

AUSTRALIAN COUNCIL OF NATIONAL TRUSTS

Submission No. 2 to the

**Senate Environment, Communications, Information Technology and the
Arts References Committee**

Additional comments and recommended changes

to the

Australian Heritage Council Bill 2000



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Canberra, February 2001

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Additional comments and recommended changes to the Australian Heritage Council Bill 2000

General comments

In these specific changes proposed to the Bill, the Australian Council of National Trusts reaffirms that crucial changes should be made to the proposed Australian Heritage Council (AHC).

In summary, the Bill should broaden the AHC's role for the specific purpose of providing national leadership and progress towards the stated intention of delineating state/territory and Commonwealth heritage roles. Part of its leadership role should also entail responsibility for coordinating the work of the Commonwealth and state/territory jurisdictions to ensure better conservation outcomes and minimisation of duplication.

In addition, changes should be made to genuinely establish the AHC as an independent statutory authority, allowing it to undertake a comprehensive advisory role and to initiate listing, assessment and review.

It is recommended that an additional whole section be added to the Bill that is equivalent to Part VA-National Estate Grants Program, under the *Australian Heritage Commission Act 1975*.

Note: recommended changes are placed in a box below the relevant sections of the Bill.

1998-1999-2000

The Parliament of the Commonwealth of Australia

THE SENATE

Presented and read a first time

Australian Heritage Council Bill 2000

No. , 2000

(Environment and Heritage)

A Bill for an Act to establish the Australian Heritage Council, and for related purposes

Contents

A Bill for an Act to establish the Australian Heritage Council, and for related purposes

The Parliament of Australia enacts:

Part 1 Preliminary

1 Short title

This Act may be cited as the *Australian Heritage Council Act 2000*.

2 Commencement

This Act commences at the same time as section 2 of the *Environment and Heritage Legislation Amendment Act (No. 2) 2000*.

3 Definitions

(1) In this Act:

Chair means the Chair of the Council.

Council means the Australian Heritage Council established under section 4.

member includes the Chair.

(2) Except where the contrary intention appears, other expressions used in this Act have the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

Part 2 Establishment of the Council

4 Establishment

The Australian Heritage Council is established by this section.

5 Functions

These are the functions of the Council:

(a) to make assessments requested by the Minister under the *Environment Protection and Biodiversity Conservation Act 1999*;

(b) to advise the Minister, on request, on conserving and protecting places included, or being considered for inclusion, in the National Heritage List or Commonwealth Heritage List;

(c) to advise the Minister, on request, on matters relating to heritage including the following:

(i) promotional, research, training or educational activities;

(ii) national policies;

(iii) grants or other financial assistance;

(iv) the monitoring of the condition of places included in the National Heritage List or Commonwealth Heritage List;

(v) the Commonwealths responsibilities for historic shipwrecks;

(d) to nominate places for inclusion in the National Heritage List or Commonwealth Heritage List;

(e) to perform any other functions conferred on the Council by the *Environment Protection and Biodiversity Conservation Act 1999*.

Comments/Recommended changes

These functions are totally inadequate in comparison with the existing functions of the Australian Heritage Commission under the *Australian Heritage Commission Act 1975*. The Bill severely limits the role of the AHC, no longer allowing it a proactive function. Its listed functions in the Bill are more limited than in the existing *Australian Heritage Commission Act*. (Refer also to ACNT submission no 1.)

In addition to the functions listed, the Council should:

- **initiate listing and assessment for the National and Commonwealth Heritage Lists (instead of simply responding to the Minister);**
- **provide advice to other agencies, individuals and organisations, not only the Minister;**
- **monitor heritage-related activities of Commonwealth agencies and government business enterprises;**
- **encourage public interest in heritage generally;**
- **promote the interpretation as well as the preservation of heritage places;**
- **coordinate the activities of state and territory heritage agencies with the aim of providing a national approach to best practice heritage conservation;**
- **administer Commonwealth funding programs.**

Part 3 Constitution of the Council

6 Membership of the Council

The Council consists of:

- (a) the Chair; and
- (b) 6 other members.

7 Appointment of members

(1) The members of the Council are to be appointed by the Minister by written instrument.

(2) The Minister must appoint the Chair. The Chair must have experience or expertise concerning heritage.

(3) In appointing the other members, the Minister must ensure that:

(a) there are 2 members who have experience or expertise concerning natural heritage; and

(b) there are 2 members who have experience or expertise concerning historic heritage; and

(c) there are 2 members who have experience or expertise concerning indigenous heritage, one of whom represents the interests of indigenous people.

Comments/Recommended changes

Commonwealth Government employees should be excluded from AHC membership by virtue of the fact that their servicing of the AHC secretariat affords them ample opportunity present a government perspective.

Within the membership proposed, there should be specific community representation covering the three identified areas—natural, historic and indigenous. (Refer also to ACNT submission no 1.)

8 Term of office of members

(1) A member is to be appointed on a part-time basis.

(2) A member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

(3) A member cannot be appointed more than twice.

9 Acting appointments

The Minister may appoint a member to act as the Chair:

(a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Chair is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.

Note: Section 33A of the *Acts Interpretation Act 1901* has provisions relating to acting appointments.

10 Outside employment or other activities that conflict with a members duties

A member must not engage in any paid employment, or any other activity, that the Minister is satisfied conflicts or may conflict with the proper performance of the members duties.

11 Remuneration and allowances of members

(1) A member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.

(2) A member is to be paid the allowances that are prescribed.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

12 Resignation

A member may resign his or her appointment by giving the Minister a written resignation.

13 Termination of appointment of members

The Minister may terminate a members appointment:

- (a) for misbehaviour or physical or mental incapacity; or
- (b) if the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (c) if the Minister is satisfied that it is no longer appropriate that the person remain as a member because of the Ministers obligations under subsection 7(3); or
- (d) if the member is absent from 3 consecutive meetings of the Council; or
- (e) if the member engages in paid employment, or any other activity, that the Minister is satisfied conflicts or could conflict with the proper performance of the duties of his or her office; or
- (f) if the member fails, without reasonable excuse, to comply with section 19 (disclosure of interests).

Part 4 Meetings of the Council

14 Times and places of meetings

- (1) The Council is to hold such meetings as are necessary for the efficient performance of its functions.
- (2) Meetings are to be held at the times and places determined by the Council.
- (3) The Chair may call a meeting at any time. However, the Chair must call a meeting if a majority of the members, for the time being holding office, request the Chair to do so.
- (4) The Minister may, at any time, direct the Chair to call a meeting.
- (5) The Chair must ensure that at least 4 meetings are held each year.

15 Notice of meetings

Each member is entitled to receive reasonable notice of the Councils meetings.

16 Who presides at meetings

- (1) The Chair presides at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting, the members present may elect a member to preside at the meeting.

17 Quorum

A majority of the members, for the time being holding office, constitutes a quorum.

18 Voting at meetings

- (1) A question is decided by a majority of the votes of the members present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, if necessary, also a casting vote.

19 Disclosure of interests

- (1) A Council member who has a direct or indirect pecuniary interest in a matter that is being considered, or is about to be considered, by the Council must disclose the nature of the interest to the other members.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the members knowledge.
- (3) Unless the Council otherwise determines, the member:
 - (a) must not be present during any deliberation by the Council on the matter; and
 - (b) must not take part in any decision of the Council on the matter.

- (4) For the purposes of a determination under subsection (3), the member:
- (a) must not be present during any deliberation of the Council on whether to make the determination; and
 - (b) must not take part in making the determination.

20 Conduct of meetings

The Council may, subject to this Part, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

Comments/Recommended changes

Provision should be made for the AHC to establish subcommittees and/or working groups. It could also be advantageous if on an as-required basis individuals with relevant expertise could be co-opted to the to assist the work of the subcommittee or working group. Any appointments would be confined to the specific work of the subcommittee or working group.

Part 5 Regulations

21 Regulations

The Governor-General may make regulations prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Additional Section

Comments/Recommended Changes

It is recommended that an additional whole section be added to the Bill that is equivalent to *Part VA-National Estate Grants Program*, under the *Australian Heritage Commission Act 1975*.

