



Conservation Legislation Amendment Act 1988

No. 7 of 1988

**An Act to amend the *World Heritage Properties
Conservation Act 1983* and the *Environment Protection
(Impact of Proposals) Act 1974*, and for related purposes**

[Assented to 31 March 1988]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Conservation Legislation Amendment Act 1988*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

**PART II—AMENDMENT OF THE WORLD HERITAGE
PROPERTIES CONSERVATION ACT 1983**

Principal Act

3. In this Part, “Principal Act” means the *World Heritage Properties Conservation Act 1983*.

Interpretation

4. Section 3 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definition:

“‘inspector’ means an inspector appointed under subsection 17A (1);”;

(b) by omitting subsection (2).

5. After section 3 of the Principal Act the following sections are inserted:

Identified property

“3A. (1) A reference in this Act to identified property is a reference to:

(a) any property in respect of which one or more of the following conditions is satisfied:

(i) the property is subject to an inquiry established by a law of the Commonwealth whose purpose, or one of whose purposes, is to consider whether the property forms part of the cultural heritage or natural heritage;

(ii) the property is subject to World Heritage List nomination;

(iii) the property is included in the World Heritage List provided for in paragraph 2 of Article 11 of the Convention;

(iv) the property forms part of the cultural heritage or natural heritage and is declared by the regulations to form part of the cultural heritage or natural heritage; or

(b) any part of property referred to in paragraph (a).

“(2) For the purposes of subparagraph (1) (a) (i), property shall be taken to be subject to an inquiry of the kind referred to in that subparagraph until the end of 42 days after the report, or the final report, of the inquiry is given to the person to whom it is required to be given.

“(3) For the purposes of subparagraph (1) (a) (ii), where the Commonwealth has, under Article 11 of the Convention, submitted property to the World Heritage Committee, whether before or after the commencement of this Act, as suitable for inclusion in the World Heritage List provided for in paragraph 2 of that Article, the property shall be taken to be subject to World Heritage List nomination from the time of its submission until the end of 7 days after the day on which the Committee informs, or first informs, Australia that it has included or decided not to include the whole or any part of the property in the list.

“(4) Where any property ceases to be identified property:

Conservation Legislation Amendment No. 7, 1988

- (a) any Proclamation under subsection 6 (3) or section 7, and any regulation for the purposes of subsection 9 (1) or paragraph 10 (2) (m), in relation to the property or any part of the property ceases to be in force; and
- (b) any Proclamation under subsection 8 (3), and any regulation for the purposes of paragraph 11 (1) (j), in relation to a site being, or situated within, the property ceases to be in force.

Judges

“3B. (1) In this Act:

‘eligible Judge’ means a Judge in relation to whom a consent under subsection (2) and a declaration under subsection (3) are in force;

‘Judge’ means a person who is a Judge of a court created by the Parliament.

“(2) A Judge may by writing consent to be nominated by the Minister under subsection (3).

“(3) The Minister may by writing declare Judges in relation to whom consents are in force under subsection (2) to be eligible Judges for the purposes of this Act.

“(4) A person who is or has been an eligible Judge is not liable to an action, suit or proceeding for or in relation to an act done, or omitted to be done, by the person in good faith in the performance or exercise, or the purported performance or exercise, of a function or power conferred by this Act on an eligible Judge.”.

Unlawful acts

6. Section 9 of the Principal Act is amended:

- (a) by omitting subsections (1) and (2) and substituting the following subsection:

“(1) Where an act is prescribed for the purposes of this subsection in relation to particular property to which this section applies, it is unlawful, except with the consent in writing of the Minister, for a person to do that act, or to do that act by a servant or agent, in relation to that property.”;

- (b) by omitting from subsection (3) “subsections (1) and (2)” (twice occurring) and substituting “subsection (1)”.

7. Section 17 of the Principal Act is repealed and the following sections are substituted:

Compensation

“17. (1) In this section:

‘acquisition of property’ has the same meaning as in paragraph 51 (xxxi) of the Constitution;

‘just terms’ has the same meaning as in paragraph 51 (xxxi) of the Constitution.

“(2) Where, but for this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.

“(3) Where the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the Federal Court determines.

Entry and search etc.

“17A. (1) The Minister may, in writing, appoint a person to be an inspector for the purposes of this Act.

“(2) An inspector may, for an eligible purpose:

- (a) enter and search an eligible place;
- (b) take photographs and record occurrences in an eligible place; and
- (c) inspect, examine and take photographs and measurements of an eligible thing.

“(3) For the purposes of exercising powers under paragraph (2) (c), an inspector may stop, detain, enter and search any vehicle.

“(4) An inspector shall not enter an eligible place (other than a public place) under subsection (2), or a vehicle under subsection (3), unless:

- (a) the consent of the person in charge of the eligible place or the vehicle has been obtained;
- (b) pursuant to a warrant issued under subsection (5); or
- (c) the following conditions are satisfied:
 - (i) the inspector believes on reasonable grounds that it is necessary to enter in order to prevent the concealment, loss or destruction of any thing; and
 - (ii) the entry is made in circumstances of such seriousness and urgency as to require and justify immediate entry without the consent of the person in charge or the authority of a warrant issued under subsection (5).

