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NEW SOUTH WALES WORLD HERITAGE PROPERTIES: COMMONWEALTH/STATE ADMINISTRATIVE ARRANGEMENTS

Report of the House of Representatives Standing Committee on Environment and Conservation

November 1985

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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

NEW SOUTH WALES WORLD HERITAGE PROPERTIES: COMMONWEALTH/STATE ADMINISTRATIVE ARRANGEMENTS

Report of the House of Representatives Standing Committee on Environment and Conservation

November 1985

Terms of Reference of the Committee

(1) That a standing committee be appointed to inquire into and report on:

(a) environmental aspects of legislative and administrative measures which ought to be taken in order to ensure the wise and effective management of the Australian environment and of Australia's natural resources; and

(b) such other matters relating to the environment and conservation and the management of Australia's natural resources as are referred to it by -

(i) the Minister responsible for those matters, or

(ii) resolution of the House.

Terms of Reference of the Inquiry

That the Committee report to the House on the matter of the protection and management of World Heritage properties in New South Wales.

Members of the Committee

Chairman	Mr P. Milton, M.P.
Members	Mr R.L. Chynoweth, M.P. Mr R.F. Edwards, M.P. Mr P.S. Fisher, M.P. Mr G. Gear, M.P. Ms J. McHugh, M.P. Mr C.G. Miles, M.P.
Secretary to the Committee	Mr J.R. Cummins

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RECOMMENDATIONS

The Committee recommends that:

1. the Minister for Arts, Heritage and Environment seek a joint agreement with the New South Wales Minister for Planning and Environment for the exchange of all documents and proposals of Commonwealth and State Departments and instrumentalities relating to World Heritage properties in New South Wales.
(paragraph 51)

2. the Minister for Arts, Heritage and Environment identify an office within the portfolio which would be responsible for World Heritage matters.
(paragraph 52)

3. the Minister for Arts, Heritage and Environment discuss with the New South Wales Minister for Planning and Environment the submission on an annual basis of proposals relating to management of World Heritage properties, identifying those areas where Commonwealth assistance is required.
(paragraph 54)

4. Commonwealth and State works proposals be deferred until such time as the Lord Howe Island Plan of Management has been completed.
(paragraph 56)

5. the Commonwealth Government meet the additional costs of importing aggregates from the mainland or other sources.
(paragraph 57)

6. the administrative procedures of the Environment Protection (Impact of Proposals) Act 1974 be amended to require the preparation of environmental impact statements for Commonwealth proposals in World Heritage properties, except for those proposals which Commonwealth and State authorities agree are environmentally insignificant.
(paragraph 59)

1. INTRODUCTION

The Inquiry

1. The Committee's decision to investigate the administrative arrangements relating to New South Wales World Heritage properties was the result of two factors. First, despite the controversy relating to World Heritage properties in other areas of Australia, it appeared that in New South Wales arrangements had been devised which indicated a high degree of co-operation between the Commonwealth and the New South Wales Governments. The Committee considered that the New South Wales arrangement may provide a model for a system of management for other areas of Australia. Secondly, it was apparent that while many millions of dollars have been allocated to World Heritage properties in the Northern Territory, Queensland and Tasmania little support had been provided by the Commonwealth to New South Wales. The Committee was concerned that the Commonwealth assistance might appear to be determined by political considerations rather than management needs.

2. The Committee conducted inspections and informal discussions at the Willandra Lakes Region on 20 June 1985 and the Lord Howe Island Group on 1 to 3 October 1985. On 10 October 1985 the Committee resolved that:

- the Committee report to the House on the matter of the protection and management of World Heritage properties in New South Wales.

3. Public Hearings were held in Sydney on 18 October 1985 and in Canberra on 14 November 1985.

4. As part of other inquiries the Committee, in this and previous Parliaments, visited the other World Heritage properties in Australia.

The Willandra Lakes Region

5. In December 1980 the Willandra Lakes Region was nominated by the Commonwealth Government for inclusion on the World Heritage list. In October 1981 the UNESCO World Heritage Committee declared the Region to be of "outstanding universal value" and registered it on the World Heritage list.

6. The Willandra Lakes World Heritage Region is an area of approximately 3 600 sq.km in the semi-arid south-western part of New South Wales. The Region is centred on a chain of lake beds which have been dry for at least 15 000 years, since the Pleistocene epoch. Archaeological discoveries from the 'Wall of China' lunette of Lake Mungo, one of the lakes in the series, led to the region gaining international prominence.

7. The archaeological material, consisting of skeletal remains, stone tools, hearths and shell middens provides evidence of human occupation of the region about 40 000 years ago. The material ranks amongst the oldest evidence of modern man, Homo sapiens, in the World and provides some of the earliest data on human exploitation of fresh water resources.

8. Animals were also attracted to the lakes and archaeological relics of varied fauna have been discovered including some species extinct since European settlement and other species which became extinct in the late Pleistocene.

9. The World Heritage significances of the Willandra Lakes Region is due equally to attributes of the natural environment. The area lies within a tectonically stable region which has not been modified by glaciation or by long term sea-level changes. It thus represents a "fossil landscape" which offers stratigraphic

and geochemical information and evidence from soils of climatic and related environmental changes over the last 100 000 years. This evidence provides detailed documentation of how non-glaciated zones responded to the glacial-interglacial climatic fluctuations. As such, the region provides a resource for climatic change research which has global applications.

10. The hearths are also of particular interest in that they provide a site for the measurement of magnetic changes which are important in world-wide studies of changes in the earth's magnetism.

11. The significance of the archaeological discoveries is augmented by these aspects of their location. That is, the juxtaposition of evidence of man and of his environment which occurs at Willandra Lakes provides an opportunity for reconstructing Pleistocene ecology with detail which is unprecedented for such ancient communities.

12. The major environmental issues fall into several categories, namely, the impact of grazing on the land, accelerated erosion of soil and sediments, the effect of cropping on the natural heritage value of the region, disturbance of the flora and fauna by agricultural and tourist activities, fire, the value of the vegetation as fauna habitats, derivation of environmental criteria for ongoing surveillance of the region and the adequacy of the boundaries of the region to preserve items and features of heritage value.

13. The Willandra Lakes World Heritage Region consists of the Mungo National Park, administered by the National Parks and Wildlife Service, and Western Lands leases devoted to pastoral and agricultural pursuits. Unlike other World Heritage areas in Australia the majority of the Willandra Lakes Region is not included in a national park.

