in other areas. Whereas in the initial 2000 Bill, the Council had virtually no powers to act of its own motion, in the *Australian Heritage Council Act 2003*, the Council was given much greater scope. These powers included assessment of places proposed for listing; advice to the Minister on places included in, or being considered for inclusion on, the two new lists; and the nomination of places for inclusion on these lists, together with the opportunity to advise the Minister on a range of other matters. The revised powers also included some powers to act of its own motion. These included promoting the identification, assessment, conservation and monitoring of heritage, and engaging in research.

Some other powers enjoyed by the previous Heritage Commission were also restored to the new Heritage Council. The first was the maintenance of the Register of the National Estate. While provisions for listing and delisting were changed, and the Section 30 provisions in the old Heritage Commission (which required Commonwealth agencies not to carry out any actions potentially damaging to listed places unless there was 'no prudent or feasible alternative') were deleted, an equivalent power was now found in section 341ZC. The Council was also left free to add places to the Register. The extensive power enjoyed by the previous Heritage Commission, to prepare reports of its own motion and submit them to the minister, who was required under the Act to table them within a fixed number of sitting days, was restored to the Council. But one very significant power previously enjoyed by the Commission, and not given to the Council, was the power to list places on the two new lists of its own account. This was a power tightly held onto by the minister.<sup>25</sup>

In all other major respects, the revised regime as introduced by Senator Hill in 2001 remained as it had been initially proposed. The new Australian Heritage Council, despite the greater scope given to it, remained without its own staff and without the full suite of powers given to the Heritage Commission. The claimed intention was to transfer places in the Register of the National Estate (RNE) to state lists, but whether done or not, to close the Register in five years. Few of the states took up the opportunity to transfer places from the Register onto their lists, although Tasmania did use RNE listed buildings as the basis for its heritage register. The reprieve given to the RNE was clearly temporary. The sealing off of the

Register at 13,127 places, preventing any further additions or deletions, and the removal of references to the Register from all legislation was brought about later by a sunset clause, intended to allow opportunity for selected places on the Register to be transferred to the other lists. The Register finally closed in 2012.

**What was gained and what was lost by the introduction of the new National Heritage Regime?**

The arguments put before the Senate References Committee and the findings of that committee give a very good picture of the feelings of heritage professionals about the reform proposals.

It is correct to say that the new Acts extend national heritage protection for properties on the two new lists, using powers not available or untested in the High Court, when the Australian Heritage Commission first came into being. Protection for places on both lists draws upon the powers conferred upon the Commonwealth in the 1967 referendum in respect to Aboriginal people, the external affairs power in the Constitution (particularly the UN Convention on Biological Diversity 1992, to which Australia is a signatory) to prohibit actions that might have a significant impact on places listed because of their Indigenous or biodiversity values, together with other powers such as the trade and corporations power. These are important improvements, and under High Court rulings since the 1970s have expanded the Commonwealth's constitutional powers considerably, giving the Commonwealth wide scope to regulate heritage issues. The application of these powers to the properties on the two new lists has met with widespread approval as an initiative long overdue.

At the same time it was at all times made clear that the number of properties that would be protected by inclusion on the new lists would be limited to a small fraction of the number of places on the Register of the National Estate. And so it has turned out. There has also been a significant price to pay for the introduction of the new system. As has been noted above, nearly all vestiges of the old system have been wiped away, regardless of their ongoing value, The Commonwealth has abandoned its heritage interest and involvement in heritage places other than the very few properties listed on the new lists. With this abandonment of the previous heritage system has gone many of its unique features, such as the responsibility for listing decisions left in the hands of heritage experts. Now, by contrast, listing decision making is political, requiring the consent of the minister at all stages. The new Heritage Council is not a body with its own staff and thus by virtue of the absence of powers previously enjoyed by the Commission has to be seen as a body of lesser standing than was the Commission. (This is no reflection on the Council's membership.)

The confirmation of the Commonwealth powers to protect places of heritage value is one major change that has taken place in the last twenty years. Another major change that has taken place alongside it has been the development of state and territory protective legislation. This is to be welcomed; the more that the states and territories follow the pattern of the Register of the National Estate, the richer will be the overall heritage regime in Australia.

There are three key points to make about these two major background changes. The first is that despite the new forms of protection that are available, there remain gaps in the

Commonwealth's powers. The protection offered by the EPBC Act depends on the nature of the ownership of the place, and the nature of the heritage values at stake. If it is a Commonwealth-owned property, if its listing is based on Indigenous heritage values, if the Commonwealth is able to invoke its constitutional powers (such as its overseas treaty powers, or its race powers, or its corporations power, or other powers previously discussed), then there is full protection for that place. If, however, the place is a cultural heritage site owned by the state or private individuals on state or private land, and if the place is not protected by the powers that are available to the Commonwealth, its full heritage protection depends on the extent that it is also protected by state legislation or through bilateral agreement. Full protection therefore depends upon collaborative agreement and action between the states and the Commonwealth, or possibly between affected individuals and the Commonwealth.

The second point is that an amalgamation of all existing state and territory lists still does not replicate the Register of the National Estate, and is unlikely to do so for a considerable time, if ever. In a federal system there has to be duplication, since the protection of places, as things currently stand, cannot be fully guaranteed by any one level of government. As discussed above, to be fully protected, many places on the National List need also to be included in state protective legislation, or covered by bilateral agreements. Similarly, the states and territories cannot legislate to bind the Commonwealth, so their listings have to be duplicated by Commonwealth legislation if they are to be fully protected. In whatever way this two-layer system of protection is devised, it will still from time to

time continue to involve those bringing forward proposals affecting listed places in negotiations with two levels of government. This is a natural consequence of a federal system of government.<sup>26</sup>

The third point is that while those promoting Senator Hill's reforms have focused all their attention on the opportunity the combination of the two major background changes described above have given the Australian Government to develop a new narrowly conceived heritage regime cut off from the states, the real opportunity was for the Commonwealth to take a broad national leadership role. As noted above, it was the Senate Reference Committee's principal recommendation. This opportunity, described in greater detail in the final chapter of this book, was entirely missed.

### **A response to Senator Robert Hill's assertions**

When first introducing the bills to bring about his proposed reforms, Senator Hill made a number of assertions about the Australian Heritage Commission, its Act and its Register of the National Estate. The chapter might fittingly end with a challenge to many of those assertions since they lie at the heart of different conceptions of the most appropriate national heritage regime for Australia.

Was the number of places on the Heritage Commission's Register of the National Estate too great and was it true in 2001, as argued by Senator Hill, and is it true today, that an extensive representative listing of places reflecting Australia's natural and cultural history was not a useful task for the Commonwealth? Given that the Register of the National Estate covers an entire continent, includes places representative of a

continuous 50,000 year Indigenous history, together with the more recent history of settlement, and includes places representative of the full natural history of the land; can it really be said that the number of places on the Register (13,127 places when capped by the Howard government) was excessive? There was little or no argument offered in the Senate References Committee debates to support Senator Hill's assertions. Another way to try to answer this and other such questions is to look at the actions taken by other countries in developing their national heritage regimes. The discussion of heritage listings in four English-speaking countries in the next chapter tries to do just that.

Should better distinctions be made between places of supposedly national, regional or local significance? The reason for not making such distinctions is that they are very hard to make. The experience of the National Trusts has been that when their classifications were graded, as they once were, most of the time spent in listing was devoted to interminable discussions about the grading appropriate for the place. Furthermore, when issues arose related to listed places, only those with the highest gradings were given serious attention. On these and other grounds, all the Trusts across Australia abandoned gradings many decades ago and have not since sought to reintroduce them. When the Australian Heritage Commission had its first discussions about the most appropriate structure for the Register of the National Estate, it looked even handedly at all possible options. Among these options was a graded register; it was rejected for the reasons above.

Is it inappropriate that the national list should include places reflecting a country's entire natural and cultural history,

and that it should be a representative listing, not simply a listing of the unique and remarkable? Is the preparation of a smaller National List that is given very strong protection any reason to abandon the larger list? Is there any rational argument that would say that developing one list should require the abandonment of the other? Once again it is useful to see what other countries have done.

More fundamental still is the contrast in views about the significance of heritage to the nation implied by the different viewpoints behind the different types of lists. One is elitist, with the assumption that only the *crème de la crème* is worthy of national attention and protection. Places of the highest quality and distinction rightly command our attention and deserve very strong protection, but to look to them only ignores other rich values solely to be found on the longer lists. The larger lists are broadly conceived, interested in the physical evidence of the history and culture of all the people, concerned with different manifestations of natural history across the land and interested in preserving and interpreting all these places for a variety of different purposes — natural and cultural continuity, understanding of the past, appreciation of the significance of Australia's ecosystems and landscapes, and local and personal engagement and satisfaction.

It is hard to avoid the conclusion that the decision to abandon the continuing development and extension of the Register of the National Estate stemmed from an impoverished view of national heritage, together with a regrettable readiness to succumb to pressure from those who do not want listings to have any influence whatsoever on development proposals. The smaller lists also ignore the very important educational and

cultural benefits of the larger Register, tellingly illustrated by the publication of *The Heritage of Australia: The Illustrated Register of the National Estate* and the preparation of the Commission's other educational materials.

The fourth critical challenge in the new legislation is to the principle of separation of responsibility embodied in the original *Australian Heritage Commission Act 1975*, whereby an expert independent body makes decisions about listing based solely on the National Estate values of the place, and ministers have responsibility for the actions that are taken when development or other proposals threaten those values. The good sense of such an arrangement has been consistently supported by those engaged in heritage protection around the world. If the goal is objective evaluation of a country's heritage, other issues should not intrude into that assessment.

Finally, is a broadly conceived program of research, education, training and promotion unimportant? Does it not make obvious good sense to give the national heritage body the responsibility for such roles, and the scope and the means to carry them out in whatever ways it thinks most appropriate? These were precisely the responsibilities given to the Australian Heritage Commission under its Act, which led to many of its most significant achievements. All these questions are further examined in the next chapter in the light of international experience.

### **The 2006 amendments to the listing arrangements**

In 2006, amendments were made by the Howard government to the National Heritage listing arrangements, further complicating the operation of the new 2003 heritage system. This is

what researchers Andrew Macintosh and Deb Wilkinson have said of these amendments:

*On the pretext of improving the efficiency of the system, the standard listing process was changed to enable the minister to determine themes for listing and to introduce a 'priority assessment list'. Under this process there is a 12-monthly assessment cycle. At the beginning of each cycle, the minister can set listing themes for the coming assessment period and invite public nominations. These nominations are passed to the Council, which then prepares a priority assessment list. After the draft list is completed it is passed to the minister for finalisation. The minister can make any changes to the list that he or she considers appropriate, including inserting or removing places from the list and changing the proposed assessment time for each place.<sup>27</sup>*

This is only a part of the extraordinarily cumbersome process introduced in 2006 and a description of just some of the many different steps required before a place can be listed. At each step the minister has the opportunity to intervene and direct what will be listed and what will not be listed. Anyone could be pardoned for thinking that the system was meticulously devised not only to keep the process of listing under the strictest possible political control, but also to limit the number of properties placed on the National Heritage List to the greatest degree possible. If that was the intention it has been remarkably successful. To have managed to limit the listings on the National Heritage List after thirteen years of the Council's existence between 2004 to 2017 to no more than 115

places is quite an accomplishment. Particularly when that list is intended to be a full representation of the most outstanding examples of Australia's natural heritage, its prehistoric and Indigenous heritage, and its historic heritage since European exploration and settlement.

The Australian Labor Party was strong in its criticisms at the time of the introduction of the new heritage regime, but when it came to power in 2007, it failed to remedy any of the above deficiencies, let alone re-establish the Register of the National Estate or create an independent listing process. This was despite independent listing forming part of the party's national platform at the 2007 election.

### **Politicisation**

A final word here about politicisation. It is an important but complex issue. It is complex because it involves so many factors: full appreciation of the reasons why the body concerned was given statutory independence in the first place and respect for that reasoning; careful consideration of the qualifications and expertise that should be mandatory for the chairs and commissioners or council members of the particular statutory body; and the expectations of them once appointed. In recent years it has become something of a pattern for both major parties when in power to appoint ex-ministers as chairs of the Heritage Council. Examples include Carmen Lawrence by the Labor government and David Kemp by the Coalition. There is nothing wrong in principle with such appointments. Indeed, there may be benefits in having an ex-minister and, in Carmen Lawrence's instance, an ex-premier sitting in the Chair's position. The acid test here is whether the

appointee meets the criterion specified in section 7 (2) of the *Australian Heritage Council Act 2003* that the 'chair must have substantial experience or expertise concerning heritage.' Necessary too is a genuine heritage commitment to the task. Some distance from their previous ministerial roles is also essential. These requirements make it desirable that such appointments should be made infrequently and only with great care.

By contrast, the appointment onto the Commission of a serving senior public servant such as the Secretary of the Department of Environment and Heritage, the head of the host department of the Commission, was widely seen as a political appointment interfering with the independence of the Commission. This was because the Secretary was still employed by the government of the day and controlled many of the resources on which the Commission depended for its work. There were two such successive Secretary appointments over the last six or so years of the Commission's life. Fortunately, the Australian Heritage Council Act no longer permits such appointments.





