

Environment and heritage

5.1 In the Indian Ocean Territories, the Department of the Environment and Heritage has responsibilities in two key areas:

- promotion, protection and conservation of the environment, including heritage, especially those aspects that are matters of national environmental significance; and
- provision of meteorological and related services.¹

In 2001-02, the Department reported that:

- the Minister had exempted the Christmas Island Immigration Reception and Processing Centre from Part 3 under section 158 and Part 13 under section 303A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act);²
- a consultancy was underway for the preparation and updating of recovery plans for four bird species and one mammal on Christmas Island;³
- the Commonwealth had been involved in revising and updating the management plan for the Christmas Island Ramsar site;⁴ and

1 Department of the Environment and Heritage, Submissions, p. 213.

2 Department of the Environment and Heritage, *Annual Report 2001-2002*, p. 181.

3 Three endemic mammals exist on Christmas Island. The Christmas Island Fruit Bat and the Christmas Island Pipistrelle are well distributed over the island. Of the two bat species, the Pipistrelle bat is listed as endangered under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). The other mammal species, the Christmas Island Shrew, is listed as endangered under the EPBC Act. It has not been seen since 1985 despite surveys in 1987 and work by Parks Australia North during 1997-98. Department of the Environment and Heritage, *Annual Report 2001-2002*, p. 189

- a permit had been issued under section 216 of the EPBC Act for feathers to be collected from boobys for research purposes on Cocos (Keeling) Islands.⁵

The Department also reported that several proposals to upgrade infrastructure on Christmas Island had been determined to be controlled actions and that construction of new recreational facilities had been approved.⁶

- 5.2 Expenditure by the Federal Government on environment and heritage in the Indian Ocean Territories is through Parks Australia, the Australian Heritage Commission (now Council) and the Bureau of Meteorology. Parks Australia's expenditure for 2001-2002 for the National Park on Christmas Island and other areas in the Territory was approximately \$4.5 million. Expenditure for the Pulu Keeling National Park and other areas on Cocos (Keeling) Islands amounted to \$530,000. Expenditure from the Australian Heritage Commission budget amounted to \$20,000 for provision of Register of the National Estate advice in both territories. Bureau of Meteorology expenditure per annum amounted to approximately \$118,000 on Christmas Island and \$368,000 on Cocos (Keeling) Islands.⁷

Federal Environmental Laws

Environment Protection

- 5.3 The principal legal framework for environmental protection in the Indian Ocean Territories is provided by the *Environment Protection and*

4 "Hosnie's Spring, located within the National Park in the north east area of the island, is internationally listed as a Ramsar Wetland. The area of the spring covers approximately 0.33 ha and is located between 24m and 37m above sea level and 120m inland from the shore terrace. It is made up of a number of freshwater streams and seepages. The wetland is host to a number of migratory bird species that are listed under international agreements such as JAMBA and CAMBA. Hosnie's Spring supports a stand of *Bruguiera spp.* (mangrove) that has been estimated to be in excess of 120,000 years old and comprises some of the largest plants of the species ever recorded. It is also of particular interest due to its sloping location well above sea level." *Christmas Island Airport Upgrade – Environmental Impact Statement*, pp. 45-46. Located at:

http://www.dotars.gov.au/terr/xmas/Airport_upgrade/Environment.pdf.

See also Department of the Environment and Heritage, *Annual Report 2001-2002*, p. 194. In 2002-03, The Dales on Christmas Island were listed under the Ramsar Convention. See Department of the Environment and Heritage, *Annual Report 2002-2003*, p. 86.

5 Department of the Environment and Heritage, *Annual Report 2001-2002*, p. 191.

6 Department of the Environment and Heritage, *Annual Report 2001-2002*, pp. 177, 183.

7 Information provided by the Department of the Environment and Heritage.

Biodiversity Conservation Act 1999 (Cth).⁸ Under the assessment and approval provisions of the Act, actions that are likely to have a significant impact on a matter of national environmental significance are subject to a rigorous assessment and approval process. An action includes a project, development, undertaking, activity, or series of activities.⁹

