

Playing Politics with the Federal Heritage Regime

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Summary

This paper considers the effectiveness and propriety of the Howard Government's administration of the new federal heritage regime. In particular, it examines the way in which the Federal Government dealt with the nomination to include Sir Donald Bradman's birthplace on the National Heritage List (NHL) and its decisions to distribute heritage funding to Bradman-related projects in July 2005.

The paper finds the following.

- The Minister for the Environment and Heritage, Senator the Hon. Ian Campbell (the Minister), was required by law to make a decision on the nomination of Bradman's birthplace for inclusion on the NHL during the 2004 federal election campaign.
- Given the criteria for listing, the Minister had little choice but to reject the nomination.
- Minister Campbell delayed rejecting the nomination until seven days after the federal election in breach of his statutory obligations under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (EPBC Act). The available evidence suggests it is likely that the Minister delayed the rejection so as to avoid unwanted public criticism during the election campaign.
- The Minister's failure to reject the nomination of Bradman's birthplace during the federal election campaign contrasts with his decision to include Kurnell Peninsula on the NHL using the emergency listing process three weeks before the day of the election. The decision to list Kurnell Peninsula was made following a request from the Hon. Mr Bruce Baird MP, the Liberal Member for Cook.
- After receiving criticism in the media for failing to include Bradman's birthplace on the NHL, the Federal Government provided \$100,000 for two Bradman-related heritage projects under the *Sharing Australia's Stories*

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program: the Don Bradman Heritage Trail and the Australian Cricket Captains' Walk. The projects were two of only four to receive the maximum amount of \$50,000 under the program's first round of grants and both projects involve Cootamundra Shire Council, one of the main critics of the Minister's decision not to include Bradman's birthplace on the NHL.

- The evidence suggests that the funding application for the Don Bradman Heritage Trail project was not lodged until at least seven and a half months after the applications for funding under the *Sharing Australia's Stories* program had closed. Further, it appears that the project was devised by Minister Campbell and the Department of the Environment and Heritage.
- In relation to the Australian Cricket Captains' Walk project, Cootamundra Shire Council did not make a funding application despite being the recipient of the grant. It appears that a funding application for the project may not have been lodged at all and that the grant was 'arranged' by the National's Member for Riverina, the Hon. Kay Hull MP.
- There is evidence that the Prime Minister's office was involved in the events following the decision not to include Bradman's birthplace on the NHL, although the nature of its involvement is unclear.
- It appears the *Sharing Australia's Stories* program is not being administered in accordance with the spirit and objects of the *Heads of Agreement on Commonwealth and State Roles and Responsibilities for the Environment*. The way the program is being administered also conflicts with one of the primary purposes of the new federal heritage regime, which is to ensure the Commonwealth focuses its energies on places of national and Commonwealth heritage significance. Most importantly, the *Sharing Australia's Stories* program does not appear to be an efficient use of scarce government resources as there is a large number of nationally significant heritage places that are in urgent need of additional funding for identification, protection and management.
- The events surrounding the nomination of Bradman's birthplace raise questions about whether the Federal Government has inappropriately sought to exploit Sir Donald Bradman's name and reputation for political purposes.
- The evidence of impropriety on behalf of the Federal Government in relation to these events suggests that consideration should be given to whether responsibility for making listing decisions concerning the NHL and distributing grant funding for environment and heritage issues should be transferred from the Minister to an independent statutory authority.
- The Commonwealth Auditor-General should be asked to undertake a comprehensive review of the *Distinctively Australian* and *Sharing Australia's Stories* programs.

1. Introduction

In January 2004, the Federal Government launched a new heritage regime that fundamentally changed the nature of the Commonwealth's involvement in heritage issues. The centrepiece of the new regime is the National Heritage List (NHL), which is intended to include places that are of outstanding heritage significance to the nation. The new regime also includes a list of places in Commonwealth areas that have significant heritage value, called the Commonwealth Heritage List (CHL). Linked to these lists is the *Distinctively Australian* program, a \$52.6 million program that was originally intended to assist in the identification, protection and management of places of national and Commonwealth heritage importance (Kemp 2003a). The rationale behind the new regime was to focus the Federal Government's energies towards the identification, protection and management of places of national significance and sites of heritage significance in Commonwealth areas. Responsibility for heritage issues of state, regional and local importance would rest with state, territory and local governments.

In recent times, questions have been raised about the Federal Government's administration of the new heritage regime (Mulvaney 2005; Dick 2005; Macintosh and Wilkinson 2005; Beynon *et al.* 2005). For example, John Mulvaney, a former member of the Australian Heritage Commission, has suggested the NHL has become a 'political plaything' (Mulvaney 2005). In light of these criticisms, this paper looks at the way in which the Federal Government dealt with the nomination to include Sir Donald Bradman's birthplace on the NHL and its decisions to distribute funding to Bradman-related heritage projects in July 2005.

Section 2 provides a brief outline of the listing process for the NHL. Section 3 reviews the listing decision in relation to Bradman's birthplace. Section 4 compares the listing decision in relation to Bradman's birthplace to the emergency listing of Kurnell Peninsula during the 2004 federal election campaign. Section 5 reviews the decisions to provide grants to Bradman-related heritage projects and Section 6 draws conclusions.