AUSTRALIAN COUNCIL OF NATIONAL TRUSTS

Submission No. 2 to the

**Senate Environment Communications, Information Technology and the
Arts References Committee**

Additional comments and recommended changes

to the

Environment & Heritage Legislation Amendment Bill (No. 2) 2000



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Canberra, February 2001

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Additional comments and recommended changes to the Environment & Heritage Legislation Amendment Bill (No. 2) 2000

General comments

In these specific comments and changes proposed to the Bill, the Australian Council of National Trusts (ACNT) draws upon its first submission to the Committee (January 2001). Overall, this Bill should be altered to:

- (a) reflect the need for substantially increased powers for the Australian Heritage Council (AHC) as well strengthen its national leadership and coordination role in heritage conservation;
- (b) rationalise the current emphasis in the Bill on the role of the Minister, particularly in what could be deemed administrative matters;
- (c) recognise the need for an enhanced Commonwealth heritage role reflected in more clearly expressed Commonwealth heritage responsibilities, in particular: in relation to actions affecting heritage places on Commonwealth land; in identifying and managing Commonwealth-owned heritage places; in review processes; and in funding;
- (d) extend the future use of the Register of the National Estate (RNE), in particular as an interim Heritage National List and interim Commonwealth Heritage List;
- (e) establish firmer requirements for public consultation, participation and community education;
- (f) include more explicit and/or appropriate heritage terminology.

The ACNT has assessed the *whole* EPBC Act, not simply those sections proposed for amendment in the Environment and Heritage [E&H] Bill. Changes to other sections are proposed for amendment. These sections follow in their proper order below (they are marked with an asterisk so that the numbering used in the E&H Bill remains unchanged). Some sections of the Bill/Act are omitted if no amendments to them are recommended by the ACNT.

Note: The original E&H Bill and additional sections of the EPBC Act that the ACNT considers should be amended are reproduced in a font different to that used in the comments of the ACNT. Our recommended changes are placed in a box below the relevant sections of the Bill/Act.

The Parliament of the Commonwealth of Australia

THE SENATE

Presented and read a first time

Environment and Heritage Legislation Amendment Bill (No. 2) 2000

No. , 2000

(Environment and Heritage)

**A Bill for an Act to amend legislation relating to the
environment, and for related purposes**

Comment

**Note that this submission adds sections from the EPBC Act to this outline of
the Bill, where the ACNT is proposing additional amendments.**

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Environment and Heritage Legislation
Amendment Act (No. 2) 2000*.

Schedule 1 Amendments relating to the National Heritage
List and Commonwealth Heritage List
Environment Protection and Biodiversity Conservation Act 1999

4 After Subdivision A of Division 1 of Part 3

Insert:

Subdivision AA National heritage

**15B Requirement for approval of activities with a significant impact on a
national heritage place**

(1) A constitutional corporation, the Commonwealth or Commonwealth agency
must not take an action that has, will have or is likely to have a significant impact
on the national heritage values of a national heritage place.

Civil Penalty:

(a) for an individual 5,000 penalty units;

(b) for a body corporate 50,000 penalty units.

(2) A person must not, for the purposes of trade or commerce:

(a) between Australia and another country; or

(b) between 2 States; or

(c) between a State and Territory; or

(d) between 2 Territories;

take an action that has, will have or is likely to have a significant impact on the national heritage values of a national heritage place.

Civil Penalty:

- (a) for an individual 5,000 penalty units;
- (b) for a body corporate 50,000 penalty units.
- (3) A person must not take an action in:
 - (a) a Commonwealth area; or
 - (b) a Territory;

that has, will have or is likely to have a significant impact on the national heritage values of a national heritage place.

Civil Penalty:

- (a) for an individual 5,000 penalty units;
- (b) for a body corporate 50,000 penalty units.
- (4) A person must not take an action that has, will have or is likely to have a significant impact on the national heritage values, to the extent that they are indigenous heritage values, of a national heritage place.

Civil Penalty:

- (a) for an individual 5,000 penalty units;
- (b) for a body corporate 50,000 penalty units.

Note: For ***indigenous heritage value***, see section 528.

(5) A person must not take an action that has, will have or is likely to have a significant impact on the national heritage values of a national heritage place in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

Civil Penalty:

- (a) for an individual 5,000 penalty units;
- (b) for a body corporate 50,000 penalty units.
- (6) Subsection (5) only applies to actions whose prohibition is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention. (However, that subsection may not apply to certain actions because of subsection (7).)

(7) Subsections (1) to (5) do not apply to an action if:

(a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency, Commonwealth or person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the constitutional corporation, Commonwealth agency, Commonwealth or person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: For ***national heritage place***, see subsection 324B(2) and for ***national heritage values***, see section 324C.

Comments/Recommended changes

Specify both the physical heritage place *and* its associated heritage values, not just heritage values alone throughout the Bill.

Ensure that the term ‘constitutional corporation’ encompasses all Commonwealth entities including government business enterprises.

In subsection 7 substitute the following: *an approval of the taking of action has been given by the AHC* for the whole of the proposed section 7. As a consequence of this power, an additional clause should be added providing the AHC with a monitoring role.

15C Offences relating to national heritage places

(1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, is guilty of an offence if:

- (a) the corporation or agency takes an action; and
- (b) the action results or will result in a significant impact on the national heritage values of a national heritage place.

(2) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, is guilty of an offence if:

- (a) the corporation or agency takes an action; and
- (b) the action is likely to have a significant impact on the national heritage values of a national heritage place; and
- (c) the corporation or agency is reckless as to the facts in paragraph (b).

(3) A person is guilty of an offence if:

- (a) the person takes an action; and
- (b) the action is taken for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and Territory; or
 - (iv) between 2 Territories; and
- (c) the action results or will result in a significant impact on the national heritage values of a national heritage place.

(4) A person is guilty of an offence if:

- (a) the person takes an action; and
- (b) the action is taken for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and Territory; or
 - (iv) between 2 Territories; and
- (c) the action is likely to have a significant impact on the national heritage values of a national heritage place; and
- (d) the person is reckless as to the facts in paragraph (c).

(5) A person is guilty of an offence if:

- (a) the person takes an action; and
- (b) the action is taken in:
 - (i) a Commonwealth area; or
 - (ii) a Territory; and
- (c) the action results or will result in a significant impact on the national heritage values of a national heritage place.

(6) A person is guilty of an offence if:

- (a) the person takes an action; and
- (b) the action is taken in:
 - (i) a Commonwealth area; or
 - (ii) a Territory; and

(c) the action is likely to have a significant impact on the national heritage values of a national heritage place; and

(d) the person is reckless as to the facts in paragraph (c).

(7) A person is guilty of an offence if:

(a) the person takes an action; and

(b) the action results or will result in a significant impact on the national heritage values, to the extent that they are indigenous heritage values, of a national heritage place.

Note 1: For ***indigenous heritage value***, see section 528.

(8) A person is guilty of an offence if:

(a) the person takes an action; and

(b) the action is likely to have a significant impact on the national heritage values, to the extent that they are indigenous heritage values, of a national heritage place; and

(c) the person is reckless as to the facts in paragraph (b).

Note 1: For ***indigenous heritage value***, see section 528.

(9) A person is guilty of an offence if:

(a) the person takes an action; and

(b) the action results or will result in a significant impact on the national heritage values of a national heritage place; and

(c) the national heritage place is in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

(10) A person is guilty of an offence if:

(a) the person takes an action; and

(b) the action is likely to have a significant impact on the national heritage values of a national heritage place; and

(c) the national heritage place is in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention; and

(d) the person is reckless as to the facts in paragraphs (b) and (c).

(11) An offence against any of subsections (1) to (10) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also be guilty of an offence against section 495.

(12) Subsections (9) and (10) only apply to actions whose prohibition is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention. (However, those subsections may not apply to certain actions because of subsection (13).)

(13) Subsections (1) to (10) do not apply to an action if:

(a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency or person is in operation under Part 9 for the purposes of this section; or

(b) Part 4 lets the constitutional corporation, Commonwealth agency or person take the action without an approval under Part 9 for the purposes of this section; or

(c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

(d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

***Section 26(3)**

Comments/Recommended change

Add an extra clause: *the action relates to Commonwealth land that is a national or Commonwealth heritage place.*

***Section 28(2)**

Comments/Recommended change

Add an extra clause: *the action relates to Commonwealth land that is a national or Commonwealth heritage place.*

5 Section 34 (after table item 1A)

Insert:

1B section 15B the national heritage values of a national heritage place

1C section 15C the national heritage values of a national heritage place

6 After section 34B

Insert:

34BA Declarations relating to national heritage places

(1) The Minister may make a declaration under section 33 relating to a national heritage place only if:

(a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the national heritage management principles; and

(b) the declaration meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management plan under section 33 for the purposes of such a declaration only if he or she is satisfied that the management plan will promote the management of the place concerned in accordance with the national heritage management principles.