Ubirr Rock, Kakadu National Park, Northern Territory



Uluru, Kata Tjuta National Park, Northern Territory

## CHAPTER EIGHT

### International heritage practice

This chapter begins with a description of UNESCO and the World Heritage Committee's Global Heritage Strategy. It then looks at national heritage regimes currently in place in four English-speaking countries — the United Kingdom, New Zealand, Canada and the United States — to see what we might learn from them today. These countries are particularly relevant to Australia because, whatever their differences, they all originally drew their political and legal culture from British practice. This applies as much to the United States, Canada and Australia, with their federal systems of government, as it does to New Zealand with its unitary system of government. The French-Canadian component of Canadian culture has given Canada an added richness and diversity rather than a complete break from British legal and political traditions.

The discussion in this chapter concentrates on the way global heritage practice in each of the four countries can illuminate contentious issues and practice in Australia and in doing so guide us towards the best-informed decisions.

#### **World Heritage — the Global Strategy**

Australia's contribution to the development of the World Heritage Convention has consistently been active, positive and supportive. Australia was an early signatory to the Convention, and since that time, Australian delegates have regularly served

on the World Heritage Committee. Australia has provided two chairs, Professor Ralph Slatyer AC and Peter King AO, for the Committee at different times. Joan Domicelj AM was one of the authors for the World Heritage Committee's Global Strategy. More recently, other experts such as Penelope Figgis AO, Dr Michael Pearson AO and Professor Richard Mackay AM have all made important contributions to the work of IUCN, ICOMOS and the World Heritage Committee. These are only some examples. There are now nineteen Australian places of outstanding natural or cultural universal value listed under the Convention. All are also listed on the National Heritage List.

Since the Convention came into force in 1972, the number of state parties to it, and the overall number of properties identified by the World Heritage Committee to be of outstanding universal value and placed on the World Heritage List, has steadily grown. As at January 2017, there were 193 state parties to the convention. At the time of writing there were 1,092 listed properties, of which 845 were cultural, 209 natural and 38 mixed. Fifty-four properties were identified as being in danger.<sup>1</sup>

The World Heritage Committee's *Global Strategy for a Representative, Balanced and Credible World Heritage List*, launched in 1994, is of particular interest to any review of Australian heritage practice. Its aim is to ensure that the List adequately reflects the world's cultural and natural diversity of places of outstanding universal value. Twenty-two years after the adoption of the Convention, it was felt that the World Heritage List lacked balance in the type of inscribed properties, and in the geographical areas of the world that were represented. Among the 410 properties on the list at that time, 304 were cultural sites, 90 were natural and 16 mixed. The vast

majority of properties were located in developed regions of the world, principally in Europe. Through the Global Strategy, the World Heritage Committee sought to 'broaden the definition of World Heritage to better reflect the full spectrum of our world's cultural and natural treasures', as well as to establish comprehensive processes and guidelines to help implement the World Heritage Convention:

*This new vision goes beyond the narrow definitions of heritage and strives to recognise and protect sites that are outstanding demonstrations of human coexistence with the land as well as human interactions, cultural coexistence, spirituality and creative expression.<sup>2</sup>*

ICOMOS and IUCN were invited to assess the World Heritage cultural and natural area listings. ICOMOS's global cultural research carried out between 1987 and 1993 revealed that Europe's historic towns and religious monuments, Christianity, historical periods and 'elitist' (in contrast to vernacular) architecture were all over-represented on the World Heritage List. By contrast, all living cultures, and especially traditional cultures, were under-represented. IUCN's natural area research found that the natural and mixed sites currently inscribed on the World Heritage List cover almost all regions and habitats of the world with a relatively balanced distribution. Particular categories of places such as tropical/temperate grasslands, savannahs, lake systems, tundra and polar systems, and cold winter deserts were, however, missing from or under-represented on the List.<sup>3</sup>

A key part of the Global Strategy has been to encourage more countries to become States Parties to the Convention,

and to prepare nominations of properties from categories and regions currently not well represented on the World Heritage List. Since the Strategy's launch, 39 new countries have ratified the World Heritage Convention. Of great interest for the World Heritage List and for heritage practice worldwide are the new categories for World Heritage listing. Examples are cultural landscapes, itineraries, industrial heritage, deserts, coastal-marine and small-island sites.<sup>4</sup>

In their book *Many Voices, One Vision: The Early Years of the World Heritage Convention*, Cameron and Rössler give a very interesting description of the manner in which ideas leading to the development of the Global Strategy began to take shape. Also of particular interest to Australian national heritage practice is the discussion of the fundamental role played by thematic studies in the Global Strategy.

The World Heritage Committee has made other changes to support its Global Strategy. It has decided to limit the number of nominations that can be presented by each State Party and the number of nominations it will review during each session. The World Heritage Committee is working closely with its three Advisory Bodies, ICOMOS, IUCN and ICCROM, and with every State Party to the Convention to make the World Heritage List a truly balanced representation of the world's heritage.<sup>5</sup>

UNESCO's World Heritage Committee's Global Strategy offers a model process for every nation to follow. From the earliest days of the Australian Heritage Commission and the development of its Register of the National Estate, the Commission's primary long-term aim was to build 'a truly balanced, representative and credible list' of Australia's

national heritage. During the Australian Heritage Commission's existence, many important thematic studies were commissioned to help achieve that aim. We need to question why similar systematic 'regional, chronological, geographical and thematic studies' have not been a priority for any recent Minister for Environment and Heritage. Few thematic studies have been commissioned or carried out by the Australian Heritage Council or its host department since the Council was formed in 2003. I do not mean to imply that this has been for lack of interest from Council members. It is likely that they have been as frustrated as any onlooker by their inability to initiate and fund such studies.

It might be argued that the thematic studies carried out by the Commission were relevant to the development of a large register seeking representation of every major theme in Australia's natural and cultural history, and that such studies are not of as much relevance to the development of an elite list. The analyses done, the thematic studies carried out and the conclusions reached during the World Heritage Global Strategy demonstrate the fallacy of this argument. There is no more elite list of natural and cultural places in the world than the places on the World Heritage List. The Global Strategy demonstrates just how much that list was in need of extensive review and just how critical was the use of sharply focused thematic studies to carry out that review.

In the World Heritage Committee's Global Strategy we see a brilliant conceptualisation of a project to give recognition to previously ignored heritage values and thereby to develop a more 'representative, balanced and credible World Heritage List.' Its efforts to increase membership, use of thematic

studies, conferences and other approaches all work together to achieve its ambition. Of particular interest here is in the many ways in which the approach adopted in the Global Heritage Strategy echoes the strategy used for the development of the Register of National Estate by the Australian Heritage Commission in Australia.

**Heritage regimes and practices in the United Kingdom, New Zealand, Canada and the United States. What can Australia learn from these countries?**

When searching for best international practice it should first be said that it is most likely to be found, not in the practices of any one country, but rather in the composite practices of all the different countries. Clearly, too, we should expect that other countries with federal systems of government such as the United States and Canada are likely to be the most relevant for comparison with Australia. This does not, however, mean that Australia has nothing to learn from countries with unitary systems of government. When making comparisons with these four countries and Australia, it also needs to be remembered that the former Register of the National Estate and the current National Heritage List in Australia include not only historic places, but also prehistoric and Indigenous places and natural areas of heritage significance. This is not the case for any of the other countries whose heritage practices are examined here. Each country has separate procedures for protecting outstanding natural and cultural places. Only the World Heritage List combines natural and cultural properties in the same list. This is an example of the way that World Heritage listings and each of the other four countries reviewed, including Australia,

contribute to best international practice. What conclusions can Australia draw from the practices of UNESCO's World Heritage Committee and these four countries?

- None of the countries described, irrespective of their differences, have any apparent qualms about long lists or registers of historic places. These long lists are comparable in size to the Register of the National Estate when it was sealed at 13,127 places in 2003 (taking into account the different sizes of the countries). Some indeed are much bigger. England has close to 400,000 places on its lists, the United States has 90,000 on its register, Canada has 12,400 on its register and New Zealand, a much smaller country than any of the others, including Australia, has 6,000 places. They clearly view the continuing development of the lists as a matter of great pride about their country's history and heritage. Parks Canada does more. It goes out of its way to let Canadians know that the Canadian Register of Historic Places is still not fully representative and is constantly growing, and to invite their help in making it a better and more complete list.
- Each of the four countries examined has longer lists (generally similar in scope and intention to the former Register of the National Estate) sitting alongside shorter lists of national landmarks that are given a higher level of care

and protection. None of the four countries acts as if one form of list or register rules out having another of a different kind. Their common practice demolishes the argument that by introducing the National Heritage List in Australia in 2003 there was a need to abandon the Register of the National Estate. What is dismaying is the failure of the Australian Government at the time and since to perceive that the two lists served completely different purposes.

- The size of the smaller select historic heritage landmark lists in each of the United States (2,400 places), Canada (950 places), and New Zealand (1,000 places), dwarfs the size of the National Heritage list in Australia (I say this while acknowledging that there are some places of considerable size on Australia's list), with its current listing of 116 places containing natural as well as cultural sites, none of which are included in the other lists. England is not included in this comparison because its list of historic places of landmark quality is so large (approximately 400,000 places) that it overwhelms all the others.
- The responsibility for decisions about listing is not overtly political in all other countries as it is now in Australia. In the United States, the Keeper of the National Register is responsible for listings under a sequence of delegations

from the Secretary of the Interior, beginning with a delegation to the Director of the National Parks Service. In New Zealand, the *Heritage New Zealand Pouhere Taonga Act 2014* expressly forbids any involvement of the minister in the development of New Zealand's List. The procedure for listing is accordingly a professional, not a political one.

- In Canada, the decision to list or not to list a place on the smaller National Historic Sites List is made by the minister responsible for Parks Canada, on the recommendation of the Historic Sites and Monuments Board of Canada, whose members are Order-in-Council appointments by the government. The minister can, however, override the Board recommendation. Responsibility for listing on to the larger Canadian Register of Historic places rests with each government partner (Parks Canada, ten provinces and three territories).
- In the United Kingdom, the criteria for listing and for scheduling are broadly defined in the relevant legislation — special architectural and historic interest for listed buildings, and national importance for ancient monuments. Those are further clarified in the relevant guidance. Although the minister makes the final decision, he or she must act reasonably. In the United Kingdom, an application can be

made for listed building consent to demolish a structure after it has been listed. If the wider benefits of the new proposal are seen to outweigh the importance of the listed structure then it may be demolished.

- Each country has several aspects of its heritage practice that should be of interest to Australia. The United States' Advisory Council on Historic Preservation and the *National Heritage Preservation Act 1966* (NHPA) are of special interest to both the United States and Australia. For over fifty years that Act has provided the means for identifying, listing, protecting and interpreting places of historic heritage significance across the country. It has been significant to Australia because the *Australian Heritage Commission Act 1975* borrowed some sections of the U.S. Act and in that form served Australia very well for twenty-eight years. The NHPA arrangements also show how, rather than repealing the *Australian Heritage Commission Act* in 2003, it could have been amended to achieve an outcome vastly superior to the current national heritage system established in its place. For example, had the NHPA's dual listing arrangements (comprised of a large register and a smaller select list known as National Historic Landmarks) been put in place rather than the system actually introduced in

2003, all the Australian Heritage Commission's listing arrangements could have been left intact and the responsibility for decisions about listing left solely in the hands of the Commission. This includes all measures related to the further development of the Register of the National Estate. Decisions about listing on a landmark list, comprised of a much smaller number of select places could, if necessary, have been treated in a somewhat different way.

- *The National Heritage Preservation Act 1966* has many other provisions that bear careful examination for possible adoption in Australia. Examples are the comprehensive requirements for the training of heritage specialists, the tax credit system, and aspects of the collaborative system appointments of State Preservation Officers with the states. Canada's Commemorative Integrity program stands out as a program of great significance for the management of heritage properties. In the United Kingdom, the extent of listed protected places and the amount of money made available for historic property protection (and other cultural programs) from the operation of the National Lottery are both remarkable. The outstanding contribution of Britain to best practice heritage conservation has, however,

come from the achievements of its citizen bodies. In New Zealand, the distribution of regional offices of Heritage New Zealand across the country is worthy of note and replication, along with many aspects of New Zealand's listing system.

- This survey of the heritage practices in the United Kingdom, United States, New Zealand and Canada illustrates in what way that national heritage (in all its dimensions) is viewed in each of the four countries. This can be seen in the institutional arrangements, in the reach of the national programs, in the funding that is made available for them, in the richness of the way that each country's natural and cultural history is illustrated, and in the way that the intent and purpose of its protection is expressed.

### **Celebrations of heritage**

A country's national estate consists of places to visit, celebrate and enjoy. These places also need to be protected to ensure that our grandchildren and their grandchildren are able to enjoy them far into the future. Because the safeguarding of heritage places will frequently require some restrictions on uses and activities, we must at all times insist that this is a quite normal requirement everywhere in the world.

Starting with the United Kingdom, there is so much that is striking about the approach taken in England, Scotland, Wales and Northern Ireland that it is difficult to know where to begin. It is, however, hard to look past the achievements of the citizen

bodies, particularly the National Trust, and to a lesser degree other such bodies. Their accomplishments, as described in Chapter 2, are quite remarkable, not just in the protection they have achieved for heritage resources, but also in the opportunities they have created for public visitation and enjoyment. The state's contribution provides a fine supplement.

Heritage New Zealand, as the country's key national heritage agency, makes special note of public engagement with historic heritage and concern for its protection:

*We operate in an environment marked by a growing interest in heritage, recognition of its social, cultural, environmental and economic benefits to our country, and awareness of its importance to national identity.<sup>6</sup>*

This statement is accompanied by an invitation to the people of New Zealand to make greater use of the country's heritage resources and to share with Heritage New Zealand the care of them.

