



Museums Australia is the national association for museums and galleries in Australia. ICOM-Australia (the National Committee of the International Council of Museums, Paris) is a key partner.

Submission to the Review of the *EPBC Act*

Part One - Introduction

Museums Australia welcomes this review of the *EPBC Act*, and appreciates the opportunity to contribute to it.

Museums Australia

Museums Australia (MA) is the national organisation for the museums sector, committed to the conservation, continuation and communication of Australia's heritage.

**Note: The definition of 'museums' includes galleries, keeping places, historic sites, herbaria, botanic gardens and zoos.*

MA encompasses places and their collections, and covers the conservation, continuation and communication of Australia's historic, natural and Indigenous heritage: tangible and intangible.

In other words, MA interests are closely aligned with 'heritage' as defined by the Act, (with the difference that MA is concerned not only with heritage of *national heritage value*, but with Indigenous, historic and natural heritage of local, national and international value, including associated collections).

Museums Australia has been a strong supporter of the National Heritage System from its inception. MA worked with ministers, and with colleagues, especially through the now disbanded National Cultural Heritage Forum, to achieve a strong, effective national heritage system through the passage of the Heritage Bills.

MA has worked over the past five years to **forge closer links between heritage policy and management and the work of museums** and sites through:

- provision of information and advice to encourage museums sector understanding of and support for the National Heritage System

- fostering and reinforcing partnerships between the heritage and museums sectors, such as the successful partnership achieved in 2008 between Museums Australia WA and the **Heritage Council of WA**
- Strengthening the MA Historic Sites and Houses National Network
- Collaborating with heritage organizations in advocacy to the National Curriculum Board regarding the importance of museums (including natural and historic sites) to teaching and learning outcomes of the national curriculum.

Through these heritage focused activities, we have gained considerable insight into the effectiveness of the NHS, especially at the community level.

We now join with heritage sector colleagues in expressing our disappointment in the achievements of the NHS to date. In particular, we note that while a substantial number of places have been listed, there appears to be little evidence of improved conservation, interpretation and presentation of the nation's heritage arising from the National Heritage System.

The Importance of Heritage

Australia's heritage – natural and cultural - is central to our sense of ourselves as a nation, as a people. As such, cultural heritage is not a marginal or sectoral interest, but an essential aspect of the nation's heritage.

Australia lead the world in its approach to the conservation and protection of the environment from the 1970s. The establishment of the Register of the National Estate (RNE) was ground-breaking in its comprehensive scope and inclusive approach to identifying heritage places. It encompassed places from all three parts of the environment (natural, historic and Indigenous), and all levels of heritage values.

Australia furthered this understanding of the holistic nature of the environment through the World Heritage Listing of places such as Kakadu and Uluru for their cultural as well as natural values, and continues this approach with the inclusion of cultural heritage as a key indicator in the national State of the Environment Reports.

This rich holistic approach to consideration of heritage values, further championed by the Commonwealth in the development of the National Heritage System, is integral to the inclusive and holistic definition of heritage proclaimed in the Act itself, yet does not appeared to have framed the realization of the system in practice.

Nor do we see that rich understanding of the environment reflected in the framework governing this Review.

This impression is reinforced by the lack of evident heritage expertise on the Review team.

The Role of the Commonwealth in National Heritage Protection and Conservation

We note that the Review considers questions of 'heritage' primarily under the heading of **Commonwealth Protected Areas**. This implies that Commonwealth responsibilities for heritage identification, protection and conservation arise only when it has a legally constituted responsibility for the protection of a place. This suggests the Commonwealth has adopted a very narrow and exclusively statutory role regarding Australia's heritage

This is in marked contrast to the Commonwealth approach to the other two areas of the 'environment' – the natural environment, and Indigenous heritage - where the Commonwealth funds grass-roots community conservation programs, as well as providing national protection. These programs provide targeted funding for environmental research, identification and conservation at community, regional and S/T levels.