Comments/Recommended changes

Why is the Minister making the declaration rather than the AHC (see also Australian Council of National Trusts submission re AHC Bill)? If this power is given to the AHC this section should be deleted.

7 After section 51

Insert:

51A Agreements relating to national heritage places

(1) The Minister may enter into a bilateral agreement containing a provision relating to a national heritage place only if:

(a) the Minister is satisfied that the agreement will promote the management of the place in accordance with the national heritage management principles; and

(b) the provision meets the requirements (if any) prescribed by the regulations.

(2) The Minister may accredit a management plan under section 46 for the purposes of such a bilateral agreement only if he or she is satisfied that the plan will promote the management of the place concerned in accordance with the national heritage management principles.

Comments/Recommended changes

Re (1) (a): These national heritage management principles must be either incorporated into this Bill or included in Regulations before the Bill is passed. Intangible heritage values must be recognised in the principles.

8 Subsection 84(3A)

After 34B., insert 34BA.,

9 Chapter 5 (heading)

Repeal the heading, substitute:

Chapter 5 **Conservation of biodiversity and heritage**

10 Paragraph 304(a)

After biodiversity, insert or heritage.

11 Section 304

After biodiversity (last occurring), insert , heritage or both of those things.

12 Subsection 305(1)

Omit in the Australian jurisdiction, including, substitute or heritage in the Australian jurisdiction, including any one or more of the following.

13 Paragraphs 305(1)(a) and (b)

Repeal the paragraphs, substitute:

(a) the protection, conservation and management of any listed species or ecological communities, or their habitats;

(b) the protection, conservation and management of a national heritage place or Commonwealth heritage place;

(c) the abatement of processes, and the mitigation or avoidance of actions, that might adversely affect:

(i) biodiversity; or

(ii) the national heritage values of a national heritage place; or

(iii) the Commonwealth heritage values of a Commonwealth heritage place.

14 Paragraphs 305(2)(a) and (b)

Repeal the paragraphs, substitute:

(a) in the case of a proposed agreement for the protection and conservation of biodiversity the agreement:

(i) will result in a net benefit to the conservation of biodiversity; and

(ii) is not inconsistent with a recovery plan, threat abatement plan or wildlife conservation plan; and

(b) in the case of a proposed agreement for the protection and conservation of heritage the agreement:

(i) will result in a net benefit to the conservation of heritage; and

(ii) is not inconsistent with the national heritage management principles or Commonwealth heritage management principles; and

(c) in the case of a proposed agreement for the protection and conservation of both biodiversity and heritage the agreement satisfies paragraphs (a) and (b).

15 Subsection 305(3)

After biodiversity, insert or heritage.

16 Paragraph 306(1)(a)

After biodiversity, insert or heritage.

17 Paragraph 306(1)(b)

Omit all the words after affect, substitute:

: (i) the species, ecological communities, habitats or potential habitats covered by the agreement; or

(ii) the national heritage values of a national heritage place; or

(iii) the Commonwealth heritage values of a Commonwealth heritage place;

18 Paragraph 306(2)(a)

After biodiversity, insert or heritage.

19 Paragraph 306(2)(b)

Omit all the words after affect, substitute:

: (i) the species, ecological communities, habitats or potential habitats covered by the agreement; or

(ii) the national heritage values of a national heritage place; or

(iii) the Commonwealth heritage values of a Commonwealth heritage place;

20 Subsection 309(3)

Omit components of biodiversity, substitute:

: (a) components of biodiversity; or

(b) the national heritage values of a national heritage place; or

(c) the Commonwealth heritage values of a Commonwealth heritage place;

Comments/Recommended changes

Re sections 304–312: The AHC should be involved in the development and monitoring of conservation agreements.

21 At the end of section 323

Add:

(3) In this section:

cultural heritage has the meaning given by the World Heritage Convention.

natural heritage has the meaning given by the World Heritage Convention.

22 After Division 1 of Part 15

Insert:

Division 1A Managing national heritage places

Subdivision A Simplified outline of this Division

324A Simplified outline of this Division

The following is a simplified outline of this Division:

The Minister may only include a place in the National Heritage List if the Minister is satisfied that the place has one or more national heritage values.

The Minister may ask the Australian Heritage Council for an assessment of the places national heritage values and invite public comments on the inclusion of the place in the National Heritage List.

The Minister must make plans for managing national heritage places that are entirely within Commonwealth areas. The Commonwealth and Commonwealth agencies must not contravene those plans.

The Commonwealth must try to prepare and implement plans for managing other national heritage places, in co-operation with the States and self-governing Territories.

The Commonwealth and Commonwealth agencies have duties relating to national heritage places in States and Territories.

The Commonwealth can provide assistance for the identification, promotion, protection or conservation of national heritage places.

Note: Section 15B prohibits an action that has a significant impact on the national heritage values of a national heritage place, unless the person taking the action has the approval of the Minister or certain other requirements are met.

Comments/Recommended changes

Throughout this Division (1a) the AHC should be responsible for all relevant actions.

Subdivision B The National Heritage List

324B The National Heritage List

(1) The Minister must establish, by instrument published in the *Gazette*, a National Heritage List.

(2) A place may only be included in the National Heritage List if the Minister is satisfied that the place has one or more national heritage values. A place that is included in the National Heritage List is called a ***national heritage place***.

(3) The National Heritage List must specify the national heritage values for which each place is included in the National Heritage List.

(5) The National Heritage List may be kept electronically.

324C Meaning of ***national heritage values***

(1) A place has one or more ***national heritage values*** only if it meets one or more of the criteria for national heritage values prescribed in the regulations for the purposes of this section. The criteria may deal with natural, indigenous, historic, or any other, heritage value.

Note: For ***indigenous heritage value***, see section 528.

(2) The ***national heritage values*** of a national heritage place are the national heritage values specified for the place in the National Heritage List.

Comments/Recommended changes

Throughout 324 the AHC should be responsible for all relevant actions.

Re 324c(1) Criteria for national heritage values must be either specified in this Bill or included in the regulations.

324D Nominations of places

(1) A person may, in accordance with the regulations (if any), nominate to the Minister a place for inclusion in the National Heritage List.

(2) Within 20 business days after receiving a nomination of a place, the Minister must:

(a) ask the Australian Heritage Council for an assessment of the places national heritage values under section 324F; or

(b) advise the person who made the nomination of the Ministers decision not to include the place in the National Heritage List and of the reasons for that decision.

Note: However, the Minister may, in an emergency, include the place in the National Heritage List before asking for an assessment under section 324F (see section 324E).

- (3) The Minister may:
- (a) ask a person who has nominated a place to provide additional information about the place within a specified period; and
 - (b) reject the nomination if the information is not provided within that period.
- The period specified must be reasonable.
- (4) If the Minister asks a person for additional information, the period in subsection (2) stops on the day the Minister asks for that information until the day after that information is provided.
- (5) To avoid doubt, a member of the Australian Heritage Council may make a nomination in accordance with this section on behalf of the Australian Heritage Council.
- (6) The Minister may, by publishing a notice in accordance with the regulations, invite nominations of places within a specified theme.

Comments/Recommended changes

Add a new (1) *the Register of the National Estate will be used as an interim National List for [a specified period] to obviate delay in creating a new National List.*

The existing (1) should be altered specifying that *A person may ... nominate to the AHC* (rather than the Minister).

In the existing (6) add: *or region* after theme.

324E Emergency listing

(1) Despite subsection 324D(2), the Minister may include a place in the National Heritage List before asking the Australian Heritage Council for an assessment of the places national heritage values if the Minister is satisfied that:

- (a) the place has or may have one or more national heritage values; and
- (b) any of those values are under imminent threat.

(2) Within 10 business days after including the place in the National Heritage List, the Minister must:

(a) ask the Australian Heritage Council for an assessment of the places national heritage values under section 324F; and

(b) publish a notice in accordance with the regulations stating that the place is included in the National Heritage List and the date on which it was included; and

(c) if the place was nominated by a person advise the person that the place has been included in the National Heritage List.

- The Australian Heritage Council must give the Minister the assessment within 40 business days after the Minister asks for the assessment. However, the Minister may extend that period.

324F Assessments by the Australian Heritage Council

(1) The Australian Heritage Council must give the Minister a written assessment of a places national heritage values within:

- (a) 12 months after the Minister asks for the assessment; or

(b) if the place is included in the National Heritage List under section 324E (emergency listing) within 40 business days after the Minister asks for the assessment.

However, the Minister may extend that period.

