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Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) replaces the *Australian Heritage Commission Act 1975* (Cth) (AHC Act). Comparing the two statutes points to failings EPBC may have for heritage. Looking to EPBC for how the Act works for required heritage practices, like strategic planning and management plans also points to potentially weak requirements to protect heritage. EPBC is biodiversity legislation with heritage as an add-on, so manages to ignore much of best practice in heritage legislation, such as Burra Charter ideals on significance. The biggest implication for heritage is that the Commonwealth is not obliged to take an interest in heritage if it so chooses. All these phenomena in EPBC may suggest weaker protection for heritage than the old system.

Discretionary decision-making

Under the old system (AHC Act) a group of heritage experts decided what to list and the legislation guaranteed funding for conservation of items on the list. This new system (EPBC Act) sees the Minister decide listings and decisions are discretionary. Decisions can easily become political. Discretionary decisions are impossible to appeal.

Under the old system, the main strength of the AHC Act was that the Minister could not list/delist items; the authority for listing was with the Australian Heritage Commission. The Australian Heritage Commission, an independent statutory authority, did these tasks, and the Minister had no statutory role in the listing process[1]. The Minister could direct the Heritage Commission to inquire whether an item should continue to be listed[2], but could not direct the

[1] AHC Act 1975 s.23

[2] AHC Act 1975 s.30 (1) provides for Ministers to give advise, but only under certain conditions. No-where does the Act provide for the Heritage Commission being obliged to take the advice. Before a Minister, a Department or an authority of the Commonwealth takes any action that might affect to a significant extent, as part of the national estate, a place that is in the Register, the Minister, Department or authority, as the case may be, shall inform the Commission of the proposed action and give the Commission a reasonable opportunity to consider it. Text from Yates Security Services Pty Ltd v Paul Keating MP; Rockvale Pty Ltd;

Heritage Commission to remove a place from the Register[3]. Therefore, decisions about what to list fell to a panel of heritage experts. It was seen that heritage experts, and not the Minister who may/may not be caught up with political agendas were the best people to decide what should be listed.

Since heritage became a trigger under EPBC Act, the Minister now makes decisions about inclusions on a National Heritage List[4]. The Minister has wide ranging discretionary powers[5]. Terms like 'exception of a policy, plan or program' and 'assessment' and 'approval process' is not defined, and no environmental safeguards are stipulated, or review mechanisms built in[6]. The Minister can transfer referrals to other government Ministers[7]. The Minister can take advice from other Ministers about approval applications[8]. Therefore there are fears that the decision-making process can be biased to conform to the Minister's, or even the Prime Minister's own political agenda which may or may not be in heritage conservation's best interests.

Also, wording in EPBC Act may work against heritage conservation directly. EPBC Act s.136 talks about the Minister "must consider economic and social matters when making a decision about whether to approve an action". A Minister considering economic matters can easily come to a decision that does not favour heritage conservation. It is unclear how this kind of authority helps heritage preservation.

Discretionary decision-making makes all accountability checks and balances void. When a Minister has discretionary powers, more general objectives have no legal force. Government policy is the overriding decider when discretionary decisions are allowed[9]. Also, a Minister is entitled to disagree with the Department and not accept its recommendations on policy. The 2002 audit[10] found the decisions made under EPBC Act fell within the authority of

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Valtone Pty Ltd and The Registrar General of NSW No. G442 of 1990 FED No. 623 Foreign Acquisitions and Takeovers 98 ALR 21

[3] AHC Act s.24(1)

[4] at first glance, the Minister takes advice from the Australian Heritage Council, but the Minister only need 'consider' the advise given to him or her by the Heritage Council. There is no obligation to take the advice. EPBC Act 1999 - SECT 341M

[5] Ministerial discretion is wide. "Allowing other legislative mechanisms to override these legislative standards where these afford greater levels of protection for heritage places" which were cited as standards of protection in "National Strategy for Australia's Heritage Places" A Commonwealth Consultation Paper Issued by Senator the Hon. Robert Hill Commonwealth Minister for the Environment and Heritage
April 1999

[6] McGuiness, Julie, *Briefing Paper on Commonwealth Environment Legislation*, 17 July 1998, Wilderness Society

[7] section 145B of the Act

[8] section 136 of the Act

[9] *Greenpeace Australia v Redbank Power Company and Singleton Council* (1995) 86 LGERA 143 per Pearlman CJ at 153

[10] The Auditor General, Audit Report No. 38 2002-03 Performance Audit conducted on Department Environment and Heritage

the legislation as well as meeting the Prime Minister's *Guide on Key Elements of Ministerial Responsibility*[11] requirements[12].

