



Australian Heritage Council Act 2003

No. 85, 2003

An Act to establish the Australian Heritage Council, and for related purposes

Note: An electronic version of this Act is available in SCALEplus
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No. 85, 2003

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[Assented to 23 September 2003]

The Parliament of Australia enacts:

Part 1 Preliminary

Section 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *Australian Heritage Council Act 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	23 September 2003
2. Sections 3 to 25	At the same time as Schedule 1 to the <i>Environment and Heritage Legislation Amendment Act (No. 1) 2003</i> commences	1 January 2004

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Definitions

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

associate member means a person holding an appointment under subsection 7(4).

Chair means the Chair of the Council.

Council means the Australian Heritage Council established under section 4.

meet the registration criterion has the meaning given by subsection 22(2).

member includes the Chair and an associate member.

Register means the Register of the National Estate kept under section 21.

- (2) Except where the contrary intention appears, other expressions used in this Act have the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

Part 2—Establishment of the Council

4 Establishment

The Australian Heritage Council is established by this section.

5 Functions

These are the functions of the Council:

- (a) to make assessments under Divisions 1A and 3A of Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999*;
- (b) to advise the Minister on conserving and protecting places included, or being considered for inclusion, in the National Heritage List or Commonwealth Heritage List;
- (c) to nominate places for inclusion in the National Heritage List or Commonwealth Heritage List;
- (d) to advise the Minister on:
 - (i) promotional, research, training or educational activities relating to heritage; and
 - (ii) national policies relating to heritage; and
 - (iii) grants or other financial assistance relating to heritage; and
 - (iv) the monitoring of the condition of places included in the National Heritage List or Commonwealth Heritage List; and
 - (v) the Commonwealth's responsibilities for historic shipwrecks; and
 - (vi) other matters relating to heritage;
- (e) to promote the identification, assessment, conservation and monitoring of heritage;
- (f) to keep the Register of the National Estate under section 21;
- (g) to organise and engage in research and investigations necessary for the performance of its functions;

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- (h) to provide advice directly to any person or body or agency either of its own initiative or at the request of the Minister;
- (i) to prepare reports in accordance with Part 5A;
- (j) to perform any other functions conferred on the Council by the *Environment Protection and Biodiversity Conservation Act 1999*.

Part 3—Constitution of the Council

6 Membership of the Council

The Council consists of:

- (a) the Chair; and
- (b) 6 members other than the Chair and associate members; and
- (c) each associate member (if any) who has been appointed.

7 Appointment of members

- (1) The members of the Council are to be appointed by the Minister by written instrument.
- (2) The Minister must appoint the Chair. The Chair must have substantial experience or expertise concerning heritage.
- (3) In appointing the members other than the Chair and associate members, the Minister must ensure that:
 - (a) 2 of them have substantial experience or expertise concerning natural heritage; and
 - (b) 2 of them have substantial experience or expertise concerning historic heritage; and
 - (c) 2 of them are indigenous persons with substantial experience or expertise concerning indigenous heritage, at least one of whom represents the interests of indigenous people.
- (4) The Minister may appoint as an associate member a person who has substantial experience or expertise described in paragraph (3)(a), (b) or (c). The Minister may not appoint more than 2 persons to be associate members at one time.
- (5) The Minister may not appoint as the Chair or as a member, other than as an associate member, an employee of the Department administered by the Minister.

8 Term of office of members

- (1) A member is to be appointed on a part-time basis.
- (2) A member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years, or 1 year for an appointment of an associate member.
- (3) A member cannot be appointed for more than 2 consecutive periods.

9 Acting appointments

The Minister may appoint a member, other than an associate member, to act as the Chair:

- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chair is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.

Note: Section 33A of the *Acts Interpretation Act 1901* has provisions relating to acting appointments.

10 Outside employment or other activities that conflict with a member's duties

A member must not engage in any paid employment, or any other activity, that the Minister is satisfied conflicts or may conflict with the proper performance of the member's duties.

10A No conflict with a member's duty

For the purposes of section 10, membership of an organisation with similar goals and interests to those of the Council shall not be taken to conflict with the proper performance of a member's duties.

Section 11

11 Remuneration and allowances of members

- (1) A member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.
- (2) A member is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

12 Resignation

A member may resign his or her appointment by giving the Minister a written resignation.