(2) In making an assessment, the Australian Heritage Council:

(a) must make reasonable efforts to notify the following persons that the place is being considered for inclusion in the National Heritage List:

(i) the places owner and occupier (if any);

(ii) any indigenous persons with rights or interests in the place, if the Australian Heritage Council considers the place might have indigenous heritage value; and

(b) must give those persons a reasonable opportunity to comment in writing on whether the place should be included in the National Heritage List.

A copy of the comments must be included in the assessment.

(3) In making an assessment of a places national heritage values, the Australian Heritage Council must not consider any matter that does not relate to the places national heritage values.

(4) The Minister must consider an assessment under this section if it is given to the Minister by the end of the period in subsection (1).

(5) The Minister may ask the Australian Heritage Council for an assessment of a places national heritage values whether or not the place is the subject of a nomination.

(6) The Australian Heritage Council must not undertake an assessment of a places national heritage values unless the Minister asks it to do so. However, the Australian Heritage Council may undertake research and investigations necessary for the purposes of nominating places to be included in the National Heritage List.

Note: For ***indigenous heritage value***, see section 528.

Comments/Recommended changes

Change (6) to: *the AHC can of its own volition undertake an assessment ...*

324G Requirement to invite public comments

(1) The Minister must publish a notice in accordance with the regulations inviting comments, in an approved form, on the inclusion of a place in the National Heritage List.

Note: However, the Minister is not required to publish a notice in certain circumstances: see subsection (5).

(2) The notice must be published within 20 business days after the day on which the Minister receives from the Australian Heritage Council an assessment of the places national heritage values under section 324F.

(3) The notice must include a statement (***statement of significance***) setting out the places national heritage values and must allow the comments to be given to the Minister within:

(a) 40 business days after the notice is published; or

(b) if the place is included in the National Heritage List under section 324E (emergency listing) 20 business days after the notice is published.

(4) The Minister may ask the Australian Heritage Council or a person with appropriate qualifications or expertise to assess the merits of any comments received by the Minister that comply with this section.

(5) The Minister is not required to publish a notice under this section concerning a place, other than a place included in the National Heritage List under section 324E (emergency listing), if the Australian Heritage Councils assessment under section 324F is to the effect that the place should not be included in the National Heritage List.

Comments/Recommended changes

Replace the existing (4) with: *The AHC can assess the merits ...*

324H Decision whether to include a place in the National Heritage List

(1) Within a reasonable period after considering any comments that comply with section 324G concerning a place, other than a place that is included in the National Heritage List under section 324E (emergency listing), the Minister must:

(a) include the place in the National Heritage List and publish a notice to that effect in accordance with the regulations; or

(b) advise the person who nominated the place of the Ministers decision not to include the place in the National Heritage List and of the reasons for that decision. A notice published under paragraph (a) must include a statement setting out the places national heritage values.

Note: The Minister may only include a place in the National Heritage List if the Minister is satisfied that the place has one or more national heritage values (see subsection 324B(2)).

(2) Within a reasonable period after considering any comments that comply with section 324G concerning a place that is included in the National Heritage List under section 324E (emergency listing), the Minister must:

(a) decide that the place is to remain in the National Heritage List and publish a notice to that effect in the *Gazette*; or

(b) remove the place from the National Heritage List by publishing a notice in the *Gazette*.

A notice published under paragraph (a) must include a statement setting out the places national heritage values.

Note: The Minister may only include a place in the National Heritage List if the Minister is satisfied that the place has one or more national heritage values (see subsection 324B(2)).

(3) Section 324J does not apply to the removal of a place under paragraph (2)(b).

Note: This means that the notice that is published in accordance with that paragraph is not a disallowable instrument.

Comments/Recommended changes

Throughout sections 324D–324H stricter timeframes should be established to reduce the total process. The current framework appears to unnecessarily long which may lead to community and industry frustration.

324J Removal of places or national heritage values from the National Heritage List

(1) The Minister may only remove a place from the National Heritage List if the Minister is satisfied that:

(a) the place does not have any national heritage values; or

(b) it is necessary in the interests of Australia's defence or security to do so.

Note: A place may also be removed from the National Heritage List under section 324H(2).

(2) The Minister may only remove one or more national heritage values specified in the National Heritage List for a national heritage place if the Minister is satisfied that the place no longer has the national heritage value or values.

(3) The Minister may remove a place, or a national heritage value specified for a place, by instrument published in the *Gazette*.

(4) The instrument is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* unless the instrument removes the place only because of paragraph (1)(b) (Australia's defence of security).

Note 1: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 324K).

Note 2: How one or more additional national heritage values for a place may be specified is dealt with in section 324L.

(5) The removal takes effect on the first day on which the instrument is no longer liable to be disallowed, or to be taken to have been disallowed, under section 48 of the *Acts Interpretation Act 1901* as it applies in relation to an instrument because of section 46A of that Act. This subsection has effect despite section 48 of the *Acts Interpretation Act 1901*.

(6) When an instrument is laid before each House of the Parliament in accordance with section 48 of the *Acts Interpretation Act 1901*, the Minister must cause a statement to be laid before each House with the instrument explaining why the Minister removed from the National Heritage List the place or the places national heritage value or values.

(7) A notice summarising the information contained in an instrument under this section must be published in accordance with the regulations.

Comments/Recommended changes

The AHC should be given power to remove a place from the National List. An existing clause could be amended or another added.

Re (1b): Remove this clause because this is a management not a heritage issue. Remove all subsequent references to defence in these sections.

324K Minister must consider advice of the Australian Heritage Council

(1) The Minister must ask the Australian Heritage Council for advice before removing under section 324J a place from the National Heritage List or one or more of a places national heritage values. However, the Minister is not required to do so if the removal is only because of paragraph 324J(1)(b) (Australia's defence of security).

(2) The advice must be given to the Minister within the period specified by the Minister.

(3) The Minister must consider advice given to the Minister under this section by the end of that period.

(4) The regulations may set out requirements that the Minister must comply with in obtaining or considering the advice.

(5) In preparing the advice, the Australian Heritage Council must not consider any matter that does not relate to the national heritage values of the place concerned.

(6) The Minister must:

(a) decide whether to remove from the National Heritage List the place concerned, or the national heritage value or values of the place concerned; and

(b) if the Minister decides to remove the place, or the national heritage value or values of the place ensure that an instrument removing the place or national heritage value or values is published in the *Gazette*;

within 60 business days after the advice is given to the Minister, or 60 business days after the end of the specified period for giving the Minister the advice, whichever is earlier.

Comments/Recommended changes

Re (2): Rather than leave this to the discretion of the Minister it may be more appropriate to add a specified timeframe—perhaps 40 days would be appropriate.

324L Specifying one or more additional national heritage values for a national heritage place

(1) This section sets out how the Minister can specify in the National Heritage List one or more additional national heritage values for a national heritage place if the Minister considers it appropriate to do so.

(2) For the purposes only of specifying the additional national heritage value or values, the Minister must treat the place, and comply with the requirements in this Subdivision, as though the place were not already included in the National Heritage List.

- Nothing in this section affects the inclusion of the place, as originally included, in the National Heritage List.

Comments/Recommended changes

Add a further clause allowing individuals or organisations to propose to the AHC additional national heritage values to a national heritage place.

324M National Heritage List must be publicly available

The Minister must ensure that:

(a) up-to-date copies of the National Heritage List are available for free to the public on request; and

(b) an up-to-date copy of the National Heritage List is available on the Internet.

Note: The copies of the National Heritage List made publicly available may not contain certain information kept confidential under section 324N.

324N Certain information may be kept confidential

(1) This section applies if the Minister considers that a place would be significantly damaged by the disclosure of some or all of the following information, or by the presence or actions of persons if some or all of the following information were disclosed publicly:

- (a) the places precise location;
- (b) the places national heritage values;
- (c) any other information about the place.

(2) It is sufficient compliance with this Act if only a general description of the place, its location or its national heritage values is included in:

- (a) the National Heritage List as made publicly available; or
- (b) a notice given, or other document created, for the purposes of this Act.

324P Duty not to disclose assessments or advice

(1) A member of the Australian Heritage Council has a duty not to disclose to any other person:

- (a) an assessment under section 324F of a place's national heritage values or any information relating to the assessment; or
 - (b) advice under section 324K concerning a place or any information relating to the advice;
- unless the disclosure is for the official purposes of the Australian Heritage Council.
- (2) However, subsection (1) does not apply after the earlier of the following:
- (a) 60 business days after the Minister receives the assessment or the advice;
 - (b) the day on which:
 - (i) a notice is published under section 324H concerning the place; or
 - (ii) an instrument is published in the *Gazette* under section 324J concerning the place;

as the case may be.