- 5.4 In short, the EPBC Act provides that nobody can take an 'action' that may have a significant impact on the environment of areas listed under the Act unless they have the prior approval of the Federal Minister for the Environment and Heritage. Administrative Guidelines issued under the Act provide guidance on determining whether an action has, will have, or is likely to have a significant impact on a matter of national environmental significance.¹⁰
- 5.5 Importantly, the term 'environment' is defined by the Act to mean all natural, social and cultural aspects of the area or land in question. This includes all animal and plant life, the soil, water and air, and even things like buildings and access for recreation may qualify for protection. In respect of the marine environment, for example, the Act may apply to any proposed new ventures that could cause major pollution, destroy undersea habitats for marine life or kill sea creatures. This may include new wharfs, offshore installations or even a new project on the Islands that result in significant environmental impact.
- 5.6 All actions that require approval under the EPBC Act must undergo environmental impact assessment before they can take place. This involves gathering and analysing information about the project and its impacts, consulting widely and considering ways to minimise any significant impacts. This ensures the Minister has enough information to make an informed decision about whether to approve a proposed action. Assessment is also designed to allow the public to comment on a proposal.
- 5.7 Different assessment approaches will be appropriate in different circumstances. The Minister must choose one of the following assessment options:

8 Christmas Island is also subject to the applied Western Australian *Environment Protection Act 1986* (WA) (CI).

9 Department of the Environment and Heritage, Submissions, p. 225.

10 See <http://www.deh.gov.au/epbc/assessmentsapprovals/guidelines/index.html>.

- assessment on preliminary documentation;
- a Public Environment Report (PER);
- an Environmental Impact Statement (EIS);
- a Public Inquiry; or
- an accredited process (that is, on a project by project basis).

5.8 Once the environmental assessment process is complete, the Minister must decide whether to approve the action within 30 business days. In deciding whether to approve an action and what conditions to impose, the Minister must consider relevant environmental impacts and economic and social matters. In considering these matters, the Minister must also take into account:

- the principles of ecologically sustainable development;
- the assessment report on the impacts of the action (or the report of a commission of inquiry);
- the documentation provided by the person proposing the project (for example, an environmental impact statement);
- any other information available to the Minister on the relevant impacts of the action; and
- relevant comments from other Federal Government Ministers (such as information on social and economic factors).

5.9 An approval issued by the Minister is a legal document saying that the project can proceed. Most approvals have conditions that must be complied with. Anyone working directly for, or as a contractor to, the holder or owner of an EPBC Act approval is also bound by that approval. It is the owner's responsibility to ensure the approval and its conditions are followed.

5.10 Importantly, the EPBC Act allows the Federal Environment Minister to require proposed actions to be referred to him or her for a preliminary assessment as to whether they may be likely to have a significant impact on the matters of environmental significance listed and, therefore, require approval and detailed assessment under the Act as described above. Apart from requiring approval of actions, the Act also establishes systems for issuing permits to take, catch, interfere with or kill listed species and ecological communities on Commonwealth (Crown) land or in a marine area.

- 5.11 The EPBC Act requires recovery and threat abatement plans to be prepared and implemented for those species listed under it. Importantly, the Act also expressly allows for the provision of federal financial and other assistance to State and Territory Governments and to individuals to help with the implementation of such plans.¹¹ The Act also allows for the Federal Government to enter into conservation agreements with State and Territory Governments and with individuals to provide for the protection and conservation of biodiversity.¹²

Heritage Protection

- 5.12 The legal framework for heritage protection in the Indian Ocean Territories is also provided under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). The Act has been amended to implement a new national scheme for the identification, conservation and protection of Australia's unique heritage places.¹³ Listed places will be protected under the EPBC Act with a range of enforcement options for any reported breach.
- 5.13 The Department of the Environment and Heritage informed the Committee that the new heritage regime within the EPBC Act will give rise to important changes in heritage protection in the territories.¹⁴ Key features of the new regime include:
- the creation of a National Heritage List;
 - the creation of a Commonwealth Heritage List;
 - the creation of a new expert advisory body, the Australian Heritage Council, to advise the Federal Environment Minister on the listing and protection of heritage places on the National and Commonwealth Heritage Lists;¹⁵

11 See sections 281 & 286, *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

12 See section 304, *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

13 On 23 September 2003 the *Environment and Heritage Legislation Amendment Act (No 1) 2003*, *Australian Heritage Council Act 2003* and *Australian Heritage Council (Consequential and Transitional Provisions) Act 2003* received Royal Assent. The new heritage regime came into effect on 1 January 2004. Further information can be found at: <http://www.ea.gov.au/heritage/whatsnew/index.html>

14 Department of the Environment and Heritage, Submissions, p. 214.

15 The Council replaces the Australian Heritage Commission, whose responsibilities included assessing natural and cultural heritage places and providing advice on the

- the retention of the Register of National Estate;¹⁶
- increased protection for places on the register; and
- the introduction of a four-year funding package for listed heritage places (\$52.6 million over four years as announced in the 2003-2004 budget).¹⁷

5.14 The amendments will also allow the Federal Minister for the Environment and Heritage to include on the Commonwealth Heritage List those places that are in Commonwealth areas and which are currently listed on the RNE. Listing will oblige federal agencies to properly manage heritage listed places for which they are responsible.¹⁸ This will extend to the development of heritage strategies to identify and protect heritage places. As indicated above, there may be additional and significant funding opportunities arising out of any listing.