2. Outline of the NHL listing processes

There are two processes for including places on the NHL under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (EPBC Act): the normal listing process and the emergency listing process.

Normal listing process

The normal listing process can be broken down into three stages.

- A nomination is made by a member of the public or a member of the Australian Heritage Council (AHC). Upon receiving the nomination, the Minister for the Environment and Heritage (Minister) is required to refer it to

the AHC for an assessment of whether the place meets one or more of the listing criteria (called the ‘national heritage criteria’).²

- Having received the nomination from the Minister, the AHC has 12 months to complete the assessment of whether the place meets the national heritage criteria.³
- After receiving the assessment from the AHC, the Minister has 20 business days⁴ to decide whether or not to include the place on the NHL and, if so, what national heritage values to include on the list in relation to the place.⁵

Emergency listing process

The emergency listing process has three or four stages, depending on how it is initiated.

- A person nominates a place under the normal listing process or sends a written request for the Minister to include a place on the NHL under the emergency listing process.⁶
- If the Minister believes: (a) a place has or may have one or more national heritage values (i.e. it may meet the national heritage criteria),⁷ and (b) any of those heritage values is under threat, he/she can include the place and its national heritage values on the NHL.⁸ If a person makes a written request for a place to be included on the NHL under the emergency listing process, the Minister has ten business days to make the listing decision.⁹ Within ten business days of including the place and its heritage values on the NHL, the Minister must refer it to the AHC for an assessment of whether it meets the listing criteria.

² The Minister can request the AHC to assess whether a place meets the national heritage criteria even when a nomination has not been made (EPBC Act, s. 324G(1)). The AHC can also carry out assessments ‘on its own initiative’ (EPBC Act, s. 324G(3)).

³ The assessment period can be extended by the Minister if the AHC is unable to complete the assessment within 12 months (EPBC Act, ss. 324G(2A) and (2B)).

⁴ The timeline for the listing decision is longer if the Minister undertakes a formal consultation process after the AHC assessment has been completed (EPBC Act, s. 324J(2)). This did not occur in relation to the nomination of Bradman’s birthplace, meaning the 20 business day restriction applied.

⁵ A place can only be included on the NHL if the Minister is satisfied it meets one or more of the national heritage criteria (EPBC Act, s. 324C(2)). However, the Minister has a broad discretion when determining whether to include a place that meets the listing criteria on the NHL. As a result, the Minister can refuse to list a place, notwithstanding the fact that it meets the listing criteria.

⁶ A nomination or request is not essential to trigger an emergency listing (see note 7).

⁷ A place can only be included on the NHL under the emergency listing process if it is located wholly in the Australian jurisdiction (EPBC Act, s. 324F(1)(a)).

⁸ The Minister can include a place on the NHL under the emergency listing process even if no nomination or request has been made.

⁹ If the Minister fails to make the decision within ten business days, a notice must be published on the internet, the person who made the request must be notified and a statement of reasons must be provided to anybody who asks for it on why the Minister did not include the place on the NHL (EPBC Act, s. 324F(6)).

- After receiving the emergency request from the Minister, the AHC has 40 business days to complete the assessment of whether the place meets the national heritage criteria.¹⁰
- Upon receiving the assessment, the Minister has 20 business days to decide whether the place will remain on the NHL and, if so, whether its boundaries or national heritage values should be changed.¹¹

3. The listing decision in relation to Bradman's birthplace

Bradman's birthplace is a small cottage at 89 Adams Street, Cootamundra, New South Wales. The front room of the cottage was previously used as a small private hospital and it was there that Sir Donald Bradman was born (Cootamundra Shire Council 2004a).

The cottage was nominated for inclusion on the NHL on 19 April 2004. The nomination was referred to the AHC by the Minister, Senator Ian Campbell on 5 May.¹² The AHC assessment on Bradman's birthplace was then sent to the Minister by letter dated 5 September 2004. From there, the Minister was required by law to make the listing decision within 20 business days, meaning the decision should have been made before the federal election on 9 October 2004.¹³

On 16 October 2004, seven days after the federal election, the Minister made the decision not to include Bradman's birthplace on the NHL (Campbell 2004). In making his decision, the Minister stated:

While the event of the birth of Sir Donald Bradman is of significance for Cootamundra, it cannot be classified as being of outstanding significance to the nation. ... In terms of the man's life and more essentially his contribution to Australian cricket, this place plays only a slight part. All people who have made a major contribution to Australian life were born somewhere, and this simple fact does not alone make those birthplaces worthy of entry on the NHL (Campbell 2004, pp. 2-3).

In order for a place to meet the listing criteria, it is necessary that it has 'outstanding heritage value to the nation'.¹⁴ The AHC found that Bradman's birthplace did not meet this standard for listing. While Cootamundra Shire Council and others objected to this finding (Pryor 2004; Gregory 2005; Fitzsimmons 2005), when Bradman's birthplace is compared to other places that have been included and excluded from the

¹⁰ As with the normal listing process, the Minister has the power to extend the assessment period (EPBC Act, s. 324G).

¹¹ Again, the timeline for the listing decision is longer if the Minister undertakes a formal consultation process after the AHC assessment has been completed (EPBC Act, s. 324J(5A)).

¹² This was three days after it was required to be referred under the EPBC Act.