If we now turn to Canada, the story of the development of Canada's national park system is a wonderful illustration of the power of imaginative thinking and brilliant communication. When JB Harkin was appointed as the first Commissioner of the new Dominion Parks Branch, he was faced with enormous difficulties. The branch had seven employees and a budget of \$200,000 to cover its work across the whole of Canada.<sup>7</sup>

Harkin began by persuading the federal government that the parks, whether primarily concerned with nature, wildlife or historic conservation, needed stronger protection. This was achieved by an amendment to the *Dominion Forests and Parks Act* in 1913 that brought the parks under the Commissioner's

sole control. Meanwhile, Harkin travelled all over Canada giving speeches and circulating attractively presented reports and material to foster attention on the parks as delightful places to visit. An inspired initiative was to send out his talented secretary, Mabel Williams, to visit, travel through, and write about individual parks. She did this with style, capturing the romance of each park in a series of handsome leather pocket books. They were an instant success. Parks attendance rose from 100,000 in 1921 to 250,000 in 1925 and 550,000 in 1928. For her outstanding contribution to the development of the parks system Mabel Williams herself was promoted to a manager overseeing twenty-five people.

The hard work and imaginative thinking of Harkin, Williams and others during the first twenty years of the life of the Service eventually led to an historic piece of legislation, the *Canada National Parks Act*. The Act clarified the role of the Parks Branch, giving it more authority to set aside and administer lands for the benefit of the people of Canada.

What can we learn from these stories and approaches? Adequate protection and care of heritage sites remain essential requirements. Readers will recall that one of the first initiatives taken by Harkin following his appointment as Commissioner was to successfully persuade the Canadian federal government that the level of protection for the country's parks was inadequate. Thereafter, however, the principal emphasis of all his work was promotion of the nation's parks, whether they were devoted to nature conservation, wildlife protection or historic themes. He and Williams correctly perceived that significant increases in parks visitation provided the route to increased

political support for the parks system, and that promoting the grandeur and romance of the country's parks was the way to attract Canadians and visitors from other places to visit the parks. This is a lesson of great importance, easily able to be adopted in Australia or elsewhere in the world, provided that there is a body such as the Australia Heritage Commission empowered by its Act to carry out promotional work and given at least some minimal resources to begin it. It goes without saying that the other essential ingredient required for success is people with enterprise and imagination.

The Preamble to the National Historic Preservation Act 1966 provides a different but equally fascinating opportunity for adoption in Australia or other countries. The preamble is remarkable for the range of different messages and commitments it contains. Summarised they are:

The preamble is a significant document. It is a declaration of the United States Congress and makes the following points.

- Point 1 is the striking statement that the spirit and direction of the Nation are founded upon and reflected in its historic heritage;
- Point 2 is the strongly expressed view that the historical and cultural foundations of the Nation should be preserved as a living part of community life to give a sense of orientation to the American people;
- Point 3 is the statement that historic properties significant to the Nation's heritage are being lost with increasing frequency;

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- Point 4 states that the preservation of this irreplaceable heritage is in the public interest so that its legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;
- Point 5 states that present governmental and non-governmental historic preservation programs and activities are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of the Nation;
- Point 6 states that better knowledge and administration of heritage resources, the establishment of better means of identifying and administering them, and greater encouragement of their preservation will improve the planning and execution of federally assisted projects and will assist economic growth and development;
- Point 7 states that it is necessary for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the US National Trust for Historic Preservation to expand and accelerate their historic preservation programs and activities.<sup>8</sup>

## INTERNATIONAL HERITAGE PRACTICE

It would be immensely beneficial for a heritage agency to work under the umbrella of an Act with such a preamble. Even if not always fully met, it would set a level of expectation that would provide a serious basis for discussion and negotiation.

Other possible international models for emulation are of the non-government-organisations (NGOs). Accordingly, the NGO movement in Australia is further discussed in the next chapter.



Alexandra Cave at Naracoorta Caves, South Australia

## CHAPTER NINE

### The state of Australia's heritage of places of natural and cultural significance

This chapter is concerned with the current state of Australia's heritage of natural, prehistoric and historic places. It uses two means to make this assessment. The first is the findings of Independent State of the Environment reports. The second is the research and advocacy work of NGOs concerned with the protection of Australia's heritage and environment.

#### **Independent State of the Environment Reporting**

In 1996, Senator John Faulkner established a State of the Environment Advisory Council under the chairmanship of Professor Ian Lowe. I was one of the members appointed to the Council. Our responsibility was to produce Australia's first independent national state of the environment report (SoE). A leading force in encouraging countries to prepare such reports was the Organization for Economic Cooperation and Development (OECD). The OECD saw it as an important task to encourage all member countries to ensure that they were conscious of the forces causing pressures on the environment, aware of the current state of their environments, and thinking seriously about the responses that they were making and the adequacy of them. Accordingly, the OECD recommended that member countries used a Pressure-State-Response framework for their reports. While the production of Australia's first SoE

report in the following year was widely seen to be a landmark national event, the Advisory Council recognised an equally important need was to gain bipartisan commitment to the production of independent state of the environment reports at regular intervals.

Today, an independent state of the environment report is prepared for Australia every five years, the most recent being the State of the Environment 2016 (SoE 2016), released early in March 2017. The reports have been expanded and refined. Heritage, for example, has been added to the biogeographical and conceptual themes and is separately reported. The Heritage report retains a section on pressures and a section on state and trends as before, but the report also has new sections that cover heritage management effectiveness, resilience, risks and outlook. Professor Richard Mackay was commissioned to report on the Heritage theme for both the SoE 2016 and SoE 2011 reports, so is well placed to assess change for the better or worse over the intervening five years.

Mackay's report covers the state of heritage places across Australia under all jurisdictions: from federal to local, and under public or private ownership. The report gives insight into the current condition of Australia's heritage, and draws attention to emerging challenges; for example, pressures from climate change, population growth and industry. The report also assesses specific issues as they relate to natural, Indigenous or historic heritage.

Overall, Mackay finds that 'Australia's natural and cultural heritage remains in good condition despite some deterioration and emerging challenges since 2011'.<sup>1</sup> While there is increasing recognition of the importance of Indigenous involvement in

heritage management, Mackay notes that Australia's Indigenous heritage remains inadequately protected, and destruction continues. In terms of Australia's historic heritage places, many remain in good condition. However, he points out that 'despite efforts to improve the calibre of historic heritage lists and registers, they remain inconsistent and incomplete'.<sup>2</sup>

Mackay also records that the resources and data available for assessing management practices and the condition of natural and cultural heritage have declined, particularly in proportion to the amount of reserved land and the number of listed places.

In summing up, Mackay writes that the release of the Australian Heritage Strategy in 2015 gives the Australian Government the opportunity to bring about major change and 'to foster innovative approaches in partnership with the states and territories'. He concludes that the success of the Australian Heritage Strategy and the long-term outlook for Australia's heritage will require the 'commitment of additional resources and strategic responses to continuing pressures and emerging threats'.<sup>3</sup>

Of prime relevance to this book is what Mackay has to say about Australia's national heritage regime, that is, the listing and management of properties on the World Heritage List, the National Heritage List and the Commonwealth Heritage List, as summarised below.

### **Identification and listing**

#### **Australia's world heritage properties**

Mackay suggests that a remaining task is to review each property listed for only one value (either cultural or natural

outstanding universal value) and assess whether there is also a case to seek listing of that property for the other value.

### **The National Heritage List**

Mackay describes the tortoise-like development of this list, with only twelve new places having been added to the list between 1 July 2011 and 30 June 2016, and the total list comprising no more than 106 places at 30 June 2016. This is despite 63 places being nominated to the National Heritage List and 24 National Heritage List assessment reports provided to the minister over the same period. Mackay identifies the principal reasons as a lack of resources available to the Australian Heritage Council and the cumbersome requirement that places be put onto a 'priority assessment list' before any assessment takes place. Mackay notes that although the Australian Heritage Council may only assess a place for its heritage values, the minister considers a broader range of matters, such as socio-economic benefits, public support and legal implications. He further observes that 'the resources available for documentation and assessment and the rate at which places are being added to the National Heritage List do not yet reflect the importance of the National Heritage List as Australia's list of natural, historic and Indigenous places of outstanding significance to the nation'.<sup>4</sup>

### **The Commonwealth Heritage List and the Register of the National Estate**

As at 30 June 2016, there were 396 places on the Commonwealth Heritage list, of which 63 were added between 2011 and 2016, with 43 post offices added on 8 November 2011. The Australian Heritage Strategy commits to streamlining

listing and management arrangements for properties on this List. Mackay notes that the capping of the previous Register of the National Estate has not only meant that no new places have been added to the Register but also that some previously listed places have been left without any protection.

### **Protection**

#### **The protection of natural areas**

The national and regional planning framework for the systematic development of a Comprehensive, Adequate and Representative (CAR) National Reserve System was introduced in Chapter 2. The current mapping and classification tool used for the achievement of such a system is known as Interim Biogeographic Regionalisation for Australia (IBRA). Thanks to the work on IBRA, many significant natural areas have been identified and are now supported by a systematic framework to ensure that their protection continues. IBRA was developed in the mid-nineties, and is endorsed by all levels of government as a key tool for identifying land for conservation under Australia's Strategy for the National Reserve System 2009–2030. IBRA is updated as improved spatial mapping and information on vegetation communities and ecosystems becomes available from state and territory agencies. The latest version, IBRA7, classifies Australia's landscapes into 89 large geographically distinct bioregions based on common climate, geology, landform, native vegetation and species information. The 89 bioregions are further refined to form 419 subregions, which are more localised and homogeneous geomorphological units in each bioregion.<sup>5</sup>

### **The protection of Indigenous places**

Although Indigenous places continue to be included on the National Heritage List and there has been a major increase in Indigenous Protected Areas (areas that are voluntarily dedicated by Indigenous groups on Indigenous-owned or managed land, or sea country and which form part of the national reserve system), there is no nationally coordinated inventory of significant Indigenous places. Survey and assessment programs for Indigenous heritage are often undertaken in response to threats from development projects, rather than proactively, owing to perceptions about cost and resource availability.

Indigenous Protected Areas seek to deliver environmental, cultural, social, health, wellbeing and economic benefits to Indigenous communities. As well as protecting biodiversity and cultural heritage into the future, Indigenous Protected Areas provide employment, education and training opportunities for Indigenous people in remote areas. There are currently over 70 dedicated Indigenous Protected Areas across 65 million hectares, accounting for more than 40% of the National Reserve System's total area.

### **The protection of places of historic significance**

Progress continues to be made in the statutory listing of historic heritage at the national and state level. The number of listed places continues to increase, and there have been more systematic, thematic historic heritage assessment projects, and projects to improve the quality of listing data. However, gaps remain in statutory registers and heritage lists, and the resources allocated to survey and assessment processes have declined. At the local level, processes for heritage listing are

inconsistent, sometimes perceived as costly, and often under-resourced. Mackay points to the ad hoc manner in which historic place statutory registers have developed, usually 'with a strong focus on buildings, and then in response to specific development threats'. More recent practice, according to Mackay, has enabled a wider range of site types to achieve heritage listing, supported by greater community involvement. Listing programs have included more systematic survey and assessment projects, based on thematic studies, gap analysis, and review of heritage lists at national, state and territory, and local levels.<sup>6</sup>

### **Condition and integrity**

#### **Australian properties on the World Heritage List**

Mackay reports that between 2013 and 2018, an investment of seven million dollars was made for Australian World Heritage properties under the World Heritage Grants program. The Australian Heritage Council's most recent periodic report, submitted to the World Heritage Committee in 2011 found that the 'three most significant factors affecting World Heritage properties in Australia' were:

- invasive and alien species, or hyperabundant species;
- climate change and severe weather events; and
- social or cultural impacts on heritage (including changes in traditional ways of life as well as impacts of tourism).<sup>7</sup>

There is concern about the condition and integrity of a number of Australian World Heritage properties, most notably the Great Barrier Reef where the outlook assessment is poor and where climate change, poor water quality and impacts from coastal development are major threats to the property's

health. Of the nineteen World Heritage properties in Australia, the state of three — the Great Barrier Reef, the Wet Tropics of Queensland and Kakadu National Park — is considered to be of 'significant concern'; and the state of a further five — Fraser Island, the Greater Blue Mountains World Heritage Area, the Gondwana Rainforests World Heritage Area, Macquarie Island and the Tasmanian Wilderness World Heritage Area — are of 'some concern'.<sup>8</sup>

### **The National Heritage List**

Although systematic surveys of the conditions of the properties included on the National Heritage List and the Commonwealth Heritage List have not been recently undertaken, there have been relatively few compliance incidents reported for both lists. Studies of natural, Indigenous and historic heritage carried out for the SoE 2011 report found that listed National Heritage places were mostly in good condition and retained a high degree of integrity, reflecting the fact that these places are mostly in public ownership and are managed for conservation purposes. Data from the National Heritage Place Monitoring Survey (WHAM 2017) similarly show that most places have remained stable or improved since the time of listing.

### **The Commonwealth Heritage List**

While the EPBC Act requires Commonwealth Agencies to prepare heritage strategies and management plans, reliable data is still not yet available to assess management outcomes.

