

Australian Council of National Trusts

SUBMISSION TO THE REVIEW OF THE EPBC ACT

December 2008

EXECUTIVE SUMMARY

1. The Australian Council of National Trusts welcomes this review of the EPBC Act.
2. The ACNT along with many others in the heritage sector is concerned that the outcomes since the Act came in to force in 2000 for heritage have been very mixed – a few improvements but an overall picture of decline and disappointment. The promise of great improvements has unfortunately not been realised.
3. Given the importance, complexity and perceived issues with heritage, the ACNT is concerned that the review is very short on expertise in heritage matters. It is apparent that some important issues are beyond the capacity of the review to examine, as they are major review topics in their own right (eg. the future of heritage listing activities in Australia). We also believe it would be beneficial to the review process and its outcomes for a heritage expert to become a member of the panel of experts.
4. The ACNT believes a meaningful review of the Act should take a broad view of the legislation, its place within the overall Commonwealth Government's heritage system, and aspects of its implementation. The review will only deliver real, sustainable national benefits if this approach is taken.
5. This submission addresses the questions posed in the review discussion paper. However, there are other important questions which must be considered, including,
 - does the EPBC Act accord with best practice principles for heritage legislation?
 - is Australia's heritage better off in theory and in practice under the EPBC Act?
 - given the proliferation of heritage lists under the EPBC Act and the unfortunate demise of the Register of the National Estate, what is the sensible and strategic future for the various lists?
 - has the change to the EPBC Act seen an improvement in heritage protection and conservation? and
 - are resource constraints frustrating progress with heritage protection and conservation?
6. The ACNT's submission considers these and other matters.
7. It is not possible to adequately summarise the many comments and recommendations within this submission. None the less, a few points worth stressing are:
 - listing processes under the Act for both the National Heritage List and the Commonwealth Heritage List are fraught with problems and complexities which all but frustrate the original intentions and promise for these lists;
 - substantial research is required to assess the effectiveness of protection and various tools within the Act, such as heritage strategies and management plans;

- the appropriate role for the Commonwealth in heritage needs to be better defined, and needs to embrace a broader role consistent with national leadership and the national interest;
- the EPBC Act does not meet relevant general objectives for heritage legislation and is not consistent with best legislative practice;
- there are major practical and methodological problems with the Act;
- an expert review is needed to develop a strategic view about the future of listing activities in Australia;
- the lack of resources for heritage is a major impediment;
- the Act is too complex, and one option that should be considered is to create a stand-alone heritage Act;
- various review mechanisms are not adequate, especially for heritage;
- the role of the Australian Heritage Council must be strengthened;
- the impact of climate change on heritage must be better recognised and a suitable policy and funding response developed;
- the situation with heritage protection in the ACT for places under Commonwealth planning control must be brought up to a contemporary good standard; and
- Commonwealth Heritage continues to suffer and greater efforts must be made to improve the protection and management of this heritage – the Commonwealth should be an exemplar.



INTRODUCTION

8. The Australian Council of National Trusts welcomes this review of the EPBC Act. The Act, especially the heritage provisions, were promoted as a major step forward for Australia's heritage. It is timely to look closely at the actual operations and real outcomes of the Act, to see whether the promise has been realised.

9. The ACNT along with many others in the heritage sector is concerned that the outcomes for heritage since the Act became operational have been very mixed – a few improvements but an overall picture of decline and disappointment. The promise of great improvements is far from what has actually been achieved.

10. While the EPBC Act deals with a wide range of environmental and heritage matters, this submission focuses on heritage. The ACNT is deeply concerned for all aspects of the environment. However, it anticipates that many others will provide detailed submissions on such things as biodiversity and threatened species, and it will be more useful to the review for the ACNT to put its effort into heritage. Regrettably, heritage is often the poor cousin to the environment, as is the case with the EPBC Act.

11. The National Trust in Australia is the largest community-based, non-government organisation committed to promoting and conserving Australia's indigenous, natural and historic heritage. It achieves this through its advocacy work and custodianship of heritage places and objects. The Australian Council of National Trusts (ACNT) represents the interests of the National Trust at the federal level. Collectively the organisation owns or manages over 300 heritage places (the majority held in perpetuity), manages a volunteer workforce of 7,000 while also employing about 350 people nationwide. The national membership is about 80,000.

12. The ACNT was deeply involved with the long process to develop the heritage provisions in the EPBC Act. We remember the promises made, the discussions about principles and details, and have participated in and keenly watched its operations.

13. This submission addresses the following:

- review process and structure;
- questions posed by the review;
- other major issues;
- additional issues related to Commonwealth Heritage; and
- a few detailed issues.

THE REVIEW PROCESS AND STRUCTURE

Context for the Review

14. The review needs to take account of the broader context of the Government's approach to heritage as reflected by the 2007 ALP National Platform as well as in statements by the Prime Minister and then Shadow Minister for Heritage, now the Minister for the Environment, Heritage and the Arts.
15. Relevant extracts from ALP National Platform of 2007 are as follows.

Heritage

43. In placing emphasis on developing the best and newest, it is very important not to lose sight of the priority of preserving what is best in our history, tradition and heritage.
44. It is not only important that this material is preserved but that it is made effectively available to Australians wherever they live. This requires institutional and individual activities at a local and national level, assistance to private owners of heritage properties and skills development and training.
45. Labor will give special attention to the preservation of the heritage properties owned by the Commonwealth.
46. Labor will ensure the identification and preservation of our industrial, built, environmental and cultural heritage, and look for opportunities to promote world heritage recognition of such sites.
47. Labor will ensure that the National Trust and other government and community organisations are supported to identify priority projects for heritage protection.

Built and Cultural Heritage

148. Thousands of years of Indigenous settlement and more recent waves of migration have left Australia with a rich and diverse heritage. This heritage is a link between the past and present and is both a national asset and a source of national pride.
 149. Labor is committed to the identification, preservation, restoration and promotion of significant and representative built and cultural heritage, whether material or not. Labor recognises the imminent threat of the loss of Indigenous knowledge systems and will fund the recording of Indigenous oral histories, stories and languages. Labor recognises that Indigenous knowledge is a critical part of the knowledge capital of Australia and is a key to an environmentally and socially sustainable Australia.
 150. It is important that we preserve what is best of our history, tradition and heritage. Where culturally appropriate, Labor is committed to the promotion of and access to our built and cultural heritage, both Indigenous and non-Indigenous.
 151. The identification and listing of properties of heritage significance should be carried out by an independent expert body.
 152. Labor believes that the Commonwealth government has a responsibility to provide adequate heritage protection for Commonwealth properties of heritage significance.
 153. Labor would pay special attention to ensuring that the heritage significance of existing defence properties is properly ascertained, protected and conserved.
16. In a speech at Port Arthur on 15 August 2008 the Prime Minister said,

'The Australian Government believes that it is vital that we continue to identify and protect the places integral to our national story, so that they can help us remember and understand that we are part of a living history...

It is vital that we continue to appreciate, recognise and protect our investment in our National and World Heritage sites. They are important to our history, our future and to the local economy of many

parts of Australia.’

17. On 12 September 2007, the then Shadow Minister for Heritage, now the Minister for Heritage, made the following comments in the House of Representatives,

‘[the then] government’s approach to heritage has been characterised in equal parts by neglect and overt politicisation...

When we recognise our heritage we affirm that nothing is more central to Australia’s national identity than our history, both Indigenous and non-Indigenous...

It is the responsibility of us, the present generation, to nourish and nurture [Australia’s heritage] for future generations...

Respecting our heritage means actively engaging with our past and our sense of place. It is not something that we can afford to take for granted...

...the Howard government’s approach to heritage has been characterised by, we say, political interference and neglect. It seems that if it cannot be used for political advantage it does not get a mention. We have seen this approach played out in the abolition of the independent Australian Heritage Commission in 2003, the expiry of the Register of the National Estate, the slashing of Commonwealth funding for World Heritage places and the destructive Anzac Cove roadworks. Heritage listings have become too slow and the listing processes opaque. Heritage promotion activities have withered and, as a result, we have seen a diminishing of those national conversations about heritage, the genuine engagement with communities around Australia, that are crucial to understanding and recognising heritage values...

The Australian Heritage Commission and the Register of the National Estate are significant achievements. It is a great shame, and it says much about the present government’s record, that some three decades later we have witnessed their demise.

In 2003, the stand-alone Australian Heritage Commission was abolished under the Howard government and substituted with the Australian Heritage Council—an advisory body specifically and effectively controlled by the Department of the Environment and Water Resources. The absence of an independent body offering arms-length advice on Australian heritage risks the politicisation of listing processes. Additionally, a closed-door approach to Australia’s heritage diminishes the scope for genuine community engagement and the national conversations that I referred to earlier, which are central to understanding and recognising heritage values...

...the expiry of the Register of the National Estate will diminish the level of protection for many significant Australian places. The expiry of the register also signals a loss of the Australian public’s foremost heritage information resource. In short, there is no substitute for the register as a catalogue of the places which we, as a nation, regard as significant.

The Howard government has much to take us backward and very little to take us forward in terms of heritage protection, conservation and promotion...

Heritage is an important component of what it means to be an Australian, and it is a matter that Labor will take very seriously should it prevail at the next election.’

18. These statements set a high priority for Australia’s heritage and make a clear, if general commitment to addressing a range of fundamental problems with the Commonwealth Government’s heritage role and systems. The review should take account of this context.

Access by the Review to Heritage Expertise

19. The ACNT notes the reviewer, panel of experts and secretariat are very short on expertise in heritage matters. It is understood that one part-time member of the secretariat

is the only heritage expert formally attached to the review. Given the importance, complexity and perceived issues with heritage, this does not seem adequate.

20. The ACNT is very mindful of the deeply disappointing Productivity Commission inquiry in to historic heritage in 2005-06. The latter inquiry suffered, in our view, partly because it lacked sufficient heritage expertise integrated into the inquiry process.

Recommendation 1 The review structure should be supplemented by additional heritage expertise fully integrated with the review process.

Terms of Reference for the Review

21. There are two key terms of reference which are the focus of this submission,

‘the operation of the Act generally’ and

‘the extent to which the objects of the Act have been achieved’ (Discussion Paper, p. ii)

22. These terms of reference seem suitable. However, a key issue will be whether the review takes a narrow view of its task, and only considers the theoretical situation with the legislation itself. The ACNT believes a meaningful review of the Act should take a broad view of the legislation, its place within the overall Commonwealth Government’s heritage system, and aspects of its implementation. For example, it is not useful to look only at the legislation and ignore the expertise and resourcing available for its implementation.