Subdivision C Management plans for national heritage places in Commonwealth areas

324Q Management plans for national heritage places in Commonwealth areas

(1) The Minister must make a written plan for managing each national heritage place that is entirely within one or more Commonwealth areas. The Minister must do so within the period specified in the regulations after the place:

- (a) is included in the National Heritage List; or
- (b) becomes entirely within one or more Commonwealth areas.

Note: However, section 324R precludes the Minister from making plans for managing certain places.

(2) The Minister may, in writing, amend a plan or revoke and replace a plan.

(3) A plan must not be inconsistent with the national heritage management principles (see Subdivision E).

(4) If the national heritage management principles change so that a plan (the **earlier plan**) is inconsistent with them, the Minister must make another plan:

- (a) amending or revoking the earlier plan to make it consistent with the principles; or
- (b) revoking and replacing the earlier plan.

(5) The Minister must give notice, in accordance with the regulations, if the Minister:

- (a) makes a plan for a national heritage place; or
- (b) amends such a plan; or
- (c) revokes and replaces such a plan.

Comments/Recommended changes

Responsibility for overseeing these processes should rest with the AHC.

Add specified timeframes: as recommended in the Schofield Report, all Commonwealth agencies must complete management plans for all of their identified heritage properties within 3 years; and as an ongoing responsibility, do so for any newly identified heritage properties within 6 months. Appropriate clauses should be added to 324(Q).

Add an extra clause to ensure public consultation in the preparation or amendment of management plans.

Add an extra clause to ensure that existing Commonwealth Reserve management plans encompass cultural heritage values.

324R Restriction on ability to make plans

(1) Despite section 324Q, the Minister must not make a plan for managing so much of a national heritage place as is in a Commonwealth reserve and covered by another plan under this Act.

- Despite section 324Q, the Minister must not make a plan for managing so much of a national heritage place as is in the Territory of Heard Island and McDonald Islands and covered by a plan in operation under the *Environment Protection and Management Ordinance 1987* of that Territory.

324S Compliance with plans by the Commonwealth and Commonwealth agencies

The Commonwealth or a Commonwealth agency must not contravene a plan under section 324Q for managing a national heritage place.

324T Multiple plans in the same document

To avoid doubt, a plan for managing a national heritage place may be in the same document as:

- (a) one or more other plans for managing national heritage places; or
- (b) one or more other plans that this Act or another law of the Commonwealth requires or permits to be prepared.

324U Review of plans at least every 7 years

(1) At least once in every 7 year period after a plan for managing a national heritage place is made under section 324Q, the Minister must cause a review of the plan to be carried out.

- (b) The review must assess whether the plan is consistent with the national heritage management principles in force at the time.

Comments/Recommended changes

Re 324 (U): Review should be conducted every 5 years and not 7 as proposed. This is consistent with the EPBC Act and standard conservation practice.

Add an extra clause that the review must assess how effectively the heritage place is being managed in relation to the management plan and include a requirement that remedial action must be taken by the agency concerned.

Subdivision D Management of national heritage places in States and self-governing Territories

324V Plans and Commonwealth responsibilities

(1) This section applies to a national heritage place that is not entirely within one or more Commonwealth areas and is:

- (a) in a State; or

(b) in a self-governing Territory; or
(c) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*.

(2) The Commonwealth must use its best endeavours to ensure a plan for managing the place, that is not inconsistent with the national heritage management principles, is prepared and implemented in co-operation with the State or Territory.

(3) The Commonwealth, and each Commonwealth agency, must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the place in a way that is not inconsistent with:

- (a) the national heritage management principles; or
- (b) the plan for managing the place, if one has been prepared under subsection (2).

Subdivision E The national heritage management principles

324W National heritage management principles

(1) The Minister must make principles for managing national heritage. A copy of the principles must be published in the Gazette. The principles are called the ***national heritage management principles***.

(2) The regulations may prescribe obligations to implement or give effect to the national heritage management principles.

(1) A person must comply with the regulations to the extent that they impose obligations on the person.

Comments/Recommended changes

The principles alluded to should be incorporated into the Bill or into the regulations.

Subdivision F Obligations of Commonwealth agencies

324X Sale or lease of national heritage places

(1) This section applies to a Commonwealth agency that executes a contract for the sale or lease to someone else of Commonwealth land that includes a national heritage place. It does not matter whether the agency executes the contract for the Commonwealth or on its own behalf.

(2) The agency must ensure that the contract includes a covenant the effect of which is to protect the national heritage values specified for the place in the National Heritage List.

(3) The agency must take reasonable steps to ensure as far as practicable that the covenant binds the successors in title of the buyer or lessee.

Note: The Minister may enter into an agreement under Part 14 for the protection and conservation of the places heritage value.

Comments/Recommended changes

Re (2) add: *heritage agreement* or before the word covenant.

Add an extra clause that, in disposing of a property, preference should be given in this order to: long-term lease; freehold sale to a state/territory entity; freehold sale to a local authority/community group with adequate protection under state law.

Add an extra clause that, before disposal the Commonwealth agency should take action to ensure that the property is appropriately listed at national, state/territory or local level, to ensure long-term protection.

Additional proposal

As an additional proposal, consideration should be given to allocating a set percentage of funds raised from the disposal of every Commonwealth heritage property (for example, 15% of sale price) to a Trust Fund that would enable the Commonwealth to:

- **fund future heritage purchases;**
- **properly manage and interpret national and Commonwealth heritage places;**
- **undertake nationally-focused heritage research;**
- **undertake other appropriate activities, as determined by the Minister, and/or on recommendation from the AHC.**

Subdivision G Assistance for protecting national heritage places

324Y Commonwealth assistance for protecting national heritage places

(1) The Commonwealth may give financial or other assistance for the identification, promotion, protection or conservation of a national heritage place to:

(a) a State or self-governing Territory in which the place or part of the place is located; or

(b) any other person.

(c) The Commonwealth may give the assistance subject to conditions.

Recommended changes

Re (1): Substitute the words may give with *must provide* ...

Subdivision H Reviewing and reporting on the National Heritage List

324Z Reviewing and reporting on the National Heritage List

(1) At least once in every 10 year period after the National Heritage List is established, the Minister must ensure that:

- (a) a review of the National Heritage List is carried out; and
- (b) a report of that review is tabled in each House of the Parliament.

(2) The report must include details of:

- (a) the number of places included in the National Heritage List; and
- (b) any significant damage or threat to the national heritage values of those places; and

(c) how many plans under Subdivisions C and D for managing national heritage places have been made, or are being prepared, and how effectively the plans that have been made are operating; and

(d) the operation of any conservation agreements under Part 14 that affect national heritage places; and

- (e) any other matters that the Minister considers relevant.

Comments/Recommended changes

Re (1): Change to 5 years instead of the proposed 10 year period, ideally coinciding with State of Environment reporting.

It is imperative that the review adopt a comprehensive analytical approach making recommendations for remedial action.

The AHC should also provide an annual report to Parliament.

23 After Division 3 of Part 15

Insert:

Division 3A Managing Commonwealth heritage places

Subdivision A Simplified outline of this Division

341A Simplified outline of this Division

The following is a simplified outline of this Division:

The Minister may only include a place in the Commonwealth Heritage List if the place is in a Commonwealth area and the Minister is satisfied that the place has one or more Commonwealth heritage values.

The Minister may ask the Australian Heritage Council for an assessment of the places Commonwealth heritage values and invite public comments on the inclusion of the place in the Commonwealth Heritage List.

Commonwealth agencies must make plans for managing Commonwealth heritage places. The Commonwealth and Commonwealth agencies must not contravene those plans.

Commonwealth agencies also have other obligations.

The Commonwealth can provide assistance for the identification, promotion, protection or conservation of Commonwealth heritage places.

Subdivision B The Commonwealth Heritage List

341B The Commonwealth Heritage List

(1) The Minister must establish, by instrument published in the *Gazette*, a Commonwealth Heritage List.

(2) A place may only be included in the Commonwealth Heritage List if:

(a) the place is entirely within a Commonwealth area; and

(b) the Minister is satisfied that the place has one or more Commonwealth heritage values.

Comments/Recommended changes

Add a clause that the existing Register of the National Estate (RNE) acts as an interim list of Commonwealth heritage places pending further assessment.

The AHC should have a defined role in overseeing the conservation of Commonwealth heritage places.

A place that is included in the Commonwealth Heritage List is called a ***Commonwealth heritage place***.

