



Australia ICOMOS Secretariat  
Cultural Heritage Centre for Asia & the Pacific  
Faculty of Arts, Deakin University  
221 Burwood Highway  
Burwood, Victoria 3125  
AUSTRALIA

Ph: +61 3 9251 7131  
Fax: +61 3 9251 7158  
austicomos@deakin.edu.au  
www.icomos.org/australia  
ABN: 85073285798

## Submission to the Review of the EPBC Act

December 2008

---

### Executive Summary

This document should be read as a preliminary submission to the review process. Australia ICOMOS looks forward to the opportunity to have additional input throughout the course of the review.

Australia ICOMOS has consistently supported the new national heritage legislative regime created by the 'heritage amendments' to the EPBC in 2003. This support was based on a judgement that - *on balance* - the amendments offered the opportunity for significant improvement in the protection provided for Australia's cultural heritage, and especially for heritage assets in the ownership of Commonwealth government. Since the introduction of the national heritage system in 2004, Australia ICOMOS and its members have worked actively to support the successful implementation of these elements of the EPBC Act, and to provide constructive operational feedback to the Australian Government.

It is also the case that Australia ICOMOS questioned the desirability and workability of many aspects of the directions taken in the heritage provisions of the EPBC at the time the amendments were developed, and has observed a number of issues through the day-to-day professional practice of its membership.

Australia ICOMOS therefore presents this submission as a further step in this longer constructive and professional relationship with Australia's legislative arrangements for cultural heritage. This review provides an ideal opportunity to take stock of how the Act is or is not working to achieve its objectives and where and in what way it might be improved.

While the EPBC Act 1999 was an admirable first step in integrating the conservation of natural and cultural values and places there are many areas where this marriage has proved unwieldy. As it currently stands the Act is based on the language and philosophies of natural environment conservation, onto which the cultural heritage issues have been grafted. In the years since the Act was first gazetted, its application across a range of conservation areas has revealed the extent to which the philosophies and language of the two areas of conservation interest differ. This has resulted in the inconsistent absorption of cultural heritage concepts into a natural environment framework. In turn this has led to poor management and conservation outcomes for cultural heritage places and values.

The Terms of Reference (ToR) as listed in the Discussion Paper maintain this bias which acts generally against cultural heritage conservation. Australia ICOMOS takes this

opportunity to make it clear that nothing in the following submission should be construed as a recommendation to ‘downgrade’ natural/biodiversity conservation. Rather as an organisation with a mission that is primarily concerned with the philosophy, terminology, methodology and techniques of cultural heritage conservation, we are focussing on the need to achieve effective and useful legislative protection for cultural heritage places.

The terms of reference for the review should be broadened to include three new points:

- 2e) The effectiveness of the cultural heritage conservation provisions of the Act.*
- 2f) The adequacy of financial resources available for the implementation of the Act; and*
- 2g) The adequacy and appropriateness of the expertise available to administer the Act.*

In addressing 2e) consideration should be given to substantially re-working the current Act to simplify, strengthen and improve the provisions for the conservation of Australia’s cultural heritage. It is essential that the legislation facilitates and encourages the assessment and management of places in a holistic way that takes account of all the significant values and components of a place.

In our submission we have addressed each of the specific questions relating to Cultural heritage in the Discussion Paper and have posed another: Does the EPBC Act accord with best practice objectives for heritage legislation?

Australia ICOMOS understands that the review panel will be receiving a number of submissions some of which may contain conflicting recommendations and observations. We urge the government to expand the panel to include appropriate cultural heritage expertise so that the panel may more effectively address the cultural heritage issues raised and indeed identify any that fail to be raised.

We are keen to be involved in further stages of consultation or collaboration in the review process and welcome any queries or requests for clarification of any points in this submission.

## **Introduction**

Australia ICOMOS welcomes this opportunity to participate in the review of the EPBC Act. We understand that the review will be receiving submissions from a number of heritage practitioners and other organisations and would welcome a future opportunity to discuss and debate the issues raised through the submission process. In formulating this preliminary submission we have had some brief discussions with the Australian Council of National Trusts (ACNT) with whom, notwithstanding our different membership base and organisational objectives, we share some common concerns in relation to the effectiveness of the EPBC Act.