Recommendation 2 The review should consider:

- *the principles underpinning the Act, and the detail of the provisions themselves;*
- *the role of the legislation in the broader Commonwealth approach to Australia’s heritage;*
- *the relationship to other key legislation, in particular the Australian Heritage Council Act 2003, including the role of the Australian Heritage Council;*
- *the financial resources available for the implementation of the Act; and*
- *the expertise available to administer the Act.*

23. The objects of the Act relevant to the Trust are,

‘to provide for the protection and conservation of heritage’ and

‘to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous people’ (Discussion Paper, p. 5)

24. These objects are supported.

25. In addition, the terms of reference note,

‘The review will be guided by key Australian Government policy objectives’

26. Regrettably, these policy objectives:

- promote sustainable **economic** development rather than **environmentally** sustainable development;
- appear to give primacy to a range of factors with the environment being secondary; and

- fail to mention heritage at all.

27. It seems remarkable that in the 21st century after all the battles over heritage and the environment, when the environment is routinely one of the top issues for the community, the key Australian Government policy objectives fail to adequately embrace environmental stewardship.

Recommendation 3 The key Australian Government policy objectives should be revised to:

- *promote environmentally sustainable development;*
- *give equal weight to environmental and other factors; and*
- *specifically refer to Australia's heritage.*

RESPONSE TO REVIEW QUESTIONS

Other Important Questions for the Review to Consider

28. While the review discussion paper poses a number of useful questions, there are other important questions for the review to consider:
- does the EPBC Act accord with best practice principles for heritage legislation?
 - is Australia's heritage better off in theory and in practice under the EPBC Act?
 - given the proliferation of heritage lists under the EPBC Act and the unfortunate demise of the Register of the National Estate, what is the sensible and strategic future for the various lists?
 - has the change to the EPBC Act seen an improvement in heritage protection and conservation? and
 - are resource constraints frustrating progress with heritage protection and conservation?
29. These other questions are addressed in this submission.

Recommendation 4 The review should consider a range of other important questions, such as those noted in this submission.

Q25. What factors should the Minister have regard to when making a decision on heritage listing?

30. The Minister should **only** consider the heritage significance of places.
31. This issue has a long history and a failure to appreciate that history may result in the wrong conclusion. Statutory heritage listings have been in use in Australia since the 1970s, and non-statutory listings by the National Trusts are older still. A fundamental principle established long ago is the need to separate listing decisions from management decisions. Without such a separation, listing decisions have time and again been corrupted. If the listing agency tries to consider both heritage significance and management issues, a distorted perception of heritage significance is the outcome. **The integrity of the listing process must rest on a clear understanding of heritage values, not on the heritage values that are compatible with some management circumstance.**
32. Under the EPBC Act, listing problems because of management issues have been apparent in a number of cases including the Belconnen Naval Transmission Station and Cameron Offices both in the ACT, the Dampier Archipelago and the listing of sites on Norfolk Island.
33. This principle has been long recognised through the National Trusts' listing processes, and is supported through the nationally and internationally recognised Australia ICOMOS *Burra Charter* (available at <http://www.icomos.org/australia/>). It was also a major principle underpinning the former Australian Heritage Commission Act.
34. Listing is in one sense an aspirational statement – a statement made objectively of the heritage significance of a place, and implicitly a hope that protection and conservation can be achieved. There are many factors which influence management, and these change over time. These factors cannot be sensibly assessed at the time of listing. The appropriate mechanism to address such factors is the development approval/ environmental

impact process. Such a situation applies in the better State heritage systems.

35. The EPBC Act currently allows the Minister to consider a range of factors in listing decisions, not just heritage significance. This came about, we suspect, because of the extension of the World Heritage model to the Commonwealth and National Heritage Lists. In the ACNT's view, this was a mistake which privileged the unusual situation with World Heritage over the long experience under the *Australian Heritage Commission Act* and under State heritage systems.

Recommendation 5 The Minister should only consider the heritage significance of places in listing decisions, and should not consider management or other factors. Management issues should properly be considered as part of a referral or management plan.

Q26. What are your views on the process for nominating and listing Commonwealth and National heritage places?

36. These processes are fraught with problems and complexities which all but frustrate the original intentions and promise for these lists.

37. Similar to other parts of the Act, the processes are too complex and cumbersome. The purpose of the National Heritage list in particular is not fully clear, and this influences nomination and listing processes. This issue is separately discussed below.

38. Key problems are:

- there is no formal link between Commonwealth agency identification/survey work and nominations to the Commonwealth Heritage List. Agencies must give reports to the Minister about potential heritage places but there is no formal link to ensure these result in listings;
- in practice, despite five years of operation of the heritage provisions, there appears to be little Commonwealth Heritage listing activity;
- the nomination processes appear too cumbersome in an attempt to deal with previous nomination problems;
- the complex Priority Assessment List process was designed to fix problems with the National Heritage List and there is no evidence it is required for Commonwealth Heritage;
- there is no simple link made to update listing details on the basis of accepted management plans (eg. a conservation management plan approved under the Act by the Minister might develop a superior statement of significance for a listed place but changing the actual listing still involves an unnecessarily complex process);
- there is an inability to deal quickly with nominations which might arise and which deserve priority attention for some good reason (but which do not merit emergency listing) – the Priority Assessment List process is unreasonably inflexible;
- if a nomination fails to make the Priority Assessment List on two consecutive occasions, the nomination lapses – while the place may well have suitable heritage values, resourcing or other issues prevent it being considered (eg. the recent case of the Archerfield Airport Heritage Precinct);
- the thematic approach to National Heritage nominations appears to have been a failure, as hinted by the AHC in its 2007 Periodic Report (p. 17), and thematic studies already undertaken have not all been made public;

- the use of both statements of significance and values tables in the listing documentation is confusing and unnecessary; and
 - the National Heritage List still appears to be unbalanced given the predominance of historic heritage places – this issue also being noted in the AHC’s 2007 Periodic Report (pp. 23-4). There are currently 26 natural places, only 9 Indigenous places (despite the stated priority of the current Government for Indigenous places) and 46 historic places.
39. The AHC noted there was to be a review of criteria in its 2007 Periodic Report (p. 22). However, it is not clear what the outcome has been.
40. Other issues include:
- there is no apparent link between emergency and ordinary listing processes when an emergency process might find potential values though no threat, and listing does not take place under the emergency process. Such places should automatically be channelled in to the ordinary listing process;
 - the AHC’s assessments should be automatically posted wherever the Minister’s statement of reasons are posted (eg. on the EPBC website, and ideally as part of the AHDB citation);
 - the apparent interpretation that each component of a serial site nomination must be above threshold for listing partly defeats the concept of serial sites and should be changed;
 - there is no apparent proactive role by the AHC regarding information gaps which prevent the satisfactory assessment of values (although this may happen); and
 - it is not clear if the process for dealing with multiple nominations for the same place or partly the same place has been resolved.
41. The issue of objection/appeal processes on the basis of heritage significance is discussed elsewhere.

Recommendation 6 Changes to the nomination and listing processes should be made to:

- *create a formal link between Commonwealth agency identification/survey work and nominations to the Commonwealth Heritage List;*
- *ensure timely Commonwealth Heritage listing, noting this may be a resourcing issue;*
- *seek to simplify processes whilst achieving stated objectives for the lists;*
- *remove the Priority Assessment List process for Commonwealth Heritage;*
- *create a simple link to update listing details on the basis of accepted management plans;*
- *provide an ability to deal quickly with nominations which might arise and which deserve priority attention for some good reason;*
- *delete the provisions which mean that nominations lapse if they fail to make the Priority Assessment List after two consecutive attempts;*
- *reconsider the thematic approach to National Heritage nominations – noting this should be an expert review, not one for the current EPBC Act review;*
- *existing thematic studies should be promptly made public, and future studies released in a timely fashion;*
- *delete the use of values tables and simply use statements of significance related to the criteria;*

- *programs need to be either developed or given greater priority to achieve a better balanced National Heritage List;*
- *a linkage should be created between the emergency and ordinary listing processes to automatically channel nominations into the listing process if they are found not to be under threat;*
- *the AHC's assessments should be automatically posted wherever the Minister's statement of reasons are posted (eg. on the EPBC website, and ideally as part of the AHDB citation);*
- *the situation with components of serial site nominations should be clarified, such that components do not each have to be above threshold;*
- *the role of the AHC to be proactive to fill information gaps in nominations should be resourced and made clear; and*
- *the process for multiple nominations for the same place or partly the same place should be clarified.*

Recommendation 7 The appropriate level of resourcing for listing activities must be addressed.

Recommendation 8 The outcome of any review of criteria should be made public.

Q27. What are your views on the effectiveness and utility of Commonwealth heritage strategies and management plans for protecting World, National and Commonwealth Heritage values?

42. In theory these appear useful tools in achieving heritage protection and conservation. However, it is understood there has been no independent expert review of these tools to enable an assessment of their effectiveness. Such a review needs to be undertaken by heritage conservation experts.

43. Key apparent issues include:

- heritage strategies do not have to be made public, but should be;
- the requirements for management plans may be unreasonably inflexible;
- the process to develop management plans seems too complicated with too many stages of consultation and review;
- it is understood some agencies are developing their own models for management plans without a clear understanding if such models are equal or superior to standard approaches; and
- progress with the development of strategies and management plans still appears to be too slow. Regrettably the 2007-08 EPBC Act Legislation Annual Report does not provide a running total of completed management plans. This would be much more useful than just figures for the current year. None the less it is suspected overall numbers are very low in both categories. Despite the expiration of the statutory time limit for completion of strategies in 2006, only 13 strategies have been completed by 2007-08. It is suspected, although the legislation report does not make this clear, that the number of agencies who should have completed strategies is over 20.

44. It is rather worrying that progress with heritage strategies and management plans has been slow. The reasons for this are not clear. One possibility is that Commonwealth agencies have not fully embraced their legislative obligations.

45. As an example, it is understood the Department of Defence controls a large number

of heritage places but does not yet have a single completed management plan after 5 years since the heritage provisions came in to force.

Recommendation 9 An independent review of heritage strategies and management plans should be undertaken by heritage conservation experts.

Recommendation 10 The Legislation Annual Report should provide more transparent accounting of overall progress with management plans and strategies. The figures should indicate the overall number of required plans and strategies, and the total completed to date, as well as completions during the current year.

Recommendation 11 Greater efforts must be made to ensure the timely development of strategies and management plans. To the extent this may reflect a systemic reluctance to embrace heritage obligations, additional measures should be considered to overcome such reluctance. The review should investigate the reasons for slow progress.

Q28. Given that the protection and conservation of Australia's heritage is shared between the different levels of government, are there any improvements in the current legislative arrangements that would be of benefit?

46. This question is too narrow given its focus on the legislative arrangements. The proper question needs to consider the overall Commonwealth Government's heritage system and its role in Australia.

