Purpose

To provide a means nationally to preserve and protect in Australia and Australian waters areas and objects which are, in accordance with Aboriginal and Islander tradition and heritage, of particular significance.

Background

It is only over the last twenty or so years that the particular significance of certain sites and objects to the cultural heritage of Aborigines and Islanders has come to be widely accepted. The concept of a sacred site or object is basic to Aboriginal culture. Like the culture itself, it is a very localised concept and knowledge of what is sacred is held only by people of the particular community concerned with each site. The development of the legislative means to protect sacred sites and objects was a concomitant of Land Rights legislation. Where, of course, these sites reside on land controlled by Aboriginal and Islander communities by virtue of the Land Rights legislation, there is no need for specific legislation. The problem, however, is that although there is now in place in most jurisdictions (except perhaps Queensland and Western Australia) Land Rights Acts, often times sacred sites and objects fall outside of land able to be claimed under the Acts.

The Commonwealth is not the first to implement legislation to protect Aboriginal sacred sites and objects. Indeed, in the Commonwealth's Aboriginal Land Rights (Northern Territory) Act 1976 there is provision for protecting sacred sites (s.69). More comprehensive legislation was passed in other jurisdictions - see Aboriginal Heritage Act 1972 (W.A.); Archaeological and Aboriginal Relics Preservation Act 1972 (Vic.); National Parks and Wildlife Act 1974 (NSW); and Aboriginal Sacred Sites Protection Act 1978 (N.T.). Questions surround the
administration of the W.A. legislation and a Victorian magistrate has called the wording of the Victorian act "vague" and "obtuse". Most of the Acts make no provision for protecting sacred objects. The Commonwealth legislation will, therefore, operate nationally to plug gaps in the presently operating sacred sites legislation. Express provisions in the Bill save the operation of consistent State and Territory laws (clause 7).

Outline

The basic scheme of the Bill sets up the necessary legal machinery to empower the Minister for Aboriginal Affairs or authorized officers of his department to make Declarations regarding certain areas or objects. The Declarations will specify the land or objects concerned and have provisions relating to their protection. Penal sanctions then attach for breach or contravention of the Declarations; injunctive relief is also available. The Bill also has provisions for the payment of compensation where the making of a Declaration amounts to the acquisition of property.

Main Provisions

By clause 6, the Crown in right of the Commonwealth, States and Northern Territory is bound by the provisions of the Act.

Clause 9 empowers the Minister for Aboriginal Affairs on the application of Aborigines to make emergency declarations for the preservation of certain areas from immediate injury or desecration. By sub-clause 3(2), injury or desecration mean the treatment of an area inconsistent with Aboriginal tradition.

Clause 10 empowers the Minister to make declarations in circumstances where there is no immediate threat to an area. Before making a declaration, the Minister must receive a report on the area covering the significance of, and threat to the area, as well the effect, if any, of the making of the declaration.

Clause 11 requires that Ministerial Declarations shall specify the areas in question, as well as contain provisions relating to their protection. Likewise with Declarations relating to objects (clause 12(3)) and Declarations made by authorized officers (clause 18(2)).

By clause 12, the Minister may make declarations regarding specified objects or classes of objects. The
Minister is commanded to consider the effect his declaration will have on proprietary interests.

Clauses 14 and 15 relate to publication in the Commonwealth Gazette and review by either House of Parliament. The declarations are to be treated like regulations with either House having the power to disallow.

Clause 18 empowers authorized officers, so designated by the Minister, to make Declarations in respect of certain areas, objects or classes of objects. These Declarations can be made only when the area or object is under immediate threat and remain in force for 48 hours.

Part III of the Bill covers offences, penalties and legal proceedings. Clause 22, for instance, provides for imprisonment up to five years, or a fine of $10,000 for contravention of the provisions of a declaration. Clause 27 makes provision for in camera proceedings.

Clause 32 states that Bill will cease to have effect two years after its commencement. This gives effect to the Government's intention to introduce comprehensive land rights and heritage legislation within this period.

For further information, if required, contact:

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