Australia ICOMOS, Australia’s leading non-government professional organisation for cultural heritage, is the Australian national committee of the International Council on Monuments and Sites. This is a non-government professional/expert organisation primarily concerned with the philosophy, terminology, methodology and techniques of cultural heritage conservation. Internationally, ICOMOS works closely with UNESCO, and acts as UNESCO’s principal adviser on cultural aspects of the operation of the World Heritage Convention. As members of an international NGO, we are part of a global professional network.

Australia ICOMOS has a key role in contributing to heritage conservation philosophy, methods and standards of practice in Australia. Our members are professionally qualified and experienced practitioners from a wide range of disciplines, working in all facets of the understanding and protection of Australia's cultural heritage places, at all levels of government and in the private sector. We regularly provide feedback and advice on heritage policy and philosophy to the Australian Government.

Australia ICOMOS has worked closely with the Commonwealth government on many issues including the development of the Australian heritage system. Unfortunately since the Act came into force in 2000 we have observed very mixed outcomes for cultural heritage in Australia and a disturbing decline in the cultural heritage protection generally.

## The Review Process

We urge the government to make the most of this opportunity to improve the Commonwealth's track record of the past few years in relation to cultural heritage conservation and use the review to make a serious attempt at addressing the shortcomings of the current legislation in relation to its effectiveness as a mean of conserving cultural heritage.

As a first step we would like to see the terms of reference for the review expanded to specifically address cultural heritage by adding three new points to the list of 'particular' matters that the review will examine (Commonwealth of Australia, nd:ii)

- 2e) *The effectiveness of the cultural heritage conservation provisions of the Act.*
- 2f) *The adequacy of financial resources available for the implementation of the Act; and*
- 2g) *The adequacy and appropriateness of the expertise available to administer the Act.*

In addition we note that the Terms of Reference say that *the review will be guided by key Australian Government policy objectives*. We note with concern the inclusion of the policy objective to promote sustainable **economic** development rather than **environmentally sustainable** development. This appears to give primacy to a range of factors with the environment being a secondary consideration, a rather ominous note on which to commence a review of legislation designed to conserve the natural and cultural environment. Further we note that Australian Government policy objectives specific to cultural heritage have been omitted from the list altogether and believe that the review should also be guided by the following key objectives for cultural heritage which have been previously articulated by government:

- *To identify and protect places integral to our national story so that they can help us remember and understand that we are part of a living history (Primer Minister's speech , Port Arthur 15/8/2008) and*
- *To ensure the identification and preservation of our industrial , built , environmental and cultural heritage (ALP National Platform 2007)*

These statements (amongst others) 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.

We do note however, that the Terms of Reference do say that the review will examine the *'extent to which the objects of the Act have been achieved;* and that these objects specifically address the identification and conservation of cultural heritage. Unfortunately we see it as a serious limitation that neither the Reviewer nor his supporting Panel of

Experts has cultural heritage skills or experience and we would like to see this team expanded by the appointment of a cultural heritage specialist.

Although there is little information yet available on how the Review panel will engage with the Australian public beyond this call for submissions we take this opportunity to invite the review panel to consult with us further as the review progresses.

The Discussion Paper to which this submission responds, poses a number of questions for consideration. We suggest that, in considering the matter of cultural heritage, these additional questions should also be considered as the review progresses:

- Does the EPBC Act accord with best practice principles for heritage legislation?
- What is the sensible and strategic future for the various lists established under the Act?
- Given the reality that cultural heritage conservation is under-resourced – what would be a reasonable and appropriate level of resourcing sufficient to achieve the objectives of the Act?

## Specific questions posed by the Discussion Paper in relation to cultural heritage

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

### **Response**

The Minister should **only** consider the heritage significance of places.

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. 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. **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.**

This principle 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. We note that the Australian Government and all State governments have adopted the Burra Charter as the standard of best practice in cultural heritage conservation.

Under the EPBC Act, listing problems because of management issues have been apparent in a number of cases. The Act currently allows the Minister to consider a range of factors in listing decisions, not just heritage significance.