### **Natural heritage**

Nationwide, the limited available data relating to natural heritage values, environmental threats and management plans

for natural heritage places suggests that Australia's reserved lands are in good condition, but continue to face threats from invasive species, fires, erosion, use and adverse effects on threatened species. The limited resources available for reserve management (particularly in relation to the growing extent of reserved lands) means that these threats to natural heritage values are increasing.

### **Indigenous heritage**

No nationally coordinated data exist about the condition and integrity of Indigenous heritage places. There have been positive developments, but also trends that significantly undermine the protection of Indigenous heritage. Recognition of the role of Indigenous people in managing Indigenous heritage has expanded, but individual assessment and development decisions continue to cause cumulative destruction of the Indigenous cultural heritage. According to Mackay, the biggest challenge facing Indigenous heritage is its incremental destruction through the accumulation of decisions associated with individual development and resource extraction projects.

### **Historic heritage**

No nationally coordinated data exist about the condition and integrity of historic heritage places, but those on national, state and territory lists appear to be in good condition and retain integrity of their identified values. Idle, unused historic places remain at risk. The biggest opportunity in the area of historic heritage conservation is to tackle the continuing decline in availability of specialist heritage trades people, the lack of training opportunities and the looming trades shortage.

Mackay's findings identify many ways in which heritage listing procedures could be improved. There are many places of great significance that are not and should be listed on either the National Heritage List or the Commonwealth Heritage List. There is also great scope for more effective approaches to the measurement of the state and integrity of Australia's national estate. They are, however, all dependent on the proper resourcing of Australia's national heritage programs.

### **Non-government organisations (NGOs)**

The health of the NGOs and voluntary bodies that advocate on behalf of Australia's National Estate should be a matter of great concern to all those who care about the state of Australia's heritage places. Chapter 1 illustrated how powerful and effective NGOs can be in achieving heritage protection. International examples, such as the United Kingdom's National Trust and the Sierra Club in the United States, are particularly notable. Late in my working life I was given the opportunity to play a part in one such prominent Australian organisation as the President and later the Patron of the Australian Conservation Foundation. The dedication and commitment of councillors and staff to environmental causes was most impressive. Later I had the opportunity to bring together a group of peak national community organisations working in different fields under the umbrella of the Australian Collaboration. It was similarly impressive to see the range of their skills, the depth of their knowledge and the extent of their dedication.

From the earliest days of its existence, Australia's NGOs were key to the work of the Australian Heritage Commission. Before the Commission's Act was passed in 1975, National

Trusts in each state had begun to classify historic heritage properties (either as 'Classified' — the most significant places, or as 'Recorded'). When the Commission began work on the development of the Register of the National Estate, it decided that it could appropriately use the classified listings for the first step in its listing process as the various Trusts' Classified places had already been given expert heritage assessment and significant public exposure prior to their inclusion on their lists. The Commission was obliged under its Act to advertise widely its intention to put any places on its Register and to give an opportunity for anyone to object. Objections under its Act had to be taken seriously. The Commission itself, where necessary, undertook extensive reviews of some statements of significance provided by the Trusts.

The Commission drew upon the collective expertise of nature conservation and environmental NGOs in a somewhat different way. These bodies had not established registers of natural areas of significance to the nation. They were, however, the repositories of extensive knowledge about Australia's physical environment. Accordingly, when the Commission sought nominations for natural areas for its Register they came forward with much rich material. The Commission assessed this material carefully, with the assistance of its staff and scientists from many backgrounds, before places were advertised. Scientists with specialised expertise in particular fields also brought forward places for possible listing of their own motion.

The Commission sought recommendations for places of high Indigenous significance from the Site Committees of the Australian Institute of Aboriginal Studies (later the Australian Institute of Aboriginal and Torres Strait Islander Studies),

recognising that it needed to be consultative and respectful of Indigenous viewpoints when considering any such listings.

These arrangements helped the Commission create a large, representative Register in a remarkably short time, culminating in the publication of *The Heritage of Australia*.<sup>9</sup> This monumental book of nearly 1,000 pages provided an illustrated statement of significance for each of the 6,000 places on the Register of the National Estate at the time of publication in 1981.

The NGO movement in Australia continued to provide this remarkable level of assistance to the Commission throughout its life, helping the Register to grow from 6,000 listed places in its first five years to over 13,000 listed places in 2003 when the Commission was abolished and the Register of the National Estate was capped under the Howard Government.

Today, the scope for the NGO movement to influence entries on the new National Heritage List or Commonwealth List is limited, such is the cumbersome nature of listing on the National Heritage List and the control exercised by the minister. That does not mean that the NGOs have ceased to have any influence over national heritage practice. Far from it, the NGOs are as active as ever, but in a different way. The Trusts have continued to add places from different periods and of different categories to their non-statutory lists. When, as might be hoped, the cap is removed from the Register of the National Estate, there will be places already assessed by the Trusts that can be immediately considered for inclusion.

#### **Nature Conservation NGOs**

Australia has a rich array of environmental bodies. They include Australian offshoots of the major international organi-

sations such as WWF-Australia, Greenpeace and Friends of the Earth, and national bodies such as the Australian Conservation Foundation and the Wilderness Society. There are also Conservation Councils in every state, which act as umbrella bodies for a host of smaller environmental bodies, and bodies such as National Parks Associations. Other organisations of great importance are Bush Heritage and the Nature Conservancy Australia, which receive gifts and bequests, and manage land for conservation purposes. Individually, these bodies may not be as large as some of the overseas groups, but collectively they represent a powerful movement. In particular, they have recently embarked on two major projects of great significance for Australia's natural heritage.

The Places you Love Alliance, launched in 2012, is one of the biggest Australian partnerships of environment groups ever assembled, representing forty groups and 1.5 million supporters, including WWF-Australia, the Wilderness Society, Australian Conservation Foundation, Birdlife Australia, Humane Society International, along with conservation councils and local groups from around the country. Aiming to inspire Australians to protect nature, one of its prime initiatives brought together experts, communities, business and government to survey the state of Australia's natural systems. The survey, the findings of which were published in 'The Australia We Love' report, is an example of what can be achieved when NGOs pool their resources and specialist knowledge and work together.

Another initiative stemming from Places You Love is the creation of the Australian Panel of Experts in Environmental Law (APEEL). Its membership includes environmental law

practitioners, internationally renowned academics and a retired Federal Court judge. APEEL's *Blueprint for the Next Generation of Australian Environmental Law*<sup>10</sup> aims to ensure a 'healthy, functioning and resilient environment for generations to come.'<sup>11</sup> It is to be hoped that APEEL will review the *Australian Heritage Council Act 2003* and the *Environment Protection and Biodiversity Act 1999* so that when a propitious moment arises there is a carefully considered reform proposal to put before a minister or shadow minister. It would be a great contribution to Australia's National Estate.

APEEL proposes a set of clear principles (categorised as design and directing principles) to underpin environmental law. In addition, it recommends norms such as a general environmental duty of care and a general duty to restore and rehabilitate damaged environments. It proposes a general duty imposed on all companies under corporate law to improve their environmental performance. Under APEEL's Blueprint, other environmental norms in the form of substantive and procedural rights are a core component of the next generation of environmental law, including a substantive right to a safe and healthy environment, and procedural environmental rights and the right to information and to public participation.

Importantly, APEEL argues that the Commonwealth should accept its responsibility to provide national strategic leadership on the environment (and by implication the nation's heritage), beginning with the production of a Statement of Commonwealth Environmental and Heritage Interests that defines this leadership role, while also recognising that the states and territories will continue to regulate for the environment. Such a statement would accord well with the Australian

Heritage Commission's Preferred Heritage Regime set out in the Commission's Annual Report for 1996. It is sorely needed.

**Indigenous heritage: The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)**

There is no Indigenous body that quite matches Australia's environmental or historic NGOs. The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), although a government body, does however enjoy an independent standing that allows it to speak out strongly and publish material in support of Indigenous culture and heritage. Many of the other NGOs also work actively alongside Indigenous groups to help them protect their heritage.

In a recent book, *The Right to Protect Sites; Indigenous Heritage Management in the Era of Native Title*,<sup>12</sup> published by AIATSIS, Pamela Faye McGrath and Emma Lee argue that Aboriginal and Torres Strait Islander places constitute a large component of Australia's overall national heritage estate. They estimate that there are at least 150,000 Indigenous heritage places and objects listed on state, territory and federal registers around the country, double the estimated 75,000 registered in 1993 (when the Native Title Act was established). These are striking numbers. Alongside these Indigenous heritage listings, McGrath and Lee note that native title rights have been granted over 2.2 million square kilometres (almost 30 per cent of Australia's landmass), and 145 Prescribed Bodies Corporate have been established to enable native title holders to manage those rights.

McGrath and Lee question whether these heritage listings and native title rights have improved the ability of Aboriginal

and Torres Strait Islanders to legally protect places of significance. Such arrangements should have strengthened Indigenous peoples' scope to do so, since along with rights to hunt, fish, gather and engage in cultural activities, native title rights to protect sites are standard in native title determinations. Combined with longstanding state, territory and federal laws supposedly intended to protect Indigenous heritage, native title should have delivered Aboriginal and Torres Strait Islander people far greater ability to manage and protect places of significance. But they say it is far from clear that it has. This is, as Carolyn Tan explains in the second chapter of the book, because native title and Indigenous heritage are two separate regimes:

*that have very different theoretical origins, legal characteristics and limitations. The heritage of a state is construed as a public interest limitation of private or government property rights and does not provide rights to the people in whose culture it was originally conceived. Native title on the other hand is a private (albeit communal) right that is also capable of being limited by heritage laws.<sup>13</sup>*

The result, say McGath and Lee, is a body of unsatisfactory and contradictory public law.

The authors stress that the distinction between the place-based heritage of Aboriginal & Torres Strait Islander people as defined by them, and the heritage sites that governments recognise and protect cannot be over-emphasised. The former, they say, is a cultural landscape; the latter is a state-informed project to identify and manage the competing values of places

within such a landscape, balancing protection against private property rights and other public interests in the public interest.

McGrath and Lee report that the failures of current arrangements are widespread and have many dimensions:

*Permits to destroy or interfere with places of significance to Aboriginal and Torres Strait Islander people are being granted at an alarming rate.*

*Policy reforms have narrowed instead of broadened the dimensions of what is considered 'Indigenous heritage'.*

*The burden of dismantling barriers to Indigenous heritage management still falls on Aboriginal and Torres Strait Islander people.<sup>14</sup>*

The procedural right to negotiate afforded by the Native Title Act (NTA) does not extend to the right to say 'no' to developments that potentially impact on places of significance, thus undermining the ability of native title groups to enhance heritage management practices and outcomes in negotiations with non-Indigenous people.

### **Historic heritage NGOs**

Chapter 1 describes the historic heritage NGOs and the roles they variously played in helping to protect and promote Australia's historic heritage in the period leading up to the passage of the *Australian Heritage Commission Act* in 1975. It makes clear that no single body played a decisive role in many of the conservation victories; concerted action was regularly needed to prevent damage and destruction of heritage sites. The principal bodies that worked together to stop inappropriate development during this period were the National Trusts,

the Civic Amenity societies and the Builders Labourers Federation (BLF). Today, the National Trust movement remains active, although its health varies across Australia, given that each state and territory National Trust is a fully autonomous entity. Nearly all the main civic amenity bodies formed in the earlier period are still in existence. No longer active, however, is the BLF and its Green Ban activities. This is a major loss because in the earlier period it was often through the placement of green bans on projects that inappropriate development was stopped. Some new NGOs have come into existence, such as Australia ICOMOS and the Garden History Society.

The Australian National Trust movement was established in New South Wales in 1945 to raise community consciousness of widespread destruction of the built and natural heritage in Sydney. The movement quickly spread across Australia, with the other states establishing National Trust offices throughout the 1950s and 60s.

Collectively, the organisation owns or manages over 380 heritage places (the majority held in perpetuity), manages a volunteer workforce of 3,500 while also employing about 350 people nationwide. The National Trusts in Australia are community-based, non-government, not-for-profit organisations, committed to promoting and conserving Australia's heritage through their advocacy work and their custodianship of heritage places and objects.

If this book had been written in 2005, just after Professor Simon Molesworth AO QC stood down as the chair of the Australian Council of National Trusts and devoted himself to the creation of the International National Trusts Organisation

which he subsequently chaired until 2015, to an outside onlooker the Australian National Trust movement would likely have seemed to be in excellent health. Ten years later there are the signs of a decline in some of the Trust movement's fortunes. They are illustrated by the retrenching of the last of the staff of the Australian Council of National Trusts, including both the CEO and CFO in Canberra, by the closure of the national office, by the financial woes of some of the Trusts, and by the reluctance of others to campaign actively for fear of offending governments. Also of critical significance has been a deterioration in the relations between the Trusts and the Australian Government, which has seen the once assured annual grant-in-aid for Trust operations nationwide becoming subject to government project preference direction.

The role of the Australian Council of National Trusts was of paramount importance in the early work of the Heritage Commission not just in representing the views of the Trust movement. Reg Walker, then Secretary General of the Australian Council of National Trusts, was a strong and effective member of the Committee of Inquiry into the National Estate and of the first Heritage Commission. He could be relied on to support bold decision making when other members of the Commission hesitated.

