

Senate Standing Committee on Environment, Communications and the Arts

Answers to questions on notice

Environment, Water, Heritage and the Arts portfolio

Additional Estimates, February 2009

Outcome:	1	Question No:	110
Output:	1.4		
Division/Agency:	Heritage Division		
Topic:	World Heritage – Port Arthur		
Hansard Page ECA:	91 (24/2/09)		

Senator ABETZ asked:

But did it specifically talk about the buffer zone? That is the only issue. Everybody loves the idea that it is on the World Heritage List *et cetera*. It is just that some landholders adjoining or abutting the World Heritage area are now somewhat surprised at the buffer zone consequences. I just want to know whether they were told and, if they were not told, who do you believe had the responsibility to inform them?

Answer:

The Tasmanian Government has advised that the issue of buffer zones was covered in its presentation to a community consultation meeting at Port Arthur on 23 April 2007.

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Outcome:	1	Question No:	111
Output:	1.4		
Division/Agency:	Heritage Division		
Topic:	EPBC Act and Heritage		
Hansard Page ECA:	93 (24/2/09)		

Senator Siewert asked:

Senator SIEWERT—Let us take a step back. How did you report threats to heritage before the act was changed?

Mr Early—We did not report threats to heritage other than the number of controlled actions where Commonwealth heritage was a controlling provision. That is what we still do. Unfortunately, I do not have a copy of the EPBC Act annual report with me, but we could take that on notice. I cannot imagine that there were only two controlled actions for Commonwealth heritage in the last financial year. That does not seem accurate.

Answer:

This question appears to be based on a misunderstanding of the information presented in the report – which is not comparable with the data previously reported by the Australian Heritage Commission. The figures quoted from the Annual Reports of the Australian Heritage Commission refer to requests for advice, from Commonwealth and non-Commonwealth bodies, made to the Commission on proposed actions that might affect to a significant extent any of the 13,000 places in the Register of the National Estate. The requests were not seeking approval for actions.

In contrast, under the EPBC Act, approvals are required for any action "that has, will have, or is likely to have a significant impact on the National Heritage values of a National Heritage place". Eighty one places are currently included in the National Heritage List. Approvals are also required for any action that has, will have or is likely to have a significant impact on the environment of Commonwealth land or marine areas, including the heritage values of all places in the Commonwealth Heritage List (currently 339 places).

The Department's Annual Report Volume 2 gives an overview of the operations of the Act each financial year. The report gives information on the protection of National and Commonwealth Heritage listed places, including the number of referrals under the Act that were designated as Controlled Actions. In 2007-08, the Department received 418 referrals under all controlling provisions. During that year, 13 proposals were made Controlled Actions because of their potential impact on National Heritage values and eight were approved if taken in a particular manner. In addition, 22 proposals were made controlled actions because of their potential impact on Commonwealth land or marine areas and 52 were

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approved if taken in a particular manner. Six other proposals were made Controlled Actions because of their potential impact on Commonwealth Heritage values.

The report "*The National and Commonwealth Heritage Lists, 1 January 2004 – 30 June 2008*", tabled in Parliament in early 2009, was the first five yearly report of its kind required under the Act. It was prepared as a statutory report on the status of these lists, and is in addition to the statutory Departmental Annual Report covering the operations of the Act. On page nine, the report refers to several incidents and potential threats that were reported to the Department that were not the subject of referrals. All these incidents were investigated and in all but two cases were found to be unlikely to adversely affect heritage values.

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Outcome:	1	Question No:	112
Output:	1.4		
Division/Agency:	Heritage Division		
Topic:	Heritage Funding and the Australian Heritage Council		
Hansard Page ECA:	94 (24/2/09)		

Senator Siewert asked:

Senator SIEWERT—I asked previously whether the AHC provided any advice to the minister regarding the decline of overall heritage funding. Since that time has the AHC provided any advice to the minister on funding specifically?

Mr Shevlin—I am not aware that the council has written to the minister in that respect, but the members of the council meet with the minister at different times, so they may have.

Senator SIEWERT—You say you are not aware whether they have written. Is that because you need to check or is the answer no?

Mr Shevlin—I do not think they have. I did not want to give you an absolute answer because I would need to check to make sure that was right.

Senator SIEWERT—That is what I was getting to. If you are not sure you could take it on notice.

Answer:

The Australian Heritage Council has not provided specific written advice to Minister Garrett concerning the overall level of heritage funding, but the matter has been raised with him in discussions.