14. In August 1984 the New South Wales Government decided to prepare a Regional Environmental Plan under the provisions of

the Environmental Planning and Assessment Act 1979 for the Willandra Lakes World Heritage Region. The first stage in the preparation of the Regional Plan is the development of an environmental study which includes the collection and synthesis of relevant environmental, historical, social and economic information about the Region. This information will form the basis for the development of management decisions and policies which will be incorporated in the Regional Plan.

15. A series of specialist studies has been commissioned by the New South Wales Government. A consultative committee has been established to provide a forum for community input and to oversee the environmental study.

The Lord Howe Island Group

16. The Lord Howe Island Group was nominated as a World Heritage property in 1981. This nomination was considered and included on the World Heritage list in December 1982.

17. The Lord Howe Island Group is located in the South Pacific Ocean, 702 km north east of Sydney. The Group includes the main island, outlying islands and the surrounding marine environment.

18. The total area of all the islands in the Group is approximately 1540 ha of which the main island has an area of 1455 ha. Settlement is confined to the lowlands of this island. Lord Howe Island has spectacular topographical relief with Mount Gower (875m) and Mount Lidgbird (777m) rising dramatically from sea level. The central low-lying part of the Island provides a marked contrast to the adjacent mountains and northern hills. The Island's subtropical climate and high rainfall has produced lush vegetation which is largely undisturbed.

19. The Group contains habitats for a large population of seabirds and rare fauna and includes the southernmost fringing coral reef in the World.

20. The primary reasons for the recognition of the Island as a World Heritage site are:

- the island group is considered to be an outstanding example of an island system developed from submarine volcanic activity;

- the Island has a high proportion of rare and endemic animals, plants and invertebrates; and

- the Island has exceptional natural beauty as a result of its diversity of landscapes, its vegetation and its coral reef.

21. The major environmental issues include problems associated with introduced plants and animals and the need to balance the requirements of the permanent residents for services on the one hand and to manage the Island in accordance with its World Heritage status on the other. Proposals which are, or soon to be, under consideration include construction of a meteorological station, installation of a satellite ground station, relocation or upgrading of the power station and collection of boulders from a beach to produce aggregates.

22. Lord Howe Island and its associated islands are under the care, control and management of the Lord Howe Island Board.

23. Under the Lord Howe Island (Amendment) Act 1981 the Board consists of three Island members, a member nominated by the Minister for Lands and the Director of the National Parks and Wildlife Service. The Director provides the Board with expertise in environmental matters and is able to call upon the resources of the National Parks and Wildlife Service for advice.

2. MANAGEMENT

World Heritage Convention

24. In August 1974 Australia became one of the first countries to ratify the International Convention for the Protection of the World Cultural and Natural Heritage (the World Heritage Convention). Under the Convention countries recognise that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of their cultural and natural heritage as defined in the Convention belongs primarily to them (See Appendix 2).

25. It is under this Convention that State Parties, which can only be National Governments, submit nominations to the World Heritage Committee for consideration for the World Heritage list. This list comprises areas of the World's cultural and natural heritage of 'outstanding universal value', the disappearance or destruction of which would constitute 'a harmful impoverishment of the heritage of all nations of the World'.

26. The Department of Arts, Heritage and Environment advised that the World Heritage list is not an inventory of sites which are essentially of national significance, such as the Register of the National Estate, nor is it a list of places of local and/or national significance considered worthy of preservation. More importantly it is not a refuge for places perceived to be under threat.

27. The primary obligation of Australia under the Convention relevant to New South Wales World Heritage properties are Articles 4 and 5.

28. Article 4 states:

"Each State Party to this Convention recognises that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain."

29. Article 5 states:

"To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country:

...

(c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage;

(d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage;

... "

World Heritage Properties Conservation Act

30. The purpose of the World Heritage Properties Conservation Act 1983 is to provide for the protection of certain property which Australia has identified as natural heritage or cultural heritage within the meaning of the Convention. The protection is in the form of prohibiting acts which might damage or destroy the property. In order that the Act may be applied a number of conditions must be satisfied. First the property must be an 'identified property'. The World Heritage properties within New South Wales are identified properties by reason of their nomination to the list. The second stage is proclamation by the Governor-General which cannot be made unless he is satisfied that an identified property is being, or is likely to be, destroyed. The third stage involves the making of regulations for the purposes of specifying the acts which will be unlawful in an area subject to proclamation made by the Governor-General.

Administrative Arrangements

31. As stated in previous paragraphs the New South Wales Government is responsible for the management of World Heritage properties within the State. The Director of the New South Wales National Parks and Wildlife Service stated that as the areas are part of New South Wales the State has the direct responsibility for their management. He advised that the State fully recognises the significance of World Heritage listing and is committed to managing those areas to meet Commonwealth obligations under international conventions.

Commonwealth Obligations

32. The question arises however as to whether or not the Commonwealth is fulfilling its obligations concerning the provision of management and financial assistance to the State to adequately manage the properties.

33. The Director drew the Committee's attention to Article 5 of the Convention which outlines the Commonwealth's responsibilities in relation to New South Wales properties. In respect of these obligations he advised that New South Wales had not received any inquiries from the Commonwealth Government relating to the management of World Heritage properties in New South Wales. The State would welcome some interest and assistance from the Commonwealth in those questions of management and protection.

34. The Attorney-General's Department provided advice on the Commonwealth's obligations under the World Heritage Convention (See Appendix 3). The Department advised that:

- Australia is the primary judge of the extent of those obligations. However in exercising that judgement Australia must act in good faith;

- the selection of the appropriate domestic measures to give effect to those obligations identified is left by the Convention to Australia; and

- the allocation of resources (including financial resources) for the discharge of those obligations is also a matter for Australia to decide but it must be exercised in good faith. Australia is not obliged to sacrifice other financial priorities and allocate disproportionate resources towards protecting and conserving cultural or natural heritage.

35. The Department advised that while the Commonwealth Government bears ultimate international responsibility for carrying out the Convention there is no legal impediment to the Commonwealth relying on the New South Wales Government. Indeed the Lord Howe Island Group and the Willandra Lakes Region were

inscribed on the list by the World Heritage Committee in the knowledge that they would be managed by New South Wales authorities. The Department stated however, that given its ultimate responsibility it would be appropriate for the Commonwealth as a matter of policy to monitor compliance with the Convention.