¹³ The precise date by which the decision should have been made will depend upon when the AHC assessment was received by the Minister. Even if the letter was not received until 10 September (i.e. a week after it was dated), the decision was still required to be made before the federal election (i.e. 8 October 2004).

¹⁴ *Environment Protection and Biodiversity Conservation Regulations 2000*, reg. 10.01A(2).

NHL, it seems to be beyond doubt that the assessment was correct.¹⁵ Consequently, the Minister had little choice but to reject the nomination.

The difficulty that arises in relation to the decision is the fact that it was delayed until after the federal election campaign.¹⁶ There are four possible reasons for this delay.

- (a) The Minister was tardy or simply forgot about his statutory duties due to the pressures associated with the election campaign.

This excuse may have been believable (even if it was not completely satisfactory) were it not for the Minister's decision to list Kurnell Peninsula under the emergency listing process on 17 September 2004, three weeks before the election (see Section 4).¹⁷

- (b) The Minister could not make listing decisions during the federal election campaign due to the 'caretaker conventions', which provide that the government should avoid making major policy decisions that are likely to commit an incoming government (Department of Prime Minister and Cabinet 2004).¹⁸

There are three flaws in this argument. Firstly, it is highly unlikely that the decision not to list Bradman's birthplace could be regarded as a major policy decision, particularly given the fact that the Minister had little choice but to reject the nomination. Secondly, the decision to reject the nomination would not 'commit' an incoming government because the EPBC Act does not prohibit the Minister from including a place on the NHL that has previously been rejected. Thirdly, the caretaker conventions do not override statutory obligations (Department of Prime Minister and Cabinet 2004). As a result, even if the determination involved a major policy decision that committed an incoming government, the conventions would not apply because the Minister was required by law to make the decision during the caretaker period.

- (c) The Minister delayed the decision to allow for further public consultation.

Had this been the case, the Minister would have been required under the EPBC Act to publish a notice in accordance with the regulations inviting public comments.¹⁹ No

¹⁵ The fact that the former Minister, the Hon. Dr David Kemp MP, suggested that the final NHL would include around '100 to 200 sites' (Kemp 2003b) also supports this conclusion because it is highly unlikely that Bradman's birthplace, when assessed against the national heritage criteria, could be considered to be among the 200 most important heritage places to the nation.

¹⁶ Decisions on three other nominations were also deferred until after the election: War graves, Mildura Public Cemetery (VIC); the Golden Grove House, Shearing Sheds and Quarters (SA); and Eurama (NSW). Like the nomination concerning Bradman's birthplace, all three were subsequently rejected.

¹⁷ At times, the Minister has failed to comply with the statutory timelines for decisions under the EPBC Act (Department 2004; Australian National Audit Office 2003). However, to date, only five listing decisions concerning the NHL have been late and four of these should have been made during the election campaign. The four nominations that should have been dealt with during the election were subsequently rejected.

¹⁸ The caretaker conventions require that, from the time the House of Representatives is dissolved until the 'election result is clear or, if there is a change of government, until the new government is appointed', the government should avoid: (a) making major policy decisions that are likely to commit an incoming government; (b) making significant appointments; and (c) entering into major contracts or undertakings (Department of Prime Minister and Cabinet 2004).

¹⁹ EPBC Act, s. 324H.

notice was published and there is no record of the Minister seeking further public comments on the listing decision.

- (d) The Minister delayed the decision to avoid unwanted public criticism during the election campaign.

On the basis of the available evidence, this explanation appears to be the most plausible.

In making the listing decision, the Minister stated that, '(t)he place evidently has high social significance for the Cootamundra community and for sections of the wider community (as evidenced by visitation to the museum, and the results of public consultation)' (Campbell 2004, p. 2). Consequently, it seems clear that the Minister was aware of the public backlash that could occur as a result of his decision.

Any fears the Minister may have had about the potential adverse reaction to the listing decision were confirmed when the decision was announced. Cootamundra Shire Council's General Manager was quoted as saying that:

... the rejection of the listing of the birthplace was an insult to the council, the sport of cricket and the Bradman name ... 'Let them try to tell the people of Bethlehem that Christ's birthplace was unimportant' (Gregory 2005).

The minutes of a meeting of Cootamundra Shire Council held on 15 November 2004 note that the matter had been referred to the Member for Riverina, the Hon. Kay Hull MP, who had apparently agreed to 'follow up on this matter' (Cootamundra Shire Council 2004b, p. 10). They also include a record of a resolution being passed that the Council write to the Minister 'expressing its disappointment in this decision and requesting that it be reviewed' (Cootamundra Shire Council 2004b, p. 10). There were also reports that Cootamundra Shire Council organised for residents and visitors to Bradman's birthplace to 'petition the Federal Government in a bid to have the decision reversed' (Williams 2005).²⁰

The negative reaction to the listing decision was not confined to the Cootamundra community. Numerous media outlets in New South Wales covered the story (Pryor 2004; ABC 2005a; 2005b; Fitzsimmons 2005; Gregory 2005; Williams 2005), and a number of the media reports reflected negatively on the Minister's decision (Pryor 2004; Fitzsimmons 2005; Gregory 2005). For example, some eight months after the initial decision, Peter Fitzsimmons wrote in the *Sydney Morning Herald*:

... how is it that Donald Bradman's birthplace - at 89 Adams Street, Cootamundra - didn't make the cut? ... Twice now, Bradman's birthplace has been put before you, Minister, and twice you have rejected it. Minister, I think I should warn you that the PM devours this column every Saturday morning, and if you don't put Bradman's birthplace on the list you will risk being invited for a visit behind the woodshed with him. You *know* how he feels about Bradman (Fitzsimmons 2005).