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Outcome:	1	Question No:	113
Output:	1.4		
Division/Agency:	Heritage Division		
Topic:	Heritage - National Heritage List		
Hansard Page ECA:	Written Question on Notice		

Senator Ludlam asked:

Regarding the National and Commonwealth Heritage Lists for the period 2004 to 2008 tabled by the Minister, as the principal adviser to the Australian Government on heritage matters, did the Australian Heritage Council contribute to the review of the National and Commonwealth Heritage Lists?

Answer:

No. The report "National and Commonwealth Heritage Lists 1 January 2004 – 30 June 2008" is a largely descriptive and quantitative report prepared by the Department under sections 324ZC and 341ZH of the *Environment Protection and Biodiversity Conservation Act 1999*.

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Outcome:	1	Question No:	114
Output:	1.4		
Division/Agency:	Heritage Division		
Topic:	Heritage - National Heritage List		
Hansard Page ECA:	Written Question on Notice		

Senator Ludlam asked:

The report (page 9) deals with significant damage or threats to National or Commonwealth Heritage. Remarkably, for the 4.5 year period only 2 specific actions or threats were found to have a significant impact. By contrast, in 1999-2000, under the former legislation there were 1,590 referrals of Commonwealth actions of which 161 were found to have significant adverse effects. In 2000-01, there were 1,212 referrals and 106 actions involving significant adverse effects (Australian Heritage Commission, Annual Report 2000-01). On this basis for the period 2004-2008 and under the former legislation one would have expected about 600 actions with a significant adverse effect. Yet the actual number reported is only 2 actions.

1. Is this remarkable discrepancy strong evidence that the EPBC Act is failing to protect heritage places?
2. Why doesn't the report discuss this issue?
3. What is being done to explore this issue and develop better protection for heritage which is equal if not superior to the former legislation?

Answers:

- 1-3. No, the numbers quoted are not in any way comparable. The figures quoted from the Annual Reports of the Australian Heritage Commission refer to requests for advice, from Commonwealth and non-Commonwealth bodies, made to the Commission on proposed actions that might affect to a significant extent any of the 13,000 places in the Register of the National Estate. The requests were not seeking approval for actions.

In contrast, under the *Environment Protection and Biodiversity Conservation Act 1999*, approvals are required for any action "that has, will have, or is likely to have a significant impact on the National Heritage values of a National Heritage place". Eighty one places are currently included in the National Heritage List. Approvals are also required for any action that has, will have or is likely to have a significant impact on the environment of Commonwealth land or marine areas, including the heritage values of all places in the Commonwealth Heritage List (currently 339 places).

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The Department's Annual Report Volume 2 gives an overview of the operations of the Act each financial year. The report gives information on the protection of National and Commonwealth Heritage listed places, including the number of referrals under the Act that were designated as Controlled Actions. In 2007-08, the Department received 418 referrals under all controlling provisions. During that year, thirteen proposals were made Controlled Actions because of their potential impact on National Heritage values and eight were approved if taken in a particular manner. In addition, twenty two proposals were made controlled actions because of their potential impact on Commonwealth land or marine areas and 52 were approved if taken in a particular manner. Six other proposals were made Controlled Actions because of their potential impact on Commonwealth Heritage values.

The report "*The National and Commonwealth Heritage Lists, 1 January 2004 – 30 June 2008*", tabled in Parliament in early 2009, was the first five-yearly report of its kind required under the Act. It was prepared as a statutory report on the status of these lists, and is in addition to the statutory Departmental Annual Report covering the operations of the Act. On page nine, the report refers to several incidents and potential threats that were reported to the Department that were not the subject of referrals. All these incidents were investigated and in all but two cases were found to be unlikely to adversely affect heritage values.

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Outcome:	1	Question No:	115
Output:	1.4		
Division/Agency:	Heritage Division		
Topic:	Heritage – National Heritage List		
Hansard Page ECA:	Written Question on Notice		

Senator Ludlam asked:

1. At page 12 there is mention of a review of National Heritage management plans. When will this review be completed and will it be made public?
2. Also on page 12, there is discussion of Commonwealth Heritage management plans. Under the Act the review is meant to consider the effectiveness of such plans. However, there would actually appear to be no review of effectiveness.
 - (a) Is this correct?
 - (b) What is being done to review the effectiveness of Commonwealth Heritage management plans?