36. The Attorney-General's Department commented that, while the Commonwealth could as a matter of law play a more direct role in the management, a number of non-legal factors need to be taken into account, namely:

- there is considerable sensitivity on the part of some States towards the involvement of the Commonwealth in the management of areas such as national parks within those States;

- where World Heritage areas are being managed in a satisfactory manner by State authorities there is no reason for the Commonwealth to play an active role in that management;

- the fact that the Commonwealth bears international responsibility for World Heritage areas does not mean that the Commonwealth (as opposed to the States) is required to bear financial responsibility for the management or protection of those areas or for other projects; and

- at least in relation to New South Wales, nominations on the World Heritage list have been made on the basis of management by State authorities.

37. The Attorney-General's Department concluded, that one would normally expect that if a State is managing an area in accordance with sound conservation principles before it is identified as a

World Heritage area, such identification and the attendant obligations under the Convention would not give rise to the need for additional funding in order to meet Convention obligations. The provision of management assistance over and above the level which is necessary to give effect to the Convention is a policy question and the Department makes no comment.

Commonwealth Financial and Management Assistance

38. The Director of the New South Wales National Parks and Wildlife Service told the Committee that there have been two areas in which assistance has been sought from the Commonwealth. The first related to Lord Howe Island where officers of the Premier's Department met with the Australian Heritage Commission to seek financial assistance for the undertaking of studies related to the Regional Environmental Study. The Director advised that no assistance was provided. The second instance related to the preparation of cases by the State to the Grants Commission for the allocation of funding generally to the State. The Government advised the Commission of the existence of the World Heritage areas within New South Wales and the need for special consideration to be given to them in the Grants Commission formula. That approach was unsuccessful.

39. The Department of Arts, Heritage and Environment on the other hand advised that the statements made were misleading in that the Commonwealth Government has provided over $200 000 to assist in programs related to Lord Howe Island and Willandra Lakes. In addition expert advice has been provided to New South Wales authorities by two Commonwealth Government agencies, namely the Australian Heritage Commission and the Australian National Parks and Wildlife Service.

40. Commenting on the two specific approaches referred to by the Director of the New South Wales National Parks and Wildlife Service, the Department of Arts, Heritage and Environment advised

that no officers of the Australian Heritage Commission can recall any contact with the Premier's Department or any such requests from New South Wales for special financial assistance. The Department consulted the Grants Commission who advised that officers of the Commission have looked at recent New South Wales submissions to the Commission and have not been able to locate any reference to Lord Howe Island and Willandra Lakes in connection with World Heritage areas. They comment it is not possible to be certain that New South Wales has made no such claims to the Commonwealth.

41. The Department of Arts, Heritage and Environment concluded that the Commonwealth has provided funds and would consider any further requests made by the New South Wales Government. The Director of the New South Wales National Parks and Wildlife Service provided details to the Committee of research and other programs where Commonwealth financial assistance would be welcomed.

Planning and Development

42. One area of interest to the Committee was the degree of Commonwealth involvement in management and development proposals particularly as they relate to Lord Howe Island. The Director advised that in the preparation of the Regional Environmental Study for Lord Howe Island consultants were involved in discussions with the Australian Heritage Commission. The Director further advised that copies of the study had been formally forwarded to the Commonwealth for comment. Other documents such as the Environmental Impact Statement relating to a proposal to remove boulders from an area of the Island are placed on public exhibition for comment. These documents would not be formally submitted to the Commonwealth but under the New South Wales legislative arrangements for the exhibition of development proposals they are advertised in large display advertisements in metropolitan newspapers.

43. The Department of Arts, Heritage and Environment could find no evidence of documents being referred formally for comment. Documents had been requested by the Department and had been supplied but in relation to reviews being conducted by the Department under the Environment Protection (Impact of Proposals) Act. There is no record of the Department's views ever having been sought.

44. The Lord Howe Island Regional Environmental Study has recently been released. The preparation of the document is part of a two stage process. The environmental study is a compilation of the background resource information on the area. Its aim is not to present specific proposals but rather to outline the status of information on resources on the Island and to provide the framework within which the actual regional plan is prepared.

45. Following public exhibition and comment a regional environmental plan is prepared which will include the specific planning proposals.

46. Even though a detailed plan has not been prepared a number of proposals are underway or are being discussed. These include the construction of a meteorological station, relocation or upgrading of the power station, installation of a satellite ground station and proposals such as one to produce approximately 2 000 tons of coarse aggregates from a boulder beach on Lord Howe Island.

47. The Director recognised the difficulties associated in considering developments before the planning exercise has been completed. He advised that one option would be to defer decisions pending the plan. The other is to allow developments which are in sympathy with the manner in which the planning process is developing. He advised that there may be matters which require immediate decision but admitted that there was a problem of balancing the need to meet immediate requirements without pre-empting the regional environmental plan.

48. The Director advised that the Lord Howe Island Board experienced some difficulties in persuading the Commonwealth authorities to prepare environmental impact statements. The Department of Arts, Heritage and Environment advised that proposals have been considered pursuant to the Environment Protection (Impact of Proposals) Act but there is a discretion as to whether an environmental impact statement should be prepared. The proposals were considered not to warrant an environmental impact statement. The Department argued that under the administrative procedures a normal environmental assessment has been carried out. The Director agreed that there was no breach of Commonwealth legislation but asserted that there was a special obligation on Government instrumentalities to apply development standards and environmental impact assessment arrangements of the highest quality in World Heritage areas.

3. CONCLUSIONS

49. The Committee was impressed by the competent manner in which the New South Wales National Parks and Wildlife Service manages the Lord Howe Island Group and Willandra Lakes Region World Heritage properties. The Committee agrees with the conclusion of the officers of the Department of Arts, Heritage and Environment who noted that the New South Wales Government takes pride in its environmental protection record. It affords a high degree of sympathetic management to its two World Heritage sites and there is no significant threat of damage contemplated to these properties. The Committee also agrees with the sentiments expressed by the Director of the New South Wales National Parks and Wildlife Service that the properties are part of New South Wales and that the State should accept direct responsibility for their management.

50. Notwithstanding these comments there are a number of matters which the Committee considers warrant further discussion.