Also, under AHC Act s. 7 (a) (iii) there was guaranteed funding for heritage conservation, where the federal government was obliged to set up the National Heritage Trust. Under EPBC Act, there is no guaranteed funding for heritage conservation.

Weak Strategic Planning

The way EPBC handles strategic planning is weak. The Minister has full discretionary decision-making authority about what is in a management plan[13]. The Minister can revoke an existing management plan and replace it with one of their own. Before making, replacing, amending or revoking a management plan the Minister needs to 'seek and consider' points raised by the Australian Heritage Council, but is not obliged to take and use the advice[14]. The EPBC Act talks about National Heritage Management Principles[15] that need to be considered when accepting management plants, but these principles do not demands any minimum standards required to be in a management plan. The Management Plan can be as strong in protection or as weak in protection as the Minister chooses.

There are much stricter requirements for management plans when the heritage item is on Commonwealth land, rather than non-Commonwealth land under EPBC Act[16]. In some instances, the Minister is restricted in approving some management plans[17]. When it is remembered that Commonwealth land makes up about two thirds of Australia's land mass, any restrictions can be significant for heritage protection[18]. Therefore EPBC Act may not be strong on protection for heritage on Commonwealth land.

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[11] This document talks about transparency of decision-making.

[12] Decision-making under EPBC Act was found to fall within the obligations of EPBC Act, yet EPBC Act has saved only two actions in 5 years of operations when it was biodiversity conservation legislation without the heritage trigger. One was a case involving flying foxes in Queensland and one was some Ramsar wetland in NSW. Questions need to be asked why it takes DEH with staff of over 500 to prevent two actions in five years. But more importantly, what these kinds of results will mean for heritage.

[13] EPBC Act 1999 – s. 324S

[14] EPBC Act 1999 –s. 324S

[15] EPBC Act 1999 – s. 34BAThe Principles are details in the regulations attached to EPBC Act. National Heritage management principles (Act s 324Y) in 10.01E are outlined in schedule 5B of the regulations. The principles are not specific in minimum requirements.

[16] Schedule 7A Management plans for Commonwealth Heritage places (regulation 10.03B)

[17] EPBC Act 1999 – ss. 341S - 324T

[18] Australia has about 768 million hectares of land. About 537 million hectares is Crown ownership, 360 million hectares of which is licences or leased to private interests. The remaining 231 million hectares is private freehold. In NSW, two thirds of land is Crown and one third private ownership. Reference: Commonwealth of Australian, Australian Bureau of Statistics 1998 *Australia Yearbook* (ABS, Canberra, 1998), also Australian Surveying and Land Information Group (AUSLIG) *Australia: Land Tenure Map and Tables* (AGPS, Canberra 1993) Map 93/020 Tables 1-4

Management of federally listed heritage items are devolved to States via bilateral agreements. If the management plan of an item listed at federal level is different to the management plan of the same item listed at State level, then the States need to oversee the management of the item with two different management plans. The two management plans could easily be different; after all they are protecting different heritage values (heritage values at federal level are different to significant values at State level). However, if the States are overseeing both management plans, they are being required to do twice as much work as overseeing one management plan (their own)[19].

One way of overcoming this problem is for the national list's management plans to be flexible, thus allowing their management plan to be similar to the item's State management plans equivalent, and this kind of flexibility is built into EPBC Act. However this flexibility is a weakness, in that there are no minimum obligations with management plans' contents.

Strategic planning of valid heritage items is not linked to planning regulations in EPBC Act. Planning regulations are valid phenomena in the States, where future strategic planning of valid sites is protected. The structure of EPBC Act is that a one-off decision is made about the item, and no future planning for that item is undertaken. This is a weakness for heritage conservation, because values change over time. A one-off decision about listing an item may increase the chances of missing valid heritage items.

EPBC ignores heritage best practice

The Act is essentially biodiversity conservation legislation that has had heritage added-on. Heritage best practice may easily be different from environmental conservation best practice[20]. Legislation drafters have taken biodiversity legislation that embraces best practice in environmental conservation industry and have added heritage as a trigger. Thus they have managed to ignore heritage industry's best practice when it comes to listing and preserving valid items.

