



PARLIAMENT OF AUSTRALIA · THE SENATE  
SHIRLEY WALTERS      SENATOR FOR TASMANIA

4 March 1988,

Dear Sir,

On February 24, I introduced a private members Bill to amend the Australian Heritage Commission Act 1975.

Under the current Act private property can be added to the register of the National Estate of Australia without the owners of that property being aware or, in fact, without even being notified that their property was under consideration for inclusion. My Bill provides that owners of property under consideration for inclusion on the register are notified, in writing, and permitted to lodge submissions which must be taken into consideration before registration takes place.

As you are aware inclusion of private property on the register of the National Estate of Australia can impose severe limitations and restrictions on the future use of the registered property. I believe this situation completely ignores the ownership rights of the title holders irrespective of the nature of the property, ie residential, commercial, industrial or rural. My Bill addresses this problem and re-establishes equitable property ownership rights.

I am writing to you in the hope that you will advise me of the views of your group in relation to the Bill, hopefully before it is debated again on Thursday, 17th March.

On many occasions property has already been added to the register of the National Estate without any knowledge of the owners and in some instances for quite incorrect reasons. I believe this situation must not be allowed to continue.

I am enclosing a copy of my second reading speech and private members Bill which will explain in greater detail both the current Legislation and my proposed amendments.

Yours sincerely,

Shirley Walters,  
Senator for Tasmania.

The AUSTRALIAN HERITAGE COMMISSION

(Notification of Owners)

AMENDMENT BILL 1988.

SECOND READING SPEECH

by

Senator Shirley Walters

The purpose of the Bill is to require the Australian Heritage Commission; when it proposes to enter private property either on its list of places that might be entered in the register of the National Estate or when it proposes to enter property in the register of the National Estate, to inform the owners of the property, in writing, of that proposal. The Bill requires the Commissioner to give the owners access to documents held by the Commission pertaining to their property, as well as an opportunity to make submissions before registration can occur. It also requires the Commission to take into consideration any submission made, by owners of the property when considering that property for inclusion on the register of the National Estate.

The Bill extends these requirements to the Minister when he gives a directive to the Commission to enter private property in the Register of the National Estate and to those properties on the list at the commencement of this Legislation.

Under the present Act, the situation has frequently arisen that an area of private land or indeed a private home, has been

entered on the list for consideration by the Commission of places that might be entered in the register (that the Act requires the Commission to keep) without the knowledge of the owners, and further the Commission has eventually entered the property on the register of the National Estate still without the owners knowledge.

The only requirements in the present Act are:-

1. That the Commission shall not enter a place on the register unless it has placed a public notice in the Gazette, a local newspaper and a newspaper circulating throughout the State or Territory.

This public notice must specify a date by which objections are to be made and the Commission must give due consideration to those objections. However it does not require notification to the owner.

Should the owner miss the public notice he is left in the position of being unable to lodge an objection in the prescribed time.

2. Section 27 allows any person to inspect the register or the list, take a copy of, or an extract from an entry in the register or list.

Again if the owner is unaware that his property is listed or entered on the register of the National Estate this requirement is of no use to him.

Mr President, natural justice dictates that this Bill be accepted by the Senate. Amendments, which simply allow an owner to be informed by the Commission that his property is under consideration for inclusion in the National Estate and give him the right to object, can only be accepted and supported.

I commend the Bill to the Senate.

Commencement

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

Entry of place in Register

3. Section 23 of the Principal Act is amended:

(a) by inserting before paragraph (2)(a) the following paragraphs:

"(aa) it has given a copy of the notice referred to in paragraph (a) to the person who is the owner of the place or, if different places forming part of the place are owned by different persons, to each of those persons (in this section called the 'owner or owners');

(ab) it has given to the owner or owners a reasonable opportunity:

(i) to examine any materials which the Commission has concerning the proposed entry; and

(ii) to make submissions to the Commission concerning the proposed entry;

(ac) it has given due consideration to any submissions made by the owner or owners;"

(b) by omitting from subsection (3) "after the giving of" and substituting "after complying with paragraphs (2)(aa), (ab) and (ac) and giving";

(c) by inserting before paragraph (3)(a) the following paragraph:

"(aa) give a copy of the notice referred to in paragraph (a) to the owner or owners;"

(d) by omitting from subsection (4) "shall by public notice" and substituting "shall, by notice in writing given to the owner or owners, and by public notice,".

Directions by the Minister

4. Section 25 of the Principal Act is amended:

(a) by omitting from subsection (2) "Where" and substituting "Subject to subsection (2A), where";

(b) by inserting after subsection (2) the following subsection:

"(2A) The Minister shall not give a direction under subsection (2) in relation to a place unless the Minister has given to the person who is the owner of the place or, if different places forming part of the place are owned by different persons to each of those persons (in this section called the 'owner or owners') a reasonable opportunity:

(a) to examine any materials which the Minister has concerning the proposed direction; and

(b) to make submissions to the Minister concerning the proposed direction;

and the Minister has given due consideration any submissions made by the owner or owners.";

(c) by adding at the end the following subsection;

"(8) Where the Minister gives a direction under this section in relation to a place, the Minister shall give a copy of the direction to the owner or owners of the place."

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List of places to be entered in the Register

5. Section 26 of the Principal Act is amended by adding at the end the following subsections:

"(4) The Commission shall not, after the commencement of this subsection, include a place in the list unless the Commission has given to the person who is the owner of the place or, if different places forming part of the place are owned by different persons, to each of those persons a notice in writing stating that the Commission proposes to include the place in the list and setting out the reasons why the Commission proposes to include the place in the list.

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"(5) Subject to subsection (6), the Commission shall, before the end of 3 months after the commencement of this subsection, give to each person who is the owner of a place that is in the list at the commencement of this subsection or, if different places forming part of the place are owned by different persons, to each of those persons a notice in writing stating that the place is in the list.

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"(6) The Commission is not required to give a notice under subsection (5) in relation to a place if, before the end of the period in which the Commission is required by that subsection to give the notice, any of the circumstances set out in subsection (3) become applicable to the place."

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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented and read a first time, 24 February 1988)

(SENATOR WALTERS)

A B I L L  
FOR

An Act to amend the Australian Heritage Commission Act 1975

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

Short title etc.

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1. (1) This Act may be cited as the Australian Heritage Commission (Notification of Owners) Amendment Act 1988.

(2) In this Act, "Principal Act" means the Australian Heritage Commission Act 1975.