Christmas Island

5.15 Ms Virginia Jealous, representing a group of concerned Christmas Island residents, pointed out that the Immigration Reception Processing Centre and related housing developments in the Poon Saan and Silver City areas on Christmas Island had been exempted from the usual environmental impact assessment procedures required under the EPBC Act.¹⁹ Ms Jealous noted that, following “recent heavy rains”, there had been significant erosion in the area of the road works.²⁰ This erosion had affected the fringes of the Abbott’s Booby habitat.²¹

protection of heritage places listed on the Commission’s Register of the National Estate (RNE).

- 16 The Register of National Estate includes over 13,000 places of natural, historic and indigenous significance to Australia. It can be viewed online at:
<http://www.ahc.gov.au/register/index.html>
- 17 Media Release, Minister for the Environment & Heritage, The Hon. Dr David Kemp, *Quantum Leap for National Heritage*, 21 August 2003. Available online at:
<http://www.deh.gov.au/minister/env/2003/mr21aug303.html>
- 18 Media Release, Minister for the Environment & Heritage, The Hon. Dr David Kemp, *Quantum Leap for National Heritage*, 21 August 2003. Available online at:
<http://www.deh.gov.au/minister/env/2003/mr21aug303.html>
- 19 Ms Virginia Jealous, Transcript, 11 March 2003, p. 33.
- 20 Ms Virginia Jealous, Transcript, 11 March 2003, p. 33.
- 21 Ms Virginia Jealous, Transcript, 11 March 2003, pp. 33-34.

- 5.16 The Department of the Environment and Heritage stated that the erosion problems on Christmas Island were being addressed.²² The Indian Ocean Territories' Environmental Officer had undertaken site inspections, reviewed environmental management plans for the sites, and given instructions for upgrades and other measures where necessary. The Department of the Environment and Heritage noted that the Christmas Island Administration had also undertaken remedial work to mitigate the impacts of sediment run-off from the site.²³
- 5.17 The Committee considers the exemption of the proposed Immigration Reception and Processing Centre on Christmas Island from the EPBC Act to be inappropriate and urges the Federal Government not to allow this precedent to occur again. The Committee also recognises that the associated road works have impacted on the Abbott's Booby habitat and calls on the Federal Government to properly evaluate this impact.
- 5.18 Another issue brought to the Committee's attention was the impact that introduced fauna are having on endemic species. Yellow crazy ants and feral cats pose the greatest threats. The Department of the Environment and Heritage stated that it had spent \$1.5 million on baiting the yellow crazy ant, including aerial baiting.²⁴ The Department considered that the baiting program had been successful, but that it would need to monitor the situation over the next three or four years.²⁵ Mr Mark Bennett, Environmental Manager, Christmas Island Phosphates, stated that the yellow crazy ant eradication program "has been quite successful".²⁶
- 5.19 Mr Bennett also informed the Committee that Christmas Island Phosphates' recent studies made in connection with the company's draft environmental impact statement for new mining leases confirm that feral cats are having a significant impact on Christmas Island's

22 Department of the Environment and Heritage, Submissions, p. 698.

23 Department of the Environment and Heritage, Submissions, p. 698.

24 See <http://www.deh.gov.au/parks/christmas/fauna/crazy.html> Parks Australia and the Invasion Biology Group from Monash University were awarded a 2003 Banksia Foundation award for the protection of Australia's environment for their successful campaign to control the yellow crazy ant problem on Christmas Island.