- (a) The Commonwealth Heritage List must specify the Commonwealth heritage values for which each place is included in the Commonwealth Heritage List.

Comments/Recommended changes

The Commonwealth heritage values should be specified in the Bill or in the regulations. These values should include intangible heritage values.

Importantly this is one of several areas where Indigenous heritage values need improved definition, recognising the indigenous sensitivity to the importance of all heritage places.

(4) The Commonwealth Heritage List may be kept electronically.

341C Meaning of *Commonwealth heritage values*

(1) A place has one or more *Commonwealth heritage values* only if it meets one or more of the criteria for Commonwealth heritage values prescribed in the regulations for the purposes of this section. The criteria may deal with natural, indigenous, historic, or any other, heritage value.

Note: For *indigenous heritage value*, see section 528.

(2) The *Commonwealth heritage values* of a Commonwealth heritage place are the Commonwealth heritage values specified for the place in the Commonwealth Heritage List.

341D Nominations of places

(1) A person may, in accordance with the regulations (if any), nominate to the Minister a place for inclusion in the Commonwealth Heritage List.

(2) Within 20 business days after receiving a nomination of a place, the Minister must:

(a) ask the Australian Heritage Council for an assessment of the places national heritage values under section 341F; or

(b) advise the person who made the nomination of the Ministers decision not to include the place in the Commonwealth Heritage List and of the reasons for that decision.

Note: However, the Minister may, in an emergency, include the place in the Commonwealth Heritage List before asking for an assessment under section 341F (see section 341E).

(3) The Minister may:

(a) ask a person who has nominated a place to provide additional information about the place within a specified period; and

(b) reject the nomination if the information is not provided within that period.

The period specified must be reasonable.

(4) If the Minister asks a person for additional information, the period in subsection (2) stops on the day the Minister asks for that information until the day after that information is provided.

(b) To avoid doubt, a member of the Australian Heritage Council may make a nomination in accordance with this section on behalf of the Australian Heritage Council.

Comments/Recommended changes

Add an extra clause requiring Commonwealth agencies to nominate places for the list (as recommended in the Schofield Report).

341E **Emergency listing**

(1) Despite subsection 341D(2), the Minister may include a place in the Commonwealth Heritage List before asking the Australian Heritage Council for an assessment of the places Commonwealth heritage values if:

(a) the place is entirely within a Commonwealth area; and
(b) the Minister is satisfied that the place has or may have one or more Commonwealth heritage values any of which are under imminent threat.

(2) Within 10 business days after including the place in the Commonwealth Heritage List, the Minister must:

(a) ask the Australian Heritage Council for an assessment of the places Commonwealth heritage values under section 341F; and
(b) publish a notice in accordance with the regulations stating that the place is included in the Commonwealth Heritage List and the date on which it was included; and
(c) if the place was nominated by a person advise the person that the place has been included in the Commonwealth Heritage List.

(3) The Australian Heritage Council must give the Minister the assessment within 40 business days after the Minister asks for the assessment. However, the Minister may extend that period.

341F **Assessments by the Australian Heritage Council**

(1) The Australian Heritage Council must give to the Minister a written assessment of a places Commonwealth heritage values within:

(a) 12 months after the Minister asks for the assessment; or
(b) if the place is included in the Commonwealth Heritage List under section 341E (emergency listing) within 40 business days after the Minister asks for the assessment.

However, the Minister may extend that period.

(2) In making an assessment, the Australian Heritage Council:

(a) must make reasonable efforts to notify the following persons that the place is being considered for inclusion in the Commonwealth Heritage List:

(i) the places owner and occupier (if any);
160; (ii) any indigenous persons with rights or interests in the place, if the Australian Heritage Council considers the place might have indigenous heritage value; and

(b) must give those persons a reasonable opportunity to comment in writing on whether the place should be included in the Commonwealth Heritage List.

A copy of the comments must be included in the assessment.

(3) In making an assessment of a places Commonwealth heritage values, the Australian Heritage Council must not consider any matter that does not relate to the places Commonwealth heritage values.

(4) The Minister must consider an assessment under this section if it is given to the Minister by the end of the period in subsection (1).

(5) The Minister may ask the Australian Heritage Council for an assessment of a places Commonwealth heritage values whether or not the place is the subject of a nomination.

(6) The Australian Heritage Council must not undertake an assessment of a places Commonwealth heritage values unless the Minister asks it to do so. However, the Australian Heritage Council may undertake research and investigations necessary for the purposes of nominating places to be included in the Commonwealth Heritage List.

Note: For ***indigenous heritage value***, see section 528.

Comments/Recommended changes

See previous comments re National List-assessments.

Delete clause (6). This is not required if the AHC has responsibility.

Add an extra clause to ensure that the assessments are made publicly available.

341G Requirement to invite public comments

(1) The Minister must publish a notice in accordance with the regulations inviting comments, in an approved form, on the inclusion of a place in the Commonwealth Heritage List.

Note: However, the Minister is not required to publish a notice in certain circumstances: see subsection (5).

(2) The notice must be published within 20 business days after the day on which the Minister receives from the Australian Heritage Council an assessment of the places Commonwealth heritage values under section 341F.

(3) The notice must include a statement (*statement of significance*) setting out the places Commonwealth heritage values and must allow the comments to be given to the Minister within:

- (a) 40 business days after the notice is published; or
- (b) if the place is included in the Commonwealth Heritage List under section 341E (emergency listing) 20 business days after the notice is published.

(4) The Minister may ask the Australian Heritage Council or a person with appropriate qualifications or expertise to assess the merits of any comments received by the Minister that comply with this section.

- (c) The Minister is not required to publish a notice under this section concerning a place, other than a place included in the Commonwealth Heritage List under section 341E (emergency listing), if the Australian Heritage Councils assessment under section 341F is to the effect that the place should not be included in the Commonwealth Heritage List.

Comments/Recommended changes

Re (4): delete 'or a person with appropriate qualifications or expertise'.

341H Decision whether to include a place in the Commonwealth Heritage List

(1) Within a reasonable period after considering any comments that comply with section 341G concerning a place, other than a place that is included in the Commonwealth Heritage List under section 341E (emergency listing), the Minister must:

(a) include the place in the Commonwealth Heritage List and publish a notice to that effect in accordance with the regulations; or

(b) advise the person who nominated the place of the Ministers decision not to include the place in the Commonwealth Heritage List and of the reasons for that decision.

A notice published under paragraph (a) must include a statement setting out the places Commonwealth heritage values.

Note: The Minister may only include a place in the Commonwealth Heritage List if the place is entirely within a Commonwealth area and the Minister is satisfied that the place has one or more Commonwealth heritage values (see subsection 341B(2)).

(2) Within a reasonable period after considering any comments that comply with section 341G concerning a place that is included in the Commonwealth Heritage List under section 341E (emergency listing), the Minister must:

(a) decide that the place is to remain in the Commonwealth Heritage List and publish a notice to that effect in the *Gazette*; or

(b) remove the place from the Commonwealth Heritage List by publishing a notice in the *Gazette*.

A notice published under paragraph (a) must include a statement setting out the places national heritage values.

Note: The Minister may only include a place in the Commonwealth Heritage List if the place is entirely within a Commonwealth area and the Minister is satisfied that the place has one or more Commonwealth heritage values (see subsection 341B(2)).

(3) Section 341J does not apply to the removal of a place under paragraph (2)(b).

Note: This means that the notice that is published in accordance with that paragraph is not a disallowable instrument.

Comments/Recommended changes

Re (1): add a specified timeframe (substitute for ‘reasonable period’)–40 days might be appropriate.

Add a clause that the AHC must only consider Commonwealth heritage values when deciding on listing.

341J Removal of places from the Commonwealth Heritage List

(1) The Minister may only remove a place from the Commonwealth Heritage List if the Minister is satisfied that:

(a) the place is not entirely within a Commonwealth area; or

(b) the place does not have any Commonwealth heritage values; or

(c) it is necessary in the interests of Australia’s defence or security to do so.

Note: A place may also be removed from the Commonwealth Heritage List under section 341H(2).

(2) The Minister may only remove one or more Commonwealth heritage values specified in the Commonwealth Heritage List for a Commonwealth heritage place if the Minister is satisfied that the place no longer has the Commonwealth heritage value or values.

(3) The Minister may remove a place, or a Commonwealth heritage value specified for a place, by instrument published in the *Gazette*.

Note 1: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 341K).

Note 2: How one or more additional Commonwealth heritage values for a place may be specified is dealt with in section 341L.

