RE: ACT Heritage Bill 2002

Australia ICOMOS welcomes the opportunity to comment on the Heritage Bill 2002 as invited in your exposure draft explaining the proposals for reform of legislation covering heritage issues in the ACT.

Australia ICOMOS

Australia ICOMOS provides the following submission as the main non-government cultural heritage professional organisation in Australia. (Attachment 1)

Our comments are informed by our experience and a suite of policies and principles that are recognised as providing leadership for heritage conservation in Australia.

- Objectives for Legislation to Protect the Cultural Environment, 1993. These were developed with the advice of members throughout Australia with experience in administering and practising heritage conservation under different heritage statutes at all government levels. (Attachment 2)
- Cultural Heritage Places Policy 1998, provides guidance on heritage conservation policies and strategies, including heritage legislation.
- The Burra Charter, 1999. This charter for places of cultural significance, revised since the ACT heritage review, is widely acknowledged by Australian governments as the national standard, or ‘best practice’ for heritage conservation. A key element of its revision is the greater acknowledgment of (a) meanings and associations with place as an integral element of heritage significance, and (b) the essential role of the community and its values in heritage conservation.

Comments

Australia ICOMOS welcomes the draft Bill. It highlights the importance of heritage by being a stand-alone Bill. The Bill also simplifies several processes to better identify, protect and conserve heritage places and objects in the ACT.

There are however several issues that we feel need further consideration. These are briefly discussed below:

s.13 Heritage Council

Australia ICOMOS is concerned that members from disciplines relevant to heritage conservation do not form the majority on the Council. Either the number of non-experts should be reduced or the members with expertise relevant to heritage conservation
should be increased. It is not appropriate to the independence of heritage assessment decisions by the Council to have industry members as voting members. We also note that it is important that members have relevant heritage experience, rather than merely coming from the disciplines mentioned.

s.15 Ministerial direction of Heritage Council
Australia ICOMOS queries the role of the Minister as stated in (a) about policy it should put into practice and objectives it should follow. This potentially compromises the role of the Council as an independent advisory body. Clearer wording is needed to ensure this independence of the Council in providing advice to the Minister in order to maintain the confidence of the ACT community.

s.27 Role of Legislative Assembly
Similarly, Australia ICOMOS strongly questions the role of the ACT parliament in decisions regarding heritage significance. This is a totally unnecessary involvement of the political process and potentially compromises the independence of the heritage identification process which already includes public appeal opportunities.

The LA may be needed to make decisions about planning approvals, but this should not be conflated with the role of the Council in identifying heritage places, objects and values. This aspect of the Bill is totally against best practice standards as outlined in the Burra Charter and observed by other states in Australia.

Our reservations regarding the Heritage Council and the role of the Minister and Legislative Assembly stem from national best practice as articulated in the Burra Charter (Article 6), that separates decisions about what is heritage from decisions about what should happen to heritage. The expert process of identifying heritage places and values may be compromised by the inclusion of the Planning Authority on the Heritage Council, clearance by the Minister, and tabling in the Assembly.

s.44 Council to consider development applications
Australia ICOMOS recommends that the Council have the power to reject development applications because they impact on the heritage values of a place. This is practice for heritage protection in most other jurisdictions in Australia.

Part 10 Heritage and public authorities
This part of the bill is welcomed. Australia ICOMOS recommends consideration of extending good heritage management practice by such public authorities by requiring them to:

- maintain a list of their heritage places arising from an audit and include a requirement to assess the heritage values of any new property acquisitions (s.78)
- have a strategy for their heritage places beyond the requirement to have conservation management plans (s.82) (such CMPs should be required to be implemented, not merely developed)
- dispose of heritage places and objects in such a way as to protect their values
- assist the Heritage Council in carrying out its functions
Should further clarification of any of these points be required please do not hesitate to contact me at the Australia ICOMOS Secretariat at Deakin University, 221 Burwood Highway, Burwood VIC 3125 (email: austicomos@deakin.edu.au).

Yours sincerely,

Kristal Buckley
President

29 November 2002

cc Simon Corbell MLA, Minister for Urban Services
Australia ICOMOS

ICOMOS (International Council on Monuments and Sites) is primarily concerned with the philosophy, terminology, methodology and techniques of conservation for places of cultural heritage significance. It is a non-government professional organisation formed in 1965. It is closely linked to UNESCO being a statutory advisory body under the World Heritage Convention. ICOMOS has national committees in some 100 countries with the headquarters in France. Members in these countries are formed into national committees and have the right to participate in the ICOMOS General Assemblies held every three years.

Australia ICOMOS is a national committee of the international body and was formed in 1976. It shares the interests and concerns of ICOMOS and has been particularly active in the development and promotion of the philosophy, standards and practice of cultural heritage conservation. Its major achievement is The Burra Charter (the Charter for Places of Cultural Significance) which has become the Australian standard for conservation. The Charter has also achieved widespread international acclaim.