Despite the insistence of the CEO of the Victorian Trust that the Trust movement continues to hold high expectations for the role of the Australian Council, it is hard to see how the Council can maintain continuous pressure on the major political parties for more effective heritage action without a physical presence in Canberra.<sup>15</sup> There are other problems. There is the very real prospect that the Commonwealth will terminate

funding to the Trusts in the current grant-in-aid program. It would be a great misfortune if the Trust movement were to lose its coordinated national voice entirely. Let us hope these are only temporary setbacks. They are especially unfortunate because, as identified in SoE 2016, there is much work to be done that the Australian Council of National Trusts is best equipped to help with.

Individual state Trusts appear to be in better condition. To get a feel for the state of the two largest Trusts, representatives of The National Trust of Australia (NSW) and the National Trust of Australia (Victoria), were interviewed for this book.<sup>16</sup> Both stated that their organisations were in good health, citing steady or increasing membership, financial health, strong Boards, and good visitation to their properties. As is now standard practice, bequests of properties to these Trusts are only accepted if accompanied by appropriate endowments. Almost all properties are self-supporting, but this does not cover major renovation and upgrades; hence the Victorian Trust's CEO's decision to set himself and the Trust the strategic goal to significantly increase the resources available to the Trust as a medium-term goal. The research and listing work of the Victorian Trust is concentrating on major trees, post-war architecture and heritage, modernism in the suburbs and the statutory planning system. The NSW Trust is concentrating on new types of heritage such as brutalist style buildings, and achieving success in doing so. Advocacy, public or behind the scene, is stated to be a key role for both Trusts; the Victorian Trust, for example, has a dedicated advocacy group.

These are, however, self-assessments that need constant review by Trust managers, members and well-wishers. Trust

managers should constantly be looking at the key performance indicators of their Trust bodies. These are, first, that Trust properties are imaginatively run and thereby lead to high visitation, use and healthy income generation; second, that the Trust in question maintains significant non-statutory lists of property deserving of listing on formal statutory lists; and third, that the Trust is a prominent and well-recognised public voice arguing strongly for conservation action.

### **Australia ICOMOS**

Australia ICOMOS appears to be in excellent health. With a membership of almost 700, it is a leading peak body in Australia and one of the largest national committees of ICOMOS worldwide. Its mission is to promote best practice in heritage management and, although it does not have as its principal purpose advocacy to protect the management of specific historic properties, it is an influential voice to government in driving positive change in legislation and policy. In 2017, Australia ICOMOS embarked on an ambitious strategic plan, identifying priorities that include the development of national standards and best practice guidelines, and greater engagement with contemporary cultural heritage issues. It has also, with strong federal and state government support, recently won the right to host the triennial General Assembly of ICOMOS in Sydney in October 2020. This will be the first time the world's largest cultural heritage convention has been held in the Pacific region. As an example of its expanding roles, Australia ICOMOS has recently been involved in the Sydney Opera House and Warragamba Dam controversies, and has had a growing involvement in Australia's World Heritage activ-

ities. (Australia ICOMOS is also now focusing very strategically on the impact of climate change on heritage places. The 2018 international conference jointly hosted by ICOMOS Pacifica and Australia ICOMOS in Fiji in October 2018 was largely focused on developing strategies for heritage management in response to climate change.)

The local amenity bodies, such as the North and West Melbourne Association, the Paddington Society, the Parkville Association, the North Adelaide Society and the Fremantle Association, continue to do excellent work for their residents. We just need many more of them.

The 2011 SoE report stated that assessing the condition of Australia's heritage places is hampered by an incomplete and unrepresentative set of formally identified places and by the absence of a comprehensive body of reliable national data. McKay writes:

*This was the situation reported in 2011 and remains so to this day. We just do not know what the condition of Australia's heritage places are as we have no empirical data, nor any common means of collecting it. Developing a national database on the condition and conservation works on our heritage places would be of great value to governments and NGOs concerned with heritage conservation.*<sup>17</sup>

Ideally, Australia needs another body to sit alongside the National Trusts, the resident associations and Australia ICOMOS. It is a Civic Trust, such as was the UK's Civic Trust described in Chapter 2, which for many decades advocated for a higher quality of urban environment. Although the UK Civic

Trust was forced to close for lack of funds, there are still bodies in Britain that continue to play some of the roles the Civic Trust sponsored.

Overall, what this chapter demonstrates is the great significance of comprehensive state of the environment reports written every five years by independent experts. Whether or not governments respond to them, the reports remain on the record and provide objective material and arguments for environmentalists and others that cannot be lightly dismissed. It also illustrates the critical importance of a strong and effective NGO heritage movement.



Flinders Chase National Park, Kangaroo Island, South Australia

## Part Four

*The Committee of Inquiry established in the Whitlam years offers a powerful precedent for the creation of a similar citizen body under the leadership of a person of similar eminence with a deep commitment to Australian cultural history in all its Indigenous and historical dimensions, and to Australia's natural history in all its geodiversity and biodiversity.*

*Sadly, Mackay's State of the Environment Report demonstrates that ... there is little evidence to suggest that the Heritage Strategy is a broadly adopted, well-supported and promoted strategy of the federal government, let alone of any other government in Australia.... The reference to the British National Lottery is not much more than a cruel hoax.*

## CHAPTER TEN

### A richer future for National Heritage

*Australia's heritage, shaped by nature and history, is an inheritance passed on from one generation to the next. It encompasses many things — the way we live, the traditions we hold dear, our histories, stories, myths, values and places. The diversity of our cultural and natural places helps us to understand our past and our relationship with the Australian landscape. Heritage recognises the indivisible association of culture-nature-country-place-religion for Aboriginal and Torres Strait Islander peoples.<sup>1</sup>*

This book tells the story of the creation and development of Australia's national heritage regime from its first establishment in 1973 up to present times. It begins with a reminder of the many reasons why every Australian citizen and every Australian government and institution should be concerned about the protection of our heritage of places of all kinds and illustrates by comparison how other countries protect theirs. It is very much an unfinished story; a key aim of the book is indeed to suggest how our national regime might best be enriched far into the future. It is, accordingly, a record of critical debates about the best way to identify, protect, promote and interpret Australia's National Estate.

This last chapter brings to firm conclusion arguments that have been sketched out in earlier chapters. To do this, it asks four fundamental questions:

What were the principal successes of the Australian Heritage Commission and what matters stood out as needing attention in March 1996 when the Howard government came to power?

What options faced the Howard government to deal with these issues? Did the government choose wisely or were there better options available that it ignored?

How well has the new heritage regime established by the Howard government in 2003 performed to date?

How might Australia's current heritage regime best be enriched far into the future?

**What were the successes and failures of the Australian Heritage Commission and its supporting political regime?**

As earlier told, Australia's first national heritage regime, the National Estate program and the Australian Heritage Commission, were Whitlam government (1972–1975) initiatives brought into reality by the Fraser government, thereby giving the Commission and its Act a bipartisan imprimatur.

As its prime task, the Commission developed the Register of the National Estate with extensive listings of Australia's natural areas, Indigenous places and places reflecting European exploration and settlement. By 2003, when the

Australian Heritage Commission was abolished, the Register had over 13,000 listings. This remarkable achievement was widely acknowledged in the submissions and debates during the Senate References Committee hearings discussed in Chapter 7. The Commission and its predecessor, the Interim Committee on the National Estate, also used the National Estate Grants program in particularly imaginative ways, earning a Robin Boyd Environmental Medal for its work.

Once the Register had reached a certain size, the protective provisions of Section 30 of the Act became more and more frequently invoked in resource debates, particularly those related to mining and forestry development proposals. The Commission's accomplishments in this role have been illustrated in Chapter 6, which describes its work to protect forest values.

The Commission's promotion and interpretation of Australia's National Estate through the use of books, school kits, film, technical reports and other materials were other signal achievements. The Commission's connections with international heritage bodies such as the World Heritage Committee, the International Union for the Conservation of Nature (IUCN) and the International Council on Monuments and Sites (ICOMOS) were also notable and productive. For over 25 years, under both Coalition and Labor governments, the Commission continued this work and, in building up a substantial Register, acted as the national guardian of Australia's heritage. These achievements over the Commission's lifetime, under many different Chairs and Commissioners appointed by many different governments, have been widely acknowledged.

Missing during the Commission's lifetime was action by any government to keep abreast of the changing status of the Commonwealth's constitutional powers as they were progressively extended by High Court decisions. When the *Australian Heritage Commission Act* was drafted in the mid-seventies, the constitutional powers of the Commonwealth were believed to be quite limited. Accordingly, they were not included in the 1975 Act. By 1999, when the *Environment Protection and Biodiversity Act* (EPBC Act) was enacted, the situation had radically changed; several constitutional powers are specifically and confidently included in the Act. This failure to keep abreast of the opportunity to increase the Commission's protective powers for places on its Register was a widely recognised deficiency.

A second problem identified by Dr Wendy McCarthy, AHC Chair in 1997, and given expression in the Commission's Annual Report for 1996–1997, was that 'Australia's intergovernmental processes were increasingly outdated and not serving the Australian community as well as they might.'<sup>2</sup> In response, the AHC started work on an integrated national approach to heritage protection by preparing a sequence of discussion papers. The first was *A National Future for Australia's Heritage: Discussion Paper*<sup>3</sup>, released in August 1996, followed by a series of national workshops and meetings with stakeholders. The second was *Australia's National Heritage: Options for Identifying Heritage Places of National Significance*<sup>4</sup>, released in February 1997. A third, entitled *National Heritage Standards*<sup>5</sup>, was released in May 1997. Together, these papers presented the government with a comprehensive review of heritage practice in Australia and

options for the future. They also provided a brief overview of heritage practice in the United Kingdom, Canada and the USA. The Commission did more. It set out its preferred heritage regime, giving the government a clear view of the best way to approach a revised and streamlined national heritage regime.<sup>6</sup> I describe this preferred heritage regime in greater detail later in the chapter, when considering options that might have been adopted by the Howard government.

**What were the actions of the Howard government after it came to power in 1996, and what other options were available?**

When the Howard government came to office in 1996, despite having extensive studies and a clearly described preferred heritage regime available, it began to develop an alternative plan of its own, evidently intending to introduce major environmental and cultural heritage reforms. Swift action followed. In 1997, a Council of Australian Governments (COAG) meeting resolved that the Commonwealth should focus on heritage places of international and national significance, and leave places of state or local significance to the states and territories under the jurisdiction of state heritage and planning laws. The implications for the Australian Heritage Commission and the Register of the National Estate, although not yet publicly spelt out, were clearly great. They ruled out many options that could have married the provision of stronger protective powers for listed places with the existing *Australian Heritage Commission Act*, the existing Commission and the existing Register of the National Estate. Later, there were many claims that the bills put before the Parliament in 2000 reflected many years of discus-

sions and consultations beginning with eight general workshops between November 1996 and March 1997 and concluding with Senator Hill's release of two consultation papers in 1999. As described in Chapter 7, the 1997 COAG agreement does not support these assertions. There was no public consultation about this core change that laid the foundation for all the other changes that followed.

The COAG agreements led first to the drafting and passage of the Commonwealth's new omnibus environmental protection legislation, the EPBC Act 1999, implementing the wider aspects of the COAG Agreement. It aimed to provide a single legislative base for the Commonwealth's environmental responsibilities.<sup>7</sup> The passage of the EPBC Act was followed by legislation to abolish the Commission, the repeal of its Act, the capping of the Register of the National Estate and the removal of all statutory reference to the Register. It also led to the replacement of the *Australian Heritage Commission Act* and the Commission with new legislation bringing into being the Australian Heritage Council and two new heritage lists. When the protective powers for the new lists were set out in legislation they were incorporated into the EPBC Act, not the Australian Heritage Council legislation. At this point 'Heritage' was added to the list of triggers applied to places on the National Heritage List.

These actions led to the abandonment of national care for over 13,000 places that were not included in the new National Heritage List. This was disappointing as it demonstrated a lack of appreciation for the significance of our national natural and cultural heritage. As the previous chapter has shown, none of the four countries reviewed has such a view of national respon-

sibility for their natural and cultural heritage. All maintain extensive national lists of different classes with very large numbers of listed places and express their sense of pride in this heritage in language strikingly different from that used in the Australian Heritage Council Act or National Heritage List.

**Alternative options available to the Howard government**

What alternative options might the Howard Government have considered other than the one it chose? One simple option would have been to strengthen protection for all places on the Register of the National Estate.

Another option might have been to follow the pattern of behaviour practised in many of the countries examined in Chapter 8 and to maintain two lists: one a large list of the nature and size of the Register of the National Estate, and the other a select list of places given greater protection. (It should be added that a small list in the international context I have described is not a list of just over a hundred places, but one closer to a thousand places.) These large and smaller lists could be given different protective treatments, as shown in the international examples. In Australia, a similar treatment could have left the Heritage Commission, its Act and its Register intact with an amendment to the Act to make provision for a smaller list with the strongest possible protective powers.