47. In this broader context, the range of issues include:

- the subsidiarity concept adopted for heritage by COAG some years ago is on one level an attempt at a rational division of responsibilities but it stands in contrast to many other issues dealt with by governments, indeed it is not apparently adopted for any other aspect of the environment or indeed other policy areas. For example, the Commonwealth Government is at the centre of work to develop a national schools curriculum for application in all States and Territories when it does not actually own or manage a single school!
- accordingly, the heritage community feels heritage has been singled out for special and unfair treatment, essentially facilitating a withdrawal by the Commonwealth from many aspects of heritage activity;
- the proper role for the Commonwealth should not simply be World, National and Commonwealth Heritage;
- Commonwealth Heritage is obviously a core part of the Commonwealth's role, yet the Commonwealth should be an exemplar in the treatment of its heritage and current outcomes fall far short of this goal;
- National Heritage is mostly the direct responsibility of States, Territories, local government and the community and private sectors. The abstract division agreed by COAG glosses over this reality, a reality which means that National Heritage itself is a shared responsibility which is not neatly divisible;
- on the other hand, the Commonwealth has all but walked away from any contribution to other categories of heritage – a situation not replicated in the case of the natural environment;
- the Commonwealth should contribute to the broader conservation of Australia's heritage through a range of mechanisms including a willingness to:
 - provide national leadership in heritage;
 - develop national systems of broadscale benefit;

- play a role in promoting Australia’s heritage, and in education and training (see the comment by the AHC in its 2007 Periodic Report, p. 21);
- recognise heritage values when other statutory processes fail in other jurisdictions;
- make a proportionate contribution to conservation costs;
- contribute to, and where necessary, lead methodological, technical and research studies of broadscale benefit;
- to monitor broad trends with Australia’s heritage (it does this through state of the environment reporting); and
- contribute to supporting the community and NGOs working in heritage (noting there is limited support for some NGOs, including the National Trusts).

48. This question also raises the issue of the national heritage protocol (see the AHC’s 2007 Periodic Report, p. 19) and the cooperative national heritage agenda. The status and effectiveness of these initiatives is not entirely clear, nor their real contribution to the shared responsibilities for heritage. There has been much talk over the years of developing a national heritage strategy, and while the protocol and agenda may be steps along this path, the impression is that a national strategy is still needed but is not yet really being developed.

49. It is worth noting that the creation of the National Heritage List has encouraged some to question the value of heritage at every other level. The ACNT is aware that in some planning tribunal cases in Victoria, for example, the argument is sometimes made that because a place is not on the National Heritage List, it is therefore not very important and is not worthy of protection or conservation. This problem is precisely the reason why the various National Trusts abandoned heritage gradings (eg. A, B, C, D, etc) many years ago. Creation of the National Heritage List must be coupled with active information and education programs not just to explain this list but also to counter the view that every other list is in some way not significant. The issue of information/education programs are addressed elsewhere in this submission.

Recommendation 12 The review should consider the strengths and weaknesses of the subsidiarity approach adopted by COAG, include the inconsistent application to heritage compared to other sectors of the environment. The review should consider the reality that many National Heritage places are the shared responsibility between a number of jurisdictions and stakeholders, and not the sole responsibility of the Commonwealth.

Recommendation 13 The review should consider the proper role of the Commonwealth beyond simply World, National and Commonwealth Heritage. Possible roles to consider include:

- *providing national leadership in heritage;*
- *developing national systems of broadscale benefit;*
- *promoting Australia’s heritage, and fostering education and training;*
- *recognising heritage values when other statutory processes fail;*
- *making a proportionate contribution to conservation costs (eg. through a grants program);*
- *contributing to, and where necessary, lead methodological, technical and research studies of broadscale benefit;*
- *monitoring broad trends with Australia’s heritage (it does this through state of*

- the environment reporting); and*
- contributing to supporting the community and NGOs working in heritage.*

Recommendation 14 The review should consider again the extent to which the Commonwealth should be an exemplar in the treatment of Commonwealth Heritage, noting this was previously addressed by the Schofield Review in 1996 (A presence for the past: a report/by the Committee of Review - Commonwealth Owned Heritage Properties). In addition, the review should consider the extent to which the Commonwealth meets best practice in the conservation and management of its heritage estate.

Recommendation 15 A status report should be publicly issued on the national heritage protocol and cooperative national heritage agenda, and the review should consider its implications for the shared responsibilities for heritage.

Recommendation 16 A national heritage strategy for Australia should be developed as a matter of priority.

OTHER MAJOR ISSUES FOR THE REVIEW TO CONSIDER

50. In addition to the major issues dealt with in the responses to the review questions above, there are a range of other important issues for the review to consider.

Does the EPBC Act accord with best practice objectives for heritage legislation?

51. A set of best practice Objectives for Heritage Legislation has been developed by Australia ICOMOS (see the table below and also Attachment A). These objectives are supported by the ACNT and are a useful measure for testing heritage legislation.

52. A brief review of the EPBC Act against these objectives is provided in the following table.

Australia ICOMOS Objectives for Heritage Legislation	Comment about the EPBC Act
<p>1. An Act which is simple to operate and simple to understand.</p> <ul style="list-style-type: none"> • Cumbersome laws and procedures will not protect places, • Equitable system for review of Heritage Authority decisions required, • No formal legal appeal on issues of cultural significance (as distinct from rights of appeal on planning or development applications). 	<p>The EPBC Act is complex to operate and complex to understand. It fails this objective. As such, it is actually a major impediment to its own intentions to promote good heritage conservation.</p> <p>The current system of review of decisions requires action in the Federal Court or Federal Magistrates Court. Such a process involves a cost and expertise beyond the capacity of many. As such, the review system is iniquitous.</p> <p>The EPBC Act also allows the possibility of legal appeals on issues of cultural significance.</p>
<p>2. Conservation by agreement should be the primary aim (as opposed to conservation by compulsion) whilst maintaining the required standards and conditions.</p> <ul style="list-style-type: none"> • Act should provide for Heritage Agreements attached to land title and binding subsequent owners, • Heritage Agreements should receive financial incentives such as reduction or waiving of land tax or local government rates, • Act should provide for professional, practical and financial assistance, • Responsible Minister should be empowered to waive provisions of other laws if this would help encourage conservation. 	<p>The Act provides for conservation agreements, although these are not attached to land title. It is not clear whether the provisions binding future land owners can be practically effective (Section 307(c)), or whether a related covenant needs to be brought in to effect.</p> <p>There is the possibility of financial incentives. Though in practice there are effectively no resources for historic heritage.</p> <p>The legislation provides for other assistance. However, resources are so constrained as to make such assistance very limited, and even if available it may not always be provided in a timely fashion.</p> <p>There are no powers for the Minister to waive other provisions.</p>
<p>3. Adequate powers to list and protect the cultural environment.</p> <ul style="list-style-type: none"> • A comprehensive register of heritage places serves as an early warning system if coupled with referral to the Heritage Authority, • Must provide for adequate sanctions - severe penalties - to ensure compliance, • Penalties need not be financial - loss of development rights is an alternative. 	<p>See comments elsewhere in this submission.</p> <p>In summary, the listing and protection powers are inadequate. Neither the NHL nor the CHL are yet comprehensive, and there is little prospect of achieving this goal within the foreseeable future.</p>
<p>4. The provision of a wide range of services and functions to advise the Government and to</p>	<p>While some capacity exists to undertake these tasks, and in practice they are undertaken to some extent,</p>

Australia ICOMOS Objectives for Heritage Legislation	Comment about the EPBC Act
<p>assist in the conservation of the cultural environment.</p> <ul style="list-style-type: none"> The Heritage Authority should be able to give advice and supply information, The Authority should support research, training, promotion and interpretation of places, The Authority should advise on financial assistance to owners, The Authority should not own or manage property itself. 	<p>the severe resource limitations inhibit the proper realisation of this objective.</p> <p>There is little or no research, no training, and little promotion and interpretation. It is not clear what advice the Department or AHC has provided on financial assistance measures.</p>
<p>5. Adequate professional staffing and proper administrative backup.</p> <ul style="list-style-type: none"> The Heritage Authority should be responsible to Minister, The Authority should have a Chief Executive to manage the professional and administrative staff. 	<p>As noted elsewhere in this submission, the extent and level of professional staff is not adequate. It is suspected administrative support is also not adequate.</p>
<p>6. The Minister responsible for the Act must receive the best possible advice.</p> <ul style="list-style-type: none"> The Heritage Authority must be a representative body of informed members with appropriate skills, Majority of members should have skills in conservation: ie archaeologists, conservation architects, historians, planners, etc, Representatives of other interests may be included but not so as to make the Authority to large to be workable. 	<p>It is not clear what advice the Minister is receiving from the AHC, apart from the Periodic Report of 2007. While this report has much useful information and expresses some important points of view, it appears rather timid in its commentary on issues.</p> <p>In addition, the Department is the major source of advice to the Minister. There is an ongoing concern that the Department lacks enough heritage experts at various levels, including senior levels, and otherwise lacks resources to enable the provision of good advice.</p>
<p>7. Conservation provisions should be treated as an integral part of the regular planning system albeit administered by a specialist branch.</p> <ul style="list-style-type: none"> Delegation to local government may be needed but should be carefully administered by the Heritage Authority. 	<p>This objective is perhaps less relevant to the Commonwealth compared to States and Territories.</p> <p>None the less, to the extent the Commonwealth exercises development control through the EPBC Act, then conservation provisions are integral to the Act. However, it is understood the Heritage Division has no delegated development control powers under the Act, and therefore contributes to but does not actually administer the provisions.</p>
<p>Heritage Administration The above objectives envisage a heritage administration system, the main components of which are:</p> <ul style="list-style-type: none"> A Heritage Authority with power to identify and list heritage places, 	<p>The AHC identifies but does not list places. Listing is undertaken by the Minister.</p>
<ul style="list-style-type: none"> A Register of heritage places, judged against criteria, 	<p>There are several lists and criteria.</p>
<ul style="list-style-type: none"> A non-legal review process for objections to listing (ie to significance), 	<p>Does not exist.</p>
<ul style="list-style-type: none"> Listing on Register would require approval for changes to a place, 	<p>This power exists to the limit of constitutional powers.</p>
<ul style="list-style-type: none"> Legal appeals against planning decisions, 	<p>Such appeals are possible.</p>
<ul style="list-style-type: none"> Stop Work Orders to control unauthorised works, 	<p>Do not exist as such.</p>
<ul style="list-style-type: none"> Penalties or sanctions to ensure compliance with control provisions, 	<p>Penalties exist.</p>
<ul style="list-style-type: none"> Heritage Agreements provide flexible management opportunities, 	<p>Conservation agreement are possible.</p>

Australia ICOMOS Objectives for Heritage Legislation	Comment about the EPBC Act
<ul style="list-style-type: none"> Financial incentives and technical assistance are essential tools. 	<p>In theory such incentives and assistance can be provided. In practice there are no financial incentives and very limited technical assistance because of resource constraints.</p>

Recommendation 17 The review should adopt the Australia ICOMOS Objectives for Heritage Legislation, confirm the above findings through its own analysis, and make recommendations to address the apparent problems.