51. The Committee notes the advice of the Attorney-General's Department which states that there is no doubt that the Commonwealth bears direct international responsibility for management of World Heritage areas and that given its ultimate responsibility it would be appropriate for the Commonwealth, as a matter of policy, to actively monitor compliance with the Convention. This is not the case at present. As noted previously, various planning documents and proposals for development are not automatically supplied to the Commonwealth. It is the view of the Committee that while it is reasonable to

assume that developments will be in accordance with the World Heritage status of the properties, the Commonwealth, at the very least to fulfil its obligations, should be aware of these proposals. Accordingly the Committee recommends that:

- **the Minister for Arts, Heritage and Environment seek a joint agreement with the New South Wales Minister for Planning and Environment for the exchange of all documents and proposals of Commonwealth and State Departments and instrumentalities relating to World Heritage properties in New South Wales.**

52. Another shortcoming in the management of World Heritage properties is that there is no clearly identified office within the Commonwealth administration which has responsibility for World Heritage matters. While the Committee would be reluctant to recommend that a vast administrative machinery be established at the Commonwealth level it believes that a section within either the Department of Arts, Heritage and Environment or the Australian Heritage Commission could be identified as responsible for liaison between the Commonwealth and the State. Accordingly the Committee recommends that:

- **the Minister for Arts, Heritage and Environment identify an office within the portfolio which would be responsible for World Heritage matters.**

53. The Committee notes the comments by the Attorney-General's Department that while little positive action may be necessary to enable Australia to give effect to its obligations, as a matter of policy, it may be considered desirable to take action over and above the minimum necessary. The Committee agrees with this view. The Committee believes that the New South Wales Government should submit to the Commonwealth each year, prior to budget formulation, a program for each of its World Heritage properties which would identify those programs where Commonwealth assistance is sought. The Committee firmly

believes that the information supplied should not only relate to those proposals for which Commonwealth assistance is requested but also contain details of the total program proposed by the State. This approach has a number of benefits. First, it would inform the Commonwealth of management activities within the properties. Secondly, it would enable the Commonwealth to assess New South Wales requirements in the light of the total management program. Such arrangements are not necessary for other World Heritage properties as they are either administered solely by the Commonwealth or joint Commonwealth/State management arrangements exist.

54. *Accordingly the Committee recommends that:*

- **the Minister for Arts, Heritage and Environment discuss with the New South Wales Minister for Planning and Environment the submission on an annual basis of proposals relating to management of World Heritage properties, identifying those areas where Commonwealth assistance is required.**

55. It is the Committee's view that the Commonwealth must recognise that the World Heritage status of properties will involve certain costs and that these costs should not necessarily be met entirely by the State.

56. The Committee notes with concern that certain development proposals are under consideration before the Plan of Management for Lord Howe Island has been finalised. While accepting that some proposals may be urgent the Committee believes that the proposals should be deferred until such time as the Plan of Management has been completed. Accordingly the Committee recommends that:

- **Commonwealth and State works proposals be deferred until such time as the Lord Howe Island Plan of Management has been completed.**

57. The Committee is unable to comment on the appropriateness of these developments except for the proposal to collect boulders from a beach on the Island and associated works. It seems that the only justification for the proposal to proceed is that of cost. The Director of the New South Wales National Parks and Wildlife Service commented that in his view it is correct to assume that if there was no cost penalty involved production of aggregates on the Island would not be considered. The Committee believes that while the impact of the operation may be small in the context of the total Island and would not seriously damage the World Heritage status of the Island, there is no doubt that the proposal would have significant impacts on the natural beauty and integrity of that site. Not only is the area attractive but the habitat of the endangered Lord Howe Island woodhen could also be affected by the proposal. Accordingly the Committee recommends that:

- **the Commonwealth Government meet the additional costs of importing aggregates from the mainland or other sources.**

58. The Committee believes that this assistance should be conditional on the proposed collection site being included in the Permanent Park Preserve.

59. Finally the Committee notes the comments relating to the reluctance of Commonwealth authorities to prepare environmental impact statements for developments on the Island. The Committee agrees with the Director of the New South Wales National Parks and Wildlife Service who stated that development standards and environmental impact assessment arrangements of the highest quality should apply to World Heritage properties. Accordingly the Committee recommends that:

- the administrative procedures of the Environment Protection (Impact of Proposals) Act 1974 be amended to require the preparation of environmental impact statements for Commonwealth proposals in World Heritage properties, except for those proposals which Commonwealth and State authorities agree are environmentally insignificant.

PETER MILTON
Chairman

November 1985

APPENDIX 1

List of Witnesses

BOURKE, Mr M.	First Assistant Secretary, Department of Arts, Heritage and Environment
BRADLEY, Mr D.F.	Director, Department of Arts, Heritage and Environment
GILES, Dr J.R.	Assistant Director, New South Wales National Parks and Wildlife Service
MULLETTE, Dr K.J.	Chief Scientist, New South Wales National Parks and Wildlife Service
McCUSKER, Dr A.	Acting First Assistant Secretary, Department of Arts, Heritage and Environment
WHITEHOUSE, Mr J.F.	Director, New South Wales National Parks and Wildlife Service

CONVENTION FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

The General Conference of the United Nations Educational, Scientific and Cultural Organization meeting in Paris from 17 October to 21 November 1972, at its seventeenth session,

Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction,

Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world,

Considering that protection of this heritage at the national level often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific and technical resources of the country where the property to be protected is situated,

Recalling that the Constitution of the Organization provides that it will maintain, increase and diffuse knowledge, by assuring the conservation and protection of the world's heritage, and recommending to the nations concerned the necessary international conventions,

Considering that the existing international conventions, recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world, of safeguarding this unique and irreplaceable property, to whatever people it may belong,

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole,

Considering that, *in view of the magnitude and gravity of the new dangers threatening them, it is* incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an effective complement thereto,

Considering that it is essential for this purpose to adopt new provisions in the form of a convention establishing an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods,

Having decided, at its sixteenth session, that this question should be made the subject of an international convention,

Adopts this sixteenth day of November 1972 this Convention.

I. DEFINITIONS OF THE CULTURAL AND THE NATURAL HERITAGE

Article 1

For the purposes of this Convention, the following shall be considered as "cultural heritage":

monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.

Article 2

For the purposes of this Convention, the following shall be considered as "natural heritage":

natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;

geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;

natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.

Article 3

It is for each State Party to this Convention to identify and delineate the different properties situated on its territory mentioned in Articles 1 and 2 above.

II. NATIONAL PROTECTION AND INTERNATIONAL PROTECTION OF THE CULTURAL AND NATURAL HERITAGE

Article 4

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, *with any international assistance and co-operation, in particular, financial, artistic, scientific* and technical, which it may be able to obtain.

Article 5

To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country:

(a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes;

(b) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions;

(c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage;

(d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and

(e) to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field.

Article 6

1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property rights provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate.

2. The States Parties undertake, in accordance with the provisions of this Convention, to give their help in the identification, protection, conservation and preservation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11 if the States on whose territory it is situated so request.

3. Each State Party to this Convention undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage referred to in Articles 1 and 2 situated on the territory of other States Parties to this Convention.

Article 7

For the purpose of this Convention, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage.