Answers:

- 1 At the time *The National and Commonwealth Heritage Lists 1 January 2004 – 30 June 2008* report was published, an initial review of the efficacy of National Heritage management plans was underway at the request of the Australian Heritage Council. This initial internal review of management plans prepared for a representative group of properties was completed in February 2009 and the findings were discussed by the Australian Heritage Council at its meeting on 4 March 2009.
- 2 (a) No
(b) The review of National Heritage management plans, mentioned in Question 1 above, also included reviews of some Commonwealth Heritage management plans; notably, plans required to be prepared by the Department of Defence. The EPBC Act requires that each Commonwealth agency must review its heritage management plans prepared under s.341S at least once in every five year period. The Commonwealth Heritage List came into effect in June 2004. No management plans are required to be reviewed by Commonwealth agencies until June 2009.

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Outcome:	1.0 The Environment	Question No:	116
Output:	1.4		
Division/Agency:	Heritage Division		
Topic:	Heritage - NHL		
Hansard Page ECA:	Written (16)		

Senator Ludlam asked:

Heritage strategies are discussed on page 13. Are all heritage strategies meant to have been completed by 2006? By mid 2008, 11 heritage strategies have been completed but how many more are to be finished, and by when?

Answer/s:

All Commonwealth agencies that own or control a place are required to prepare a heritage strategy and provide it to the Environment Minister within two years from the commencement of amendments to the *Environment Protection and Biodiversity Conservation Act 1999* in January 2004 or else within two years from when the agency first owns or controls a place. It is the responsibility of each Commonwealth agency to determine whether it owns or controls a place, and therefore, whether it is required to prepare a heritage strategy.

In addition to the eleven heritage strategies completed, a further three strategies have now been completed, and the Department is aware of another seventeen agencies that have commenced preparation of a heritage strategy. The strategies will necessarily vary in complexity and vary in the time required to complete them. Based on advice from agencies, the Department expects that twelve of those strategies will be finalised this year, with the remaining strategies completed in the following year.

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Outcome:	1	Question No:	117
Output:	1.4		
Division/Agency:	Heritage Division		
Topic:	Heritage - National Heritage List		
Hansard Page ECA:	Written Question on Notice		

Senator Ludlam asked:

The number of nominations being assessed is noted at page 16, with 13 National and 1 Commonwealth Heritage nominations to be assessed at May 2008. This seems a very leisurely pace – a little more than one per month for a whole Division within the Department. By contrast, in 1999-2000 the Australian Heritage Commission dealt with 140 nominations for the Register of the National Estate, and 89 nominations in 2000-01. The slower pace might be partly explained by the greater complexity in assessing nominations under the EPBC Act.

1. None the less, does the current pace suggest major structural or resource problems?
2. Is the Department critically reviewing its assessment processes in order to substantially increase the pace of assessments?

Answers:

1. No. It is difficult to compare the assessment work of the Australian Heritage Commission and the Australian Heritage Council. The Commission made its own listing decisions for places that, when listed, received no statutory protection other than from the actions of the Commonwealth itself. In contrast, the Council's advice to the Minister results in listed places receiving strong statutory protection under the *Environment Protection and Biodiversity Conservation Act 1999*. Assessments by the Australian Heritage Council must therefore be more rigorous and comprehensive than those under the *Australian Heritage Commission Act 1975*.

In addition, the assessments for many of the places for the National Heritage List (for example, the Australian Alps or the vast expanse of the West Kimberley Region) are significantly more complex and time consuming than those for places included in the Register of the National Estate. The number of assessments being undertaken therefore gives little indication of the actual assessment workload.

This question also appears to be based on a misunderstanding of the information provided on page 16 of the report *National and Commonwealth Heritage Lists 1 January 2004 – 30 June 2008*. The 13 National and 1 Commonwealth List assessments included in the finalised priority assessment list for 2008-09 are in addition to the Australian Heritage Council's work plan of existing assessments. As a result, as at 30 June 2008, 26 places were under assessment for the National Heritage List and 3 places for the Commonwealth Heritage List.

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2. The Department constantly reviews the resources it applies to all its activities. However, it is also important to note that the National Heritage List is designed to recognise and protect only those places of outstanding heritage value to the nation. A more appropriate measure therefore is not the quantity of assessments undertaken but the quality of the places listed and protected.

In addition to dedicating significant resources to undertaking assessments that are of increasing scope and complexity, with growth in listings the Department must also increase the resources applied to management plans and providing advice to the Minister on referrals under the Act. The Department also dedicates resources to a range of other statutory functions and non-statutory roles that are additional to those undertaken by the previous Commission.

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Outcome:	1	Question No:	118
Output:	1.4		
Division/Agency:	Heritage Division		
Topic:	Heritage - National Heritage List		
Hansard Page ECA:	Written Question on Notice		

Senator Ludlam asked:

Page 17 notes that the AHC is to give priority to reviewing other Commonwealth places on the Register of the National Estate for possible inclusion on the Commonwealth Heritage List.