Is Australia’s heritage better off in theory and in practice under the EPBC Act?

53. Australia’s heritage is potentially better off under the EPBC Act. In practice though, the range of problems is such that this theoretical improvement is not actually realised.

54. Major practical problems include the:

- complexity of the Act;
- lack of resources to promote good implementation and a better understanding of the Act;
- lack of commitment to fully embrace the potential power of the legislation to achieve good conservation outcomes – the apparent primary aim being to facilitate development not protect heritage. In this context, it should be remembered that the stated Government objectives of the EPBC Amendment Bill/Act of late 2006 was:
 - to reduce processing time and costs for development interests
 - to provide an enhanced ability to deal with large scale projects;
- the threshold for protection of places still seems too high – the scale of an action or its impact needs to be so major that the Act appears to be useless in protecting places from the myriad of smaller but still detrimental impacts;
- lack of enough suitable heritage expertise, and sufficiently high level expertise, to administer the legislation; and the
- protection decisions rest either with the Minister or the Approvals and Wildlife Division, with experts in the Heritage Division relegated to a mere advising role. Again, in the best State heritage agencies such decisions rest with the experts in the agencies.

55. In addition, there are some potentially important methodological problems with the Act:

- the definition of actions captured by the Act is narrow compared to previous heritage legislation;
- the focus on protecting heritage values rather than protecting heritage places for their values complicates attempts to achieve protection, and may be the wrong formulation; and
- the environmental impact assessment model adopted throughout the legislation appears ill-suited to heritage protection, especially regarding the threshold adopted for invoking protection – the Commonwealth is the only jurisdiction in Australia which relies on such an approach.

56. An important part of the overall protection processes is the opportunity for the public to learn about and comment on proposals. While the legislation in some senses provides for the release of information and opportunities to comment, in practice the mechanisms are too complex and difficult to be effective. The EPBC website is convoluted with

different notices posted in different sections, there is a lack of cross referencing (for example between heritage listings and referrals), and unless an individual trawls the website every day, there is no way of knowing if a heritage place is the subject of a referral. There have to be better ways to engage with the interested public, such as the use of email alerts based on keywords.

57. There is also a concern about the narrow range of information apparently considered to be important in triggering or assessing referrals. At present, a wide range of highly relevant information is not considered including statements of significance, all other heritage register information except National and Commonwealth Heritage Lists and the Register of the National Estate, and conservation management plans.

Recommendation 18 Practical and methodological problems need to be addressed:

- *an effort should be made to simplify the Act while enhancing effectiveness;*
- *consideration should be given to the benefits of creating a stand-alone heritage Act;*
- *the review should consider the resource needs for implementation and education/information/training to improve understanding of the Act;*
- *the review should consider ways to enhance the level of commitment to fully embracing the powers of the Act, including giving the highest priority to protection and conservation, not development;*
- *the threshold for protection should be changed to at least accord with the level of protection provided under the former Australian Heritage Commission Act;*
- *the review should consider whether administration through a statutory body may result in more effective implementation;*
- *the review should address the shortage of suitable expertise in the Department, and the level of that expertise;*
- *protection decisions should be made by heritage experts in the Heritage Division. The Australian Heritage Council could also play a useful role in major decisions. If necessary, the Minister could retain a call-in power;*
- *the review should commission independent expert research into the impact on conservation outcomes of the:*
 - *current definition of action compared to previous approaches – the preference being to have the broadest possible definition;*
 - *current approach of protecting heritage values rather than protecting heritage places for their values – the preference being for the protection of heritage places for their values, not just the values;*
 - *current environmental impact approach in the EPBC Act compared to a heritage approach – the preference being for a heritage approach; and*
- *the range of information which triggers or is considered in referrals should be broadened to include statements of significance, all reputable heritage lists and conservation management plans.*

Recommendation 19 The DEWHA website needs to be reviewed to improve transparency and its usefulness for the interested public, including:

- *consolidating or cross referencing notices;*
- *cross referencing heritage listings and referrals; and*
- *providing for email alerts based on keywords.*

Any such review should engage stakeholders to identify problems and possible solutions.

Given the proliferation of heritage lists under the EPBC Act and the unfortunate demise of the Register of the National Estate, what is the sensible and strategic future for the various lists?

58. The large number of heritage lists at the Commonwealth level is not conducive to achieving effective outcomes for Australia's heritage. There is a proliferation of heritage lists in Australia, both statutory and non-statutory. The Commonwealth heritage system adds several more lists to this confused picture – the Commonwealth Heritage List, National Heritage List, List of Overseas Places of Historic Significance to Australia, as well as the many Commonwealth agency heritage registers. In addition, the Register of the National Estate continues for the present.

59. This is a confusing and sometimes frustrating picture for those dealing with heritage in Australia.

60. In addition, the purpose of the National Heritage List is not fully clear, or clearly enough articulated. During the development of related legislative provisions there was much talk about it **telling important national stories and promoting a new and energised national conversation about heritage**. The primary purpose was not seen to be the need for another layer of protection, as most of the anticipated listings were likely to already be protected under State or Territory heritage legislation. As things have turned out, the national conversation has been silenced for want of commitment, leadership and resources. A brief review of the NHL shows that almost all the places are already protected by some other legislative means (see Attachment B).

61. The National Heritage List has become the centrepiece of the Commonwealth's heritage efforts, such as they are. It appears to consume much of the time, effort and other resources available. This priority raises a series of questions,

- is the effort that goes into producing the NHL worth it?
- what is the actual purpose of the NHL?
- does it actually add a level of protection to the place over and above the protection that the place might enjoy either under State/Territory legislation or because of the iconic status of the place?

62. While it is clear that protection has been important in a few cases, such as with the Burrup Peninsula, it is not clear that this is the most efficient mechanism.

63. There has been some movement towards simplifying access to the statutory lists in Australia with the Australian Heritage Places Inventory. However, this has been a quite limited exercise in coordination, and does not address more fundamental strategic issues about the future of listing activities in Australia.

64. The fate of the Register of the National Estate continues to be a major concern. The RNE was a major and unique asset, and ground-breaking in its comprehensive scope. It remains an important national dataset about Australia's heritage, and as such has been important to Commonwealth State of the Environment Reporting. Plans to terminate the RNE as a statutory list will trash the immense public investment in building up the asset. The Commonwealth should be valuing the RNE as an asset, and assessing its future as part of a broader strategic review of listing activities.

65. It is important also to recognise the several roles played by the RNE. The RNE is a list of heritage places across all environments and at all levels of significance. While

historic heritage registers have been developed in all jurisdictions, this is not the case for natural or Indigenous heritage places. The demise in the RNE will therefore create a gap in identification. In addition, on occasions State or local agencies would choose not to recognise the heritage values of a place. The RNE was able to offer an impartial and objective appraisal of heritage values, untainted by local politics or development pressures. This role has also been lost.

66. It is fair to say that Fraser Island (the first places to be listed on the RNE), the Wet Tropics, Southwest Tasmania and many of the native forest areas of NSW, Victoria, Tasmania and WA would not have been conserved in their present configuration had the former AHC and the RNE not existed.

67. It is interesting to note that in Britain they are currently considering a draft Heritage Protection Bill, one of the features of which is a single heritage register to bring together the current range of lists.

68. The overall objective should be to simplify the range of lists, and provide simple access to listing information. In addition, the goal should be an integrated, comprehensive, national list/database of heritage places across all environments and for all levels of significance.

69. Subject to the timing of a broadscale review of listing activities, an option which the ACNT also wishes to suggest is that the RNE could be managed by the National Trusts if there was adequate and guaranteed funding.

Recommendation 20 An expert review of all the heritage registers in Australia should be undertaken, including the Register of the National Estate, with a view to developing a strategic view about the future of listing activities. The review should consider statutory and non-statutory lists. This review should be completed well before the statutory decline of the Register of the National Estate. The review should also consider the purpose of the National Heritage List. Such a review is probably beyond the current EPBC Act review, and would require greater expertise in heritage conservation.

Recommendation 21 Subject to the timing of a broadscale review of listing activities, an option which the ACNT also wishes to suggest is that the RNE could be managed by the National Trusts if there was adequate and guaranteed funding.

Has the change to the EPBC Act seen an improvement in heritage protection and conservation?

70. There is no independent expert research to answer this question satisfactorily. This should be a major issue for the current review.

71. This overall submission bears upon this question. To the extent that information is available, it appears at best a very mixed outcome with a few individual instances of improvement set against an overall picture of decline and disappointment.

72. Anecdotal evidence suggests there has been a general decline in heritage protection and conservation. On the positive side, instances include:

- protection of most of the Burrup Peninsula, and Nobbys Lighthouse;
- limited progress with heritage strategies and conservation management plans;

- and
- incremental development of the National Heritage List.

73. On the negative side:

- progress in nearly all areas has been far too slow;
- the heritage system is struggling because of capacity constraints;
- there have been substantial losses such as at the Belconnen Naval Transmission Station (on the Commonwealth Heritage List and the then Minister found potential National Heritage values as well, prior to demolition work);
- only a tiny number of actions affecting heritage places have been deemed controlled actions, and a much smaller number still declined approval (compare this with the situation under the former Australian Heritage Commission Act); and
- listings are slow or have been unreasonably rejected.

74. Recommendations relating to these summary points are made elsewhere in this submission.

75. With regard to detailed aspects of protection and conservation, it is unclear whether currently conditions attached to a referral can:

- go beyond proposals contained in the referral (ie. be proactive), related to the Minister specifying the particular manner in which an action must be undertaken; and
- include provisions for the ongoing involvement of a suitable heritage expert.

Recommendation 22 The review should address the question - has the change to the EPBC Act seen an improvement in heritage protection and conservation?

Recommendation 23 The situation with conditions attached to referrals should be clarified such that:

- *conditions can be proactive – the Minister should be free to specify the particular manner an action must be undertaken;*
- *it is possible to require the ongoing involvement of a suitable heritage expert in a project, including review and agreement at key stages;*
- *certification of compliance can be required at the end of a project by a heritage expert; and*
- *DEWHA agreement is needed for the choice of expert.*

Are resource constraints frustrating progress with heritage protection and conservation?

76. Emphatically yes.

77. As is made clear in other parts of this submission, in nearly all its operations, the Commonwealth Government's heritage system including the EPBC Act and Departmental activities are struggling because of a lack of financial and other resources. It is extraordinary that the Commonwealth has created this new heritage regime and yet over successive years it would appear that:

- overall heritage funding has declined; and
- core Departmental heritage funding, including salaries and other running costs, has declined.

78. Such funding cuts have occurred at the same time that other environmental expenditures and gross Commonwealth expenditures have increased. This is also against the background of a decade of economic growth and record Commonwealth Budget surpluses. Throughout this period, heritage funding has been quietly whittled away to the apparent benefit of other Departmental programs.

Recommendation 24 The review must address the issue of resourcing for heritage protection and conservation.