Heritage legislation other than EPBC Act across Australian jurisdictions embraces Burra Charter principles. Every heritage legislation studied by this researcher talks about the idea of social, aesthetic, scientific or historic

[19] Macintosh, A *Why the Environment Protection and Biodiversity Conservation Act's referral, assessment and approval process is failing to achieve its environmental objectives* (200-4) 21 EPLJ 309 EPBC Act demands assessment of the potential impact of the proposed action, rather than the nature of the action. EPBC Act s.87 outlines the options for assessing impacts. Part 9 of the Act outlines requirements for approval of actions. EPBC Act is asking the States to assess proposed development in two different ways. One way of assessment satisfies State's own strategic planning processes and the other way of assessment satisfies EPBC Act and federal requirements, testing the impacts. This can only add to federal/State tension.

[20] Environmental Impact Assessment is completely and fundamentally different to heritage listing process, both procedurally and function.

values. Even the AHC Act understood these concepts as valid and embraced them[21]. The EPBC Act only talks about 'nationally significant heritage[22]' where 'nationally significant' is defined by the Australian Heritage Commission. There is no obligation to embrace principles of Burra or Australian Natural Heritage Charter.

Legislation that is more similar than different across jurisdictions is good. Heritage legislation at federal level and State level that see the same concepts of significance as important is the best possible situation. AHC Act had Burra Charter ideals, as does *Heritage Act 1977* (NSW). Therefore the two statutes worked together in ways that helped managers and owners. EPBC Act defines its own significance. Therefore, ongoing management of the item is addressed against different criteria and ends up being more different than similar to State processes. This can only end up being more work for all heritage managers who need to conserve their items against different definitions.

Weak Interim Listing Processes

Good heritage preservation legislation includes emergency listing procedures. Legislation that can stop development from being approved, which may affect a potential heritage site, is crucial for heritage protection. For instance, NSW local government (the tier of government at the coalface of heritage protection) has several emergency heritage listing procedures they may trigger when required[23].

EPBC Act does have interim listing procedures[24]. The procedures for listing emergency items are exactly the same as listing a non-emergency item; an application is submitted and considered. The only difference is the timeframes the Minister has to consider the application are shorter.

This is not adequate emergency listing procedure. The original listing application still needs to be up to the same standard a non-emergency application is: it needs to address all significance indicators and thorough research needs to be performed. Additionally, the item's case for listing is strengthened if other stakeholders are enthusiastic for the item's listing (for example, the State governments) in a regular listing. These same considerations are required for emergency listings. In a legitimate emergency, there may not be time for these quite stringent requirements to be met.

[21] AHC Act s.4(1A). These criteria came from the Burra Charter
[22] EPBC Acts objects are to 'provide for the protection and conservation of heritage' (s3(1)(ca)
[23] Development of a heritage site cannot be done if the site is mentioned in an LEP or there is an interim heritage order on the site or if the site is listed on the State Heritage Register *Environmental Planning and Assessment Act* s.76A(6)(f) (NSW) and *Heritage Act 1977 (NSW)*.
[24] EPBC Act 1999 – s. 341F

An argument could be made that emergency application might need to be more thoroughly researched and a better case for listing be made to decision-makers than a non-emergency listing. After all, the Minister needs to consider the application quickly, so a successful application would have a better chance of being considered favourably if it was very thoroughly prepared in the first instance. Also, the item requiring emergency listing may easily not conform to the Minister's 'themes' where they look at similar items to better judge significance. Therefore, in practice, the emergency listing procedures provided by EPBC places pressure on the applicant to prepare a more thorough application than the States requires[25], which may not always be possible in an emergency situation.

No obligation for the Commonwealth to be interested in heritage/environment

The Commonwealth does not need to become involved in heritage/environmental preservation if it chooses not to. This is important, because if the States DO mis-manage their heritage/environment, the Commonwealth is not obliged to help[26]. EPBC Act has validated this power and has enshrined it in legislation.

In five years of EPBC Act's implementation, when the legislation had only biodiversity triggers, the Act managed to protect only two actions. Consequently there is emerging a trend where the Commonwealth does not intervene in actions unless it chooses to[27]. Additionally, it must be remembered that one of the reasons for the change from AHC to EPBC was because it was felt there were too many items on the Register of the National Estate[28]. Therefore, it's hard not to wonder if the change of legislation overseeing federal listing meant that it would be harder for items to get onto the federal list, that federal government wanted a tighter, more streamlined heritage list? EPBC allows the government not to take interest in heritage if it chooses, and Senator Hill has said there's too many items on the old list. It's hard not to make the leap that legislation administrators may find valid

[25] at NSW State level, an interim listing is approved and the applicant has six or twelve months to submit a better application. This kind of consideration is absent in EPBC.