A third option is that developed by the Commission under Dr McCarthy's leadership and set out in its Annual Report for 1996–1997. Her preferred regime consisted of a National Heritage Places Policy, a National Protection List, an enhanced Register of the National Estate and the continuation of the Commission as an independent statutory authority to adminis-

ter the Commonwealth's heritage responsibilities. The proposed National Heritage Places Policy would be developed cooperatively with state, territory and local governments. The policy would recognise that the states have major responsibility for places of state and local significance and that the Commonwealth should play a greater leadership role generally with particular responsibility for places of international and national importance. The policy would include the continuation of the Heritage Commission as an independent statutory body. The National Protection List would include places that the Commonwealth, working with the states, warrants to have a high level of protection. Such places would be labelled as being of national significance on the Register of the National Estate. This would provide a focus for Commonwealth funding and act as a trigger for Commonwealth involvement when matters of national environmental significance were at stake. The Register of the National Estate would continue in existence and continue to be maintained by the Commission. It would include all places of natural and cultural heritage significance across Australia. It would be comprehensive and include places of international, national, state and local importance. Parts of the list would be increasingly compiled by the states, according to standards set by the Commission, giving the opportunity for delegation of some of the Commission's protective powers under Section 30 of its Act. The Commission would continue as an independent statutory body to administer the Commonwealth's heritage responsibilities. The Commission's 1996-1997 annual report recorded extensive consultation about these proposals and broad stakeholder support for a new regime of this nature.<sup>8</sup>

These alternative options illustrate the different ways that the Howard government could have acted that would not have entailed the dismemberment of the Australian Heritage Commission, the capping of the Register of the National Estate as a statutory list and the repeal of the *Australian Heritage Commission Act*.

### **How has the new heritage regime put in place in 2003 performed?**

When the Australian Government introduced its new heritage regime, the expectation was that every effort would be made to develop the new lists, particularly the National Heritage List, as quickly as possible and to ensure that the number of listed places on the National Heritage List — as Australia's most significant heritage list — was as rich and representative as possible. The number of places listed since the National Heritage List came into being in 2004 is therefore one way of assessing performance of the new system.

In March 2019, there were only 116 (compared to 97 listed places in 2011) places on the National Heritage List, the vast majority of which are already in public ownership and which include all Australia's World Heritage Sites — although it must be acknowledged that several of the listings cover large areas. This is a pitifully small number of listings to have been made over fifteen years. The 388 places on the Commonwealth Heritage List contains only a slightly more respectable number of listings.

Another way to judge the new regime's effectiveness is to look to the opportunities offered by the government's Australian Heritage Strategy. The Strategy was originally an

initiative of the Gillard government. In 2011, that government consulted with state and territory heritage agencies to take the first steps towards the development of the strategy. The stated aim for the strategy was to outline priorities for Australia's heritage over the next decade. At that time ten essays were commissioned on disparate heritage themes such as *What is heritage?*, *Whose heritage is it?*, *Who are the players?*, *What are the benefits of heritage?* and *What are community expectations?* In April 2012, the essays and accompanying discussion paper were released for public comment.<sup>9</sup> Ninety-seven submissions were received. The submissions emphasised the helpfulness of the background essays. Three examples are Peter James and Joann Schmider's 'Whose heritage is it?'<sup>10</sup>, Don Garden's 'Who are the players in heritage and what roles do they play?'<sup>11</sup> And Kate Clark's "Only Connect" — The social, economic and environmental benefits of cultural heritage'<sup>12</sup>. Surveys carried out by Kate Clark showed that many Australians felt ignorant about Australia's heritage, some feeling ashamed to discuss heritage because it would reveal this ignorance, but others genuinely keen to know more, especially about Indigenous heritage. Don Garden's essay helped people to understand who was involved in the identification, protection, management, and interpretation of Australia's heritage. There were only six submissions on natural heritage, two related to the planning and management of world heritage sites and four concerned with the lack of attention being paid to geo-heritage, distinctive aspects of Australia's geomorphology and geology. Four submissions focused on the importance of rock art. There were other submissions on cemeteries, garden heritage and maritime heritage. There was also considerable

emphasis on the need for national funding and support for movable collections held in museums, libraries, and archives, including intangible cultural heritage as much as for places. There was a reminder of the importance of technical heritage including electronics and computing.<sup>13</sup>

The Australian Heritage Strategy was to be a high-level document setting directions for the Australian community and governments, informed by heritage guidelines, policies and other documents and produced by government and non-government organisations. When the Abbott government came to power, the Strategy lapsed.

In November 2013, the new Minister, Greg Hunt, decided to resurrect and further develop the Australian Heritage Strategy. In December 2015, the new Strategy was released with a new structure and a deal of graphic polish.<sup>14</sup>

The new version of the Strategy begins with a statement that Australia's rich natural and cultural heritage underpins our sense of place and national identity to make a positive contribution to the nation's wellbeing. It continues this way:

*We value our heritage and have a strong desire to see Australia's significant heritage places recognised and protected. The Australian Heritage Strategy recognises that heritage is diverse and encompasses natural, historic and Indigenous values.*<sup>15</sup>

The Strategy considers ways in which Australia's heritage places can be better identified and managed to ensure their long-term protection. It states that it is exploring novel opportunities to support and fund heritage places, including the potential for a national lottery as in the UK.

It considers how the community enjoys, commemorates and celebrates these special places and the stories that underpin them. It highlights how heritage can lead to increased tourism and economic returns and makes clear that heritage identification, protection and management is a shared responsibility with state and local governments, businesses and communities. The Strategy envisions that Australia's natural, historic and Indigenous heritage places will be valued by Australians, protected for future generations and cared for by the community. According to the Strategy this vision will be realised through actions under three so-called 'high-level outcomes': national leadership; strong partnerships; and engaged communities.

The document has some good things to say, enough to cause Richard Mackay, the author of the Heritage section of the 2016 *State of the Environment Report* to make several references to it as a major hope for the future:

*The Australian Heritage Strategy establishes a new outlook for heritage conservation and management in Australia. It positions the Australian Government to provide strong leadership for fundamental changes and to foster innovative approaches, in partnership with the states and territories, private owners, and community groups.*<sup>16</sup>

Mackay draws attention to what he describes as new thinking and ideas in the Strategy, drawing particular attention to the statement that the introduction of a National Lottery to fund heritage activities will be explored. Mackay, is, however, at pains to qualify his hopes and expectations: 'The outlook for Australia's heritage will depend on the way the Australian

Heritage Strategy is implemented, not only by the Australian Government, but also by the other partners.<sup>17</sup>

Sadly, Mackay's *State of the Environment Report* demonstrates that however much that may be a worthy hope, there is little evidence to suggest that the Heritage Strategy is a broadly adopted, well-supported and promoted strategy of the federal government, let alone of any other government in Australia. The words are there but there are no matching actions. Worse than that, Mackay's report draws clear attention to the starvation of staff and other resources suffered by the Australian Heritage Council and its supporting departmental branch in recent years — hardly a way to develop the strategy in an effective way. The reference to the British National Lottery is not much more than a cruel hoax. In Britain the Lottery generates large sums of money for cultural, environmental and social causes that would not otherwise be funded. Established in 1994, it has distributed no less than \$74 billion for projects across the UK. Funds are distributed in the following way: 20% to the arts; 40% to charities, health, education and the environment; 20% to heritage (including museums and similar institutions); and 20% to sport. Based on this distribution system, a sum close to \$800 million each year would be provided for heritage alone.<sup>18</sup>

It would indeed be an exciting prospect if there was any likelihood of a lottery similar to that in the UK being made available to support the Australian Heritage Strategy. Minister Hunt has, however, moved on to another portfolio, taking his National Lottery proposal with him, this time with the intention of using it to fund Australia's Olympic athletes. There is no further mention of funding for the Heritage Strategy in the current lottery proposal.<sup>19</sup>

The Heritage Strategy could have been and could yet be a very important complement to the new National Heritage lists. The new lists with their stronger protective provisions are necessarily expressions of a restrictive nature. There is, however, another side to best heritage practice that is not restrictive but open, rich and celebratory. Chapter 5 describes three examples carried out by the early Commission, each of which was remarkably successful on many different counts. These were the book *The Heritage of Australia*, the school kit *Investigating the National Estate* and the film *The Things we want to Keep*. Chapter 6 describes the extensive range of thematic studies carried out by later Commissions, many of which were published in different forms: books, booklets and other pieces. That none of the different versions of the Australian Heritage Strategy have amounted to much is because unlike the situation with the Commission before it was abolished, the Heritage Council was not given responsibility for its carriage. There was thus no authoritative body to develop imaginative ideas and to fight for the continuation of the Strategy when it was under threat.

### **A richer future for national heritage**

If there were serious political intent to do something significant with the Australian Heritage Strategy, would it sufficiently deal with the limitations of current national heritage policy outlined in this book? While it would be a valuable step forward and as such a desirable heritage outcome, it would certainly not be a full solution. There is no suggestion in the Strategy that the Register of the National Estate would be woken from its slumbers by a new kiss of life, that the shackles

placed on the Australian Heritage Council in listing new properties would be removed, nor that the Council might be given its own staff (it was made clear early in the Heritage Commission's life that there would be little saving to the government should the Commission operate with seconded departmental staff rather than have staff of its own). There is no suggestion that the Council might be given the resources not only to do its listing job properly, but also to describe, illustrate and imaginatively promote Australia's National Estate to Australian citizens and visitors. Surely that is a richer vision than that set out in the current Australian Heritage Strategy?

Much else is required. An underlying philosophy and set of well-formulated principles need to be added to this strategy. One of the National Estate Program's important successes over its first twenty-five years was the progressive development of just such a national philosophy of heritage conservation. It is the combined Committee of Inquiry, Interim Committee and Heritage Commission's overarching achievement. The principal components of this philosophy were:

*Recognition that the protection of Australia's National Estate was a matter of national importance requiring forceful Federal action:*

In all the years that have followed and despite all the moves to hand back aspects of heritage responsibility and management to the states and territories, no federal government or political party has seriously questioned the need for this national role, even if the nature of that role is still highly contested.

*The National Estate concept:*

From 1974, the National Estate not only came to be understood as comprising both natural and cultural heritage, but also came to be treated administratively as a whole. The term National Estate was a particularly felicitous one. It avoided some of the imprecision and limiting connotations of terms such as 'heritage'. It is a great pity that it has now been largely abandoned.

*The explicit recognition of the need for a national grants program and the establishment of the National Estate Grants Program to meet that need:*

Following its early successes there is powerful community and professional recognition of the way that such a national grants program should continue to be used to stimulate heritage action across Australia and provide widespread community benefit, even if federal recognition and support for such a program has often been sadly missing.

*The formal recognition that voluntary conservation bodies play a critically important role in heritage protection and are deserving of government support:*

There is wide recognition of the importance of this community role but government responses have fluctuated greatly from time to time and between categories of conservation bodies.

*The distinctive approach to listing on the Register of the National Estate:*

Under the Commission's Act a fundamental separation of powers was made between the responsibility for listing places on the Register, as an expert task, and the responsibility for actions affecting listed places as a political process. Accordingly, the Act stipulated that listing should be based solely on heritage values and as such the Commission as the body of experts, and not the minister, had the sole responsibility for listing. Once listed, Ministers and their departments and agencies, rather than the Commission, had the responsibility for determining what should be done about proposals that might affect those places. This is one of the listing regimes operating in other English speaking countries.

*The importance of broad-ranging responsibilities for research, education, training, promotion and interpretation:*

These functions were recognised and specifically reflected in the functions listed in the Commission's act to form a core part of its work.

*The philosophy adopted for the preparation of the Register to ensure it would be a large, representative list:*

This philosophy developed by the Commission sought to ensure that, over time, the Register of

## VALUING AUSTRALIA'S NATIONAL HERITAGE

National Estate would not only include the most outstanding examples of Australia's heritage but also come to include examples of the main strands of Australia's natural and cultural history.

Three other principles have emerged arising from international experience. They are:

Side by side with a large representative list there has been a growing recognition of the value in having a smaller select list of the finest examples of a country's places of natural and cultural heritage significance, which should be given the highest level of protection available under the Constitution. The establishment of the select list should, however, not be at the expense of the larger representative list.

The need for a national approach to the country's overall heritage, overseen by the federal government and with the full engagement of the states and territories. The United States and Canada, both with federal systems of government, provide alternative models for the way this might be done.

The need for a national program, preferably managed by the Australian Heritage Council, to keep watch over the integrity of all internationally and nationally listed heritage properties. The Canadian Government's Commemorative Integrity Program, established to evaluate and report on the health and wholeness of Canada's

National Heritage sites, provides an excellent model.

Readers of this book will recognise that this statement of principles is an elaboration of a briefer version of the same principles submitted to the Senate References Committee in early 2001. They will also quickly recognise that the set of principles does not accord with the actions of the Howard government when introducing its new regime in 2003, nor with the actions of any federal government since. This set of principles is not one person's brainchild, but the agreed views of seven former chairs and Commissioners of the Australian Heritage Commission. The submission and its principles are recorded at the conclusion of Chapter 7 and the individual signatories are listed in an endnote. As the list of signatories shows, those who signed were all people of substance, drawn from across Australia. All these principles, the cornerstones of the Australian Heritage Commission's work over 25 years, remain as powerful and relevant today as they were when first formulated. These principles should be read alongside the ten principles set out as part of the Australian Heritage Commission's 'Preferred heritage regime' put forward in the Commission's Annual Report for 1996-1997.

There is one more critical need. It is to rekindle informed public consent to infuse policy making about national heritage in Australian political parties. It is clear that there will be no substantial change unless that happens. How was such an informed public consent generated in 1972?

It began with the build-up of environmental, social and cultural forces as described in Chapter 2, each progressively

influencing national debates. Thus, nature conservation and the protection of Australia's natural environment in reserves and by other means was both a well established principle and practice by the seventies. Similarly, the need for protection of historic places was being powerfully advocated by National Trusts and other bodies and starting to be put in practice. Recognition for Indigenous culture and for places representative of that culture was beginning to take firm shape with the establishment of bodies such as the Australian Institute of Aboriginal Studies (later the Australian Institute of Aboriginal and Torres Strait Islander Studies).