(4) The instrument is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* unless the instrument removes the place only because of either or both of the following:

- (a) paragraph (1)(a) (the place is not entirely within a Commonwealth area);
- (b) paragraph (1)(c) (Australia's defence of security).

(5) The removal takes effect on the first day on which the instrument is no longer liable to be disallowed, or to be taken to have been disallowed, under section 48 of the *Acts Interpretation Act 1901* as it applies in relation to an instrument because of section 46A of that Act. This subsection has effect despite section 48 of the *Acts Interpretation Act 1901*.

(6) When an instrument is laid before each House of the Parliament in accordance with section 48 of the *Acts Interpretation Act 1901*, the Minister must cause a statement to be laid before each House with the instrument explaining why the Minister removed from the Commonwealth Heritage List the place or the places Commonwealth heritage value or values.

- (d) A notice summarising the information contained in an instrument under this section must be published in accordance with the regulations.

Comments/Recommended changes

Add an extra clause allowing any organisation or person to lodge an objection to a decision under this section requiring the AHC to consider all such comments.

341K Minister must consider advice of the Australian Heritage Council

(1) The Minister must ask the Australian Heritage Council for advice before removing under section 341J a place from the Commonwealth Heritage List or one or more of a places Commonwealth heritage values. However, the Minister is not required to do so if the removal is only because of paragraph 341J(1)(c) (Australia's defence of security).

(2) The advice must be given to the Minister within the period specified by the Minister.

(3) The Minister must consider advice given to the Minister under this section by the end of that period.

(4) The regulations may set out requirements that the Minister must comply with in obtaining or considering the advice.

(5) In preparing the advice, the Australian Heritage Council must not consider any matter that does not relate to the Commonwealth heritage values of the place concerned.

(6) The Minister must:

(a) decide whether to remove from the Commonwealth Heritage List the place concerned, or the Commonwealth heritage value or values of the place concerned; and

(b) if the Minister decides to remove the place, or the Commonwealth heritage value or values of the place ensure that an instrument removing the place or Commonwealth heritage value or values is published in the *Gazette*; within 60 business days after the advice is given to the Minister, or 60 business days after the end of the specified period for giving the Minister the advice, whichever is earlier.

341L Specifying one or more additional Commonwealth heritage values for a Commonwealth heritage place

(1) This section sets out how the Minister can specify in the Commonwealth Heritage List one or more additional Commonwealth heritage values for a Commonwealth heritage place if the Minister considers it appropriate to do so.

(2) For the purposes only of specifying the additional Commonwealth heritage value or values, the Minister must treat the place, and comply with the requirements in this Subdivision, as though the place were not already included in the Commonwealth Heritage List.

(a) Nothing in this section affects the inclusion of the place, as originally included, in the Commonwealth Heritage List.

Comments/Recommended changes

Replace clauses (1) & (2) with one allocating responsibility to the AHC.

Add an extra clause allowing individuals to propose additional Commonwealth heritage values. Also, the public should be allowed to participate in the identification of Commonwealth heritage values.

341M Commonwealth Heritage List must be publicly available

The Minister must ensure that:

- (a) up-to-date copies of the Commonwealth Heritage List are available for free to the public on request; and
- (b) an up-to-date copy of the Commonwealth Heritage List is available on the Internet.

Note: The copies of the Commonwealth Heritage List made publicly available may not contain certain information kept confidential under section 341N.

341N Certain information may be kept confidential

(1) This section applies if the Minister considers that a place would be significantly damaged by the disclosure of some or all of the following information, or by the presence or actions of persons if some or all of the following information were disclosed publicly:

- (a) the places precise location;
- (b) the places Commonwealth heritage values;
- (c) any other information about the place.

(2) It is sufficient compliance with this Act if only a general description of the place, its location or its Commonwealth heritage values is included in:

- (a) the Commonwealth Heritage List as made publicly available; or
- (b) a notice given, or other document created, for the purposes of this Act.

341P Duty not to disclose assessments or advice

(1) A member of the Australian Heritage Council has a duty not to disclose to any other person:

- (a) an assessment under section 341F of a places Commonwealth heritage values or any information relating to the assessment; or
 - (b) advice under section 341K concerning a place or any information relating to the advice;
- unless the disclosure is for the official purposes of the Australian Heritage Council.

(2) However, subsection (1) does not apply after the earlier of the following:

- (a) 60 business days after the Minister receives the assessment or the advice;
- (b) the day on which:
 - (i) a notice is published under section 341H concerning the place; or
 - (ii) an instrument is published in the *Gazette* under section 341J concerning the place;

as the case may be.

Subdivision C Management plans for Commonwealth heritage places

341Q Management plans for Commonwealth heritage places

(1) Each Commonwealth agency that owns or controls a Commonwealth heritage place must make a written plan for managing the place. The agency must do so within the period specified in the regulations after the place is included in the Commonwealth Heritage List.

Note: However, a Commonwealth agency must not make plans for managing certain places (see section 341S).

(2) A plan must not be inconsistent with the Commonwealth heritage management principles (see Subdivision D).

(3) If the Commonwealth heritage management principles change so that a plan (the **earlier plan**) is inconsistent with them, the agency concerned must make another written plan:

- (a) amending or revoking the earlier plan to make it consistent with the principles; or
- (b) revoking and replacing the earlier plan.

(4) Before making, amending or revoking and replacing a plan for managing a Commonwealth heritage place, the agency concerned must ask the Minister for

advice on the matter and must take account of any advice on the matter received from the Minister.

(5) The Minister must consult with the Australian Heritage Council in preparing an advice for the purposes of this section.

(6) A Commonwealth agency must give notice, in accordance with the regulations, if the agency:

- (a) makes a plan for a Commonwealth heritage place; or
- (b) amends such a plan; or
- (c) revokes and replaces such a plan.

Note: Subdivision F imposes other obligations on Commonwealth agencies.

Comments/Recommended changes

See earlier comments under 324Q.

(4) replace ‘must take account’ with ‘*must adopt*’ (there again reinforcing that responsibility should rest with the AHC).

341R Accrediting management plans for Commonwealth heritage places

(1) A Commonwealth agency that makes a plan for managing a Commonwealth heritage place may ask the Minister to accredit the plan.

Note: An agency that has a plan accredited under this section is not required to ask for advice under section 341Y about taking certain actions.

(2) The Minister:

- (a) may only accredit a plan that the Minister is satisfied provides for the conservation of the Commonwealth heritage values of the place concerned; and
- (b) must not accredit a plan that the Minister considers is inconsistent with the Commonwealth heritage management principles (see Subdivision E).

(b) The Minister may, at any time, revoke an accreditation of a plan if the Minister considers it appropriate to do so.

Comments/Recommended changes

Responsibility for accrediting management plans should rest with the AHC. This is very much an administrative area and does not require Ministerial participation.

Any actions contrary to agreed management plans must be referred back to the AHC for consideration.

341S Restriction on ability to make plans

(1) Despite section 341Q, a Commonwealth agency must not make a plan for managing so much of a Commonwealth heritage place as is in a Commonwealth reserve and covered by another plan under this Act.

- Despite section 341Q, a Commonwealth agency must not make a plan for managing so much of a Commonwealth heritage place as is in the Territory of Heard Island and McDonald Islands and covered by a plan in operation under the *Environment Protection and Management Ordinance 1987* of that Territory.

Comments/Recommended changes

Re (1): Add ‘as long as that plan includes cultural heritage values.’

341T Compliance with plans by the Commonwealth and Commonwealth agencies

The Commonwealth or a Commonwealth agency must not contravene a plan under section 341Q for managing a Commonwealth heritage place.

Comments/Recommended changes

Consideration should be given to imposing penalties on Commonwealth agencies who contravene a plan.

341U Multiple plans in the same document

To avoid doubt, a plan for managing a Commonwealth heritage place may be in the same document as:

- (a) one or more other plans for managing Commonwealth heritage places; or
- (b) one or more other plans that this Act or another law of the Commonwealth requires or permits to be prepared.

341V Review of plans at least every 7 years

(1) At least once in every 7 year period after a plan for managing a Commonwealth heritage place is made under section 341Q, the Commonwealth agency concerned must cause a review of the plan to be carried out.

(2) The review must assess whether the plan is consistent with the Commonwealth heritage management principles in force at the time.

Comments/Recommended changes

Re (1): Review period should be 5 years for the reasons stated earlier.

Again, like earlier comments, an additional clause should be added requiring that the review encompass detailed analysis and recommended remedial action.