1. How many places does this involve?
2. Why weren't these places addressed along with the 334 places in 2004?
3. Why has it taken 4 years to begin to address these RNE places?
4. Am I right in thinking the Heritage Strategies are also generating new candidates for Commonwealth Heritage listing?
5. Do you know how many new potential CHL places have been identified so far in the inventories created under Heritage Strategies?
6. Noting the current rate of assessment of 1 Commonwealth Heritage nomination per year, what is the projected timeframe for the reasonable completion of the Commonwealth Heritage List?

Answers:

1. Approximately 130.
2. The former Australian Heritage Commission devoted substantial resources to reviewing the heritage values of over 370 places in the Register to identify Commonwealth Heritage values. These reassessments were necessary as many places in the Register had not received comprehensive assessments, especially those listed in the early 1980s. The Commission concentrated on those places not protected under State legislation (mainly Post Offices) but was unable to complete the task in the period leading up to the creation of the Commonwealth Heritage List.
3. Priority has been given to the establishment of the National Heritage List.
4. Yes.
5. While a number of possible Commonwealth Heritage List places have been identified, the Department is continuing to work with agencies to refine their inventories.
6. 2012.

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Outcome:	1	Question No:	119
Output:	1.4		
Division/Agency:	Heritage Division		
Topic:	Heritage – Priority Assessment List		
Hansard Page ECA:	Written Question on Notice		

Senator Ludlam asked:

The Priority Assessment List process seems to have some problems. It has been called complex, unreasonably inflexible, queried in its usefulness for Commonwealth Heritage, and it allows worthy nominations to lapse after two consecutive attempts. Why is the review report silent on such issues and why was the effectiveness of the process not considered?

Answers:

The contents of the five yearly report on the National and Commonwealth Heritage Lists are prescribed in sections 324ZC and 341ZH of the *Environment Protection and Biodiversity Conservation Act 1999*. The effectiveness of the procedures for developing the National and Commonwealth Heritage Lists is not one of the prescribed matters to be addressed in this report.

The separate independent review of the operations of the Act that is currently underway in accordance with section 522 of the Act has specifically invited views on the process of nominating and listing places to the National and Commonwealth Heritage Lists.

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Outcome:	1	Question No:	120
Output:	1.4		
Division/Agency:	Heritage Division		
Topic:	Heritage Compliance		
Hansard Page ECA:	Written Question on Notice		

Senator Ludlam asked:

Under the compliance section of the report (Section F), judgements are reported about actions being “considered unlikely to have a significant impact”.

1. I assume the Heritage Division of DEWHA is the primary source of expert advice in the Department on heritage issues?
2. Which area of DEWHA actually makes these compliance judgements?
3. Does this area have relevant heritage expertise or does it rely on the experts in the Heritage Division?
4. Are the expert views of the Heritage Division on significant impacts always adopted? If not, why not?

Answers:

1. Yes.
2. Potential compliance matters are generally reported to the Compliance and Enforcement Branch of the Approvals and Wildlife Division of the Department, which liaises with the Heritage Division on any potential breaches affecting heritage places.
3. The Compliance and Enforcement Branch relies on expert advice provided by the Heritage Division.
4. In making decisions on whether or not proposals are likely to have a significant impact on a protected matter the Minister or delegate takes into consideration relevant Heritage Division advice on heritage matters and other Departmental advice. The Minister or delegate must also consider any public comments received in response to an invitation under subsection 74(3) within the period specified in the invitation.

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Outcome:	1	Question No:	121
Output:	1.4		
Division/Agency:	Heritage Division		
Topic:	Heritage - Australian Heritage Council		
Hansard Page ECA:	Written Question on Notice		

Senator Ludlam asked:

Since the last Estimates, has the AHC provided any advice to the Minister, apart from advice on heritage listings?

Answer:

Yes, the Australian Heritage Council has provided advice to the Minister on a range of heritage related issues, including management of the heritage values of Point Nepean in Victoria, the use of a statutory theme in calling for National Heritage List nominations, and the inclusion of Register of the National Estate listed places in State and Territory heritage lists.

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Outcome:	1	Question No:	122
Output:	1.4		
Division/Agency:	Heritage Division		
Topic:	Heritage – Heritage Working Group		
Hansard Page ECA:	Written Question on Notice		

Senator Ludlam asked:

At the last estimates hearing, we were advised the Minister was to establish a new heritage working group to advise him. Details about this new group were sought, on notice.