Extreme Complexity of the Act

79. The EPBC Act is too complex, and this complexity is an impediment to its effective operation.

80. This complexity arises because:

- the legislation is very long;
- heritage is scattered in various places throughout the Act;
- the near parallel provisions for Commonwealth and National Heritage present a more complex picture than is probably necessary;
- there are too many heritage lists (this issue is discussed elsewhere in this submission); and
- specific processes are too convoluted (eg. listing and management plan processes – also discussed elsewhere).

81. The incorporation of heritage in to the Act may be good in theory but given the overall size and complexity of the legislation, it is in practice a highly doubtful benefit. While perhaps an exhausting possibility, at the least a long term option should be to extract the heritage provisions and create a stand-alone piece of legislation. This is the situation in every State and Territory with their heritage legislation, and provides a sound model for the Commonwealth.

82. Having stressed the problems, the ACNT would be deeply concerned if simplifying the Act was used as an excuse for watering-down heritage protection and conservation measures. If anything, the aim should be to achieve much better protection and conservation.

83. Related to this issue is the question of information programs for stakeholder groups to better understand the heritage provisions. The impression is that in the period immediately after the provisions were enacted, in 2004, considerable efforts were made to promote a good understanding of the provisions. Regrettably, these programs seem to have withered yet the information needs of stakeholder groups is ongoing.

Recommendation 25 The review must address issues related to the complexity of the Act. The aim should be to simplify the heritage system while achieving much better protection and conservation.

Recommendation 26 The review should consider the option to extract the heritage provisions and create a stand-alone piece of legislation.

Recommendation 27 The review should consider the ongoing resource and program needs to ensure timely and effective information is available to stakeholder groups to better understand the heritage provisions.

Merit Review of Decisions

84. There is an ongoing issue about the ability to seek a merit review of decisions made under the Act. In a paper for the 2006 Commonwealth State of the Environment Report, McGrath makes the point that,

‘a major limitation to the public accountability of decision-making under the EPBC Act is the lack of a general ability to seek merits review of decisions (particularly decisions about controlled actions under Parts 7-9). The Administrative Review Council has provided guidelines for the broad question of what Australian Government decisions should be subject to merits review. As explained more fully in a recent conference paper and forthcoming article, applying these guidelines, merits review should be provided for both applicants and third parties for decisions under Parts 7-9 of the EPBC Act.’ (McGrath 2006, <http://www.environment.gov.au/soe/2006/publications/emerging/epbc-act/index.html>)

85. The ACNT would strongly argue that there needs to be a distinction made between expert decisions (eg. does a place have heritage value?) and decisions relating to actions (eg. should a particular action be approved?). Consistent with the principles articulated by the ARC, such reviews should be undertaken by people with comparable skills and expertise to the original decision-maker. So, in the case of an expert decision, the review should be undertaken by an expert of comparable skill. The ACNT is not confident current formal review mechanisms such as the AAT have the requisite heritage conservation expertise.

86. The ACNT is also concerned if any such review mechanisms also entail any costs to applicants, including application fees or the need for legal representation. In principle, the review mechanism should be without cost, without the need for legal representation, and as simple as possible.

87. An example of the type of problem that is not addressed in the Act is the situation where the AHC or the Minister has made a mistake regarding the heritage values of a place. There is no simple, independent, expert process to review such situations, as previously existing under the Australian Heritage Commission. Using the Federal Court is plainly the wrong mechanism to address an issue like this.

Recommendation 28 Merit review of decisions should be available under the EPBC Act. Expert decisions must be reviewed by comparable experts, the review mechanism should be without cost, without the need for legal representation, and as simple as possible.

Future Reviews of the EPBC Act and of Heritage

88. The ACNT is of the view that the current provisions for reviewing the operation of the EPBC are not adequate. Section 522 of the current Act requires a review every ten years. We believe that in the current economic climate this is not frequent enough. Too much can happen in a ten year period, and greater responsiveness is needed. In addition we believe that special provisions should be made to review progress and report on the implementation and outcomes of heritage programs and policies, which we consider deserve particular attention. This submission makes clear the extensive problems and

concerns with heritage, and special review provisions seem vital.

89. To date, the only report on heritage outcomes that we are aware of was the periodic report published by the Australian Heritage Council on 16 February 2007. In the letter to the Minister accompanying this report, the Chairman states ‘Whilst the Council has no formal reporting process...’. We believe this lack of a formal reporting process is a major deficiency that needs to be remedied. We are also of the view that the arms-length AHC should be mandated to report on the overall state of the conservation of the nation’s cultural and natural heritage, without fear or favour, and recognising this will probably generate observations and even criticisms of State and Territory government performance and that of the non-government sector. Consideration should be given to a provision similar to Section 43 of the former *Australian Heritage Commission Act 1975* which required the Commission to report each year to the Minister on the ‘condition of the national estate’. This report was then required to be tabled in Parliament.

90. It may be suggested that this is a function of the formal State of the Environment reporting process, a report that is published every five years by the Commonwealth. Unfortunately, the attention that this report has devoted to the cultural environment in the past has been sadly deficient and we have little confidence that the situation will change in the next report. We attach some observations prepared at the time of the release of the 2006 SoE report (Attachment C).

91. A more fundamental change to current procedures and requirements would be to consider the establishment of an independent office of review, with legislative powers reporting to the Parliament, not a Minister, along the lines of the office of the Auditor-General.

92. Such an office exists in New Zealand, in Ontario and has operated in Victoria. The functions of such an office would need to be carefully prescribed and coordinated with the provisions of the EPBC Act to cover the same areas of policy. Such an office would obviously require resourcing but it may produce the benefit of being able to offer regular independent advice and recommendations across the totality of operations of the legislation.

93. However, we are mindful of the problems of setting up yet another process, only to see it starved by Government of resources and expertise, and lacking in commitment or support.

Recommendation 29 Special provisions should be made to review progress and formally report on the implementation and outcomes of heritage programs and policies, and reporting should be undertaken more frequently than at 10 year intervals.

Recommendation 30 The AHC should be mandated to report annually on the overall state of the conservation of the nation’s cultural and natural heritage, similar to Section 43 of the former Australian Heritage Commission Act 1975.

Recommendation 31 Commonwealth SoE reporting should be dramatically enhanced and improved regarding heritage, although it should not be relied on as the sole review and reporting mechanism.

Recommendation 32 The Government should consider the establishment of an independent office of review for the environment, including heritage, with legislative powers reporting to the Parliament.

Commonwealth State of the Environment Reporting

94. The comments above about future reviews raises Commonwealth State of the Environment reporting. Such reporting falls under the EPBC Act and therefore within the scope of the review.

95. In addition to the comments made above about heritage and Commonwealth State of the Environment reporting, the ACNT wishes to make the following general observations. There appear to be a range of systemic problems with Commonwealth State of the Environment reporting, these being:

- SoE is not adequately resourced, especially in the case of cultural heritage;
- there is little or no continuity from one SoE cycle to the next – it seems that a new SoE committee is formed for each cycle, staff also change, and SoE activities fall into abeyance between each report;
- SoE activities typically seem to start too late in the cycle;
- there are chronic problems in obtaining useful data, although it is understood some efforts are being made to improve the situation for heritage; and
- SoE seems to have no impact on the policies and programs of Government – problems identified in one SoE cycle crop up again in following cycles, at least in the case of heritage.

Recommendation 33 The review should address apparent systemic problems with Commonwealth State of the Environment reporting, including:

- *lack of resources;*
- *lack of continuity;*
- *SoE activities starting too late in each cycle;*
- *chronic data problems; and*
- *the lack of impact SoE has on Government policies and programs, at least in the case of heritage.*

Strengthening the Role of the Australian Heritage Council

96. It is apparent that the AHC has struggled to perform effectively as an independent adviser and champion of Australia's heritage. The reasons are not entirely clear but partly relate to the lack of any dedicated funding under its control, and the lack of access to staff resources to assist with activities. The AHC has become narrowly and inwardly focused on listing activities.

97. As an issue, heritage has slipped in priority at the national level and in the public mind. It may be that the change in character of the Council compared to the former Australian Heritage Commission has contributed to this situation.

98. Australia needs the AHC to be an active, public, independent and expert champion for heritage. This is especially the case when the Minister has limited time to devote to heritage issues. Options to strengthen its role should be considered.

99. On a minor matter, there is no current ability for the AHC to delegate all or any of its functions, in particular minor matters. This should be rectified.

Recommendation 34 The role of the Australian Heritage Council must be strengthened. It should be an active, public, independent and expert champion for heritage. Options that should be considered include:

- *improving the independence of the Council and give it greater capacity to initiate activities;*
- *providing dedicated funding and staff resources;*
- *encouraging it to lead or contribute to public debate about heritage issues;*
- *having the Council make decisions instead of the Minister with regard to the National and Commonwealth Heritage lists;*
- *having the Council advise on major conservation issues, including those under the EPBC Act.*

Recommendation 35 The AHC should be able to delegate all or any of its functions, except the power of delegation.

The Role for the Commonwealth beyond just Protected Areas

100. The review discussion paper places heritage matters in the chapter called Protected Areas. This raises the question of whether the statutory recognition of a heritage place as a protected area, as a World Heritage area, a place on the National Heritage List or Commonwealth Heritage List is the only way that the Commonwealth can fulfill its responsibilities or achieve its objectives regarding Australia's heritage.

101. In the current situation, the Commonwealth seems to have adopted a very narrow and exclusively statutory role regarding Australia's heritage.

102. The ACNT would argue there is a broader role beyond just the concept of such protected areas. This was largely the basis of the Register of the National Estate, now on a path to oblivion. The RNE contains about 13,000 heritage places, many thousands of which had, in earlier times, no legislative protection otherwise. Many may still be without protection. The purpose of these listings was to flag their heritage value to all levels of decision-makers and the community, and to encourage the conservation of these places. In this role it seemed remarkably effective. The Commonwealth was promoting an outcome beyond the perceived boundaries of constitutional powers. The question should be asked – is this role or are similar roles still valuable?

103. The issue of the future of the RNE is discussed elsewhere in this submission.

104. In addition, the ACNT is strongly of the view that the Commonwealth ought to consider the widest possible role, and certainly beyond just a protected areas approach. The Commonwealth should seek creative and effective ways to achieve good heritage outcomes for Australia's heritage.

Recommendation 36 The review should promote a wide role for the Commonwealth in achieving good heritage outcomes for Australia's heritage. This role should extend beyond just a protected areas approach, and should seek creative and effective options.

Climate Change as an Issue under the EPBC Act

105. In at least one respect, climate change should be considered under the EPBC Act – it should be made a matter of national environmental significance. This has been previously argued in the public realm.

106. It is also noted the Government has a range of greenhouse response strategies however, at present these seem to largely ignore the opportunities and contributions that can be made through heritage protection and the built environment more generally. For example, conserving or adaptively re-using heritage places conserve the greenhouse gas emissions generated in the original construction. As such, conservation and adaptive re-use contribute positively towards environmental protection through conservation of embedded energy.