***It is our view that 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.***

*What are your views on the process for nominating and listing Commonwealth heritage and national heritage places? (Q26)*

Current processes for nominating and listing are problematic and over complex to the extent that the objectives of listing are often compromised. The purpose of the National Heritage list in particular is not fully clear, and this influences nomination and listing processes. Briefly the problems with the listing process include:

- There is no perceivable strategic approach to the identification and consideration places for national listing, rather these seem to be *ad hoc*;
  - the thematic approach to National Heritage nominations has stalled and the thematic studies already undertaken have not all been made public;
- The National Heritage List still appears to be unbalanced. There are currently 26 natural places, only 9 Indigenous places and 46 historic places.
- Resourcing of the nomination and listing process is woefully inadequate.

***It is our view that a National Strategy for the Identification and Conservation of Cultural Heritage is urgently required. Such a document should clearly set out the goals for cultural heritage conservation in Australia and outline the relationship between, and the responsibilities of, the tiers of government in achieving those goals. In doing this it would spell out the links between the various lists; it would also outline the strategic approach to the identification and assessment of proposed listings. Such a strategy should be adequately resourced with a dedicated budget. Reporting on expenditure and performance on implementing the strategy should be transparent and made public.***

The current role of the AHC is severely limited and does not make efficient use of the expertise that such a Council could provide in the assessment and identification of significant heritage places. The AHC should be resourced to undertake an enhanced role in the identification and conservation of the Nation's significant heritage places and there should be greater public transparency surrounding the content of its independent and expert advice and the government's ultimate decisions relating to heritage listing. Specific issues include:

- The AHC has previously announced a review of criteria. However, it is not clear what the outcome has been.
- 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);
- there is no apparent proactive role by the AHC regarding information gaps which prevent the satisfactory assessment of values (although this may happen);
- The AHC is not resourced nor empowered to maximise its contribution to effective heritage conservation.

***It is our view that the AHC could be more effectively utilised if they were empowered and resourced to adopt a more proactive role in the identification of information gaps and in initiating projects to fill those gaps. The public transparency of the process from AHC assessments to Ministerial decisions needs to be improved.***

In relation to the Commonwealth List, we point out that one factor that played a large part in gaining the support of the cultural heritage community for the EPBC Act was the

opportunity it promised to provide statutory protection for heritage items in Commonwealth ownership. Most of these places had previously existed without statutory protection. However in this area, the implementation of the Act has been most disappointing and very few items assessed as having heritage significance have been added to the list over the past 5 years. With a few exceptions it appears as if the government (and its agencies) lacks commitment to the protection of these heritage places.

Specific problems with the listing process include:

- 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;
- 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 may have prevented it being considered and therefore clearly it should not lapse.

***Cultural heritage places in Commonwealth ownership are inadequately protected under the Act at present. Adopting a precautionary principle would suggest that items that are assessed as having significance should be added to the list automatically and their removal from the list would need to be justified by a transparent assessment and recommendation process.***

*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?*

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.

#### **Effectiveness of [heritage] management plans development under the EPBC Act**

Management planning for National Heritage Places and Commonwealth Heritage Listed in complying with requirements of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), or the *Environment Protection and Biodiversity Conservation Amendment Regulations 2003 (No. 1)*, specifically Schedules 5A and 5B or 7A and 7B (the Regulations), is often ineffective. Management plans received by the Department and the Australian Heritage Council have often failed to meet all the requirements.

An independent study of all management plans for National Heritage Places and World heritage Places (including World Heritage Places) was carried out for the Department in 2006 (*Management Plans for National and World Heritage Places and Properties Investigating the status of existing management plans consistent with the EPBC Act*) which identified serious concerns with the majority of management plans in relation to compliance with regulations. This report has not been made public but should be accessed as part of the current review.

In relation to the Commonwealth Heritage Places there is concern that Commonwealth agencies have not fully embraced their legislative obligations. Perceived 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 although this is not particularly transparent as the 2007-08 EPBC Act Legislation Annual Report does not provide a running total of completed management plans. 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 our view that the present review should incorporate an independent review of heritage strategies and management plans, and barriers to their completion and implementation whether or not these are systemic opposition to heritage objectives within some agencies, issue of resourcing or the complex marrying of regulatory requirements and heritage best practice. We note that this review should be undertaken by a heritage specialist(s).***

*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?*

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.