It takes time, however, for major societal change to be recognised by politicians and political parties, and it takes many contributing actions to take place before they are incorporated into political policies and actions. In 1972, there was real political leadership. It came first from Prime Minister Gough Whitlam, who in 1970, before the Labor Party came to power two years later, made the strong assertion of a national commitment to heritage protection with his bold statement that: 'The Australian Government should see itself as the curator not the liquidator of the national estate'.

Importantly, Whitlam was not the only person in his government interested in such matters. He had in Tom Uren a senior minister deeply devoted to the protection of the National Estate, and others such as Moss Cass who shared his views. These ministers were supported by well educated, well travelled and informed advisers who played critical roles while the Whitlam government remained in power.<sup>20</sup> Thus, the first two requirements for the development of informed public consent to drive political action, powerful societal driving forces and aware and

committed politicians, were well met. It should also be acknowledged that when Malcolm Fraser became Prime Minister, while taking his time and following advice from advisers such as Sir Henry Bland, he took the second crucial political step by putting his personal print on the Act without changing its core provisions, and by appointing the balance of the Commissioners in July 1976. In this way, he gave cross-party backing to the concept of a significant national heritage regime.

It is possible that with these two requirements met, that the Whitlam government might have felt that it could act to introduce legislation to protect the National Estate. At this point, however, there was nothing to suggest what form the legislation should take. There was also the question of the manner in which grants to protect the National Estate might be distributed. A clear set of principles was needed, and an open, accountable process was essential. At this point, only half of the task of creating informed public consent for political action had been completed.

The decision to appoint a Committee of Inquiry was a brilliant solution. It solved both the above problems, the first because the Committee of Inquiry could be expected to make recommendations about the preferred nature of subsequent legislation, and the second because the Committee could be given the responsibility for recommendations about the distribution of grants. These were only some of the benefits of the Committee of Inquiry. Its principal benefit was that it carried out a comprehensive survey of the state of Australia's National Estate, travelling to all parts of Australia, holding and documenting what was in serious need of attention, while setting out in detail proposed remedies for the problems it identified. The

constitution and choice of chair of the Committee deserve particular attention. The chair of the Inquiry, Robert (Bob) Hope, a Supreme Court judge, was sympathetic to the task and very sensible and open in his approach to it. The other members of the Inquiry included some such as Judith Wright who were well known public figures and not just for their conservation work and views. The Committee of Inquiry report laid the foundations for the national heritage regime that was subsequently to be developed. It ensured that the components of the National Estate were broadly conceived, and presented an impressive sweep of the nation's environmental and cultural history. It also listed many of the most important threats to that heritage and gave a sense of urgency to its protection. It finally set out a clear path for the federal government to follow. The Inquiry and its report had a remarkable public reception, creating the justification for political action.

A final action of lesser significance was the creation of the Interim Committee on the National Estate, a body set up to oversee the drafting of the legislation for the new Australian Heritage Commission and to begin the distribution of grants across Australia to initiate heritage work. This work, and the award it received for it, helped to reinforce the sense of a supportive political and social environment for the work of the Australian Heritage Commission that followed.

In this way the stars were all aligned. The political support for the Committee of Inquiry from the Prime Minister down, the support from its two Ministers, the standing and reputation of the Chair of the Inquiry, the breadth of its membership, the quality of the report in its content and writing created the broad public consent that enabled the Interim Committee and

the different commissions that followed to do so many imaginative things that would not have otherwise been possible.

What can we learn from these various actions that brought Australia's initial National Estate regime into existence? The starting point has to be a Prime Minister, senior Minister or Shadow Minister who cares, who thinks that the protection, interpretation and promotion of a country's natural and cultural heritage is important to the nation and that an enrichment of the current regime is seriously required. What might attract such a person to take on such a role and to invest her or his political capital by outspoken commitment to it? There are a great variety of different answers. There are the arguments developed by the great international protagonists such as Frederick Law Olmsted, John Muir or John Ruskin, all of whom profoundly influenced politicians in their own countries in their own times and in doing so turned many political actors into statesmen. Their ideas exported around the world have created similar movements in other countries. Erudite politicians such as Whitlam absorb these ideas intellectually as part of the framework of their thinking. Others, such as Uren, absorb them instinctively from what they see and feel around them. Cass combined both ways of seeing and responding, while principled and highly intelligent democrats committed to the rule of law and the separation of powers, such as Ellicott, had their own perspectives. Fraser from his somewhat patrician viewpoint had his unique view. All to some degree saw that their government's long-term political legacy was associated with the creation of heritage programs of this kind.

Something different is needed today. That is because heritage policy in its many dimensions is simply not on the

agenda of either of the main political parties. Chapter 1 of this book sets out the ecological, cultural and personal reasons why Australia and Australians should be deeply concerned to protect its national heritage of places of natural and cultural value. The arguments expressed there are of fundamental importance, but they do not resonate with everyone. At best, national heritage is seen as a second-order concern, a long way behind other great matters of state.

There is, however, one other set of arguments in Chapter 1. It relates to the economic value of the National Estate. The argument is only briefly sketched out there. There is great opportunity for the environmental and cultural NGOs to collectively carry out or commission research into the economic benefits of the national Estate. *The Places You Love* initiative illustrates what can be done when individual NGOs set aside their differences and work together on a common project. To concentrate on the economic benefits of the National Estate does not mean the other ecological and cultural arguments set out in Chapter 1 are of lesser significance. They remain the principal reasons why we should be concerned to identify, protect, interpret and promote the National Estate. It is simply that some people, especially many politicians, only respond to economic arguments. Furthermore, if all the environmental, Indigenous and historical NGOs decided to work together they might find many other good — indeed, much better things to do.

With that body of evidence in hand and collective support from so many voluntary organisations, a minister and government might be persuaded to follow the precedent set by the Whitlam government and appoint a citizen Committee of

Inquiry. The Committee of Inquiry established in the Whitlam years offers a powerful precedent for the creation of a similar citizen body under the leadership of a person of similar eminence with a deep commitment to Australian cultural history in all its Indigenous and historical dimensions, and to Australia's natural history in all its geodiversity and biodiversity. It is now over 40 years since the last citizen inquiry. This time, the Inquiry could be given a short reporting timeframe, a brief to review what has been good and what not good in recent national heritage regimes, new problems and threats to Australia's heritage such as climate change and population growth, and a requirement to look carefully at all aspects of the World Heritage system, and national heritage regimes in countries such as the United States, Canada, the United Kingdom and New Zealand. There is much to learn, both good and not so good, from these countries.

I hope that there may also be useful things to learn from the story told in this book — but that is for others to judge.



Ningaloo Coast, Western Australia

## ENDNOTES

### Chapter 1

- 1 See introductory quotations, *Report of the Committee of Inquiry into the National Estate*, Australian Government Publishing Service, 1974.
- 2 Australia, Committee of Inquiry into the National Estate (1974) *Report of the Committee of Inquiry into the National Estate*, Australian Government Publishing Service, Canberra, p. 20.
- 3 *Ibid*, p. 20.
- 4 *Ibid*, p. 277.
- 5 I first set out these arguments for the conservation of the National Estate in a report I wrote for the Australian Heritage Commission in 1981: Yencken, D (1982) *The National Estate in 1981: A Report of the Australian Heritage Commission*, Australian Government Publishing Service, Canberra, republished as *The National Estate: The role of the Commonwealth* (1983), pp. 17–19.

### Chapter 2

- 1 See Stubbs, B. J., (2005) 'National Parks and Forest Conservation' In Dargavel, J. (ed.), *Australia and New Zealand Forest Histories: Short Overviews* (Australian Forest History Society Inc., Canberra), pp. 33–40.  
See also Australia's *100 years of National Parks* (1979) National Parks and Wildlife Service, Sydney. I have drawn heavily on these two documents for my summary of the early development of parks in Australia.
- 2 Fein, Albert (1972) *Frederick Law Olmsted and the American Environmental Tradition*, George Braziller, New York.
- 3 In her article in *Australian Zoologist*, volume 36 (3) 'Being first: why the Americans needed it and why Royal National Park didn't stand in their way', Libby Robin explains why in 1979 the United States chose to promote Yellowstone as the first National Park in the world, leap-frogging Yosemite's legitimate claim. To add to the confusion, Royal National Park, established later than either Yosemite or Yellowstone, seems to be the first national park in the world to have included the words 'National Park' in its Act. Australia has, however, never sought

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to claim that Royal National Park is the first national park in the world.

- 4 Sierra Club, 'John Muir: A Brief Biography', accessed 15.04.2017.
- 5 US National Park Service History, accessed 26.4.17, <https://www.nps.gov/aboutus/history.htm>
- 6 See also Griffiths, T (1996) *Hunters and Collectors: The Antiquarian Imagination in Australia*, Cambridge University Press, Cambridge.
- 7 Griffiths, T (1996) *ibid*, p. 281.
- 8 Bonyhady, T (2000) *The Colonial Earth*, Melbourne University Press, Carlton.
- 9 Macintosh, Professor Andrew, lecture material, March 2017.
- 10 Other environmental commitments made by Gough Whitlam and Tom Uren for the 1972 election included a promise to review the decision to flood Lake Pedder, a promise to take measures to protect the Great Barrier Reef, a promise to establish a new system of Environmental Impact Assessment, a suite of green proposals, a proposal to develop a new agreement on the Murray Darling (not successful after much effort), and a proposal for a new agreement based on the Ramsar Convention relating to migratory birds (successfully accomplished).
- 11 Elkin, AP (1962) 'The development of Scientific Knowledge of the Aborigines', Symposium of Papers Presented at 1961 Research Conference, Australian Institute of Aboriginal Studies, pp. 3–28.
- 12 Spencer and Gillen resources: <http://spencerandgillen.net/resources>, accessed 1.6.2017.
- 13 Australian Institute of Aboriginal Studies, (August 1975) 'The Institute's Philosophy and Function', Canberra, pp. 4–6.
- 14 Introduction (1962) Symposium of Papers Presented at 1961 Research Conference, Australian Institute of Aboriginal Studies, pp. xii and xiii.
- 15 Senator Gorton, Australian Institute of Aboriginal Studies, Parliamentary Debates 7 May 1964, Commonwealth of Australia.
- 16 Mr Wentworth, Australian Institute of Aboriginal Studies, Parliamentary Debates, 7 May 1964, Commonwealth of Australia.
- 17 Anna Clark, 'The Great Australian Silence' 50 years on', *The Conversation*, Melbourne, 3 August 2018.
- 18 Griffiths, B (2018) *Deep Time Dreaming: Uncovering Ancient Australia*, Black Inc, Carlton.
- 19 Mr Wentworth, Australian Institute of Aboriginal Studies, Parliamentary Debates, 7 May 1964, Commonwealth of Australia.

## ENDNOTES

- 20 *Report of the National Estate: Report of the Committee of Inquiry into the National Estate* (1974), Australian Government Publishing Service, Canberra, pp. 173–174.
- 21 See Max Bourke 'A Cultural Task: The role of voluntary agencies and public participation in the protection of the historic environment', a piece of research carried out for and published by the College of Europe in May 1981, Max Bourke was at the time the seconded Director of the Commission.
- 22 Society for the Protection of Ancient Buildings, accessed 20.04.2017.
- 23 National Trust for Places of Historic Interest or Natural Beauty, <https://www.nationaltrust.org.uk/>, accessed 20.04.17.
- 24 Abercrombie, P, 'The Preservation of Rural England', in *The Town Planning Review*, Vol XII, No. 1, May 1926.
- 25 Campaign to Protect Rural England, <http://www.cpre.org.uk/> accessed 20.04.2017.
- 26 The Civic Trust, <http://www.civictrust.org.uk/> accessed 20.04.2017
- 27 Howe, R, Nichols, D & Davison, G (2013) *Trendyville: the Battle for Australia's Inner Cities*, Monash University Publishing, Clayton.
- 28 Colman, J (2016) *The House that Jack Built: Jack Munday, Green Bans Hero*, New South Publishing, Sydney.
- 29 For a full description of the state of heritage protection across the nation in 1974 see the *Report of the National Estate: Report of the Committee of Inquiry into the National Estate*.

### Chapter 3

- 1 Yencken, D (1994) *Straight Left*, Random House, NSW, p. 275.
- 2 Moss Cass was moved from the Environment portfolio in mid 1975.
- 3 Australia. Committee of Inquiry into the National Estate (1974) *Report of the National Estate: Report of the Committee of Inquiry into the National Estate*, Canberra: Australian Government Publishing Service, p. 34.
- 4 *Wyong Shire Council v. Associated Minerals Consolidated and Another* [1972] 1 NSWLR 114.
- 5 Australian Committee of Inquiry into the National Estate, op. cit., p. 20.
- 6 *Ibid*, p. 31.
- 7 I learnt much about museums from my then wife Eva who had worked as a curator in a Stockholm Museum and completed a master's degree on history of museums in Australia.

- 8 Definition of the National Estate in the *Australian Heritage Commission Act 1975*:  
(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.
- 9 Yencken, D (1982) *The National Estate in 1981: The Role of the Commonwealth*, Canberra, Australian Government Publishing Service.
- 10 Ibid, pp. 150-151.
- 11 The Department of Urban and Regional Development (DURD) was abolished in early 1976 before the Commission formally came into being later in 1976 with the appointment of all the remaining Commissioners.
- 12 Royal Australian Institute of Architects (Victorian Chapter) Robin Boyd Environmental Medal Citation 1975.
- 13 Australian Heritage Commission File No 79/1347.