²⁰ See also ABC (2005b).

Although we have not found any documentary evidence that categorically proves that the Minister delayed the decision in breach of the statutory requirements to avoid negative publicity during the election campaign, the circumstantial evidence, including the treatment of the request to list Kurnell Peninsula and subsequent events, suggest this is a strong possibility.

4. Comparison to the listing decision concerning Kurnell Peninsula

On 18 May 2004, the Hon. Mr Bruce Baird MP, the Liberal Member for Cook, New South Wales, nominated Kurnell Peninsula for inclusion on the NHL. Soon afterwards, the Minister referred the nomination to the AHC for an assessment of whether the site satisfied the national heritage criteria.

On 3 September 2004, after the Prime Minister had announced the federal election, Mr Baird wrote to Minister Campbell and asked that Kurnell Peninsula be included on the NHL via the emergency listing process because a sandmining proposal was apparently threatening certain Indigenous heritage values associated with the site. The sandmining proposal involved the extraction of approximately 4.5 million tonnes of sand, the production of sand products and the backfilling of dredge ponds from a site on the Peninsula by Rocla Pty Ltd (Rocla) (Knowles 2005; R.W. Corkery & Co. Pty Ltd 2002).

On 17 September 2004, three weeks before the federal election, the Minister decided to include the ‘whole of Kurnell Peninsula (excluding the urban area and oil refinery) in the National Heritage List under the emergency listing provisions of the EPBC Act’ on the basis that he believed the site had national heritage values and that ‘some Indigenous heritage values were under threat’ (Campbell 2005a, p. 4).²¹

There are several points to note about this decision.

- The Minister complied with the statutory requirement to make the emergency listing decision within ten business days, notwithstanding the fact that the request was made during the election campaign.
- The decision to include Kurnell Peninsula on the NHL during the election campaign was covered in at least two media stories, both of which suggested that the Minister’s decision placed Rocla’s sandmining proposal in doubt (Dick 2004; Davis 2004).
- In contrast to the manner in which other emergency listing requests have been treated, the Minister decided that some of the national heritage values of Kurnell Peninsula were threatened by a proposal that was in the process of being assessed under New South Wales environment and planning laws – an application that was ultimately rejected (Knowles 2005). In a number of other cases, the Minister has refused to accept that the heritage values of a place could be regarded as being threatened when the relevant proposal was still being evaluated under state and territory approval processes. For example, in

²¹ The decision took effect on 20 September 2004, when a notice of the decision was published in the Commonwealth Government Gazette.

rejecting the proposed emergency heritage listing of the Illawarra mine sites, the Minister stated:²²

I found that the NSW Government is yet to make a decision on the development application for housing and there is no indication that a decision to allow the development application is likely. I am therefore unable to conclude that any potential National Heritage values of the Illawarra Escarpment and Woronora Plateau are under threat (Campbell 2005b, p. 12).

- The protective provisions in Part 3 of the EPBC Act concerning national heritage places do not apply to Rocla's sand mining proposal, meaning the emergency listing of Kurnell Peninsula was an empty gesture. This is because the *Environment and Heritage Legislation Amendment Act (No. 1) 2003* (Cwlth) (EHLA Act) provides that the protective provisions in Part 3 do not apply to an action if the Minister made a decision on whether the action needed approval under the EPBC Act prior to 1 January 2004.²³ In this case, the Minister declared the Rocla proposal required approval under the EPBC Act in May 2002 (Early 2002). Yet, when Kurnell Peninsula was initially listed, Mr Baird was reported as saying that the listing 'would stop sand-mining company Rocla from trying to pre-empt the heritage listing process by extending its mining operations on the peninsula before the final decision' (Davis 2004).

The different ways in which the Kurnell Peninsula and Bradman's birthplace listing decisions were handled suggest that political considerations have played a significant role in the Government's administration of the NHL. More particularly, they indicate that it is likely the Minister delayed the decision on the listing of Bradman's birthplace until after the federal election for political reasons.

5. Funding for Bradman-related projects

5.1 Background on the new heritage regime

Following an extensive consultation process that commenced in the second half of the 1990s, the Federal Government tabled three bills in June 2002 that ultimately provided the backbone of the new heritage regime (Australian Heritage Commission 2002).²⁴ The object of the new regime was to focus the Commonwealth's energies towards the identification, protection and management of places of national significance and sites of heritage significance in Commonwealth areas.²⁵

²² See also the Minister's decision to refuse the first request for the emergency listing of the Alpine National Park (Campbell 2005c, p. 21).

²³ See *Environment and Heritage Legislation Amendment Act (No. 1) 2003* (Cwlth), Schedule 1, Item 8.

²⁴ The *Environment and Heritage Legislation Amendment Bill (No. 1) 2002*; *Australian Heritage Council Bill 2002*; and the *Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002*.