The Commonwealth appears to have abrogated responsibility for the nation's heritage since the COAG Agreement on the Environment in 1997, the Agreement that led to the development of the EPBC ACT and ultimately to the establishment of the National Heritage System.

It has shrunk back from its former national leadership, so effectively realised through the research, conservation and community education programs of the former Australian Heritage Commission. Instead, we have the new Australian Heritage Council focused solely on listing assessments.

The '**subsidiarity**' principle adopted through that Agreement, in relation to the protection and conservation of the environment generally, has had increasingly negative effects on heritage conservation nationwide.

After five years of the NHS, and after 10 years of the EPBC Act, there is less Commonwealth funding available to fund historic heritage conservation than under the former Australian Heritage Commission. All Commonwealth 'environmental' programs, including the recently developed *Caring for Country* programs, specifically exclude historic heritage. Commonwealth funding is directed specifically and exclusively at supporting the National Heritage System, most particularly, the National Heritage List.

In our view, the Commonwealth should be seeking creative and effective ways to achieve better and more equitable heritage outcomes for the whole Australia environment, including the nation's heritage.

Indigenous Heritage

MA strongly supports the right of Indigenous people to identify and conserve their own heritage as set out in our national policy: *Continuing Cultures On-Going Responsibilities* - see www.museumaustralia.org.au

However, as we have not worked directly with the EPBC Act, we cannot offer informed comment on the questions related to the role of Indigenous people under the Act.

We would however, recommend that this Review consider the *Review of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, by Justice Elizabeth Evatt that reported over a decade ago.

We urge the Commonwealth to work speedily towards determining when and if separate legislation will be drafted to provide specifically for the roles and responsibilities of Indigenous people in the identification and conservation of their cultural heritage nationwide.

Museums Australia's approach to the EPBC Review

MA recognises that the EPBC Act deals with a wide range of natural environmental as well as cultural heritage matters. MA is concerned for protection and conservation of the environment, but natural environmental management is not our expertise, nor have we been engaged with the technical aspects of the Act. We believe it is more useful for our submission to focus on the heritage aspects of the Act.

This submission therefore focuses on the key issue of the role of the Commonwealth in the protection, conservation and presentation of the nation's heritage, a national responsibility that we believe is not being carried through well by the present Commonwealth approach to the National Heritage System.

Summary of Museums Australia Recommendations

Recommendation One

That the framework for assessing the performance of the Act be broadened, to ensure that

- environmental stewardship is set out as a key policy objective, and that
- the consideration of the environment itself is broad and inclusive, embracing both natural and cultural heritage.

Recommendation Two

The EPBC Review to commission an opportunity for a Heritage Summit to be convened to assess the operations of the NHS against the HERCON Principles.

Recommendation Three

The Commonwealth should work through COAG (through the Environment Protection Heritage Council and the Cultural Ministers Council) to ensure a National Heritage Strategy is agreed and resourced;

This Strategy should include recommendations from an expert review of the role and function of all Australian heritage registers in Australia, (including the RNE, before its statutory decline).

Recommendation Four

The Review should address the issue of resourcing for national heritage protection and conservation, in relation to the Objects of the Act.

Recommendation Five

The capacity of the Australian Heritage Council must be strengthened, so it can function effectively as the national independent and expert champion for heritage able to:

- manage its own dedicated funding and staff resources;
- lead and contribute to public debate about heritage issues;
- provide advice on major conservation issues.

Recommendation Six

The Minister should only consider the assessed heritage values of the place in making listing decisions, with other mechanisms in place to provide for conservation and management as well as protection of the place.

Recommendation Seven

The Review needs to assess the nominating and listing processes associated with the NHS, including a review of community understanding of those processes.

Recommendation Eight

MA recommends that the Review

- Specifically reference Local Government in the Review framing documents, and that arrangements are made to ensure local government contribute to the Review
- 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 consider:
 - the principles underpinning the Act
 - the role of the legislation in relation to the broader Commonwealth responsibilities regarding 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.

