

**B Boer and G Wiffen,
Heritage Law in Australia,
Oxford University Press, 2006**

Launched by

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Heritage is an anthropocentric (human-centred) concept. It involves humans placing a value on not only human-made objects and places, but also natural ones.

The placing of value is a response to a recognition of the significance of the object or place. The significance may be for historical, cultural, aesthetic, political, scientific or other reasons.

Morally, it is right to protect objects or places that are valuable and it is wrong to damage or destroy objects or places that are valuable. The law gives force to this moral position. Heritage law involves giving legal protection to objects and places of value.

One of the principal benefits of protection of heritage is that it contributes to an identification and establishment of a sense of identity and place, both for individuals and for society.

This was emphasised in the groundbreaking inquiry, chaired by Justice R M Hope, into the National Estate in 1974. The Report of that inquiry led to the enactment of the *Australian Heritage Commission Act 1975* (Cth) and the establishment of the Register of the National Estate.

All people need to know who they are and what is their place. The Report noted that conservation of heritage is not just a middle class issue: it affects all persons:

“The conservation of the National Estate is the concern of everyone. The forces which threaten it directly affect the quality of life of the less privileged urban people whose access to and enjoyment of parklands, coast and natural bushland, or familiar and urban cityscapes and sometimes of their own dwellings are endangered. Often it is these less-privileged who are initiating and supporting action to preserve the best features of our present way of life”: National Estate Report of the Committee of Inquiry, Government Printer of Australia, Canberra, 1975, p. 334.

The Report defined the National Estate in terms of three components of the cultural and natural environment. The three components are those which are:

- “(a) of such outstanding world significance that they need to be conserved, managed and presented as part of the heritage of the world;
- (b) of such outstanding national value that they need to be conserved, managed and presented as part of the heritage of the nation as a whole;
- (c) of such aesthetic, historical, scientific, social, cultural, ecological or other special value to the nation or any part of it, including a regional locality, that they should be conserved, managed and presented for the benefit of the community as a whole”: p 334.

The Report noted that the components include those parts of the natural environment, the man-made or cultural environment, archaeological or scientific areas, and cultural property: p 335.

In its foundations on values and by promoting a sense of identity and place, heritage law is an exemplar of environmental law generally. Mark Sagoff argues that social regulation of consumer safety, the workplace and the environment has responded to

a need to make markets more humane, not necessarily to make them more efficient. Sagoff concludes that environmental regulation, like other social regulation, is essentially related to the identity of a nation. On this view, citizen support for environmental regulation, based on human values, can contribute significantly to such a national identity: M Sagoff, *The Economy of the Earth: Philosophy, Law, and the Environment*, Cambridge University Press, 1988, particularly chapter 6, p. 124 ff.

Heritage law is an important contributor in this regard.

The relationship between heritage law and environmental law can be put another way. Ben Boer and Graham Wiffen in their book, *Heritage Law in Australia*, state:

“This relationship might be explained in the following way: the past and present cultural environment and the present natural environment comprise the heritage of human-kind. How we conserve or modify various environments now will determine what value we place on them tomorrow. From a practical point of view, value choices are made everyday about how we conserve or modify environment. Those we value highly now, and conserve now, may become the heritage of future generations. Those with a low conservation priority may be less highly valued in the future or, if they are damaged, they may not be in existence to value in the future.

The law relating to heritage conservation can therefore be seen as an integral, albeit specialised part of the broad sweep of environmental law. One could go further and say that natural and cultural conservation is at the very heart of the concerns of environmental law”: p 8.

I make these introductory comments to emphasise the importance of heritage law and of the need for academic discussion of it.

Ben Boer and Graham Wiffen’s book, *Heritage Law in Australia*, is a work of quality and makes a valuable contribution to the field of learning of heritage law.

It is not appropriate on this occasion that I undertake a book review. However, there are some aspects of the book that I would wish to highlight.

In Part I, the book encourages exploration of the meanings of heritage. In so doing, it encourages us, both as individuals and as a society, to identify what it is we value, what is our identity, and what is our sense of place. As I have noted above, this is an important and necessary task.

The book encourages an expansive view of heritage. Heritage refers to cultural, natural and indigenous heritage. It covers the tangible and the intangible. It applies to individual and collective heritage. It involves relationships between the natural and cultural, the movable and immovable, the tangible and the intangible, the indigenous and the non-indigenous, immigrants and less recent immigrants, the past, the present and the imagined future: pp 7-8.