²⁵ This is made clear in the Explanatory Memorandum to the *Environment and Heritage Legislation Amendment Bill (No. 1) 2002*, which includes in its objects the establishment of 'a Commonwealth heritage regime that will focus on matters of national significance and Commonwealth responsibility' (Commonwealth of Australia 2002).

The principles that underlie the new heritage regime were originally outlined in the Council of Australian Government's (COAG) *Heads of Agreement on Commonwealth and State Roles and Responsibilities for the Environment* (1997) (COAG 1997).²⁶ This is acknowledged in the Explanatory Memorandum to the *Environment and Heritage Legislation Amendment Bill (No. 1) 2002*, which states that:

The Council of Australian Governments (COAG) (1997 Agreement, section 6) agreed on the need for the rationalisation of existing Commonwealth/State arrangements for the identification, protection and management of places of heritage significance. COAG accepted that the Commonwealth's role should focus on the protection of places of national heritage significance ... (Commonwealth of Australia 2002).²⁷

In the May 2003 budget, the Federal Government announced a new heritage program, called *Distinctively Australian*, which was to be worth \$52.6 million over four years (Kemp 2003a). Statements made by the former Minister and the Department of the Environment and Heritage (Department) suggested that the program would form an integral part of the new statutory heritage regime and that it would be focused towards sites of national and Commonwealth heritage significance (Kemp 2003a; Kemp 2003c; Kemp 2003d; Kemp 2004; Department 2005a). For example, the Department's website states:

In the May 2003 Budget, it was announced that \$52.6 million would be provided over four years for the *Distinctively Australian* program to protect and promote Australia's national heritage places. This will not be a grants program but instead will be tied closely to the implementation of the new heritage system (Department 2005a).

The *Distinctively Australian* program was launched on 18 December 2003, several months after the so-called 'Heritage Bills' had been passed by Parliament (Howard 2003).

In August 2004, Minister Campbell launched the *Sharing Australia's Stories* program. It was described as a three-year, \$3 million grants program 'to help tell the country's important national stories' (Campbell and Barresi 2004). Funding for the program was drawn from *Distinctively Australian* and the Minister stated that it 'complements (the) new Australian heritage legislation' (Campbell and Barresi 2004). Similarly, the Department's website suggests the program is intended 'to meet the Australian Government's national heritage priorities' (Department 2005b). The Minister said that people could:

²⁶ The *Heads of Agreement* requires the Commonwealth and the states to develop a national heritage places strategy outlining the Commonwealth's responsibilities and interests in relation to heritage. This strategy has not yet been completed. However, the *Heads of Agreement* emphasises that the Commonwealth 'should focus on matters of national environmental significance' and requires the 'national partnership between all levels of government on environment issues' to be based on several principles, including 'efficiency – unnecessary duplication and overlap between governments should be minimised' (COAG 1997).

²⁷ See also Kemp (2003c).

... apply for grants of up to \$50000 for projects which will showcase Australia's distinctive national character – both natural and cultural (Campbell and Barresi 2004).

Applications for grants under the first round of the *Sharing Australia's Stories* program closed on 15 October 2004 and the projects that were awarded funding were announced in July 2005 (Campbell and Barresi 2004; Campbell 2005d; Campbell 2005e; Campbell 2005f; Department 2005b). Applications for funding under the second round of the program are expected to be invited later this year (Department 2005b).

5.2 Grants to Bradman-related projects

On 4 July 2005, the Minister announced the first two projects to receive funding under the *Sharing Australia's Stories* program and both were Bradman-related (Campbell 2005d; Campbell 2005e).²⁸ They were the Don Bradman Heritage Trail and Australian Cricket Captains' Walk projects. These Bradman-related projects were the only ones announced on 4 July (with the remainder announced on 5 July) and they were two of only four that received the maximum amount of \$50,000 that was made available under the first round of the *Sharing Australia's Stories* program (Department 2005c). Further, both projects involve Cootamundra Shire Council, which was one of the main critics of the Minister's decision not to list Bradman's birthplace on the NHL (ABC 2005a; ABC 2005b; Gregory 2005; Williams 2005).

The Don Bradman Heritage Trail will apparently help link and promote key places in the life of Bradman and include a website and other materials (Campbell 2005d). The steering committee for the project includes the Bradman Foundation, Cootamundra Shire Council and the State Library of South Australia (Campbell 2005d; Campbell 2005e).

The Australian Cricket Captains' Walk is a walkway in Cootamundra that is decorated with a series of bronze sculptures of past cricket captains, including one of Bradman. The walkway is currently incomplete as it includes statues of only 13 out of the 42 Australian Test captains.²⁹ The funding under the *Sharing Australia's Stories* program is intended to help Cootamundra Shire Council expand the walk by paying for the completion of more statues (Campbell 2005e).

While the funding for the Australian Cricket Captains' Walk will not pay for more statues of Bradman, as the Minister emphasised in announcing the grant, it was intended to complement 'Cootamundra's other cricket heritage places, including Sir Donald Bradman's birthplace' (Campbell 2005e). Similarly, the Nationals Member

²⁸ In December 2003, the Government provided \$5,000 for the erection of a bronze relief at Hurstville Oval to commemorate Sir Donald Bradman and three other Australian cricket legends (Bill O'Reilly, Arthur Morris and Ray Lindwall) (Kemp 2003e). The grant was provided under the Commemoration of Historic Events and Famous Persons Program. It is unclear whether the funding for this program is being drawn from the *Distinctively Australian* program.