In this broader context, the range of issues includes:

- 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, but while the Commonwealth should be an exemplar in the treatment of its heritage- its 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 cultural 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 broad-scale benefit;
  - play a role in promoting Australia's heritage, and in education and training;
  - 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 broad-scale 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).

This question also raises the issue of the 'National Heritage Protocol' 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.

- *It is our view that a national cultural heritage strategy for Australia should be developed as a matter of priority. Such a strategy would involve all levels of government and clearly identify their linkages and responsibilities. This would include articulating the appropriate roles of the Commonwealth government which, we maintain, include one of leadership. It therefore follows that the Commonwealth should be an exemplar in the treatment of Commonwealth Heritage, and promote and apply best practice in cultural heritage conservation. The review should consider the proper role of the Commonwealth beyond simply World, National and Commonwealth Heritage.*

## Other Major Issues for the Review to Consider

In addition to the major issues dealt with in the responses to the review questions above, Australia ICOMOS is of the opinion that there are several other important issues for the review to consider. In particular, Australia ICOMOS would like the following question added to the range of questions against which the legislation is tested.

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

Australia ICOMOS see this as a primary test for heritage legislation. This review is an opportunity to consider the existing legislation in the light of this question and address

fundamental issues such as the compatibility of the natural and cultural heritage objectives encompassed in this large complex Act. We have long argued that the legislative separation of cultural and natural heritage was at times a barrier to effective integrated management of heritage landscapes and places with multiple values. However it is clear that in the current Act the combination of these two areas has been ‘forced’ and not enough attention has been given to understanding the nuances of accepted language and terminology used in the cultural heritage field compared with that in natural heritage/biodiversity fields. Therefore the review should consider ways in which this ‘fit’ can be improved. We reiterate that whatever legislative solution is adopted, it should facilitate and encourage the assessment and management of heritage places in a holistic way that takes account of all of the significant values and components of the place.

#### *Problems with decision making about ‘values’ rather than about ‘place’*

One of the concepts within the EPBC Act that has been forced onto heritage conservation in a confusing way, based on natural environment conservation philosophy, is the separation of ‘values’ from ‘place’. Whereas concentration on natural systems and biodiversity is appropriate for natural conservation, concentration on place and physical associations with values is central to much cultural heritage conservation. We are not disputing the importance and usefulness of rigorously defining and assessing heritage values, but a seeming reluctance to relate values to the places actually being conserved and managed has caused much confusion in the heritage industry, and we suspect some damage.

Previous Ministers have used this separation of values and place evidence to justify approving the demolition of major components of the historical fabric of significant places, on the basis that it does not impact on the potential for National Heritage Listing and conservation of the place. These decisions have engendered a level of cynicism in the heritage profession and a real doubt that the EPBC Act would ever result in a pro-conservation outcome for cultural heritage places.

To provide effective protection there must be better connection between values and physical fabric.

The use of the term ‘condition of values’ (Schedule 5A (h) (ix) and its parallel in Schedule 7A) has also caused great confusion in heritage practice, where condition of fabric is an established concept, but no guidance has been given in the Act or by the Department about what the new requirement to assess the condition of ‘values’ actually means.

#### *Over viewing best practice objectives*

A set of best practice objectives for Heritage Legislation has been developed by Australia ICOMOS (see the table below and also Attachment A). A brief review of the EPBC Act against these objectives is provided in the table below.