1. Can details be provided now about its membership and terms of reference?
2. Does this working group in any sense usurp the proper role of the Australian Heritage Council as the principal adviser to the Australian Government on heritage matters?
3. How often is the working group expected to meet with the Minister?
4. How often is the AHC expected to meet with the Minister?

Answers:

1. The membership and areas of focus for the Heritage Working Group are on the Department's website at <http://www.environment.gov.au/heritage/organisations/heritage-working-group-meeting.html>
2. No. The working group includes members of the Council plus others who bring additional expertise and perspectives – including tourism and economics. The group also has members who bring with them experience at the community level. This complements the work of the Council which is required by its Act to only include heritage experts.
3. The group met for the first time in Sydney on 16 February 2009 with the Minister. The group met again on 12 March in Melbourne. It is expected the group will meet with the Minister again at least twice before the end of 2009, in addition to other meetings of the group.
4. The Australian Heritage Council meets, on average, four times a year. The Council meets with the Minister on an ad hoc basis.

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Outcome:	1	Question No:	123
Output:	1.4		
Division/Agency:	Heritage Division		
Topic:	Heritage – Point Nepean		
Hansard Page ECA:	Written Question on Notice		

Senator Ludlam asked:

In the Caring for Our Coasts statement made during the 2007 Election, the now Minister for Heritage promised, *“Point Nepean is on the National Heritage List, but the Howard Government has played politics and delayed the hand back of Defence Department land to the Victorian Government for protection and incorporation into the Point Nepean National Park. A Rudd Labor Government will aim to transfer Commonwealth Land at Point Nepean to the Victorian Government in 2008 in time for the 20 Year Anniversary of the Point Nepean National Park.”*

Has the Government so far failed to deliver on this election promise, and when will it transfer Point Nepean to Victoria?

Answer:

The Australian Government remains strongly committed to transferring the Commonwealth-owned land at Point Nepean to Victoria and continues to work actively to this end.

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Outcome:	1	Question No:	124
Output:	1.4		
Division/Agency:	Heritage Division		
Topic:	Seabirds		
Hansard Page ECA:	Written Question on Notice		

Senator Siewert asked:

There appears to be no ongoing funding for long term monitoring of albatross populations at Macquarie and other islands. Given the Government is about to fund major pest eradication on Macquarie Island what provisions are in place to determine the albatross benefit?

Answer:

Australia monitors populations of albatross on Macquarie Island as part of the management of the Macquarie Island Commonwealth Marine Reserve. This program is conducted by the Tasmanian Government under a Memorandum of Understanding with the Australian Government. This work will provide valuable data to assist with determining the effects of the eradication program on albatross. In addition, a monitoring plan is being developed for the rabbit and rodent eradication project. The monitoring plan will consider impacts on non-target species and is expected to recommend continuing monitoring of albatross.

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Outcome:	1	Question No:	125
Output:	1.4		
Division/Agency:	Heritage Division		
Topic:	National Heritage List		
Hansard Page ECA:	Written Question on Notice		

Senator Birmingham asked:

1. What protections does placement on the National Heritage List afford a site?
2. Do all developments or activities on a site placed on the National Heritage List require approval of the Environment Minister under the EPBC Act? If not all, then what activities would require approval? What process would be applied for any approval?
3. How will the listing of the Adelaide Park Lands and City Layout on the National Heritage List change the management of the area listed in the future?
4. Can listing on the National Heritage List be withdrawn? If so, by whom and under what process?

Answers:

1. The protection given to places in the National Heritage List is set out under section 15B of the *Environment Protection and Biodiversity Conservation Act 1999*. The matters protected are the gazetted National Heritage values of the place.
2. No. Only an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place requires approval. The process of assessment and approval is set out in Chapter 4 of the *Environment Protection and Biodiversity Conservation Act 1999*. Information on the process is available on the Department's internet site at:
<http://www.environment.gov.au/epbc/assessments/index.html>.
3. The management of the Adelaide Park Lands must be conducted in such a way that there is no significant impact on the place's National Heritage values.
4. Yes, the Minister may remove a place or part of a place from the National Heritage List via the process described in sections 324L and 324M of the *Environment Protection and Biodiversity Conservation Act 1999*. The Minister may remove a place from the list only if the place or part of the place no longer has the National Heritage values included in the list, or if it is necessary in the interests of Australia's defence or security to do so. In the case of loss of heritage values, the Minister must consider the advice of the Australian Heritage Council and must consider any public comments received following a statutory invitation to provide such comments.