²⁹ The Australian Cricket Captains' Walk currently includes a statue of Unaarrimin (Johnny Mullagh), who was the leading Aboriginal player in the Australian side that toured England in 1868 (Campbell 2005e). Consequently, the walk is intended to include 43 statues when fully completed (Campbell 2005e).

for Riverina, the Hon. Kay Hull MP, said that the project ‘will ensure Cootamundra’s link with Sir Donald Bradman is continued’ (Hull 2005a).

There are two issues that arise in relation to the *Sharing Australia’s Stories* program and the grants provided for the Bradman-related projects.

- A significant number of the projects that have received funding under the *Sharing Australia’s Stories* program (including the Bradman-related projects) do not relate to the identification, protection or management of places that are of national or Commonwealth heritage significance.³⁰ Consequently, it appears the program is not being administered in accordance with the spirit and objects of the *Heads of Agreement on Commonwealth and State Roles and Responsibilities for the Environment*. The way the program is being administered also conflicts with one of the primary purposes of the new federal heritage regime, which is to ensure the Commonwealth focuses its energies on places of national and Commonwealth heritage significance. Most importantly, the *Sharing Australia’s Stories* program does not appear to be an efficient use of scarce government resources as many nationally significant heritage places are in urgent need of additional funding for identification, protection and management (Lennon *et al.* 2001).
- As detailed in Section 5.3, there is evidence of impropriety on behalf of the Federal Government in relation to both funding decisions, which raise serious questions about the manner in which the *Distinctively Australian* and *Sharing Australia’s Stories* programs are being administered.

5.3 Events surrounding Australian Cricket Captains’ Walk and Don Bradman Heritage Trail funding decisions

The key events surrounding the Australian Cricket Captains’ Walk and Don Bradman Heritage Trail funding decisions are as follows.

- On 20 August 2004, the Minister, Senator Ian Campbell launched the *Sharing Australia’s Stories* program.
- On 15 October 2004, the period for grant applications under the first round of the *Sharing Australia’s Stories* program closed.
- On 7 March 2005, the Mayor and the General Manager of Cootamundra Shire Council met with Minister Campbell to discuss the nomination of Bradman’s birthplace for inclusion on the NHL. The minutes of the meeting of Cootamundra Shire Council on 11 April 2005 include the following remarks in relation to the meeting with the Minister.

Whilst the Minister did not indicate a change of position in regard to this matter, he did advise that his department was looking at the concept of a “Bradman Trail” under the Register of the National Estate. ... A letter has now been received from the Minister, advising that the concept is continuing to be investigated and inviting the

³⁰ See Department (2005c).

Council to participate in the development of the Trail by being represented on the steering committee for the project. ... At the meeting with the Minister, when he raised the Bradman Trail concept, the Mayor indicated that Council would certainly support the trail concept, but that it would also continue with its representations in relation to the nomination of Bradman's Birthplace for the National Heritage List (Cootamundra Shire Council 2005a, p. 18).

- On 15 March 2005, representatives from Cootamundra Shire Council met with the Prime Minister's office. According to news reports, the Council officers described the meeting with the Prime Minister's office as positive (ABC 2005a).
- On 29 March 2005, Cootamundra Shire Council received a letter from Minister Campbell referring to the meeting held on 7 March that stated:

One of the important issues arising from the meeting was the possibility of developing a Sir Donald Bradman Heritage Trail to celebrate the life, cricketing achievements and national contribution made by Sir Donald. In order to assist you to further consider whether Cootamundra Shire Council would like to participate in the development of the Trail, I have attached some notes on the concept (Campbell 2005g).

The attachment to the letter states:

... The development of the trail will need to be handled with appropriate sensitivity and in consideration of the Bradman family's wishes to prevent inappropriate intrusiveness and exploitation of Sir Donald's name and reputation.

... It is proposed that the Department of the Environment and Heritage facilitates the formation of a steering committee comprising representatives of each of the proposed trail places. ... The goal would be to integrate places into a marketable network for tourism.

... While no direct Federal Government funding is immediately available, the steering committee may consider the following avenues ... Applying for a *Sharing Australia's Story* grant through the Department of the Environment and Heritage. ... The next funding round will open later this year (Campbell 2005g).

- On 31 May 2005, the Mayor and the General Manager met with representatives of other stakeholders in the proposed Don Bradman Heritage Trail project. The minutes of the meeting of Cootamundra Shire Council on 20 June 2005 state:

On 31 May, the Mayor and General Manager met in Canberra with representatives of other stakeholders in [the Don Bradman Heritage Trail] project, being the Bradman Museum and the State Library of South Australia ... It was agreed that the Bradman Trail proposal

should proceed and that an application for funding should be prepared and submitted to enable the project to proceed. A joint proposal and grant application has been completed and submitted to the Department of Heritage and it is hoped that a favourable reply will be received shortly (Cootamundra Shire Council 2005b, p. 24).