III. INTERGOVERNMENTAL COMMITTEE FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

Article 8

1. An Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Committee", is hereby established within the United Nations Educational, Scientific and Cultural Organization. It shall be composed of 15 States Parties to the Convention, elected by States Parties to the Convention meeting in general assembly during the ordinary session of the General Conference of the United Nations Educational, Scientific and Cultural Organization. The number of States members of the Committee shall be increased to 21 as from the date of the ordinary session of the General Conference following the entry into force of this Convention for at least 40 States.

2. Election of members of the Committee shall ensure an equitable representation of the different regions and cultures of the world.

3. A representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (Rome Centre), a representative of the International Council of Monuments and Sites (ICOMOS) and a representative of the International Union for Conservation of Nature and Natural Resources (IUCN), to whom may be added, at the request of States Parties to the Convention meeting in general assembly during the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization, representatives of other intergovernmental or non-governmental organizations, with similar objectives, may attend the meetings of the Committee in an advisory capacity.

Article 9

1. The term of office of States members of the World Heritage Committee shall extend from the end of the ordinary session of the General Conference during which they are elected until the end of its third subsequent ordinary session.

2. The term of office of one-third of the members designated at the time of the first election shall, however, cease at the end of the first ordinary session of the General Conference following that at which they were elected; and the term of office of a further third of the members designated at the same time shall cease at the end of the second ordinary session of the General Conference following that at which they were elected. The names of these members shall be chosen by lot by the President of the General Conference of the United Nations Educational, Scientific and Cultural Organization after the first election.

3. States members of the Committee shall choose as their representatives persons qualified in the field of the cultural or natural heritage.

Article 10

1. The World Heritage Committee shall adopt its Rules of Procedure.

2. The Committee may at any time invite public or private organizations or individuals to participate in its meetings for consultation on particular problems.

3. The Committee may create such consultative bodies as it deems necessary for the performance of its functions.

Article 11

1. Every State Party to this Convention shall, in so far as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion in the list provided for in paragraph 2 of this Article. This inventory, which shall not be considered exhaustive, shall include documentation about the location of the property in question and its significance.

2. On the basis of the inventories submitted by States in accordance with paragraph 1, the Committee shall establish, keep up to date and publish, under the title of "World Heritage List, a list of properties forming part of the cultural heritage and natural heritage, as defined in Articles 1 and 2 of this Convention, which it considers as having outstanding universal value in terms of such criteria as it shall have established. An updated list shall be distributed at least every two years.

3. The inclusion of a property in the World Heritage List requires the consent of the State concerned. The inclusion of a property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State shall in no way prejudice the rights of the parties to the dispute.

4. The Committee shall establish, keep up to date and publish, whenever circumstances shall so require, under the title of "List of World Heritage in Danger", a list of the property appearing in the World Heritage List for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. This list shall contain an estimate of the cost of such operations. The list may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods; and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such entry immediately.

5. The Committee shall define the criteria on the basis of which a property belonging to the cultural or natural heritage may be included in either of the lists mentioned in paragraphs 2 and 4 of this article.

6. Before refusing a request for inclusion in one of the two lists mentioned in paragraphs 2 and 4 of this article, the Committee shall consult the State Party in whose territory the cultural or natural property in question is situated.

7. The Committee shall, with the agreement of the States concerned, co-ordinate and encourage the studies and research needed for the drawing up of the lists referred to in paragraphs 2 and 4 of this article.

Article 12

The fact that a property belonging to the cultural or natural heritage has not been included in either of the two lists mentioned in paragraphs 2 and 4 of Article 11 shall in no way be construed to mean that it does not have an outstanding universal value for purposes other than those resulting from inclusion in these lists.

Article 13

1. The World Heritage Committee shall receive and study requests for international assistance formulated by States Parties to this Convention with respect to property forming part of the cultural or natural heritage, situated in their territories, and included or potentially suitable *for inclusion in the lists referred to in paragraphs 2 and 4 of Article 11. The purpose of such* requests may be to secure the protection, conservation, presentation or rehabilitation of such property.

2. Requests for international assistance under paragraph 1 of this article may also be concerned with identification of cultural or natural property defined in Articles 1 and 2, when preliminary investigations have shown that further inquiries would be justified.

3. The Committee shall decide on the action to be taken with regard to these requests, determine where appropriate, the nature and extent of its assistance, and authorize the conclusion, on its behalf, of the necessary arrangements with the government concerned.

4. The Committee shall determine an order of priorities for its operations. It shall in so doing bear in mind the respective importance for the world cultural and natural heritage of the property requiring protection, the need to give international assistance to the property most representative of a natural environment or of the genius and the history of the peoples of the world, the urgency of the work to be done, the resources available to the States on whose territory the threatened property is situated and in particular the extent to which they are able to safeguard such property by their own means.

5. The Committee shall draw up, keep up to date and publicize a list of property for which international assistance has been granted.

6. The Committee shall decide on the use of the resources of the Fund established under Article 15 of this Convention. It shall seek ways of increasing these resources and shall take all useful steps to this end.

7. The Committee shall co-operate with international and national governmental and non-governmental organizations having objectives similar to those of this Convention. For the implementation of its programmes and projects, the Committee may call on such organizations, particularly the International Centre for the Study of the Preservation and Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN), as well as on public and private bodies and individuals.

8. Decisions of the Committee shall be taken by a majority of two-thirds of its members present and voting. A majority of the members of the Committee shall constitute a quorum.

Article 14

1. The World Heritage Committee shall be assisted by a Secretariat appointed by the Director-General of the United Nations Educational, Scientific and Cultural Organization.

2. *The Director-General of the United Nations Educational, Scientific and Cultural Organization,* utilizing to the fullest extent possible the services of the International Centre for the Study of the Preservation and the Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN) in their respective areas of competence and capability, shall prepare the Committee's documentation and the agenda of its meetings and shall have the responsibility for the implementation of its decisions.

IV. FUND FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE

Article 15

1. A Fund for the Protection of the World Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Fund", is hereby established.

2. The Fund shall constitute a trust fund, in conformity with the provisions of the Financial Regulations of the United Nations Educational, Scientific and Cultural Organization.

3. The resources of the Fund shall consist of:

   (a) compulsory and voluntary contributions made by the States Parties to this Convention,

   (b) contributions, gifts or bequests which may be made by:

      (i) other States;

      (ii) the United Nations Educational, Scientific and Cultural Organization, other organizations of the United Nations system, particularly the United Nations Development Programme or other intergovernmental organizations;

      (iii) public or private bodies or individuals;

   (c) any interest due on the resources of the Fund;

   (d) funds raised by collections and receipts from events organized for the benefit of the Fund; and

   (e) all other resources authorized by the Fund's regulations, as drawn up by the World Heritage Committee.

