Conservation Legislation Amendment Bill 1988

Date Introduced: 25 February 1988
House: Senate
Presented by: Senator the Hon. Graham Richardson, Minister for the Arts, the Environment, Tourism and Territories

Digest of Bill

Purpose

To provide a legislative backing for the interim protection of the north-east Queensland rainforests, to deem that the Environment Protection (Impact of proposals) Act 1974 does not apply to world heritage land since the commencement of the World Heritage Properties Conservation Act 1983, and to clarify the powers to administer such areas.

Background

The use of the external affairs power to protect areas of forest came to the fore with the Tasmanian Dams Case in which that power was used to implement the World Heritage Convention. The Convention was adopted by UNESCO in 1972 and provides for areas of world importance to be identified, listed and protected by the host country. On 10 March 1988 the High Court delivered its latest decision in this area in the case of Graham Frederick Richardson and the Forestry Commission and Another (the Lemonthyme Case). That case dealt with the validity of the Lemonthyme and Southern Forests (Commission of Inquiry) Act 1987. In determining the importance of that case on the validity of the interim protection of the Queensland rainforests, the status of the two areas of land needs to be considered.

The Queensland rainforests were nominated for listing on the World Heritage List in December 1987. This means that the World Heritage Committee will consider whether the area has the necessary values to be worthy of listing as an area of world heritage. Listing is not automatic. In 1987, forty-one of the 63 nominations, or 65%, were accepted for listing.

The Lemonthyme and Southern Forest area of Tasmania has yet to be nominated for listing. The purpose of the Lemonthyme and Southern Forests (Commission of Inquiry) Act 1987 was to prevent activity in the area while an inquiry determined whether the area had the necessary attributes to be worthy of listing. In brief, the area protected by the legislation recently considered was one step further away from gaining world heritage status than the Queensland rainforests. It is therefore
very likely that the reasoning behind the Lemonthyme Case will apply equally to any challenge to the interim protection of the Queensland rainforest.

In the Lemonthyme Case, the majority (5 to 2) voted in favour of the validity of the entire legislation. While two Justices dissented, this was due to a lack of sufficient evidence to establish necessary facts, and there was no disagreement with the general principles relied on by the majority. In the joint judgment of Mason CJ and Brennan J, they state: 'The taking of action by way of interim protection pursuant to the external affairs power, for example, by the enactment of legislation prohibiting the destruction of, or damage to, particular property, pending a determination of its status as a property to be nominated for inclusion in the World Heritage List may be supported as action which can reasonably be considered appropriate and adapted to the attainment of the object of the Convention, namely the protection of the heritage.'

In determining whether a law that has domestic application can be supported by the external affairs power, Deane J referred to his judgment in the Tasmanian Dams Case and continued 'there must be identified a purpose or object, itself a legitimate subject of external affairs: e.g. the carrying into effect of a treaty, the performance of an international obligation or the obtaining of an international benefit.' In determining that the majority of the Act under consideration was valid, he continued: 'a purpose or object which the Act as a whole is designed to serve is the identification, delineation and protection of actual and potential World Heritage areas.'

Dawson J, who found the Act to be entirely valid, noted that the methods for identification and protection heritage areas were for each party to the Treaty to determine. He noted, 'The only possible question is whether the measures contained in the legislation are reasonably capable of being considered appropriate by the legislature for the identification and preservation of the nation's heritage.' As the conclusion reflects, he found the interim protection to be a valid exercise of the external affairs power.

The judgments in the Lemonthyme Case strongly suggest that there will be little doubt of the validity of legislation providing interim protection to areas nominated for World Heritage listing.

The Environment Protection (Impact of Proposals) Act 1974 aims to ensure that matters affecting the environment are fully examined and provides for inquiries to be established to ascertain the impact of decisions that will affect the environment. The amendments contained in this Bill will ensure that decisions to protect world heritage property will not attract the provisions of this Act.
Main Provisions

Clause 5 will insert a new section 3A into the World Heritage Properties Conservation Act 1983 (the Principal Act). The proposed section defines 'identified property' which is protected under the Act. 'Identified property' will be property that is subject to an inquiry to determine if the property forms part of the cultural or national heritage, is subject to world heritage nomination, is listed, or has been declared by regulation to form part of the cultural or natural heritage.

Section 9 of the Principal Act will be amended by clause 6 to clarify what is an unlawful act in relation to identified property. The amendments make it clear that the doing of an act that has been prescribed will be an offence except with the written consent of the Minister.

Clause 7 will amend section 17 of the Principal Act to make it clear that where agreement cannot be reached on the amount of compensation payable for the compulsory acquisition of property, this will be determined by the Federal Court.

Proposed section 17A, which will be inserted into the Principal Act by clause 7, deals with entry and search powers. For an eligible purpose (i.e., to determine if the Principal Act is being breached), an inspector may enter an eligible place (an area other than a dwelling house) to search, take photographs and records and examine items. Unless the inspector believes, on reasonable grounds, that it is necessary to immediately enter a place to prevent the concealment, loss or destruction of an item, entry is only to be made with consent or under a warrant. Inspectors will be required to carry and produce an identity card.

Proposed section 17C will make it an offence, punishable by a $1000 fine and/or 12 months imprisonment, to obstruct or hinder an inspector without reasonable excuse. Proposed section 17C will require inspectors not to disclose information gained except for the purposes of the Principal Act.

Clause 9 will amend the Environment Protection (Impact of Proposals) Act 1974 to make it clear that this Act does not apply to areas covered by the Principal Act. This amendment will apply from the commencement of the Principal Act.

Under clause 10, the Proclamation made on 19 January 1988 to protect the Queensland rainforest will be deemed never to have come into force. This area is protected due to the amendment made by clause 5 to the definition of identified property.

References
1. Graham Frederick Richardson and The Forestry Commission and Another, Transcript, p. 12.
2. Ibid., p.38.
3. Ibid., p.40.
4. Ibid., p.58.