[26] Historically, the Commonwealth has sometimes stepped in and helped when States cannot agree on heritage/environmental management, eg Franklin Dam Case, Fraser Island, Barrier Reef, etc.

[27] This trend has been in existence since the 1970s eg Commonwealth –v- Tasmania (1983) 46 ALR 625, where there were issues around the handling of the case at State level, so the Commonwealth intervened with its authority given to it from the World Heritage Convention and made a decision about the preservation of a piece of land below the Gordon River in Tasmania. Murphyores Pty Ltd –v- Commonwealth (1976) 136 CLR 1, Richardson –v- Forestry commissions (1988) 164 CLR 261, Queensland –v- Commonwealth (1988) 77 ALR 291. All these cases demonstrate Commonwealth's involvement only when things can't be sorted out at State level.

[28] By 1997 it was seen there were too many items on the RNE. In a speech given in October 1997, Senator Hill indicated the Government's intention to reduce the amount of items on the national list. Senator the Hon. R. Hill, Speech to Australian Centre for Environmental Law, Third Outlook Conference, 9 October 1997, p.5

heritage items at federal level not suitable for listing, in the interests of a shorter list.

The Commonwealth can choose to be involved, or not be involved in environmental/heritage development applications if it chooses. This trend has contributed to much tension between Commonwealth and States, which is discussed thoroughly in the literature[29][30].

Added to the tension is that the Commonwealth is not subject to State laws, which may have impacts on the validity of bilateral agreements and therefore invalidate EPBC Act's strength to protect heritage. *The Commonwealth Places (Application of Laws) Act 1970 (Cth)*, makes provision of the application of some state laws to Commonwealth places, but this is not generally regarded as including environment protection and planning laws[31]. This means that the Commonwealth places are not subject to state environmental and planning laws unless the Commonwealth allows themselves to be so controlled[32]. This adds to Commonwealth/State tensions.

These tensions are addressed in EPBC Act by devolving many management decisions to the States via bilateral agreements with States. The end result is where the federal government does not need to engage itself with protection of items if it chooses not to. EPBC Act successfully gives federally listed items to the States to manage. When there is tensions/problems between the Commonwealth and States, the Commonwealth has given away its power through bilateral agreements, thereby giving States more authority over

[29] in the 1980s, the Commonwealth was unhappy with the way the Tasmanian government was handline an environmental issue, the Gordon River, so invoked its authority from having recently signed the World Heritage Convention and the then newly-made *World Heritage Properties Act 1983* to list the Gordon River area for potential World Heritage Listing. *World Heritage Properties Act 1983* allowed the Commonwealth to nominate potential World Heritage sites. This Act provided that on any property submitted by the Australian government and declared a World Heritage Property, it was unlawful for a person, foreign corporation or trading corporation to carry out excavation works, mining exploration, erect buildings, etc. The property need only be nominated for listing to be protected. This case was challenged and became *Commonwealth –v- Tasmania (1983) 46 ALR 625*. After this case, States came to feel they were being overseen by the Commonwealth, and tensions grew between States and Commonwealth over environmental issues.

[30] Bates, G, *Environmental law in Australia,* Sydney : LexisNexis Butterworths

[31] *Fundamentals of Environment Law brick, ANU, 2002*, page 45

[32] There is a 'doctrine of implied immunity' of the Commonwealth from state laws, by the High Court (handbook, page 45, as cited by Commonwealth v Bogle (1953) 89 CLR 229; Commonwealth v Cigamatic Pty Ltd (1962) 108 CLR 372). The Australian Government Solicitor has argued state laws imposing pollution controls on activities are probably capable of binding the Commonwealth (handbook, page 46, Legal Briefing "The Commonwealth's Implied Constitutional Immunity from State Law' No36, 30/8/97; and see Bradbury 'Federal Immunity and Compliance', paper delivered to the National Environmental Law Association Conference, Canberra, May 1998). The future relationship between the Commonwealth and states in relation to adherence to state environmental laws is more likely to be constrained by the COAG Agreement 1997 than by legal authority.

heritage. This might not be a good for heritage conservation in States that do not place environmental/heritage preservation as a high priority.

