Purpose

To set up machinery to allow for the protection of certain properties in Australia.

Background

The Commonwealth is committed to protecting the area known as South West Tasmania which was accepted for placement on the World Heritage List in December 1983. Australia is a party to the Convention for the Protection of the World Cultural and Natural Heritage which provided that a list should be made of properties throughout the world which constituted outstanding universal value in terms of the world's cultural and natural heritage. While the nomination for listing of South West Tasmania was made jointly by the Commonwealth Government and the former Tasmanian Government, the present Tasmanian Government is opposed to the listing and intends to build a dam which will flood part of the area. On 30 March 1983, the Commonwealth Government made regulations under the National Parks and Wildlife Conservation Act 1975, making it unlawful to carry out works in South West Tasmania. These regulations are called the World Heritage (Western Tasmania Wilderness) Regulations. The Commonwealth has sought an injunction to have these regulations enforced and Tasmania has sought a declaration that the regulations are invalid. The High Court has not yet heard these matters. The present Bill is not limited to the South West Tasmania area. It aims to protect all cultural and natural heritage properties in Australia.

Provisions

Sub-clause 3(2) defines the property to which the Bill applies. "Identified property" is property which has been nominated by the Commonwealth to go on the World
Heritage List or property outlined in the regulations as forming part of the cultural and natural heritage.

Clauses 6, 7 and 8 of the Bill provide for the making of Proclamations in relation to "identified property" where the Governor General is satisfied that the property is being or is likely to be damaged or destroyed. Clause 6 enables Proclamations to be made in relation to property in a State 1) where the identified property has been nominated by the Commonwealth to go on the World Heritage List, or 2) where Australia is internationally bound to protect the identified property, or 3) where it is desirable for treaty reasons to protect the identified property, or 4) where the protection of the property is a matter of international concern, or 5) where the property is part of Australia's heritage and it is appropriate that the Commonwealth take steps to protect it (sub-clause 6(2)). If the identified property is not in a State, a proclamation can be made for it without reference to the above criteria (sub-clause 6(1)). Once a proclamation has been made under clause 6, the requirements of clause 9 apply to the "identified property". Clause 9 prohibits the carrying out of various works on the property unless the Minister gives consent in writing (sub-clause 9(1)). The clause goes further and makes it unlawful to do anything (without the written consent of the Minister) which would destroy or damage the "identified property".

Clause 7 enables a Proclamation to be made where an "identified property" is likely to be or is being destroyed. Once "identified property" is proclaimed under clause 7, clause 10 is brought into operation. Clause 10 relies on the corporations power (s.51(xx) of the Constitution) and prohibits (without written consent of the Minister) foreign and trading corporations, and also corporations incorporated in the Territories from doing any of the works set out in sub-clause 10(2). These matters are the same as those prohibited by sub-clause 9(1) in respect of world or national heritage sites. Sub-clause 10(3) is similar to sub-clause 9(2) and prohibits a corporation from doing, (without written consent of the Minister), anything which would damage or destroy an "identified property".

Clause 8 enables a Proclamation to be made where an Aboriginal site is being or is likely to be damaged. An Aboriginal site is an identified property of special significance to the Aboriginal race. Once a Proclamation has been made under clause 8, clause 11 comes into operation. Sub-clause 11(1) prohibits (without Ministerial consent) the doing of works on Aboriginal sites. The works prohibited by sub-clause 11(1) are the same as those prohibited by sub-clauses 9(1) and 10(2). Sub-clause 11(2)
is similar to sub-clauses 9(2) and 10(3) and prohibits action which damages or is likely to damage an Aboriginal site or Aboriginal relics. Sub-clause 11(3) prohibits any actions preparatory to unlawful acts.

Clause 6, 7, and 8 also provide for the revocation of Proclamations once the Governor-General is satisfied that the identified property is no longer in danger of damage or destruction.

Clause 12 enables the regulations to contain details of State or Territory laws or plans which would not, in the Governor-General's opinion, damage identified properties. Sub-clause 12(3) provides that action taken under these laws or plans as specified in the regulations, is not unlawful.

Clause 13 sets out matters in relation to the Minister giving consent for activities outlawed by clauses 9, 10, 11. Sub-clause 13(1) requires the Minister when determining whether to give consent only to consider the protection and conservation of the property.

Clause 14 provides the enforcement machinery for the Bill. The Attorney-General on behalf of the Commonwealth can seek an injunction in the High Court or the Federal Court to restrain a breach of the Act.

Clause 15 enables either House of Parliament to disallow a Proclamation made under the Act. Proclamations must be laid before the Houses within 5 sitting days of being made (sub-clauses 15(1)) and can then be disallowed within a further 5 sitting days (sub-clause 15(3)). There is no provision for the disallowance of a Proclamation which merely revokes a proclamation (sub-clause 15(6)).

Clause 16 sets up a system of compensation which will only apply if the High Court considers that there has been an "acquisition" of the property by the Commonwealth. Under s.51(xxxi) of the Constitution, the Commonwealth must compensate with just terms for any acquisition of property. It may be that the prohibitions applying to land proclaimed under the Bill would be such that the situation amounted to an acquisition of land by the Commonwealth. Where a person considers that the operation of the Bill amounts to an acquisition of his property, he can apply to the Minister for compensation (sub-clause 16(3)). If the Minister does not respond within 3 weeks, the property is taken to have been acquired and compensation is payable pursuant to clause 16 (sub-clause 16(6)). If the Minister does reply to the person within 3 weeks disputing that the property has been acquired, the person can apply to the High Court for a determination of the question (sub-clause 16(4)).
Where the compensation claimed is above $5 million and the parties cannot reach agreement a Commission of Inquiry will be established to decide the compensation payable (sub-clause 16(8)). The Commission will consist of 3 persons one of whom can be nominated by a State where the property in question is in that State. The Commission has 12 months to report unless the Commonwealth reaches agreement with the aggrieved person in the meantime (sub-clause 16(11)) in which case the Commission is abolished (sub-clause 16(12)). Provided there is still no agreement between the parties three months after the Commission has reported, the Governor-General must decide, taking into account the Commission's report and any other relevant matters, the amount of the compensation payable (sub-clause 16(13)). Commissions of Inquiry are to be conducted like Royal Commissions (sub-clause 16(16)). Where the amount of compensation claimed is less than $5 million, there is provision for a person to apply to the Federal Court if the person considers the amount fixed for compensation is unfair (sub-clause 16(15)).

Clause 18 preserves the operation of the World Heritage (Western Tasmania Wilderness) Regulations except that regulation 7, which provides for compensation, is repealed. Regulation 7 would no longer be necessary once the Bill is passed because clause 16 of the Bill deals comprehensively with compensation and applies both to the Bill and to the regulations made under the National Parks and Wildlife Conservation Act 1975.

For further information, if required, contact:

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