107. The ACNT would like to see an allowance made for carbon credits for conservation/adaptive re-use works.

108. The response to climate change in terms of the built environment is one that needs a policy and funding response that is not entirely appropriate to legislation. None the less, in a broad consideration of the Commonwealth Government's heritage system, these matters should be addressed.

Recommendation 37 Climate change should be made a matter of national environmental significance under the EPBC Act.

Recommendation 38 The Commonwealth should implement a policy and funding response to better recognise the important contribution which the conservation and adaptive re-use of heritage places can make to greenhouse abatement. This should include carbon credits for conservation/adaptive re-use works.

Heritage Protection for Areas of the ACT under Commonwealth Planning Control

109. The unusual and unsatisfactory situation of heritage protection for areas in the ACT under Commonwealth planning control must be resolved. There is concern that with the demise of the Register of the National Estate, some heritage places will be left without any heritage protection, unless the EPBC Act and/or National Capital Plan are amended, or the ACT Heritage Council registers these places under its legislation (with any legislative changes if necessary to allow this to happen).

110. While this issue may be resolved with a degree of satisfaction, the larger issue is the standard of heritage protection and conservation available under the National Capital Plan. At present, this heritage system is well below comparable standards at the national and State/Territory level. It is noted the Senate review of the National Capital Authority has outlined changes, and the Government is yet to respond. These changes may achieve a satisfactory and contemporary standard of protection and conservation for heritage places, however no details are yet available.

111. This is an important issue for the ACT and the nation, given the national importance of Canberra. Given the EPBC Act is one possible legislative mechanism that may be used to provide this new protection, the review should consider the possible effectiveness and efficiency of doing so. Such consideration should also bear in mind the other possible legislative options.

Recommendation 39 The review should consider the range of issues affecting heritage protection in the ACT which falls within Commonwealth planning control. Issues include the gap problem because of the demise of the RNE, as well as the larger issue of the standard of heritage protection and conservation available under the National Capital Plan – this being well below contemporary standards.

COMMONWEALTH HERITAGE

112. This section contains a discussion of some issues relevant to Commonwealth Heritage. Other relevant issues are dealt with elsewhere in this submission (eg. regarding listing activities, resourcing, heritage strategies and management plans).

Maintenance of Commonwealth Heritage

113. There are ongoing concerns that Commonwealth heritage is suffering because of a lack of funding for adequate maintenance and conservation. This has been reported in NSW and the ACT, and it is likely to be an issue nationwide.

114. A related problem may be that a decision to stop maintaining a place, or otherwise that willful neglect, may not be captured under the Act.

115. This issue may partly relate to the willingness of Commonwealth agencies to fully embrace their heritage obligations.

Recommendation 40 The review should consider the situation with the maintenance and conservation of Commonwealth heritage, and the extent to which heritage places are being well maintained consistent with their values. The review should also ensure that wilful neglect is captured under the Act.

Asset Disposals

116. An indicator that Commonwealth agencies are not warmly embracing heritage responsibilities is the ongoing disposal of heritage properties. As the NSW National Trust has noted, both Australia Post and the Department of Defence have been selling such properties.

117. The NSW National Trust has also highlighted problems with transferring heritage properties to other agencies, such as the Sydney Harbour Federation Trust, where redevelopment may not be consistent with the heritage values of the property.

118. In both these situations, the long term conservation of heritage places is in danger of being compromised by short term objectives. The Schofield Review in the 1990s provided recommendations which were meant to address the systemic problems with the management of Commonwealth heritage places. Regrettably the situation does not seem to have changed greatly, or agencies have found ways to work around the measures which were introduced after the Schofield Review.

Recommendation 41 The review should examine the particular situation with the disposal or transfer of Commonwealth heritage places to consider the extent to which current practices are consistent with good heritage outcomes.

Operations under the Airports Act

119. The EPBC Act states that the operations of the Airports Act are unaffected by the EPBC Act. In practice this means that actions on airports that might affect Commonwealth Heritage values are dealt with under the Airports Act and not the EPBC Act.

120. This exemption from the EPBC Act seems unwarranted and likely to lead to inconsistent outcomes for Australia's heritage. It is unclear how such airport operations are performing with regard to their heritage obligations, though there is a concern that:

- heritage obligations are not being fully and consistently embraced, consistent across airports and with the EPBC Act, or that these are being undertaken in a timely fashion; and
- there is a lack of transparency about performance and outcomes for heritage.

121. The ACNT notes the recent Aviation green paper released by Minister Albanese. Whilst there is some mention about better planning on airport land and better integrating airport land management with surrounding State provisions, heritage is not discussed.

Recommendation 42 There should be an independent expert review of the heritage performance under the Airports Act.

Recommendation 43 The operations of airports should be brought under the EPBC Act.

DETAILED ISSUES

122. In addition to the major issues addressed in this submission, there are a few important detailed matters that need to be addressed. These include:

- technical problems with the definition of aesthetic value, relating both to the need to identify the community for whom a place has value, and that community excludes expert groups; and
- there is an ongoing problem with cumulative impacts on heritage places which is an issue probably beyond the capacity of the review to deal with directly. Research is probably needed to address this issue.

Recommendation 44 The review should recommend suitable heritage experts:

- *develop a definition for aesthetic value which avoids previous technical problems; and*
- *undertake research in to the problem of cumulative impacts, with a view to developing legislative or other responses.*

SUMMARY OF RECOMMENDATIONS

Recommendation 1 The review structure should be supplemented by additional heritage expertise fully integrated with the review process.

Recommendation 2 The review should consider:

- the principles underpinning the Act, and the detail of the provisions themselves;
- the role of the legislation in the broader Commonwealth approach to Australia's heritage;
- the relationship to other key legislation, in particular the Australian Heritage Council Act 2003, including the role of the Australian Heritage Council;
- the financial resources available for the implementation of the Act; and
- the expertise available to administer the Act.

Recommendation 3 The key Australian Government policy objectives should be revised to:

- promote environmentally sustainable development;
- give equal weight to environmental and other factors; and
- specifically refer to Australia's heritage.

Recommendation 4 The review should consider a range of other important questions, such as those noted in this submission.

Recommendation 5 The Minister should only consider the heritage significance of places in listing decisions, and should not consider management or other factors. Management issues should properly be considered as part of a referral or management plan.

Recommendation 6 Changes to the nomination and listing processes should be made to:

- create a formal link between Commonwealth agency identification/survey work and nominations to the Commonwealth Heritage List;
- ensure timely Commonwealth Heritage listing, noting this may be a resourcing issue;
- seek to simplify processes whilst achieving stated objectives for the lists;
- remove the Priority Assessment List process for Commonwealth Heritage;
- create a simple link to update listing details on the basis of accepted management plans;
- provide an ability to deal quickly with nominations which might arise and which deserve priority attention for some good reason;
- delete the provisions which mean that nominations lapse if they fail to make the Priority Assessment List after two consecutive attempts;
- reconsider the thematic approach to National Heritage nominations – noting this should be an expert review, not one for the current EPBC Act review;
- existing thematic studies should be promptly made public, and future studies released in a timely fashion;
- delete the use of values tables and simply use statements of significance related to the criteria;
- programs need to be either developed or given greater priority to achieve a better balanced National Heritage List;
- a linkage should be created between the emergency and ordinary listing processes to automatically channel nominations into the listing process if they are found not to be under threat;

- the AHC’s assessments should be automatically posted wherever the Minister’s statement of reasons are posted (eg. on the EPBC website, and ideally as part of the AHDB citation);
- the situation with components of serial site nominations should be clarified, such that components do not each have to be above threshold;
- the role of the AHC to be proactive to fill information gaps in nominations should be resourced and made clear; and
- the process for multiple nominations for the same place or partly the same place should be clarified.

Recommendation 7 The appropriate level of resourcing for listing activities must be addressed.

Recommendation 8 The outcome of any review of criteria should be made public.

Recommendation 9 An independent review of heritage strategies and management plans should be undertaken by heritage conservation experts.

Recommendation 10 The Legislation Annual Report should provide more transparent accounting of overall progress with management plans and strategies. The figures should indicate the overall number of required plans and strategies, and the total completed to date, as well as completions during the current year.

Recommendation 11 Greater efforts must be made to ensure the timely development of strategies and management plans. To the extent this may reflect a systemic reluctance to embrace heritage obligations, additional measures should be considered to overcome such reluctance. The review should investigate the reasons for slow progress.

Recommendation 12 The review should consider the strengths and weaknesses of the subsidiarity approach adopted by COAG, include the inconsistent application to heritage compared to other sectors of the environment. The review should consider the reality that many National Heritage places are the shared responsibility between a number of jurisdictions and stakeholders, and not the sole responsibility of the Commonwealth.

Recommendation 13 The review should consider the proper role of the Commonwealth beyond simply World, National and Commonwealth Heritage. Possible roles to consider include:

- providing national leadership in heritage;
- developing national systems of broadscale benefit;
- promoting Australia’s heritage, and fostering education and training;
- recognising heritage values when other statutory processes fail;
- making a proportionate contribution to conservation costs (eg. through a grants program);
- contributing to, and where necessary, lead methodological, technical and research studies of broadscale benefit;
- monitoring broad trends with Australia’s heritage (it does this through state of the environment reporting); and
- contributing to supporting the community and NGOs working in heritage.

Recommendation 14 The review should consider again the extent to which the Commonwealth should be an exemplar in the treatment of Commonwealth Heritage, noting this was previously addressed by the Schofield Review in 1996 (A presence for the

past: a report/by the Committee of Review - Commonwealth Owned Heritage Properties). In addition, the review should consider the extent to which the Commonwealth meets best practice in the conservation and management of its heritage estate.

Recommendation 15 A status report should be publicly issued on the national heritage protocol and cooperative national heritage agenda, and the review should consider its implications for the shared responsibilities for heritage.

Recommendation 16 A national heritage strategy for Australia should be developed as a matter of priority.

Recommendation 17 The review should adopt the Australia ICOMOS Objectives for Heritage Legislation, confirm the above findings through its own analysis, and make recommendations to address the apparent problems.

Recommendation 18 Practical and methodological problems need to be addressed:

- an effort should be made to simplify the Act while enhancing effectiveness;
- consideration should be given to the benefits of creating a stand-alone heritage Act;
- the review should consider the resource needs for implementation and education/information/training to improve understanding of the Act;
- the review should consider ways to enhance the level of commitment to fully embracing the powers of the Act, including giving the highest priority to protection and conservation, not development;
- the threshold for protection should be changed to at least accord with the level of protection provided under the former Australian Heritage Commission Act;
- the review should consider whether administration through a statutory body may result in more effective implementation;
- the review should address the shortage of suitable expertise in the Department, and the level of that expertise;
- protection decisions should be made by heritage experts in the Heritage Division. The Australian Heritage Council could also play a useful role in major decisions. If necessary, the Minister could retain a call-in power;
- the review should commission independent expert research into the impact on conservation outcomes of the:
 - current definition of action compared to previous approaches – the preference being to have the broadest possible definition;
 - current approach of protecting heritage values rather than protecting heritage places for their values – the preference being for the protection of heritage places for their values, not just the values;
 - current environmental impact approach in the EPBC Act compared to a heritage approach – the preference being for a heritage approach; and
- the range of information which triggers or is considered in referrals should be broadened to include statements of significance, all reputable heritage lists and conservation management plans.