“(5) If an eligible Judge is satisfied on information on oath by an inspector that it is reasonably necessary that the inspector should, for an eligible purpose:

- (a) enter an eligible place and exercise powers under subsection (2); or
- (b) enter a vehicle and exercise powers under paragraph (2) (c);

the eligible Judge may issue a warrant authorising the inspector (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable, to enter the eligible place, or the vehicle, and exercise the powers.

“(6) A warrant shall specify:

- (a) the purpose for which the warrant is issued;

Conservation Legislation Amendment No. 7, 1988

- (b) whether entry is authorised to be made at any time of the day or night or only during specified hours of the day or night; and
- (c) a day, not being later than one month after the day of issue of the warrant, at the end of which the warrant ceases to have effect.

“(7) The Minister may cause to be issued to an inspector, other than a member of a police force, an identity card that specifies the name and appointment of the inspector and on which appears a recent photograph of the inspector.

“(8) Where an inspector (other than a member of a police force who is in uniform) exercises a power under subsection (2) in relation to an eligible place or under subsection (3) in relation to a vehicle:

- (a) if the inspector is a member of a police force--the inspector shall forthwith produce, for inspection by the person (if any) who is in charge of the eligible place or the vehicle, written evidence of the fact that the inspector is a member of that police force; or
- (b) in any other case--the inspector shall forthwith produce the inspector's identity card for inspection by the person (if any) who is in charge of the eligible place or the vehicle;

and if the inspector fails to do so, the inspector ceases to be authorised to exercise that power.

“(9) Where a person in possession of an identity card issued to the person ceases to be an inspector, the person shall forthwith return the identity card to the Minister.

Penalty: \$100.

“(10) In this section:

‘eligible place’ means any land, building or structure, whether or not identified property or on identified property, but does not include a dwelling house;

‘eligible purpose’ means the purpose of:

- (a) determining whether an act that is unlawful by virtue of section 9, 10 or 11 has been, is being or is likely to be done; or
- (b) obtaining information that may be relevant to the making of a Proclamation, or a regulation, under this Act;

‘eligible thing’ means any thing prescribed by the regulations for the purposes of this definition.

Obstruction of inspectors

“17B. A person shall not, without reasonable excuse, obstruct or hinder an inspector exercising powers under this Act.

Penalty: \$1,000 or imprisonment for 12 months, or both.

Confidentiality

“17C. (1) Subject to this section, a person:

- (a) who is or has been an inspector; and
- (b) who has, in exercising powers under this Act, acquired any information, or document, relating to the affairs of another person;

shall not, either directly or indirectly, except for the purposes of this Act:

- (c) make a record of, or communicate to any person, any of that information; or
- (d) produce that document to any person.

Penalty: \$1,000 or imprisonment for 6 months, or both.

“(2) Nothing in subsection (1) prohibits an inspector from communicating any information, or producing any document, to the Minister, the Secretary to the Department or an officer of the Department authorised by the Secretary to the Department for the purposes of this section.

“(3) Where information is communicated, or a document is produced, under subsection (2) to a person, the person shall not, either directly or indirectly, except for the purposes of this Act:

- (a) make a record of, or communicate to any person, any of that information; or
- (b) produce that document to any person.

Penalty: \$1,000 or imprisonment for 6 months, or both.

“(4) Section 38 of the *Freedom of Information Act 1982* does not apply in relation to information or documents to which this section applies.”.

PART III—AMENDMENT OF THE ENVIRONMENT PROTECTION (IMPACT OF PROPOSALS) ACT 1974

Principal Act

8. In this Part, “Principal Act” means the *Environment Protection (Impact of Proposals) Act 1974*².

9. After section 4 of the Principal Act the following section is inserted:

Non-application in relation to certain heritage acts

“4A. (1) Nothing in this Act applies in relation to:

- (a) the doing of any thing under the *World Heritage Properties Conservation Act 1983* or regulations under that Act; or
- (b) the submission by the Commonwealth under Article 11 of the Convention, within the meaning of the *World Heritage Properties Conservation Act 1983*, of property to the World Heritage Committee as suitable for inclusion in the World Heritage List provided for in paragraph 2 of that Article.

Conservation Legislation Amendment No. 7, 1988

“(2) This section has effect as if it had commenced on the commencement of the *World Heritage Properties Conservation Act 1983*.”.

PART IV—MISCELLANEOUS

Proclamation never in force

10. The Proclamation made on 19 January 1988 pursuant to subsection 6 (3) of the *World Heritage Properties Conservation Act 1983* shall be taken never to have come into force.

Certain statutory rules of no effect

11. Statutory Rules 1988 No. 2 shall be taken never to have had effect.

NOTES

1. No. 5, 1983, as amended. For previous amendment, see No. 39, 1983.
2. No. 164, 1974, as amended. For previous amendments, see No. 36, 1975; No. 61, 1981; Nos. 26 and 80, 1982; and No. 12, 1987.

[*Minister's second reading speech made in—
Senate on 25 February 1988
House of Representatives on 24 March 1988*]