- On 4 July 2005, the Minister announced that \$50,000 had been awarded to the Don Bradman Heritage Trail project, and a further \$50,000 had been awarded to the Australian Cricket Captains' Walk project (Campbell 2005d; Campbell 2005e). A media release issued by the Hon. Kay Hull MP on the same day states:

The Nationals Member for Riverina Kay Hull today announced funding of \$50,000 to help expand the Australian Cricket Captains Walk in Cootamundra. ... Mrs Hull lobbied the Minister for the Environment and Heritage Senator Ian Campbell extensively for funding to support this valuable project (Hull 2005b).

- On 5 July 2005, the Minister announced all of the projects that would receive funding under the first round of the *Sharing Australia's Stories* program (Campbell 2005f). According to the Minister, nearly 1,000 applications were received, but only 22 projects were successful (Campbell 2005f). Four projects were awarded the maximum amount of \$50,000, including the Don Bradman Heritage Trail and Australian Cricket Captains' Walk projects (Department 2005c). In making the announcement, the Minister stated that:

Sharing Australia's Stories will pay tribute to some of Australia's greatest sporting heroes and sportsmen, particularly Sir Donald Bradman (Campbell 2005f).

- On 11 July 2005, a meeting of Cootamundra Shire Council was held. The minutes of the meeting state:

It is pleasing to advise that the Minister has approved this grant and action to establish the [Don Bradman Heritage Trail] has commenced, with a consultant to be appointed in the near future to work on the scoping paper (Cootamundra Shire Council 2005c, p. 21).

In relation to the Australian Cricket Captains' Walk project, the minutes of the meeting state:

The Captains' Walk project was commenced in 1998 and was proposed to contain busts of all Australian Test Cricket captains with plaques noting their records as players and captains.

Councillors would have seen or heard media reports regarding a grant of \$50,000 from the Australian Government, arranged by Kay Hull MP, towards the cost of finishing the Captains Walk project.

Resolved ... that ... Council accept the grant of \$50,000 for the Captains' Walk project, with gratitude ... (and) The Member for

Riverina, Kay Hull MP, be thanked for her assistance in this matter (Cootamundra Shire Council 2005c, p. 22).

Cootamundra Shire Council did not make an application for the grant provided in relation to the Australian Cricket Captains' Walk (Godbee, S. pers comms 2005). The records of the minutes of the meetings of Cootamundra Shire Council between August 2004 (when the *Sharing Australia's Stories* program was announced) and July 2005 (when the funding was received) contain no mention of who actually lodged the application, other than the reference to the funding having been 'arranged by Kay Hull MP' (Cootamundra Shire Council 2005c, p. 22).

5.4 Conclusions regarding the Don Bradman Heritage Trail and Australian Cricket Captains' Walk projects

The available evidence in relation to the funding decision made by Minister Campbell in relation to the Don Bradman Heritage Trail project indicates that:

- it is likely that the concept for the Don Bradman Heritage Trail project was devised by the Minister and the Department of the Environment and Heritage;
- the application for the Don Bradman Heritage Trail project was lodged some time after 31 May 2005, at least seven and a half months after the period for applications under the *Sharing Australia's Stories* program had closed;
- despite the Minister suggesting that the project would not be eligible for funding until the second round of the *Sharing Australia's Stories* program, the application for funding was approved under the first round within a month of being lodged; and
- the project was awarded the maximum amount available under the *Sharing Australia's Stories* program.

The available evidence concerning Minister Campbell's decision in relation to the Australian Cricket Captains' Walk project suggests:

- Cootamundra Shire Council did not make an application for funding for the project under the *Sharing Australia's Stories* program despite being the recipient of the grant;
- the funding for the project was 'arranged by Kay Hull MP' (although it is unclear whether she actually lodged a formal application and, if so, whether it was lodged before the closing date for applications); and
- the project was awarded the maximum amount available under the *Sharing Australia's Stories* program.

There is also evidence that the Prime Minister's office was involved in the events following the decision not to include Bradman's birthplace on the NHL, although the nature of its involvement is unclear.

Irrespective of the value of these projects, the events surrounding the grants raise questions about the integrity of the decision-making process and the administration of the *Sharing Australia's Stories* program. At the very least, these decisions, and the fact that approximately 70 per cent of funding under the *Sharing Australia's Stories* program has been provided for projects in federal Coalition electorates,³¹ give the impression that the program is being used primarily for political purposes rather than to further the objects of the new federal heritage regime.

6. Conclusion

The actions of the Federal Government surrounding the nomination of Bradman's birthplace on the NHL raise serious questions about the Minister's administration of the NHL and the extent to which the Government is using the *Distinctively Australian* and *Sharing Australian Stories* programs for political rather than heritage conservation purposes.

Minister Campbell delayed making a decision in relation to the nomination of Bradman's birthplace for inclusion on the NHL until after the federal election, in breach of his statutory obligations. The available evidence suggests it is likely that the delay was motivated by a desire to avoid unwanted public criticism during the election campaign.

After the decision not to include Bradman's birthplace on the NHL was announced, the Federal Government proceeded to allocate \$100,000 to two Bradman-related projects under the *Sharing Australia's Stories* program, both of which were welcomed by Cootamundra Shire Council, a vocal opponent of the listing decision. The circumstances in which the grants were awarded suggest that the funding decisions are likely to have been motivated by political considerations. Further evidence for this conclusion is provided by the fact that the majority of funding under the *Sharing Australia's Stories* program has been directed towards federal Coalition electorates.