4. Contributions to the Fund and other forms of assistance made available to the Committee may be used only for such purposes as the Committee shall define. The Committee may accept contributions to be used only for a certain programme or project, provided that the Committee shall have decided on the implementation of such programme or project. No political conditions may be attached to contributions made to the Fund.

Article 16

1. Without prejudice to any supplementary voluntary contribution, the States Parties to this Convention undertake to pay regularly, every two years, to the World Heritage Fund, contributions, the amount of which, in the form of a uniform percentage applicable to all States, shall be determined by the General Assembly of States Parties to the Convention, meeting during the sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization. This decision of the General Assembly requires the majority of the States Parties present and voting, which have not made the declaration referred to in paragraph 2 of this Article. In no case shall the compulsory contribution of States Parties to the Convention exceed 1% of the contribution to the Regular Budget of the United Nations Educational, Scientific and Cultural Organization.

2. However, each State referred to in Article 31 or in Article 32 of this Convention may declare, at the time of the deposit of its instruments of ratification, acceptance or accession, that it shall not be bound by the provisions of paragraph 1 of this Article.

3. A State Party to the Convention which has made the declaration referred to in paragraph 2 of this Article may at any time withdraw the said declaration by notifying the Director-General of the United Nations Educational, Scientific and Cultural Organization. However, the withdrawal of the declaration shall not take effect in regard to the compulsory contribution due by the State until the date of the subsequent General Assembly of States Parties to the Convention.

4. In order that the Committee may be able to plan its operations effectively, the contributions of States Parties to this Convention which have made the declaration referred to in paragraph 2 of this Article, shall be paid on a regular basis, at least every two years, and should not be less than the contributions which they should have paid if they had been bound by the provisions of paragraph 1 of this Article.

5. Any State Party to the Convention which is in arrears with the payment of its compulsory or voluntary contribution for the current year and the calendar year immediately preceding it shall not be eligible as a Member of the World Heritage Committee, although this provision shall not apply to the first election.

   The terms of office of any such State which is already a member of the Committee shall terminate at the time of the elections provided for in Article 8, paragraph 1 of this Convention.

Article 17

The States Parties to this Convention shall consider or encourage the establishment of national, public and private foundations or associations whose purpose is to invite donations for the protection of the cultural and natural heritage as defined in Articles 1 and 2 of this Convention.

Article 18

The States Parties to this Convention shall give their assistance to international fund-raising campaigns organized for the World Heritage Fund under the auspices of the United Nations Educational, Scientific and Cultural Organization. They shall facilitate collections made by the bodies mentioned in paragraph 3 of Article 15 for this purpose.

V. CONDITIONS AND ARRANGEMENTS FOR INTERNATIONAL ASSISTANCE

Article 19

Any State Party to this Convention may request international assistance for property forming part of the cultural or natural heritage of outstanding universal value situated within its territory. It shall submit with its request such information and documentation provided for in Article 21 as it has in its possession and as will enable the Committee to come to a decision.

Article 20

Subject to the provisions of paragraph 2 of Article 13, sub-paragraph (c) of Article 22 and Article 23, international assistance provided for by this Convention may be granted only to property forming part of the cultural and natural heritage which the World Heritage Committee has decided, or may decide, to enter in one of the lists mentioned in paragraphs 2 and 4 of Article 11.

Article 21

1. The World Heritage Committee shall define the procedure by which requests to it for international assistance shall be considered and shall specify the content of the request, which should define the operation contemplated, the work that is necessary, the expected cost thereof, the degree of urgency and the reasons why the resources of the State requesting assistance do not allow it to meet all the expenses. Such requests must be supported by experts' reports whenever possible.

2. Requests based upon disasters or natural calamities should, by reasons of the urgent work which they may involve, be given immediate, priority consideration by the Committee, which should have a reserve fund at its disposal against such contingencies.

3. Before coming to a decision, the Committee shall carry out such studies and consultations as it deems necessary.

Article 22

Assistance granted by the World Heritage Committee may take the following forms:

(a) studies concerning the artistic, scientific and technical problems raised by the protection, conservation, presentation and rehabilitation of the cultural and natural heritage, as defined in paragraphs 2 and 4 of Article 11 of this Convention;

(b) provision of experts, technicians and skilled labour to ensure that the approved work is correctly carried out;

(c) training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage;

(d) supply of equipment which the State concerned does not possess or is not in a position to acquire;

(e) low-interest or interest-free loans which might be repayable on a long-term basis;

(f) the granting, in exceptional cases and for special reasons, of non-repayable subsidies.

Article 23

The World Heritage Committee may also provide international assistance to national or regional centres for the training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage.

Article 24

International assistance on a large scale shall be preceded by detailed scientific, economic and technical studies. These studies shall draw upon the most advanced techniques for the protection, conservation, presentation and rehabilitation of the natural and cultural heritage and shall be consistent with the objectives of this Convention. The studies shall also seek means of making rational use of the resources available in the State concerned.

Article 25

As a general rule, only part of the cost of work necessary shall be borne by the international community. The contribution of the State benefiting from international assistance shall constitute a substantial share of the resources devoted to each programme or project, unless its resources do not permit this.

Article 26

The World Heritage Committee and the recipient State shall define in the agreement they conclude the conditions in which a programme or project for which international assistance under the terms of this Convention is provided, shall be carried out. It shall be the responsibility of the State receiving such international assistance to continue to protect, conserve and present the property so safeguarded, in observance of the conditions laid down by the agreement.

VI. EDUCATIONAL PROGRAMMES

Article 27

1. The States Parties to this Convention shall endeavour by all appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect by their peoples of the cultural and natural heritage defined in Articles 1 and 2 of the Convention.

2. They shall undertake to keep the public broadly informed of the dangers threatening this heritage and of activities carried on in pursuance of this Convention.

Article 28

States Parties to this Convention which receive international assistance under the Convention shall take appropriate measures to make known the importance of the property for which assistance has been received and the rôle played by such assistance.

VII. REPORTS

Article 29

1. The States Parties to this Convention shall, in the reports which they submit to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with details of the experience acquired in this field.

2. These reports shall be brought to the attention of the World Heritage Committee.

3. The Committee shall submit a report on its activities at each of the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization.

VIII. FINAL CLAUSES

Article 30

This Convention is drawn up in Arabic, English, French, Russian and Spanish, the five texts being equally authoritative.