Recommendation 19 The DEWHA website needs to be reviewed to improve transparency and its usefulness for the interested public, including:

- consolidating or cross referencing notices;
- cross referencing heritage listings and referrals; and
- providing for email alerts based on keywords.

Any such review should engage stakeholders to identify problems and possible solutions.

Recommendation 20 An expert review of all the heritage registers in Australia should be undertaken, including the Register of the National Estate, with a view to developing a strategic view about the future of listing activities. The review should consider statutory and non-statutory lists. This review should be completed well before the statutory decline of the Register of the National Estate. The review should also consider the purpose of the National Heritage List. Such a review is probably beyond the current EPBC Act review, and would require greater expertise in heritage conservation.

Recommendation 21 Subject to the timing of a broadscale review of listing activities, an option which the ACNT also wishes to suggest is that the RNE could be managed by the National Trusts if there was adequate and guaranteed funding.

Recommendation 22 The review should address the question - has the change to the EPBC Act seen an improvement in heritage protection and conservation?

Recommendation 23 The situation with conditions attached to referrals should be clarified such that:

- conditions can be proactive – the Minister should be free to specify the particular manner an action must be undertaken;
- it is possible to require the ongoing involvement of a suitable heritage expert in a project, including review and agreement at key stages;
- certification of compliance can be required at the end of a project by a heritage expert; and
- DEWHA agreement is needed for the choice of expert.

Recommendation 24 The review must address the issue of resourcing for heritage protection and conservation.

Recommendation 25 The review must address issues related to the complexity of the Act. The aim should be to simplify the heritage system while achieving much better protection and conservation.

Recommendation 26 The review should consider the option to extract the heritage provisions and create a stand-alone piece of legislation.

Recommendation 27 The review should consider the ongoing resource and program needs to ensure timely and effective information is available to stakeholder groups to better understand the heritage provisions.

Recommendation 28 Merit review of decisions should be available under the EPBC Act. Expert decisions must be reviewed by comparable experts, the review mechanism should be without cost, without the need for legal representation, and as simple as possible.

Recommendation 29 Special provisions should be made to review progress and formally report on the implementation and outcomes of heritage programs and policies, and reporting should be undertaken more frequently than at 10 year intervals.

Recommendation 30 The AHC should be mandated to report annually on the overall state of the conservation of the nation's cultural and natural heritage, similar to Section 43 of the former Australian Heritage Commission Act 1975.

Recommendation 31 Commonwealth SoE reporting should be dramatically enhanced and improved regarding heritage, although it should not be relied on as the sole review and reporting mechanism.

Recommendation 32 The Government should consider the establishment of an independent office of review for the environment, including heritage, with legislative powers reporting to the Parliament.

Recommendation 33 The review should address apparent systemic problems with Commonwealth State of the Environment reporting, including:

- lack of resources;
- lack of continuity;
- SoE activities starting too late in each cycle;
- chronic data problems; and
- the lack of impact SoE has on Government policies and programs, at least in the case of heritage.

Recommendation 34 The role of the Australian Heritage Council must be strengthened. It should be an active, public, independent and expert champion for heritage. Options that should be considered include:

- improving the independence of the Council and give it greater capacity to initiate activities;
- providing dedicated funding and staff resources;
- encouraging it to lead or contribute to public debate about heritage issues;
- having the Council make decisions instead of the Minister with regard to the National and Commonwealth Heritage lists;
- having the Council advise on major conservation issues, including those under the EPBC Act.

Recommendation 35 The AHC should be able to delegate all or any of its functions, except the power of delegation.

Recommendation 36 The review should promote a wide role for the Commonwealth in achieving good heritage outcomes for Australia's heritage. This role should extend beyond just a protected areas approach, and should seek creative and effective options.

Recommendation 37 Climate change should be made a matter of national environmental significance under the EPBC Act.

Recommendation 38 The Commonwealth should implement a policy and funding response to better recognise the important contribution which the conservation and adaptive re-use of heritage places can make to greenhouse abatement. This should include carbon credits for conservation/adaptive re-use works.

Recommendation 39 The review should consider the range of issues affecting heritage protection in the ACT which falls within Commonwealth planning control. Issues include the gap problem because of the demise of the RNE, as well as the larger issue of the standard of heritage protection and conservation available under the National Capital Plan – this being well below contemporary standards.

Recommendation 40 The review should consider the situation with the maintenance and conservation of Commonwealth heritage, and the extent to which heritage places are being

well maintained consistent with their values. The review should also ensure that wilful neglect is captured under the Act.

Recommendation 41 The review should examine the particular situation with the disposal or transfer of Commonwealth heritage places to consider the extent to which current practices are consistent with good heritage outcomes.

Recommendation 42 There should be an independent expert review of the heritage performance under the Airports Act.

Recommendation 43 The operations of airports should be brought under the EPBC Act.

Recommendation 44 The review should recommend suitable heritage experts:

- develop a definition for aesthetic value which avoids previous technical problems; and
- undertake research in to the problem of cumulative impacts, with a view to developing legislative or other responses.



ATTACHMENT A: AUSTRALIA ICOMOS OBJECTIVES FOR HERITAGE LEGISLATION

- 1. An Act which is simple to operate and simple to understand.**
 - Cumbersome laws and procedures will not protect places,
 - Equitable system for review of Heritage Authority decisions required,
 - No formal legal appeal on issues of cultural significance (as distinct from rights of appeal on planning or development applications).

- 2. Conservation by agreement should be the primary aim (as opposed to conservation by compulsion) whilst maintaining the required standards and conditions.**
 - Act should provide for Heritage Agreements attached to land title and binding subsequent owners,
 - Heritage Agreements should receive financial incentives such as reduction or waiving of land tax or local government rates,
 - Act should provide for professional, practical and financial assistance,
 - Responsible Minister should be empowered to waive provisions of other laws if this would help encourage conservation.

- 3. Adequate powers to list and protect the cultural environment.**
 - A comprehensive register of heritage places serves as an early warning system if coupled with referral to the Heritage Authority,
 - Must provide for adequate sanctions - severe penalties - to ensure compliance,
 - Penalties need not be financial - loss of development rights is an alternative.

- 4. The provision of a wide range of services and functions to advise the Government and to assist in the conservation of the cultural environment.**
 - The Heritage Authority should be able to give advice and supply information,
 - The Authority should support research, training, promotion and interpretation of places,
 - The Authority should advise on financial assistance to owners,
 - The Authority should not own or manage property itself.

- 5. Adequate professional staffing and proper administrative backup.**
 - The Heritage Authority should be responsible to Minister,
 - The Authority should have a Chief Executive to manage the professional and administrative staff.

- 6. The Minister responsible for the Act must receive the best possible advice.**
 - The Heritage Authority must be a representative body of informed members with appropriate skills,
 - Majority of members should have skills in conservation: ie archaeologists, conservation architects, historians, planners, etc,
 - Representatives of other interests may be included but not so as to make the Authority too large to be workable.

- 7. Conservation provisions should be treated as an integral part of the regular planning system albeit administered by a specialist branch.**
 - Delegation to local government may be needed but should be carefully administered by the Heritage Authority.

Heritage Administration

The above objectives envisage a heritage administration system, the main components of which are:

- A Heritage Authority with power to identify and list heritage places,
- A Register of heritage places, judged against criteria,
- A non-legal review process for objections to listing (ie to significance),
- Listing on Register would require approval for changes to a place,
- Legal appeals against planning decisions,
- Stop Work Orders to control unauthorised works,
- Penalties or sanctions to ensure compliance with control provisions,
- Heritage Agreements provide flexible management opportunities,
- Financial incentives and technical assistance are essential tools.

ATTACHMENT B: PROTECTION FOR NATIONAL HERITAGE PLACES UNDER OTHER LEGISLATIVE MECHANISMS

Australian Capital Territory

Place	Legislation/Listing
Australian Academy of Science Building	RNE
Australian War Memorial and the Memorial Parade	Commonwealth Heritage List
High Court – National Gallery Precinct	Commonwealth Heritage List
Old Parliament House and Curtilage	Commonwealth Heritage List

New South Wales

Place	Legislation/Listing
Bondi Beach	NSW State Heritage Register (Heritage Act 1977)
Brewarrina Aboriginal Fish Traps (Baiames Ngunnhu)	NSW State Heritage Register (Heritage Act 1977)
Cockatoo Island	Commonwealth Heritage List
Cyprus Helene Club – Australian Hall	NSW State Heritage Register (Heritage Act 1977)
First Government House Site	NSW State Heritage Register (Heritage Act 1977)
Gondwana Rainforests of Australia – Barrington Tops Area	World Heritage List
Gondwana Rainforests of Australia – Focal Peak Group	World Heritage List
Gondwana Rainforests of Australia – Hastings-Macleay Group	World Heritage List
Gondwana Rainforests of Australia – Iluka Nature Reserve	World Heritage List
Gondwana Rainforests of Australia – Main Range Group	World Heritage List
Gondwana Rainforests of Australia – New England Group	World Heritage List
Gondwana Rainforests of Australia – Shield Volcano Group	World Heritage List
Gondwana Rainforests of Australia – Washpool and Gibraltar Range	World Heritage List
Greater Blue Mountains	World Heritage List
Hyde Park Barracks	NSW State Heritage Register (Heritage Act 1977)
Ku-ring-gai National Park, Lion, Long and Spectacle Island Nature Reserves	NSW National Parks and Wildlife Act 1974
Kurnell Peninsula Headland	NSW State Heritage Register (Heritage Act 1977)
Lord Howe Island Group	World Heritage List
Myall Creek Massacre and Memorial Site	RNE
North Head – Sydney	NSW State Heritage Register (Heritage Act 1977)
Old Government House and the Government Domain	NSW State Heritage Register (Heritage Act 1977)
Old Great North Road	NSW State Heritage Register (Heritage Act 1977)
Royal National Park and Garawarra State Conservation Area	NSW National Parks and Wildlife Act 1974
Sydney Harbour Bridge	NSW State Heritage Register (Heritage Act 1977)
Sydney Opera House	World Heritage List
Warrumbungle National Park	NSW National Parks and Wildlife Act 1974
Willandra Lakes Region	World Heritage List

Northern Territory

Place	Legislation/Listing
Kakadu National Park	World Heritage List
Uluru – Kata Tjuta National Park	World Heritage List
Wave Hill Walk Off Route	RNE