The events surrounding the nomination of Bradman's birthplace raise questions about whether the Federal Government has inappropriately sought to exploit Sir Donald Bradman's name and reputation for political purposes.

The evidence of impropriety on behalf of the Federal Government in relation to these events suggests that consideration should be given to whether responsibility for making listing decisions concerning the NHL and distributing funding for environment and heritage projects should be transferred from the Minister to an independent statutory authority. The Commonwealth Auditor-General should also be asked to undertake a comprehensive review of the *Distinctively Australian* and *Sharing Australia's Stories* programs.

³¹ See Appendix A. This figure is an approximate due to the limited nature of the information provided by the Department on the projects that received funding under the *Sharing Australia's Stories* program (see Department (2005c)).

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Appendix A Grants allocated under the first round of the *Sharing Australia's Stories* Program

Project Title	Recipient	Location of project	Approved Funding	Electorate	Party
Berri Riverfront Signage Project	The Berri Barmera Council	Berri, SA	\$4,545	Barker	Liberal
Bradman Heritage Trail	The Bradman Foundation	Adelaide, SA, Bowral, NSW and Cootamundra, NSW*	\$50,000	Adelaide/Hume/Riverina	Labor/Liberal/National
Captains' Walk	Cootamundra Shire Council	Cootamundra, NSW	\$50,000	Riverina	National
Gascoyne Murchison Outback Pathways Project	Gascoyne and Murchison Tourism Inc	Gascoyne Murchison Region, WA	\$45,454	Kalgoorlie	Liberal
Geological and Mining Heritage of Fleurieu Peninsula, SA	District Council of Yankalilla	Southern Fleurieu Peninsula, SA	\$4,545	Mayo	Liberal
Historical Walks: Kempsey and the Villages in the Macleay River District	Macleay River Historical Society	Macleay River District, NSW	\$45,454	Cowper & Lyne	National
Interpreting the Botanists Way through the Greater Blue Mountains World Heritage Area	Tourism Hawkesbury Inc	Greater Blue Mountains World Heritage Area, NSW	\$50,000	Macquarie	Liberal
Karst and Cave System Interpretive Signage/Display Project	Western Australian Speleological Group	Yanchep, WA	\$5,200	Pearce	Liberal
Limestone Landscapes	National Trust of SA	Naracoorte, SA	\$28,450	Barker	Liberal
Recollections	Armenian General Benevolent Union Victoria Inc	Melbourne, VIC	\$9,812	Melbourne	Labor
Search for <i>HMAS Sydney</i>	HMAS Sydney Search Pty Ltd	South west of Carnarvon, WA**	\$50,000	Kalgoorlie	Liberal
Sharing the Albert Namatjira Story	Ntaria School	Hermannsburg, NT	\$22,727	Lingiari	Labor

Sharing the Modesto Varischetti Story	Shire of Coolgardie	Bonnievale Town Site Westralia Goldmine, WA	\$45,454	Kalgoorlie	Liberal
Shearing the Stragglers	Flinders Shire Council	Hughenden, QLD	\$48,672	Kennedy	Independent
Shelter from the Storm: Jewish Refugees 1933-1944	Jewish Holocaust Centre Inc	Melbourne, VIC***	\$20,636	Melbourne	Labor
Tasmanian Natural History Interpretative Exhibition	Queen Victoria Museum and Art Gallery	Launceston, TAS	\$42,727	Bass	Liberal
The Goyder Project	Kanawinka Writers and Historians Inc	Naracoorte, SA	\$29,250	Barker	Liberal
Trading Places	City of Greater Dandenong	Dandenong, VIC	\$33,636	Bruce	Labor
Walking a Different Road: the Life and Story of Darby Jampijinpa Ross	Warlpiri Media Association	Yuendumu, NT	\$45,442	Lingiari	Labor
Walter Burley Griffin Society Inc Website	Walter Burley Griffin Society Inc	Sydney, NSW	\$20,000	Sydney	Labor
When Gouldians Filled the Sky: licensed finch trade in the Kimberley region	Boolanjee Aboriginal Corporation	Wyndham, WA	\$30,000	Kalgoorlie	Liberal
Wujal Wujal Community History Project	Cape York Aboriginal Charitable Trust	Wujal Wujal Community and Cairns, QLD	\$43,219	Leichhardt	Liberal

Source: Department (2005c).

Key:

* The Department's website lists the project location as Bowral, NSW (Department 2005c). Given the nature of the project, it was considered more appropriate to include the other project locations mentioned in the description provided by the Minister (Campbell 2005d).

** The Department's website lists the project location as Perth, WA (Department 2005c), which is held by the Labor Party. However, the search for the *HMAS Sydney* will take place in the waters south-west of Carnarvon, WA (a Liberal electorate). Further, the grant recipient for the project, the HMAS Sydney Search Pty Ltd, is the trustee for the Finding Sydney Foundation. The postal address of the Foundation is Nedlands, WA, which is located in the federal electorate of Curtin, also held by the Liberal Party. Therefore, both the project location and the grant recipient appear to be more closely associated with Liberal electorates.

*** The Jewish Holocaust Centre is located in Elsternwick, VIC, in the federal electorate of Melbourne Ports, which is held by Labor. Therefore, irrespective of whether the project location or address of the grant recipient is used (assuming the information on the Department website is accurate), both are Labor electorates.