## ENDNOTES

### Chapter 4

- 1 *Australian Heritage Commission Amendment Act 1976: No 135 of 1976.*
- 2 The first Australian Heritage Commission members were: Professor Geoffrey Blainey, Miss Margaret Feilman, Professor John Mulvaney, Mr E. K. Sinclair, Mr Vincent Serventy and Mr Reg. Walker. Mr Max Bourke was the Commission's first Director.
- 3 The Australian League of Rights is a far right organisation sometimes associated with neo-nazi and anti-semitic views. It holds that there are international conspiracies hatched by international elites.
- 4 Yencken, D (1982) *The National Estate in 1981*, Australian Government Publishing Service, Canberra, pp. 27-35.

### Chapter 5

- 1 Yencken, D (1982) *The National Estate in 1981*, Australian Government Publishing Service, Canberra, p. 176.
- 2 The International Union for Conservation of Nature (IUCN), accessed 10.1.17.
- 3 The Australian Committee of the International Union for Conservation of Nature (ACIUCN), accessed 10.1.17.
- 4 International Council on Monuments and Sites (ICOMOS), accessed 11.1.17.
- 5 Yencken, D (1981) 'Jewels and Old Shoes', *Historic Environment*, Volume 1, No 4.

### Chapter 6

- 1 *Australian Heritage Commission, Annual Report 2000-2001*, Commonwealth of Australia (2001).
- 2 *Ibid*, p. 5.
- 3 *Ibid*, p. 6.
- 4 *Ibid*, pp. 99-103.
- 5 *Ibid*, p. 7.
- 6 Australian Heritage Commission in association with Australian Committee for the International Union for the Conservation of Nature (ACIUCN) (2002), *Australian Natural Heritage Charter*, Second Edition, Commonwealth of Australia.
- 7 *Ibid*, p. 9.
- 8 *Ibid*, p. 4.
- 9 *AHC Annual Report 2000-2001*, p. 7.

## VALUING AUSTRALIA'S NATIONAL HERITAGE

- 10 Johnston, C, CONTEXT Pty Ltd (1992), *What is Social Value: A Discussion Paper*, Australian Government Publishing Service, Canberra.
- 11 Bird Rose, D (1996), *Nourishing Terrains*, Department of Environment.
- 12 Lennon, J & Pearson, M (2010), *Pastoral Australia, Fortunes, Failure and Hard Yakka*, CSIRO Publishing, Melbourne.
- 13 Pearson, M (2013), *Great Southern Land: The Maritime Exploration of Terra Australis*, Department of Environment and Energy.
- 14 Freestone, R, 'Australia's Urban Planning', Thematic Studies, Department of the Environment and Energy, Australian Government accessed 2.1.17. (Note that to the best of my belief this study was commissioned by the now defunct Australian Heritage Commission. I have been unable to get confirmation from the Federal Department of Environment and Energy.)
- 15 Hirst, J, 'The Places of Politics: The Buildings of Australian Democracy', Thematic Studies, Department of the Environment and Energy, Australian Government, accessed 2.1.17. (Note that to the best of my belief this study was commissioned by the no defunct Australian Heritage Commission. I have been unable to get confirmation from the Federal Department of Environment and Energy.)
- 16 Johnston, op cit.
- 17 Johnston, C, 'Inspirational Landscapes', Thematic Studies, Department of the Environment and Energy, Australian Government, accessed 2.1.17. (Note that to the best of my belief this study was commissioned by the now defunct Australian Heritage Commission. I have been unable to get confirmation from the Department of Environment and Energy.)
- 18 *Australian Heritage Commission, Annual Report 2000-2001*, p. 7.

### Chapter 7

- 1 Note that Commonwealth Heritage places are protected separately under Part 3, Div. 2.
- 2 There are now two other triggers, making nine in total.
- 3 Senate Environment, Communications, Information Technology and the Arts References Committee, *Environment and Heritage Legislation Amendment Bill (No. 2) 2000, Australian Heritage Council Bill 2000, Australian Heritage Council (Consequential and Transitional Provisions Bill 2000: Report of the Senate Environment,*

## ENDNOTES

### *Communications, Information Technology and the Arts References Committee* (May 2001).

- 4 Ibid, p. 16.
- 5 Ibid, p. 16.
- 6 Ibid, p. 17.
- 7 Ibid, p. 29.
- 8 Ibid, p. 26.
- 9 Ibid, p. 26.
- 10 Ibid, p. 49–50.
- 11 Ibid, p. 44
- 12 Ibid, p. 59.
- 13 Ibid, p. 67 et seq.
- 14 Mulvaney, J, cited in ibid p. 105
- 15 Sullivan, S, cited in ibid p. 106
- 16 ATASIC, cited in ibid p. 106.
- 17 Ibid, p. 109.
- 18 Australia, Senate 2001, *Parliamentary Debates*, Senator Nick Bolkus, Second Reading Speech, 9 August 2001, Hansard Page 25967.
- 19 Ibid
- 20 Professor Emeritus David Yencken AO, Dr Joe Baker OBE, Assoc Professor Bruce Davis, Ms. Joan Domicelj, Dr Wendy McCarthy AO, Professor Emeritus John Mulvaney AO.
- 21 Australia, Senate 2001, *Parliamentary Debates*, Senator Lyn Allison, Second Reading Speech, 9 August 2001, Hansard Page 25972.
- 22 Australia. Committee of Review — Commonwealth Owned Heritage Properties (1996) *A Presence for the Past: A report by the Committee of Review — Commonwealth Owned Heritage Properties* (The Schofield Report) Australian Government Publishing Service, Canberra
- 23 Australia, Senate 2003, *Parliamentary Debates*, Senator Robert Hill, Second Reading Speech, 13 August 2003, Hansard Page 13454.
- 24 Australian Heritage Council Act 2003
- 25 Ibid.
- 26 See also Crawford, J (1991), 'The Constitution and the Environment', *Sydney Law Review*, Vol. 13(1), pp.11-30 and Stellios, J. (2015), *The High Court and the Constitution*, Federation Press: Sydney
- 27 Macintosh, AK and Wilkinson, DL (2012) 'Best Practice Heritage Protection: Australia's National Heritage Regime and the Tarkine', in *Journal of Environmental Law*, Vol. 24, No. 1 (2012) pp. 75–101.

## Chapter 8

- 1 World Heritage States Party Signatories, <https://whc.unesco.org/en/statesparties/> and The List, <https://whc.unesco.org/en/list/>, accessed 4.3.2019
- 2 UNESCO World Heritage Global Strategy, accessed 14.5.2017, <http://whc.unesco.org/en/globalstrategy/>
- 3 Ibid.
- 4 Ibid.
- 5 Ibid.
- 6 See [www.heritage.org.nz/about-us](http://www.heritage.org.nz/about-us).
- 7 Hart, EJ (2010) *J.B. Harkin, Father of Canada's National Parks*, University of Alberta Press, Edmonton.
- 8 National Historic Preservation Act of 1966, as amended through 1992, Public Law 102-575.

## Chapter 9

- 1 Mackay, R (2017) *Australia State of the Environment 2016: Heritage*, independent report to the Australian Government Minister for the Environment and Energy, Australian Government Department of Environment and Energy, Canberra.
- 2 Ibid.
- 3 Ibid.
- 4 Ibid., p. 43.
- 5 *Interim Biogeographic Regionalisation for Australia* (IBRA) Australian Government Department of Environment and Energy. Accessed 7.10.17, <https://www.environment.gov.au/fed/catalog/main/home.page>
- 6 Mackay, R, op cit, p. 57.
- 7 'Condition and Integrity: Listing Jurisdictions' in *Australia State of the Environment 2016: Heritage*, Australian Government Department of Environment and Energy. Accessed 28.03.19, <https://soe.environment.gov.au/theme/heritage/topic/2016/condition-and-integrity-listing-jurisdictions>
- 8 Ibid.
- 9 Australian Heritage Commission (1981) *The Heritage of Australia: the Illustrated Register of the National Estate*, Macmillan Company of Australia in association with the Australian Heritage Commission, South Melbourne.
- 10 Australian Panel of Experts on Environmental Law (2017) *Blueprint for the Next Generation of Australian Environmental Law*, Carlton.

## ENDNOTES

- 11 Australian Panel of Experts on Environmental Law, *Our Purpose*, accessed 19.03.19, <http://apeel.org.au>
- 12 McGrath P, ed (2016) *The Right to Protect Sites: Indigenous Heritage Management in the Era of Native Title*, AIATSIS Research Publications, Canberra. While the research for this book was initiated by Pamela McGrath when she was a research fellow with the Native Title Research Group at AIATSIS and the book was published by AIATSIS, the arguments quoted from McGrath and her co-author Emma Lee in Chapter I of the book are not necessarily the formally adopted views or policies of AIATSIS.
- 13 Tan C (2016) 'The different concepts and structures for heritage protection and native title laws: The nature and pitfalls of public heritage and private rights' in *The Right to Protect Sites: Indigenous Heritage Management in the Era of Native Title*, op cit, p. 27.
- 14 McGrath P, op cit, pp. 2-3.
- 15 Interview with Simon Ambrose CEO National Trust of Australia Vic.
- 16 Interviews with Simon Ambrose CEO National Trust of Australia Vic and with Graham Quint, Director of Conservation, National Trust of Australia, NSW.
- 17 Australian Government Department of the Environment and Energy (2017) National Trusts of Australia — Cultural Heritage Survey, for *State of the Environment 2016: Heritage*, Australian Government Department of Environment and Energy, Canberra. p. 5.

## Chapter 10

- 1 Mackay, R (2017) *Australia State of the Environment 2016: Heritage*, independent report to the Australian Government Minister for the Environment and Energy, Australian Government Department of Environment and Energy, Canberra.
- 2 Ibid.
- 3 Ibid.
- 4 Ibid., p. 43.
- 5 *Interim Biogeographic Regionalisation for Australia* (IBRA) Australian Government Department of Environment and Energy. Accessed 7.10.17, <https://www.environment.gov.au/fed/catalog/main/home.page>
- 6 Mackay, R, op cit, p. 57.
- 7 'Condition and Integrity: Listing Jurisdictions' in *Australia State of the Environment 2016: Heritage*, Australian Government Department of Environment and Energy. Accessed 28.03.19, <https://soe.environment.gov.au/>

- ment.gov.au/theme/heritage/topic/2016/condition-and-integrity-listing-jurisdictions
- 8 Ibid.
- 9 Australian Heritage Commission (1981) *The Heritage of Australia: the Illustrated Register of the National Estate*, Macmillan Company of Australia in association with the Australian Heritage Commission, South Melbourne.
- 10 Australian Panel of Experts on Environmental Law (2017) *Blueprint for the Next Generation of Australian Environmental Law*, Carlton.
- 11 Australian Panel of Experts on Environmental Law, *Our Purpose*, accessed 19.03.19, <http://apeel.org.au>
- 12 McGrath P, ed (2016) *The Right to Protect Sites: Indigenous Heritage Management in the Era of Native Title*, AIATSIS Research Publications, Canberra. While the research for this book was initiated by Pamela McGrath when she was a research fellow with the Native Title Research Group at AIATSIS and the book was published by AIATSIS, the arguments quoted from McGrath and her co-author Emma Lee in Chapter I of the book are not necessarily the formally adopted views or policies of AIATSIS.
- 13 Tan C (2016) 'The different concepts and structures for heritage protection and native title laws: The nature and pitfalls of public heritage and private rights' in *The Right to Protect Sites: Indigenous Heritage Management in the Era of Native Title*, op cit, p. 27.
- 14 McGrath P, op cit, pp. 2-3.
- 15 Interview with Simon Ambrose CEO National Trust of Australia Vic.
- 16 Interviews with Simon Ambrose CEO National Trust of Australia Vic and with Graham Quint, Director of Conservation, National Trust of Australia, NSW.
- 17 Australian Government Department of the Environment and Energy (2017) National Trusts of Australia — Cultural Heritage Survey, for *State of the Environment 2016: Heritage*, Australian Government Department of Environment and Energy, Canberra. p. 5.
- 18 Malakoff D, 'Let's Call It "Climate Disruption", White House Science Adviser Suggests (Again)', in *ScienceInsider*, 2 May 2014, accessed 19.03.19, <https://www.sciencemag.org/news/2014/05/lets-call-it-climate-disruption-white-house-science-adviser-suggests-again>
- 19 IPCC (2018) *Global Warming of 1.5°C. An IPCC Special Report on the Impacts of Global Warming of 1.5°C Above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change*,

## ENDNOTES

- Sustainable Development and Efforts to Eradicate Poverty*, in press.  
Accessed 19.03.19, <https://www.ipcc.ch/sr15/>
- 20 Schellnhuber, J (2018) 'Foreword' in Spratt, D and Dunlop, I, *What Lies Beneath: The Understatement of Existential Climate Risk*, revised edition, Breakthrough, National Centre for Climate Restoration, Melbourne.
- 21 Climate Council, accessed 23.08.18, <https://www.climatecouncil.org.au/about/>
- 22 Spratt, D and Dunlop, I (2018) *What Lies Beneath: The Understatement of Existential Climate Risk*, revised edition, Breakthrough, National Centre for Climate Restoration, Melbourne.



Lord Howe Island

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