The book also encourages an understanding of the relationship between heritage law and environmental law. I have introduced this idea in my earlier remarks.

There has been a tendency in the past to see heritage law as apart from environmental law. Indeed, I was looking only recently at two major English books on environmental law, one by Stuart Bell and Donald McGillivray, *Environmental Law*, 5th edition, Blackstone Press, 2000 and Richard Burnett-Hall, *Environmental*

Law, Sweet & Maxwell, London, 1995, and neither have a chapter dealing with heritage law. Fortunately, Australian books on environmental law are more enlightened and include heritage law as part of environmental law.

In their book, Boer and Wiffen do well to reintegrate heritage law into environmental law. The result will be beneficial for both fields of learning, heritage law and environmental law.

The book also integrates heritage and sustainable development, the latter being of the utmost importance in our present times.

A trend in environmental law generally is for the harmonisation of international law and domestic or municipal law, and for the globalisation of law.

International conventions and customary law are being incorporated into domestic law at an increasing rate. The result is that law is no longer confined by domestic boundaries.

This is particular evident in matters of heritage. The World Heritage Convention is a prime illustration of this trend. It spawned some of the most famous environmental struggles: the Franklin Dam, the Wet Tropics, the Great Barrier Reef, the Lemnathyme/Southern Forests and Kakadu, to name a few. These galvanised society into action. They have catalysed individual and collective reflection on what we value, who we are, where we want to go.

In Part II, the book covers the sweep and importance of international heritage law.

The domestic incorporation of international conventions, especially the World Heritage Convention in Australia, has provided the opportunity for the legislatures, the executives and the judiciaries in Australia to examine and elaborate on the framework set by the international conventions. In this way, domestic law in Australia has made, and can continue to make, a valuable contribution internationally.

I have mentioned the groundbreaking National Estate Inquiry and Report earlier. The Report leads to a fresh and holistic look at heritage. It led to heritage being viewed as comprising not only the built environment but also broader cultural components as well as natural heritage. It led to the *Australian Heritage Commission Act 1975* (Cth) and the Register of the National Estate. The *NSW Heritage Act 1977* also took this broader and holistic view, embracing both cultural and natural heritage.

In Part III, the book traces the history of Commonwealth heritage law as well as examining recent developments (some may think regressions) under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and *Australian Heritage Council Act 2003* (Cth). Again, the book takes a holistic view of heritage, including in its conspectus both cultural and natural heritage and even the conservation of biodiversity.

The book examines the management of national heritage. It is one step to identify and list as important, heritage; but it is necessary to manage that heritage as well. The statutory scheme involved in managing national heritage is examined by the authors.

In the federal system that we have in Australia, it is, of course, necessary to examine the response of the States and Territories. Part IV of the book assays this task. The

important early enactment of the *Heritage Act 1977* (NSW) is examined in detail, as well as other State and Territory laws on heritage.

Of utmost importance in Australia, is the recognition of the heritage of Australia's original human inhabitants, the people of Aboriginal and Torres Strait Islander descent. Part V examines the enormously valuable heritage of these people.

The upshot of the work of Boer and Wiffen is a comprehensive survey of international, national, provincial and indigenous heritage. By bringing together all of these aspects of heritage, the authors have facilitated the harmonisation and globalisation of heritage law.

The book also serves another valuable function, that of putting heritage back on the agenda. The push for development and economic rationalisation, particularly in our urban areas, has seen heritage drop down the list of priorities and indeed in some cases off the agenda all together. This we cannot afford. Boer and Wiffen's thoughtful and comprehensive discussion of heritage law in part redresses this trend.

Ben Boer and Graham Wiffen are extremely well qualified to have completed their valuable work on heritage. In the 1980's, Ben Boer collaborated with Professor Peter Spearritt to introduce heritage law in the Graduate School for the Environment programs at Macquarie University. Ben Boer has been teaching and writing on various aspects of heritage ever since then. He has taught heritage law at postgraduate level, particularly at the University of Sydney. Graham Wiffen followed Ben Boer to Macquarie University and then in the 1990's introduced postgraduate heritage law at Macquarie University Law School.

Ben Boer has written a commentary on heritage law for the Butterworths' Planning and Environment legislation service whilst Graham Wiffen has written on natural and cultural resources in the environment volume of Halsbury's Laws of Australia.

I have great pleasure in officially launching the book, *Heritage Law in Australia*. I wish the book, and the authors, every success.