13 Termination of appointment of members

The Minister may terminate a member's appointment:

- (a) for misbehaviour or physical or mental incapacity; or
- (b) if the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (c) if the Minister is satisfied that it is no longer appropriate that the person remain as a member because of the Minister's obligations under subsection 7(3); or
- (d) if the member is absent from 3 consecutive meetings of the Council; or
- (e) if the member engages in paid employment, or any other activity, that the Minister is satisfied conflicts or could conflict with the proper performance of the duties of his or her office; or

Section 13

- (f) if the member fails, without reasonable excuse, to comply with section 19 (disclosure of interests).

Part 4—Meetings of the Council

14 Times and places of meetings

- (1) The Council is to hold such meetings as are necessary for the efficient performance of its functions.
- (2) Meetings are to be held at the times and places determined by the Council.
- (3) The Chair may call a meeting at any time. However, the Chair must call a meeting if a majority of the members for the time being holding office, other than associate members, request the Chair to do so.
- (4) The Minister may, at any time, direct the Chair to call a meeting.
- (5) The Chair must ensure that at least 4 meetings are held each year.

15 Notice of meetings

Each member is entitled to receive reasonable notice of the Council's meetings.

16 Who presides at meetings

- (1) The Chair presides at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting, the members present, other than associate members, may elect a member, other than an associate member, to preside at the meeting.

17 Quorum

A majority of the members for the time being holding office, other than associate members, constitutes a quorum.

18 Voting at meetings

- (1) A question is decided by a majority of the votes of the members, other than associate members, present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, if necessary, also a casting vote.

19 Disclosure of interests

- (1) A member who has a direct or indirect pecuniary interest in a matter that is being considered, or is about to be considered, by the Council must disclose the nature of the interest to the other members.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.
- (3) Unless the Council otherwise determines, the member:
 - (a) must not be present during any deliberation by the Council on the matter; and
 - (b) must not take part in any decision of the Council on the matter.
- (4) For the purposes of a determination under subsection (3), the member:
 - (a) must not be present during any deliberation of the Council on whether to make the determination; and
 - (b) must not take part in making the determination.

20 Conduct of meetings

The Council may, subject to this Part, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

Part 5—Register of the National Estate

21 Council must keep Register of the National Estate

- (1) The Council must keep in accordance with this Part and the regulations a register of places in the Australian jurisdiction and their heritage values, called the Register of the National Estate.

Note: Under Part 16 of the *Environment Protection and Biodiversity Conservation Act 1999*, the Minister administering that Act must have regard to information in the Register in making any decision under that Act to which the information is relevant.

- (2) The regulations may make provision in relation to:
 - (a) the Council consulting or informing specified persons (other than those mentioned in section 22 or 23) about:
 - (i) the proposed or actual inclusion of a place in the Register; or
 - (ii) the proposed or actual removal of a place, part of a place or a heritage value from the Register; and
 - (b) the content of the Register; and
 - (c) the form in which the Register may be kept; and
 - (d) inspection, publication and copying of the Register.
- (3) Subsection (2) does not limit the regulations that may be made for the purposes of this Part.

22 Including places in the Register

- (1) The Council may include a place in the Register only if the Council:
 - (a) has taken all practicable steps:
 - (i) to identify each person who is an owner or occupier of all or part of the place; and
 - (ii) if the Council considers the place has an indigenous heritage value—to identify each indigenous person who has rights or interests in all or part of the place; and

- (b) has taken all practicable steps to advise each person identified that the Council is considering whether to include the place in the Register; and
 - (c) has given persons advised a reasonable opportunity to comment in writing whether the place should be included in the Register; and
 - (d) considers the place meets the registration criterion.
- (2) A place *meets* the registration criterion if the place has a significant heritage value because of one or more of the following:
- (a) the place's importance in the course, or pattern, of Australia's natural or cultural history;
 - (b) the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history;
 - (c) the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history;
 - (d) the place's 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) the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
 - (f) the place's importance in demonstrating a high degree of creative or technical achievement at a particular period;
 - (g) the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
 - (h) the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history;
 - (i) the place's importance as part of indigenous tradition.

Note: Under subsection 3(2), the expression *heritage value* has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*. Section 528 of that Act defines *heritage value* of a place as including the place's natural and cultural environment having aesthetic, historic, scientific or social significance, or other significance, for current and future generations of Australians.

Section 23

- (4) The Council must include a place in the Register with the boundary and heritage values specified by the Minister if the Minister directs the Council to do so after being requested to conduct a review under section 24.
- (5) The Register, as first kept by the Council, is to include all the places that were included in the Register of the National Estate kept under the *Australian Heritage Commission Act 1975* immediately before the commencement of this section.
- (6) Subsections (4) and (5) have effect despite subsection (1).