Queensland

Place	Legislation/Listing
Australian Fossil Mammal Sites (Riversleigh)	World Heritage List
Fraser Island	World Heritage List
Gondwana Rainforests of Australia – Focal Peak Group	World Heritage List
Gondwana Rainforests of Australia – Main Range Group	World Heritage List
Gondwana Rainforests of Australia – Shield Volcano Group	World Heritage List
Great Barrier Reef	World Heritage List; Great Barrier Reef Marine Park Act
Wet Tropics of Queensland	World Heritage List
Dinosaur Stampede Monument	*
Glass House Mountains National Landscape	Queensland Heritage Register (Queensland Heritage Act 1992)
Tree of Knowledge and Curtilage	Queensland Heritage Register (Queensland Heritage Act 1992)

South Australia

Place	Legislation/Listing
Australian Fossil Mammal Sites (Naracoorte)	World Heritage List
Ediacara Fossil Site – Nilpena	SA State Heritage Register (The Heritage Places Act 1993)
South Australian Old and New Parliament Houses	SA State Heritage Register (The Heritage Places Act 1993)

Tasmania

Place	Legislation/Listing
Brickendon Estate	Tasmanian Heritage Register (Historic Cultural Heritage Act 1995)
Cascade Female Factory	Tasmanian Heritage Register (Historic Cultural Heritage Act 1995)
Coal Mines Historic Site	Tasmanian Heritage Register (Historic Cultural Heritage Act 1995)
Darlington Probation Station	Tasmanian Heritage Register (Historic Cultural Heritage Act 1995)
Macquarie Island	World Heritage List
Port Arthur Historic Site	Tasmanian Heritage Register (Historic Cultural Heritage Act 1995)
Recherche Bay (North East Peninsula) Area	Tasmanian Heritage Register (Historic Cultural Heritage Act 1995)
Richmond Bridge	Tasmanian Heritage Register (Historic Cultural Heritage Act 1995)
Tasmanian Wilderness	World Heritage List

Woolmers Estate	Tasmanian Heritage Register (Historic Cultural Heritage Act 1995)
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Victoria

Place	Legislation/Listing
Bonegilla Migrant Camp – Block 19	RNE/Victorian Heritage Register
Budj Bim National Heritage Landscape – Mt Eccles Lake Condah Area	Being assessed for Victorian Heritage Register
Budj Bim National Heritage Landscape – Tyrendarra Area	Being assessed for Victorian Heritage Register
Castlemaine Diggings National Heritage Park	Victorian Heritage Register
Echuca Wharf	RNE/Victorian Heritage Register
Eureka Stockade Gardens	Precinct on Victorian Heritage Register
Flemington Race Course	Being assessed for Victorian Heritage Reg.
Flora Fossil Site – Yea	Not on Victorian Heritage Register
Glenrowan Heritage Precinct	Victorian Heritage Register
Grampians National Park (Gariwerd)	Victorian National Parks Act 1975
HMVS Cerberus	RNE/Victorian Heritage Register
High Court of Australia (former)	RNE
ICI Building (former) (Orica House)	Victorian Heritage Register
Melbourne Cricket Ground	Victorian Heritage Register
Mount William Stone Hatchet Quarry	Not on Victorian Heritage Register
Newman College	Victorian Heritage Register
Point Cook Air Base	Commonwealth Heritage List
Point Nepean Defence Sites and Quarantine Station Area	Commonwealth Heritage List
Rippon Lea House and Garden	Victorian Heritage Register
Royal Exhibition Building and Carlton Gardens	World Heritage List
Sidney Myer Music Bowl	Victorian Heritage Register

Western Australia

Place	Legislation/Listing
Batavia Shipwreck site and Survivor Camps Area 1629 – Houtman Abrolhos	RNE; Classified by National Trust; Maritime Archaeology Act 2=1973
Dampier Archipelago	RNE
Dirk Hartog Landing Site 1616 – Cape Inscription Area	RNE; Municipal Inventory Adopted 1997-12-12 High level of protection - TPS
Fremantle Prison (former)	WA State Register of Heritage Places – permanent; RNE; Municipal Inventory Adopted 2000-10-14 Recommend RHP
Purnululu National Park	World Heritage List
Shark Bay, Western Australia	World Heritage List
Stirling Range National Park	WA Reserves (National Parks and Conservation Parks) Act?

Other

Place	Legislation/Listing
Heard and Macdonald Islands	World Heritage List
Kingston and Arthurs Vale Historic Area	National Heritage List only
Mawsons Huts and Mawsons Huts Historic Site	RNE/Commonwealth Heritage List

* = Denotes only found on National Heritage List

Sources

Australian Heritage Places Inventory

<http://www.heritage.gov.au/ahpi/index.html>

State/Territory Heritage Lists

ACT - http://www.tams.act.gov.au/live/heritage/act_heritage_register

NSW - http://www.heritage.nsw.gov.au/07_subnav_04.cfm

NT - <http://www.nt.gov.au/nreta/heritage/ntregister/index.html>

QLD - <http://www.epa.qld.gov.au/chims/basicSearch.html>

SA - <http://www.environment.sa.gov.au/heritage/assess.html#database>

TAS – <http://www.heritage.tas.gov.au/media/pdf/THR%20Monitor%20as%20at%20October%202008.pdf>

VIC – <http://www.heritage.vic.gov.au/Registration/About-Victorian-Heritage-Register.aspx>

WA - <http://register.heritage.wa.gov.au/index.html>

ATTACHMENT C: COMMENTARY ON THE 2006 COMMONWEALTH STATE OF THE ENVIRONMENT REPORT

The State of Australia's Heritage? Wish we knew!

The Australian Council of National Trusts today welcomed the release of the Australian State of the Environment Report for the period 2001-06. While the report highlights improvements as well as current and emerging problems across the range of environmental sectors, the situation with Australia's heritage places looks pathetic and disgraceful.

After 30 years of government activity across all jurisdictions, and with governments of all complexions, we don't have the basic data to help make informed decisions, resources are declining and the problems seem to multiply rather than become fewer.

Key problems to note from the main report and a supporting commentary include:

- the lack of data to enable a comprehensive national picture of the state of Australia's environment, especially for heritage including Indigenous cultural heritage;
- the increasing loss of Indigenous languages;
- the continuing resource disparity between government provisions for natural and cultural heritage;
- local government appear to be under-resourced in terms of capacity and skills to deliver improved environmental results;
- public funding for historic built heritage conservation has declined;
- the decline in Commonwealth historic heritage funding compared with funding through the Natural Heritage Trust;
- funding for heritage is grossly insufficient for the demand;
- former government-owned heritage properties have lost heritage values and integrity where they have been redeveloped for new uses;
- the diminished role of the Australian Heritage Council, especially in the realm of public education;
- lack of history teaching and therefore of heritage awareness; and
- the demonstrable decline in the independence, leverage and professional composition of specialist advisory bodies to the various ministers overseeing heritage legislatures, over the last ten years.

Ironically, the ACNT notes that data problems were identified in both the 1996 and 2001 SoE reports but there seems to be no improvement in this area. Indeed, the Australian Government proposes to terminate the Register of the National Estate and has downgraded the Department of the Environment & Heritage's own library suggesting data problems may actually increase.

The ACNT is astonished at the reported four-fold increase in expenditure on the environment by the Australian Government in the period 2001-06. The stark contrast is the apparent decline in heritage funding in the same period.

The ACNT also questions the assertion that the 2003 heritage amendments to the EPBC Act have improved the protection of Commonwealth-owned assets. Where is the objective evidence? Has there been an independent review? With the imminent explosive demolition of the heritage-listed Belconnen Naval Transmitting Station, a place Minister Campbell found might even have National Heritage value, the evidence suggests major problems continue.

The Australian Government also has plenty of other evidence for a range of related heritage problems. A 2006 Productivity Commission inquiry also identified a lack of basic data as a key issue, and that local government heritage arrangements needed considerable improvement and resourcing. In addition, a recent Senate committee inquiry found the low resourcing of the Department of the Environment & Heritage was a problem, and recommended the Minister undertake a review.

The SoE report notes the need for better data, the need for governments to provide incentives for environmental stewardship, and the need to maintain and build capacity to manage the environment. All of this particularly relates to Australia's heritage places and is welcomed.

The SoE report deals with a wide range of environmental issues, and the ACNT also welcomes the many findings, such as those related to energy consumption and climate change, and also the positive news in some areas including marine parks and overall funding.

Minister Campbell is to be congratulated for embracing the SoE report. But his real challenge is to actually do something about the problems identified. The first opportunity is the 2007 Commonwealth Budget. Heritage has struggled on with the small change from the Australian Government environment expenditure. A four-fold increase for heritage would be a good start! This would then just match what has been achieved for the rest of the environment.

Key Extracts from the 2006 SoE Report

Australia State of the Environment 2006, Chapter 9, Natural and cultural heritage

“The lack of data remains a chronic problem for reporting on Australia's heritage. Inter-governmental cooperation and resourcing are urgently needed to enable regular measurement of the condition of natural or Indigenous heritage, or of heritage objects.”

“Knowledge and management of Indigenous cultural heritage are limited. The number of ‘endangered’ Indigenous languages has increased since 2001.”

“In terms of both resourcing and the development of policies and programmes, there is a continuing disparity between government provisions for natural and cultural heritage.”

“The growth in the role of local government has continued (particularly for historic heritage), although the outcomes and the capacity of councils to take on this role are patchy across Australia.”

Natural and cultural heritage, Theme commentary, Responses to conserve heritage

“There has been a decline in Commonwealth historic heritage funding compared with funding through the Natural Heritage Trust. This is not appropriate given the increasing overlap of natural and cultural values being recognised by community stakeholders, who are managing places at a landscape scale.”

“Funding available in all categories is grossly insufficient for the demand: less than one fifth of the required amount was available in Queensland since 2000 (EPA 2003) and the New South Wales Heritage Incentives Program is typically oversubscribed by a ratio of

12:1.”

“The number and amount of grants increased in New South Wales, while Victorian Government annual allocations decreased from \$5 million in 2000–01 to \$4 million in 2003–05 and \$2 million in 2005–06.”

Natural and cultural heritage, Theme commentary, Conclusion

“...stakeholders believe that heritage is ‘off the political agenda’”

“Former government-owned heritage properties have lost heritage values and integrity where they have been redeveloped for new uses...”

“Public funding for historic built heritage conservation has declined.”

“...the diminished role of the Australian Heritage Council as an advisory ministerial committee does not assist public education about heritage.”

“Lack of history teaching and therefore of heritage awareness, its physical remains and intangible associations, in school environmental studies and social studies curricula remains an issue.”

“There has been a demonstrable decline in the independence, leverage and professional composition of these committees [specialist advisory bodies to the various ministers overseeing heritage legislatures] over the last ten years.”