25 Mr John Hicks, Transcript, 28 March 2003, p. 179.

26 Mr Mark Bennett, Transcript, 11 March 2003, p. 69.

wildlife.²⁷ Mr John Hicks from Parks Australia, on the other hand, stated that, based on research in the early 1980s, he did not rate feral cats “all that highly” as a significant environmental threat.²⁸ Mr Bennett also stated:

The Christmas Island biota faces major Island wide issues such as the Crazy Ant, exotic predators and competitors, weed invasions and other processes that require additional research. The company’s technical advisors believe that there needs to be a more integrated approach to all the ecological problems of the Island - one that involves all Commonwealth agencies and the Shire of Christmas Island, private enterprise land users like our company, and the community.²⁹

Recommendation 5

- 5.20 That the relevant Federal Government agencies – in collaboration with other relevant stakeholders on Christmas Island – undertake an assessment of the threat posed to the Island’s ecology from introduced species and support the ongoing campaign to control the yellow crazy ant problem.**

Cocos (Keeling) Islands

- 5.21 The Shire President of Cocos (Keeling) Islands, Mr Ron Grant, stated that there were inconsistencies in the environmental impact assessment process required of developers under the EPBC Act. He noted that although a company in which he has an interest had been required to undertake a lengthy and extensive environmental impact assessment for a proposed tourist development, there was no such requirement for the sale of land at another location, Buffet Close.³⁰ The land to which Mr Grant referred was land being sold by the Commonwealth. The Department of Transport and Regional Services informed the Committee that:

27 Mr Mark Bennett, Transcript, 11 March 2003, pp. 61-62.

28 Mr John Hicks, Transcript, 28 March 2003, p. 180.

29 Mr Mark Bennett, Submissions, p. 392.

30 Mr Ron Grant, Transcript, 13 March 2003, p. 95.

The sale of the site does not require the Commonwealth to undertake an EIS as the Commonwealth is not proposing to develop the property itself ... Should the purchaser of the land decide to develop the site they will be obliged to comply with all environmental requirements ... including, if necessary, an EIS.³¹

Oceania House

5.22 Mr Lloyd Leist purchased the historic Oceania House, former home of the Clunies-Ross family on Home Island, from the Commonwealth. The contents of the house were given to the Cocos (Keeling) Islands Shire Council by the Commonwealth.³² Some items of significant heritage value – “the original four Clunies-Ross busts that were in the main entry and the proclamation board” - were among these contents.³³ Mr Leist noted his concern that the busts and proclamation board were not stored securely and they were not on public display. Mr Leist stated that when he completed the restoration of Oceania House, he is:

prepared to open a major section of it to the public, and I would think the correct thing would be that the busts and the proclamation board should come back to their original situ.³⁴

5.23 The Committee raised this matter with the Australian Heritage Commission. The Commission pointed out that it had “expressed concern about the removal of the items, especially the Proclamation Board from Oceania House”.³⁵ The Commission suggested that:

... if the present owner was willing to securely house some items and ensure that they were regularly accessible for public viewing, the Commission would encourage discussion between the owner, the shire and other stakeholders to enable a long-term loan to be agreed upon. Any agreement should be legally binding on all parties and include provisions to

31 Department of Transport and Regional Services, Submissions, p. 648.

32 Mr Lloyd Leist, Transcript, 13 March 2003, pp. 124.

33 Mr Lloyd Leist, Transcript, 13 March 2003, pp. 124.

34 Mr Lloyd Leist, Transcript, 13 March 2003, pp. 124-127.

35 Australian Heritage Commission, Submissions, p. 599.

ensure public accessibility, security, maintenance and monitoring.³⁶

- 5.24 The Committee wrote to the Cocos (Keeling) Islands Shire on 27 May 2003 to enquire whether an arrangement had been made or could be reached between the shire and Mr Leist. The shire president responded that the shire had discussed the matter with Mr Leist and that it had no objections to the items being returned to Mr Leist for display. No legal documents had been prepared on the issue and the items remained in storage at the museum.³⁷
- 5.25 While the Committee welcomes the verbal agreement between Mr Leist and the Shire, it considers that the parties should follow the advice given by the Australian Heritage Commission, namely, that there should be a legally binding agreement which should include provisions to ensure public accessibility, security, maintenance and monitoring. As it is expected that restoration of Oceania House will take several years, interim arrangements should be made for the secure storage and preservation of the objects and their public display.

Recommendation 6

- 5.26 **That the owner of Oceania House, the Cocos (Keeling) Islands Shire Council and other relevant parties, consider forming a legally binding agreement for the return of the Clunies-Ross busts and proclamation board for public display at Oceania House once restorations are complete. This agreement should include provisions to ensure public accessibility, security, maintenance and monitoring. In the interim, the Shire should make arrangements for the secure storage and preservation of these heritage items and consider how they may be displayed.**

36 Australian Heritage Commission, Submissions, p. 599.

37 Information provided by Mr Ron Grant, Cocos (Keeling) Islands Shire President.