Article 31

1. This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.

2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 32

1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited by the General Conference of the Organization to accede to it.

2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 33

This Convention shall enter into force three months after the date of the deposit of the twentieth instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments of ratification, acceptance or accession on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

Article 34

The following provisions shall apply to those States Parties to this Convention which have a federal or non-unitary constitutional system:

(a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States Parties which are not federal States;

(b) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of individual constituent States, countries, provinces or cantons that are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption.

Article 35

1. Each State Party to this Convention may denounce the Convention.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation. It shall not affect the financial obligations of the denouncing State until the date on which the withdrawal takes effect.

Article 36

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the Organization, the States not members of the Organization which are referred to in Article 32, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, or accession provided for in Articles 31 and 32, and of the denunciations provided for in Article 35.

Article 37

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.

2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession, as from the date on which the new revising convention enters into force.

Article 38

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Done in Paris, this twenty-third day of November 1972, in two authentic copies bearing the signature of the President of the seventeenth session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 31 and 32 as well as to the United Nations.

APPENDIX 3

ATTORNEY-GENERAL'S DEPARTMENT

TEL: 71 9111

ROBERT GARRAN OFFICES
NATIONAL CIRCUIT
BARTON A.C.T. 2600

PLEASE QUOTE:
YOUR REF: GC/85/1735

13 November 1985

The Secretary,
House of Representatives,
Standing Committee on Environment
and Conservation,
Parliament House,
CANBERRA ACT 2600

Attention: Mr John Cummins

Management of World Heritage Properties in New South Wales

I refer to your letter dated 22 October 1985 requesting my advice on the application of the Convention for the Protection of the World Cultural and Natural Heritage ('the Convention') to certain areas in New South Wales. The advice is being sought for the purposes of the House of Representatives Standing Committee on Environment and Conservation's ('the Committee') report on the management of World Heritage Areas in New South Wales. The areas subject to inquiry are the Lord Howe Island Group and the Willandra Lakes Region, both of which have been inscribed on the World Heritage List ('the List') established under the Convention, and, the New South Wales Rainforests which is to be nominated for inclusion on the List before 31 December this year.

2. You say the Committee is 'particularly interested in advice on the obligations placed on the Commonwealth following acceptance of a nomination by the World Heritage Committee, reliance on New South Wales Government authorities in fulfilling the Commonwealth's obligations under the Convention and the responsibility of the Commonwealth in providing financial and other assistance to assist in the management of World Heritage properties.' Advice on those matters is set out below. I will also take the opportunity to correct certain misapprehensions concerning the Convention and the World Heritage Properties Conservation Act 1983 ('the Act') which become apparent at the Committee's hearings in Sydney on Friday, 18 October 1985. I received a copy of the Hansard Report of that hearing on 4 November 1985.

When obligations under the Convention arise

3. At the outset I should make clear that Australia has obligations under the Convention with respect to property which is 'cultural heritage' and/or 'natural heritage' as defined in Article 1 of the Convention, whether or not that property has been nominated for, or inscribed on, the List

(see Commonwealth v Tasmania ('Tasmanian Dam Case') (1983) 46 ALR 625 at p. 661). This means that if the New South Wales Rainforests are 'natural heritage' within the meaning of the Convention, Australia has existing obligations under the Convention with respect to that area. Nomination of the area would amount to identification (or further identification) of its natural heritage status and, thereafter, it would be difficult for Australia to deny that status. Inscription of the property on the list would be conclusive of its status as 'natural heritage' under the Convention.

Primary obligations under the Convention

4. The primary obligations of Australia under the Convention that are relevant to the three NSW areas are as follows:

'ARTICLE 4

'Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

ARTICLE 5

'To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country:

...

(c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage;

(d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary to the identification, protection, conservation, presentation and rehabilitation of this heritage;

... '

5. These obligations were subject to considerable judicial exegesis in the Tasmanian Dam Case and the following general points may be made with respect to them:

- Australia is the primary judge of the extent of those obligations. However in exercising that judgment Australia must act in good faith (Tasmanian Dam Case at pp. 661 and 776-7);

- The selection of the appropriate domestic measures to give effect to those obligations identified is left by the Convention to Australia. (Tasmanian Dam Case at pp. 674, 698, 703, 776, 782 and 846).

- The allocation of resources (including financial resources) for the discharge of those obligations is also a matter for Australia to decide, but this discretion is *not at large. It must be exercised in good faith.* (Tasmanian Dam Case at pp. 776-777) (Australia is not obliged to sacrifice other financial priorities and allocate disproportionate resources towards protecting and conserving cultural or natural heritage.)

6. In relation to the NSW World Heritage areas it is therefore a matter of judgment as to what is necessary to enable Australia to give effect to its obligations under the Convention. Furthermore, even if very little positive action was necessary to enable Australia to give effect to those obligations, it may be considered desirable, as a matter of policy, to take action over and above the minimum necessary. I make no comment on this policy aspect.

7. As to what measures might be seen as necessary, at the very least Australia would be in breach of its obligations *under the Convention if, by positive action or by default,* the integrity of a NSW World Heritage area as a whole, or a valuable feature of that area, was likely to be endangered, damaged or destroyed. Certainly not all interference by man in a World Heritage area would give rise to those consequences and hence a breach of Australia's obligation to protect and conserve the property. It will be a matter for expert evidence in a particular case. For example, the Gordon-below Franklin Dam, and the reservoir it created, would have inundated and destroyed many of the features listed as important components that made up the cultural or natural heritage in the nomination of the Western Tasmania Wilderness National Parks. Construction of the dam and its consequent destruction of such components would thus have placed Australia in breach of the Convention.

8. Furthermore, the cumulative impact of activities may give *rise to a breach of the Convention. While one activity,* if considered in isolation, may not diminish the cultural or natural heritage of an area, it may in conjunction with other activities lead to that result.

9. I note that the NSW National Parks and Wildlife Service has referred to the need for future planning, research and monitoring in relation to the NSW World Heritage areas. The

extent of Australia's obligations under Article 5 of the Convention to carry out such measures would depend on:

(a) the available technical and financial resources (taking into account competing needs) within Australia; and

(b) whether those measures were necessary to protect and preserve the cultural and natural heritage within the meaning of the Convention.

In absence of details of those matters I am unable to advise whether Australia would be obliged under the Convention to carry out planning, research and monitoring at the level desired by the NSW National Parks and Wildlife Service.