Australia ICOMOS has a membership of about 400 practitioners from a wide range of disciplines dealing with conservation. It carries out substantial national programs and participates in the work of international ICOMOS. Internationally, Australia ICOMOS supports an Australian member on the international ICOMOS Executive Committee, is involved with most of the International Scientific Committees and attends General Assemblies. Our members participate in a range of conservation activities including site visits, training, conferences and meetings.

Australia ICOMOS acts as a national and international link between public authorities, institutions and individuals involved in the study and conservation of all places of cultural significance.

(www.icomos.org/australia)
Australia ICOMOS believes there should be effective legislation to protect the cultural environment in each State and Territory as part of the National Estate.

The National Estate consists of

*those places, being components of the natural environment of Australia or the cultural environment of Australia, that have aesthetic, historic, scientific or social significance or other special values for special generations as well as for the present community.*

(Australian Heritage Commission Act 1975, s.4)

Australia ICOMOS believes that there should be ideally specific and comprehensive legislation in each State and Territory to protect those places within each jurisdiction which form part of the National Estate. However, Australia ICOMOS recognises that there are today separate legislation, departments and procedures to protect the natural, Aboriginal cultural and historic cultural environments. The objectives below relate primarily to the cultural environment, but it is recognised that this cannot always be considered in isolation from the natural environment.

This statement is a revision of one issued by Australia ICOMOS in 1976 which set out the need for each State and Territory appropriate and adequate legislation to protect the cultural environment. This amended document has been prepared bearing in mind *Goal 1: Advocacy* in the Australia ICOMOS Corporate Plan. At present legislation exists in all States and Territories (except Tasmania*), at the Commonwealth level, and in the Commonwealth's External Territories under the Australian Heritage Commission Act. Where legislation exists, it is not necessarily appropriate or adequate.

It is appropriate that each State and Territory Government will have different priorities and views on the conservation of the cultural environment, but Australia ICOMOS believes that the objectives set out below apply equally throughout Australia, and are essential to any legislation to protect the cultural environment.

Australia ICOMOS believes that it is the duty of each State and Territory Government to consider the introduction of amendments to existing legislation (and in the case of the Tasmanian Government, the introduction of new legislation [see footnote]) which will achieve these objectives.

1. **An Act which is simple to operate and simple to understand.**

It is essential that the operative provisions for the Act are simple, and that they do not place an impossible operative burden on the administrative staff so that places are lost through an inability to complete procedures within a given time. There must be a simple and efficient system of dealing with matters coming before the Heritage Authority. There must be an equitable system to allow people affected to have issues revised. However, there should not be any system of formal legal appeal on the issues of cultural significance.

2. **Conservation by agreement should be the primary aim (as opposed to conservation by compulsion) while maintaining the required standards and conditions.**

There should be provision for heritage agreements which run with the land and bind subsequent owners. The Minister responsible should be empowered to waive rates and land taxes on the advice of the Heritage Authority. There should be provision for all possible forms of technical, professional, practical and financial assistance. The Minister responsible for the cultural environment should be empowered to waive or vary provisions in other legislative instruments, if doing so would encourage the conservation of a place which forms part of the cultural environment.

3. **Adequate powers to list and protect the cultural environment.**

There must be power to provide an adequate early warning system. That is to say, there must be a comprehensive register to ensure that places are not damaged or destroyed without adequate notice being given to the Heritage Authority. There must be provision for adequate sanctions, and this means penalties severe enough to ensure compliance with the requirements of the Act. Penalties can vary from direct financial ones to controls implemented under the planning system.

4. **The provision of a wide range of services and functions to advise the Government and to assist in the conservation of the cultural environment.**

The Heritage Authority should be able to give overall guidance and general advice on all matters related to the cultural environment. It should be able to support and encourage research, professional training, the provision of information, and the promotion, interpretation and enhancement of the cultural environment. It should have responsibility for all places which form parts of the cultural environment and with all kinds of ownership. It should not generally be responsible for the administration of property, except where acquisition is used to facilitate conservation.

5. **Adequate professional staffing and proper administrative backup.**

The administrative structure should be such that the Heritage Authority is responsible through its Chairperson to the responsible Minister. The Heritage Authority should have a Chief Executive Officer through whom the staff is responsible to the Heritage Authority.

6. **The Minister responsible for the Act must receive the best possible advice.**

The Heritage Authority must be a representative body of informed members with appropriate skills. There must be a majority of members who are knowledgeable about or skilled in the conservation of the cultural environment. This will require the skills of historians, conservation architects, archaeologists and planners. Representatives of other interests and disciplines may be included, but not so as to increase the size of the Heritage Authority beyond a workable one.

7. **Conservation provisions should be treated as an integral part of the regular planning system, albeit administered by a specialist branch.**

While there will often be a need to delegate to local government authorities, the delegations must be carefully administered, and the Heritage Authority must not abrogate its ultimate responsibility for actions in relation to all places which form part of the cultural environment.

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Australia ICOMOS, 7 April 1993