(1) The Minister must make principles for managing Commonwealth heritage. A copy of the principles must be published in the Gazette. Those principles are called the ***Commonwealth heritage management principles***.

(2) The regulations may prescribe obligations to implement or give effect to the Commonwealth heritage management principles.

- A person must comply with the regulations to the extent that they impose obligations on the person.

Subdivision E Obligations of Commonwealth agencies

341X Obligation to assist the Minister and the Australian Heritage Council

A Commonwealth agency that owns or controls a place that has, or might have, one or more Commonwealth heritage values must take all reasonable steps to assist the Minister and the Australian Heritage Council in the identification and assessment of the places Commonwealth heritage values.

Comments/Recommended changes

This provision should be strengthened to ensure that Commonwealth agencies are required to help identify and assess heritage values.

Clauses should also be added in response to the Schofield Report.

341Y Requirement to ask Minister for advice

(1) Before a Commonwealth agency takes an action that has, will have or is likely to have a significant impact on a Commonwealth heritage place, the agency must ask the Minister for advice about taking the action.

(2) However, the agency is not required to ask for the advice if:

(a) the agency has a plan for managing the place that is accredited by the Minister under section 341R; and

(b) the action is provided for or taken in accordance with the plan.

(3) Within 30 business days after an agency asks for an advice under subsection (1), the Minister must give a written advice to the agency. The Minister must consult with the Australian Heritage Council in preparing the advice.

- The Minister may ask an agency to provide additional information about the action or place concerned. If the Minister does so, the period in subsection (3) stops on the day the Minister asks for that information until the day after that information is provided.

Comments/Recommended changes

Existing clauses within this section not necessary if sections 26 and 28 of the EPBC Act apply.

Clauses should also be added in response to the Schofield Report.

341Z Sale or lease of Commonwealth heritage places

(1) This section applies to a Commonwealth agency that executes a contract for the sale or lease to someone else of Commonwealth land that includes a Commonwealth heritage place. It does not matter whether the agency executes the contract for the Commonwealth or on its own behalf.

(2) The agency must ensure that the contract includes a covenant the effect of which is to protect the Commonwealth heritage values specified for the place in the Commonwealth Heritage List.

(3) The agency must take reasonable steps to ensure as far as practicable that the covenant binds the successors in title of the buyer or lessee.

Note: The Minister may enter into an agreement under Part 14 for the protection and conservation of the places heritage value.

Comments/Recommended changes

Add an extra clause that, in disposing of a property, preference should be given in the following order to: long-term lease; freehold sale to a state/territory entity; freehold sale to a local authority/community group with adequate protection under state law.

Add an extra clause that, before disposal the Commonwealth agency should take action to ensure that the property is listed at national, state/territory or local level to ensure long-term protection.

Additional proposal

As an additional proposal, consideration should be given to allocating a set percentage of funds raised from the disposal of every Commonwealth heritage property (for example, 15% of sale price) to a Trust Fund that would enable the Commonwealth to fund purchases, management and interpretation of national and Commonwealth heritage places; undertake nationally-focused heritage research; and other appropriate activities, as determined by the Minister, and/or on recommendation from the AHC.

Subdivision F Assistance for protecting Commonwealth heritage places

341ZA Commonwealth assistance for protecting Commonwealth heritage places

(1) The Commonwealth may give financial or other assistance for the identification, promotion, protection or conservation of a Commonwealth heritage place to any person.

(1) The Commonwealth may give the assistance subject to conditions.

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Comments/Recommended changes

Re (1): Replace ‘may’ with ‘must’.

Subdivision G Reviewing and reporting on the Commonwealth Heritage List
341ZB Reviewing and reporting on the Commonwealth Heritage List

(1) At least once in every 10 year period after the Commonwealth Heritage List is established, the Minister must ensure that:

- (a) a review of the Commonwealth Heritage List is carried out; and
- (b) a report of that review is tabled in each House of the Parliament.

(2) The report must include details of:

- (a) the number of places included in the Commonwealth Heritage List; and
- (b) any significant damage or threat to the Commonwealth heritage values of those places; and
- (c) how many plans under Subdivision C for managing Commonwealth heritage places have been made, or are being prepared, and how effectively the plans that have been made are operating; and
- (d) the operation of any conservation agreements under Part 14 that affect Commonwealth heritage places; and
- (e) any other matters that the Minister considers relevant.

Comments/Recommended changes

Re(1): change 10 year provision to 5 years.

Refer comments under National Heritage List (324Z).

Add an extra clause to ensure that details of assessments, approvals, monitoring and compliance are provided.

24 At the end of subsection 367(1)

Add:

; and (j) if the reserve includes a national heritage place or Commonwealth heritage place take account of the national heritage management principles or Commonwealth heritage management principles as the case may be.

Comments/Recommended changes

Re (1): replace ‘take account of’ with ‘adopt’.

25 Subsection 391(3) (after table item 11)

Insert:

11A 324Q about making a plan for managing a national heritage place that is entirely within one or more Commonwealth areas

26 Subsection 391(3) (after table item 13)

Insert:

13A 341R about accrediting a plan for managing a Commonwealth heritage place

27 After subparagraph 495(2)(a)(i)

Insert:

(ia) section 15C (Offences relating to national heritage places); or

***Section 516A(6)**

Comments/Recommended changes

Add: (f) include a report on action in accordance with the heritage strategy prepared in accordance with section 341Y, if such a strategy is required.

***Part 23**

Comments/Recommended change

Add: 524AA. Actions relating to a national or Commonwealth heritage place

Notwithstanding other provisions in this part, *action* includes, for the purposes of the protection of a national or Commonwealth heritage place:

- (a) the making of a decision or recommendation (including a recommendation in relation to direct financial assistance granted, or proposed to be granted to a State) the approval of a program, the issue of a licence or the granting of a permission; and
- (b) the failure to take an action or wilful neglect.

28 Section 528

Insert:

Australian Heritage Council means the body established by the *Australian Heritage Council Act 2000*.

29 Section 528

Insert:

Commonwealth Heritage List means the list established and kept under section 341B.

30 Section 528

Insert:

Commonwealth heritage management principles has the meaning given by section 341W.

31 Section 528

Insert:

Commonwealth heritage place has the meaning given by subsection 341B(2).

32 Section 528 (definition of *cultural heritage*)

Repeal the definition.

33 Section 528

Insert:

heritage value of a place includes the places natural and cultural environment having aesthetic, historic, scientific or social significance, or other significance, for current and future generations of Australians.

34 Section 528

Insert:

indigenous heritage value of a place means the heritage value of the place that is of particular significance to indigenous persons in accordance with their traditions.

35 Section 528

Insert:

National Heritage List means the list established and kept under section 324B.

36 Section 528

Insert:

national heritage management principles has the meaning given by section 324W.

37 Section 528 (definition of *natural heritage*)

Repeal the definition.

38 Section 528

Insert:

national heritage place has the meaning given by subsection 324B(2).

39 Section 528

Insert:

national heritage values has the meaning given by section 324C.

40 Section 528

Insert:

place includes:

- (a) a location, area or region; and
- (b) a building or other structure, or group of buildings or other structures (which may include equipment, furniture, fittings and articles associated or connected with the building or structure, or group of buildings or structures); and
- (c) in relation to the protection, maintenance, preservation or improvement of a place the immediate surroundings of a thing in paragraph (a) or (b).

Comments/Recommended changes

In this section definitions of the following key heritage terms should be changed:

- **Heritage value**, add '*or a part of the Australian community*'
- **Indigenous heritage value**, add: '*or contemporary life*'.

Schedule 3 Transitional provision: places included in the Register of the National Estate

1 Places may be taken to be included in the Commonwealth Heritage List

(1) In this item:

Register of the National Estate means the Register of the National Estate kept under the *Australian Heritage Commission Act 1975*, including the Interim List kept under section 26 of that Act, as in force immediately before this item commences.

(2) Within 6 months after this item commences, the Minister may determine that the Commonwealth Heritage List is taken to include a place if:

- (a) the place:
 - (i) is or was included, immediately before this item commences, in the Register of the National Estate; or

(ii) is part of a place that is or was included, immediately before this item commences, in the Register of the National Estate; and

(b) the place is within a Commonwealth area; and

(c) the Minister is satisfied that the place has one or more Commonwealth heritage values.

(3) The Minister must ensure that the Commonwealth Heritage List specifies the Commonwealth heritage value or values for each place that the Minister determines is taken to be included in the Commonwealth Heritage List.

(4) A determination under subitem (2) must be in writing and a copy of the determination must be published in the *Gazette*.