10. A specific example that clearly raises the question of the allocation of financial resources is the proposal to recover gravel on Lord Howe Island for works on the Island, referred to during the Committee's hearing in Sydney. If the collection of gravel on the island would result in a significant diminution of the natural heritage of the island, it would, in my view be incumbent on Australia to explore alternatives that would avoid such destruction, such as allocating adequate funds to enable gravel to be imported. In reaching this conclusion, I make no judgment as to which level of government, Commonwealth or State, should, in that event, provide the funds.

Reliance on the NSW Government to give effect to the Convention

11. While the Commonwealth Government bears ultimate international responsibility for carrying out the Convention, there is no legal impediment to the Commonwealth relying on the NSW Government, or its authorities, to facilitate compliance with its obligations under the Convention. Indeed the Lord Howe Island Group and the Willandra Lakes Region were inscribed on the List by the World Heritage Committee in the knowledge that they would be managed by NSW authorities. However, given its ultimate responsibility, it would be appropriate for the Commonwealth, as a matter of policy, to actively monitor compliance with the Convention.

12. The Committee would be aware that Commonwealth reliance on the States to give effect to international obligations on behalf of Australia has attendant risks, the major one being that a failure by a State to give effect to an obligation will lead to a breach by Australia of that obligation. This would have happened had Tasmania proceeded with the Gordon-below-Franklin Dam. In relation to the Commonwealth's reliance on the NSW Government to give effect to the Convention I would draw your attention to page 8 of the Hansard Report of the Committee's 14 October hearing where Mr Whitehouse stated that NSW was confident that it could manage its world heritage areas at an appropriate level.

13. A number of other matters concerning reliance on NSW to give effect to the Convention will be raised below in discussing the responsibility of the Commonwealth to provide assistance in the management of NSW World Heritage properties. However, at this point, I should correct an assertion made by Mr Whitehouse, at pages 9-10 of the Hansard Report referred to above, that the Convention does not contain a 'federal clause' (referred to by Mr Whitehouse as a 'states clause'). It does - Article 34. Under Article 34 there are two levels of obligation for federations. In relation to those provisions of the Convention the implementation of which comes under Federal legislative power the obligations are the same as those for countries with a unitary system. In relation to those provisions of the Convention the implementation of which comes under the legal jurisdiction of the constituent states of the federation, the only obligation on the federal government is to inform the competent state authority of those provisions. Since the Commonwealth has the constitutional power to implement all provisions of the Convention the second, and less onerous level of obligation is not reached in the case of Australia (Tasmanian Dam Case at p. 700, 735, 779 and 809). The attendant assertions of Mr Whitehouse are also incorrect. Relatively few international conventions recently entered into by Australia contain federal clauses. (They are viewed with suspicion by unitary States as a means of enabling Federal States to be subject to lesser obligations.) Secondly, although I am not certain what is meant by the term 'direct' constitutional responsibility in the context of implementation of the Convention, certainly the Commonwealth has 'direct' constitutional power to implement the Convention.

Responsibilities of the Commonwealth

14. There is no doubt that the Commonwealth bears the direct international responsibility for the management of World Heritage areas in NSW. However, while the Commonwealth could, as a matter of law, play a more direct role in that management a number of non-legal factors need to be taken into account. First, there is considerable sensitivity on the part of some States towards the involvement of the Commonwealth in the management of areas, such as national parks, within those States. Secondly, where World Heritage areas are being managed in a satisfactory manner by State authorities there is no reason for the Commonwealth play an active role in that management. Thirdly, the fact that the Commonwealth bears international responsibility for World Heritage areas does not mean that the Commonwealth (as opposed to the States) does, or is required to bear financial responsibility for the management or protection of those areas or for other projects. Finally, at least in relation to New South Wales, nominations of World Heritage List have been made on the basis of management by State authorities.

Coercive action

15. There is no need or requirement for the Commonwealth to take coercive action with respect to NSW World Heritage areas

unless the NSW Government refuses to prevent an apprehended breach of the Convention. In fact, the major coercive measure available, the Act, is a measure of last resort.

16. While on the subject of the Act it would be appropriate to correct some misapprehensions concerning its operation in relation to World Heritage areas in NSW (see pages 34-35 of the above-mentioned Hansard report). The Act contains a two stage procedure, and in relation to protection under s.9 of the Act, a three stage procedure, before it deems certain acts to be unlawful in relation to a particular property. First, the property, must be 'identified property' under s.3(2) of the Act. The Lord Howe Island Group and the Willandra Lakes Region, by reason of their nomination to the List, are 'identified property'. The NSW Rainforests will become 'identified property' once nominated to the List. The second stage is a proclamation by the Governor-General under s.6 or s.7 of the Act which cannot be made unless he is satisfied that an 'identified property' is being or is likely to be damaged or destroyed. No such proclamation has been made in relation to a NSW World Heritage area and hence the substantive prohibitions under the Act have no application to any of those areas. The third stage referred to in relation to s.9 is necessary because sub-paragraphs 9(1)(a)-(g) of the Act were held invalid by the High Court in the Tasmanian Dam Case. The third stage involves the making of regulations for purposes of s.9(1)(h) specifying the acts which will be unlawful in an area subject to a proclamation made by the Governor-General. Unless and until the Act rendered certain activities unlawful in NSW World Heritage areas there would be no need to obtain the consent of the Minister for Arts, Heritage and Environemnt to carry on those activities.

Non-coercive action

17. There are basically two forms of non-coercive action the Commonwealth could take. The first is the provision of funds, the second is active assistance in management. If NSW refused, or was unable, adequately to fund the protection and conservation of its World Heritage areas and this lack of funding was likely to place Australia in breach of the Convention then it would be incumbent on the Commonwealth, if it had sufficient resources, to provide that funding. The question of the funding of World Heritage areas at a level over and above that which is necessary to avoid a breach of the Convention is a policy one upon which I make no comment.

18. One would normally expect that if a State is managing an area in accordance with sound conservation principles before it is identified as a World Heritage area, such identification, and the attendant obligations under the Convention, would not give rise to a need for additional funding in order to meet Convention obligations.

19. If NSW manages the World Heritage areas at a level which enables Australia to give effect to its international

obligations, then the Commonwealth would have no obligation under the Convention actively to assist in such management. Again, the provision of management assistance over and above the level which is necessary to give effect to the Convention is a policy question upon which I make no comment. However, I note Mr Whitehouse's comment on page 13 of the aforementioned Hansard report that:

> 'The State's position is that it wishes to have the final responsibility to manage those [World Heritage] areas. They are part of New South Wales and the State sees that it has the direct reponsibility for their management.'

(H BURMESTER)
for Secretary

Contact Officer: Bill Campbell
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