Implications of bilateral agreements for heritage

EPBC Act demands bilateral agreements between Commonwealth and States to manage biodiversity/heritage. These agreements are not enforceable by courts[33]. This empowers the States. Therefore EPBC Act successfully hands authority for management decisions to the States.

EPBC Act promoted federal/state cooperation via bilateral agreements. However States need to make decisions twice when definitions are different. For instance, if one level of 'significance' exists at Commonwealth level, and one at State level, and States can make decisions for both levels, the decision needs to be made twice. This must increase costs for States, thereby leading to added tension between States and Commonwealth. When there is tension between States and Commonwealth, the States decisions will prevail.

The situation is not helped when it is remembered there are different definitions of significance between the two agencies. While ever there are different definitions about decision-making criteria there will always be a situation where the Commonwealth must oversee the States' decisions of Commonwealth's interests. EPBC Act fails to demand universally agreed definitions[34]. What constitutes heritage at State level is still different to what is heritage at federal level under EPBC Act. Therefore if States manage federally listed heritage and there are different definitions of significance, tensions must continue to arise. And when there are tensions with decision-making, the States' decisions will prevail, due to bilateral agreements.

Another failing of EPBC Act is the way it demands impacts be assessed. EPBC Act demands assessment of the potential impact of the proposed action, rather than the nature of the action[3536]. The States assess development applications in a different procedural way[37]. Therefore EPBC

[33] McGrath, C 'Bilateral Agreements – Are they enforceable?' in Environmental and Planning Law Journal – Volume 17, no.6 p.485 In *South Australia v The Commonwealth (1962) 108 CLR 130* Windeyer J stated that "an agreement deliberately entered into … may yet not be an agreement that the courts will enforce." Sometimes the agreements are outside of contract law. Undertakings that are with the government (political undertakings) are not enforceable. Therefore, persons affects by a bilateral, nor the governments themselves can enforce it directly. Therefore any decisions made under bilateral agreements have little recourse for review.

[34] Universally agreed definitions of significance was part of the IGAE conference.

[35] Macintosh, A *Why the Environment Protection and Biodiversity Conservation Act's referral, assessment and approval process is failing to achieve its environmental objectives* (200-4) 21 EPLJ 309

[36] EPBC Act s.87 outlines the options for assessing impacts. Part 9 of the Act outlines requirements for approval of actions.

[37] Development in NSW has an emphasis on planning systems for identification of significant sites and their conservation. Once an item is mentioned on an Environment Planning

Act is asking the States to assess proposed development in two different ways. One way of assessment satisfies State's own strategic planning processes and the other way of assessment satisfies EPBC Act and federal requirements, testing the impacts. This can only add to federal/State tension.

An independent body should report on the success or otherwise of bilateral agreements. Accreditation of States for a bilateral agreement should be subject to on-going satisfactory State performance, in particular continued adequate funding and resources[38]. At present EPBC Act does not demand this happen.

Minor Problems with the EPBC Act

A problem with defining heritage by attributing physical properties to it (for instance, property) is that intangible aspects to heritage can be lost[39]. Progress has been made in Australia by identifying intangible values and the monitoring of their survival[40]. But most importantly, the idea of intangible values needs to be addressed at World Heritage level. EPBC Act does not specifically address intangible values at all.

Conclusion

AHC Act and EPBC Act both validate significant heritage items by placing them on a list. However, both are weak when it comes to protecting the listed item. Strong protection written into the legislation may not be needed at federal level[41]. An item listed on a local LEP is enough to protect heritage[42][43][44]. Decisions made on developments around significant items are

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Instrument (EPI), the item goes onto the State Heritage Inventory, and is protected from future development.

[38] Principle 11 National Heritage Convention 1998, also section 4.2(d) objectives

[39] Intangible heritage can be songs, myths, or heritage that changes over time.

[40] Truscott, M 'Intangible Values' As heritage in Australia' *Historic Environment* volume 14 number 5, 2000 p.29

[41] Items listed under AHC Act were shown to be protected by the prestige of being listed when it came to State and local government development decisions.

[42] *Cracknell and Lonergan Architects v Manly Council [2003] NSWLEC 341* (16 December 2003) was to appeal a decision that a heritage item should stay. The item was on an LEP, and was part of a heritage study. It was an intact, good example of its kind. The item was found to be significant, and to stay. The development application failed.