23 Removing places etc. from the Register

- (1) The Council may remove a place, part of a place, or heritage value (the *lost value*) of a place from the Register only if the Council:
 - (a) has taken all practicable steps:
 - (i) to identify each person who is an owner or occupier of some or all of the place or part; and
 - (ii) if the Council considers, in the case of the removal of the place or part, that the place had an indigenous heritage value or, in the case of removal of the lost value, that the lost value is an indigenous heritage value—to identify each indigenous person who has rights or interests in the place or part; and
 - (b) has taken all practicable steps to advise each person identified that the Council is considering whether to remove the place, part or lost value from the Register; and
 - (c) has given persons advised a reasonable opportunity to comment in writing whether the place, part or lost value should be removed from the Register; and
 - (d) considers:
 - (i) the place no longer meets the registration criterion; or
 - (ii) the part no longer contributes to the place meeting the registration criterion; or
 - (iii) the place no longer meets the registration criterion because of the lost value (whether or not the place meets the registration criterion for another reason).

- (2) However, the Council must remove a place from the Register if the Minister directs the Council to do so after being requested to conduct a review under section 24.

24 Review of Council's decisions about the Register

- (1) A person may request the Minister in writing to conduct a review of:
- (a) the inclusion of a place in the Register by the Council (except under subsection 22(4) or (5)); or
 - (b) a decision by the Council not to include a place in the Register; or
 - (c) the removal of a place, part of a place or heritage value of a place from the Register by the Council (except under subsection 23(2)).
- (2) After receiving the request, the Minister must either:
- (a) confirm in writing the inclusion, decision or removal mentioned in subsection (1); or
 - (b) direct the Council in writing:
 - (i) to include the place in the Register with the boundary and heritage values specified (which may be the same as, or different from, the previous boundary and heritage values (if any) of the place); or
 - (ii) to remove the place from the Register.

Example: A direction under subparagraph (2)(b)(i) could:

- (a) increase or reduce the area of a place the Council had included at any time in the Register (even if the Council had later removed the place or part of it); or
- (b) change the heritage values included in the Register for a place the Council had included at any time in the Register, so that more or fewer values were included in the Register for the place; or
- (c) include in the Register a place the Council decided not to include, with boundaries the same as or different from those considered by the Council for the place; or
- (d) reinstate in the Register some or all of a place or part of a place the Council removed; or
- (e) reinstate in the Register a heritage value the Council removed.

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- (3) The Minister may confirm the inclusion, decision or removal mentioned in subsection (1) only if the Minister considers that it is justified, having regard only to:
 - (a) the condition in whichever one of paragraphs 22(1)(d) and 23(1)(d) is relevant; and
 - (b) whether the place meets the registration criterion.
- (4) The Minister may direct the Council to include a place in the Register with the boundary and heritage values specified in the direction only if he or she considers that the place, with that boundary, meets the registration criterion because of those values.
- (5) The Minister may direct the Council to remove a place from the Register only if he or she considers that the place no longer meets the registration criterion.
- (6) The Minister must, within a reasonable time, give written reasons for a confirmation or direction under this section to anyone who asks for them.

Part 5A—Reports

24A Reports

- (1) The Council may prepare a report on any matters related to the functions of the Council and provide the report to the Minister.
- (2) A report prepared under subsection (1) may include the following matters:
 - (a) the activities of the Council;
 - (b) the protection and conservation of heritage;
 - (c) how a place included in the National Heritage List, Commonwealth Heritage List or Register of the National Estate is being managed or conserved;
 - (d) the effectiveness of any measures intended to protect or conserve the heritage values of a place or places included in the National Heritage List, Commonwealth Heritage List or Register of the National Estate;
 - (e) the provisions of grants and other financial assistance related to heritage;
 - (f) policies, plans and programs of the Commonwealth or of a State or self-governing Territory that relate to or have an impact on heritage;
 - (g) how the National Heritage List, Commonwealth Heritage List or Register of the National Estate are being maintained;
 - (h) how the condition of a place included in the National Heritage List, Commonwealth Heritage List or Register of the National Estate is being monitored.
- (3) The Minister must cause a copy of a report provided to the Minister under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Part 6—Regulations

25 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 27 June 2002
Senate on 15 November 2002]*

(153/02)