***We recommend that the review adopt the Australia ICOMOS Objectives for Heritage Legislation, confirm the findings below through its own analysis, and make recommendations to address the apparent problems that the EPBC Act currently has in effectively meeting the conservation objectives of both natural and cultural heritage.***

Australia ICOMOS Objectives for Heritage Legislation	Comment about the EPBC Act
<p><b>1. An Act which is simple to operate and simple to understand.</b></p> <ul style="list-style-type: none"> <li>• Cumbersome laws and procedures will not protect places,</li> <li>• Equitable system for review of Heritage Authority decisions required,</li> <li>• No formal legal appeal on issues of cultural significance (as distinct from rights of appeal on planning or development applications).</li> </ul>	<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><b>2. Conservation by agreement should be the primary aim (as opposed to conservation by compulsion) whilst maintaining the required standards and conditions.</b></p> <ul style="list-style-type: none"> <li>• Act should provide for Heritage Agreements attached to land title and binding subsequent owners,</li> <li>• Heritage Agreements should receive financial incentives such as reduction or waiving of land tax or local government rates,</li> <li>• Act should provide for professional, practical and financial assistance,</li> <li>• Responsible Minister should be empowered to waive provisions of other laws if this would help encourage conservation.</li> </ul>	<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><b>3. Adequate powers to list and protect the cultural environment.</b></p> <ul style="list-style-type: none"> <li>• A comprehensive register of heritage places serves as an early warning system if coupled with referral to the Heritage Authority,</li> <li>• Must provide for adequate sanctions - severe penalties - to ensure compliance,</li> <li>• Penalties need not be financial - loss of development rights is an alternative.</li> </ul>	<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><b>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.</b></p> <ul style="list-style-type: none"> <li>• The Heritage Authority should be able to give advice and supply information,</li> <li>• The Authority should support research, training, promotion and interpretation of places,</li> <li>• The Authority should advise on financial assistance to owners,</li> <li>• The Authority should not own or manage property itself.</li> </ul>	<p>While some capacity exists to undertake these tasks, and in practice they are undertaken to some extent, 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><b>5. Adequate professional staffing and proper administrative backup.</b></p> <ul style="list-style-type: none"> <li>• The Heritage Authority should be responsible to Minister,</li> <li>• The Authority should have a Chief Executive to manage the professional and administrative staff.</li> </ul>	<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>

Australia ICOMOS Objectives for Heritage Legislation	Comment about the EPBC Act
<p><b>6. The Minister responsible for the Act must receive the best possible advice.</b></p> <ul style="list-style-type: none"> <li>• The Heritage Authority must be a representative body of informed members with appropriate skills,</li> <li>• Majority of members should have skills in conservation: ie archaeologists, conservation architects, historians, planners, etc,</li> <li>• Representatives of other interests may be included but not so as to make the Authority too large to be workable.</li> </ul>	<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><b>7. Conservation provisions should be treated as an integral part of the regular planning system albeit administered by a specialist branch.</b></p> <ul style="list-style-type: none"> <li>• Delegation to local government may be needed but should be carefully administered by the Heritage Authority.</li> </ul>	<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><b>Heritage Administration</b> The above objectives envisage a heritage administration system, the main components of which are:</p> <ul style="list-style-type: none"> <li>• A Heritage Authority with power to identify and list heritage places,</li> </ul>	<p>The AHC identifies but does not list places. Listing is undertaken by the Minister.</p>
<ul style="list-style-type: none"> <li>• A Register of heritage places, judged against criteria,</li> </ul>	<p>There are several lists and criteria.</p>
<ul style="list-style-type: none"> <li>• A non-legal review process for objections to listing (ie to significance),</li> </ul>	<p>Does not exist.</p>
<ul style="list-style-type: none"> <li>• Listing on Register would require approval for changes to a place,</li> </ul>	<p>This power exists to the limit of constitutional powers.</p>
<ul style="list-style-type: none"> <li>• Legal appeals against planning decisions,</li> </ul>	<p>Such appeals are possible.</p>
<ul style="list-style-type: none"> <li>• Stop Work Orders to control unauthorised works,</li> </ul>	<p>Do not exist as such.</p>
<ul style="list-style-type: none"> <li>• Penalties or sanctions to ensure compliance with control provisions,</li> </ul>	<p>Penalties exist.</p>
<ul style="list-style-type: none"> <li>• Heritage Agreements provide flexible management opportunities,</li> </ul>	<p>Conservation agreements are possible.</p>
<ul style="list-style-type: none"> <li>• Financial incentives and technical assistance are essential tools.</li> </ul>	<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>



Dr Susan McIntyre-Tamwoy  
President, Australia ICOMOS