Australand Industrial No 18 Pty Ltd v Auburn Council [2004] NSWLEC 105 (19 March 2004) the local Council tried to stop a development that was embraced in a recent LEP, by trying to hold up an older LEP and say the site had heritage significance. Development consent was granted.

In *Julian Segal, and Lucille Melanie Segal v Waverley Council [2004] NSWLEC 60* (27 February 2004) the proposed development was allowed in the LEP. It was shown the proposed development would not hurt the heritage significance of the area, so the development was allowed to go ahead.

decided because the item is seen/not seen as significant, not because the legislation that empowered that listing is weak. Evidence suggests that being on an LEP alone is enough to protect the heritage item from development[45]. The act of listing the site at Local government level means the community perceives the item as valuable. More than one list is even better[46].

Good federal heritage legislation should embrace heritage industry's best practice, which includes focussing adequate funding for heritage conservation. EPBC fails to deliver guaranteed funding like AHC Act did, and fails to address things like tax incentives for heritage conservators.

What is listed on a heritage list should be decided by a group of heritage professionals, not by someone who may have a political agenda about conservation.

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[43] *Chisholm v Pittwater Council and Anor [2000] NSWLEC 143* (11 July 2000) was first listed onto the National Trust list. While the item was in a heritage precinct, it did not have individual heritage status. The item was not yet on a heritage LEP. It was found the item needed to be listed separately on an LEP, and the case to save the item was dismissed. *TERRY GEORGE ANDRIOTAKIS, EFSEVI ANDRIOTAKIS and GREGORY NICHOLAS MALOUF v WOOLLAHRA MUNICIPAL COUNCIL [1998] NSWLEC 34* (10 March 1998) was an instance where the item was not on an LEP but the item should have its significance taken into account anyway. It was found it could not.

[44] The Queanbeyan local government are drafting a heritage LEP. The process involves surveying the area and assessing items that look significant. Further study is done of proposed items looking for significance, and heritage studies are drawn up. The owner of the item is consulted ('Notice of intention to consider listing' (*Heritage Act 1977* s.33(1)(a))) and briefed about incentives and generally involved in the listing process. Community consultation/public meetings are held for feedback about items. A secondary survey is done. The process is very long. The proposal is eventually submitted to Council for approval, but Council can approve some of the LEP and exclude others (Interview with Niger Reza of Queanbeyan Council, September 2004.). When an item is eventually listed on an LEP, everyone agrees on the item's validity.

[45] In Rahmani v Ku-ring-gai Council [2004] NSWLEC 595 (27 October 2004) a development proposal was refused because of heritage values. The item was only on an LEP and not State listed, but this was enough.

Gunning Sustainable Development Association Inc v Upper Lachlan Council and Another [2005] NSWLEC 23 (4 February 2005). The proposed development would impact on a heritage item listed in the LEP. The proposed development was going to contravene environmental issues as well as guidelines for petrol station sizes laid out by the *Roads Act 1993*. There was going to be loss of privacy for the local public. However, the development proposal was approved if the developers sank a boar and other criteria were met. *Paul Jones & Associates Pty Limited v Woollahra Municipal Council [2004] NSWLEC 2* (6 January 2004) the proposed development was in the vicinity of heritage items listed on an LEP as well as State listed. The consent was refused.

[46] *A.P.T. PEDDLE THORP & WALKER PTY LIMITED v. SYDNEY CITY COUNCIL No. 10359 of 1997 [1997] NSWLEC 186* (4 December 1997) was about proposed development that would intrude on to a piece of heritage's significance, and the item's significance was considered and found to be of exceptional significance and also on the federal list, a heritage LEP, and also recommended to the Heritage Council, at state level. The Minister had chosen not to list the item at State level, but his reasons for doing so were phrased in such a way, the building was still protected by neighbouring heritage items. The item's heritage values were seen as significant, and development application was refused.

There is no obligation to conserve a minimum amount of heritage, or direct money to conserve anything. This needs to be addressed.

EPBC Act gives management decisions for heritage to the States. EPBC has taken the Commonwealth's power and given it away. Once authority for something is given, it is difficult to be taken back. The States are more empowered to manage heritage than ever before. Historically we have needed the Commonwealth to step in and help the States when they may have mis-managed their environment. EPBC Act is making sure this phenomena will be a thing of the past.