Part Two – Review Questions addressed in this Submission

1 Q44 (a) What is an appropriate framework for assessing the performance of the Act?

2 Q44 (b) Do you have particular issues that should *be considered during the review*?

Particular issues that MA believes should be considered by the Review

2 (i) How well does the EPBC Act accord with best practice principles for heritage legislation?

2 (ii) What is the best approach to harmonizing the confusing set of lists that together now provide heritage protection across the nation?

2 (iii) Are resource constraints impacting on the performance of the EPBC Act?

2 (iv) Strengthening the Role of the Australian Heritage Council

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

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

5 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?

1 Q44 What is an appropriate framework for assessing the performance of the Act? Do you have particular issues that should be considered during the review?

This seems to us to be the over riding issue in this preliminary stage of the Review.

The Review Discussion Paper directs the first question to the Scope of the Act, referring to the appropriateness of

- the Objects of the Act, and of
- the principles of Ecological Sustainable Development (ESD)

in relation to the Commonwealth’s role in environment protection and management

However, the Review framework outlined in the Discussion Paper, directs attention narrowly towards environmental issues, with only cursory mention of ‘heritage’ in the Terms of Reference.

Further, the Discussion Paper indicates that the Review will be guided by key Australian Government policy objectives, the first of which is:

to promote the sustainability of Australia's economic development to enhance individual and community well-being while protecting biological diversity and maintaining essential ecological processes and systems

These policy objectives seem much too narrowly focused as they:

- promote sustainable *economic* development rather than *environmentally sustainable development*, seemingly in contradiction to the STD Principles referred to in the Objects of the Act, and
- again, do not refer to heritage at all.

It is of great concern to us that these Australian Government policy objectives, framing the Review, fail to privilege environmental stewardship. We believe this will inevitably distort the Review considerations and its findings.

Further, it does seem to us, from our community vantage point, that the rich holistic approach to consideration of heritage values championed by the Commonwealth in the development of the National Heritage System, has not framed the realization of the system in practice.

As we described in the Introduction, Australia lead the world in its approach to the conservation and protection of the environment from the 1970s with the establishment of the holistic Register of the National Estate, the World Heritage Listing of places such as Kakadu and Uluru for their cultural as well as natural values, and with the inclusion of cultural heritage as a key indicator in the national State of the Environment Reports.

We do not see that rich understanding of the environment reflected in the framework governing this Review.

This impression is reinforced by the lack of evident heritage expertise on the Review team.

Australia's heritage – natural and cultural - is central to our sense of ourselves as a nation, as a people. As such, cultural heritage is not a marginal or sectoral interest, but is integral to the inclusive and holistic definition of heritage proclaimed in the Act itself.

The Review itself therefore should take a broad view of the impact of the legislation – its effect on community and social well-being – as well as its effectiveness from the perspective of all three parts of the Australian federal system of government, and all three aspects of the 'environment' as defined under the Act.

Recommendation One

That the framework for assessing the performance of the Act be broadened, to ensure that

- environmental stewardship is set out as a key policy objective, and that
- the consideration of the environment itself is broad and inclusive, embracing both natural and cultural heritage.

2 Q44 (b) Particular issues that MA believes should be considered by the Review

MA considers the following questions to be important in establishing the effectiveness of the EPBC Act and the National Heritage System established under its aegis:

- 2 (i) How well does the EPBC Act accord with best practice principles for heritage legislation?
- 2 (ii) What is the best approach to harmonizing the confusing set of lists that together now provide heritage protection across the nation?
- 2 (iii) Are resource constraints impacting on the performance of the EPBC Act?
- 2 (iv) Strengthening the Role of the Australian Heritage Council

2i How well does the EPBC Act accord with best practice principles for heritage legislation?

The COAG Agreement of 1997 that led to the passage of the EPBC Act itself was followed in 1998 by the HERCON – the National Heritage Convention. HERCON delegates, including the Commonwealth Minister and representatives of community and professional heritage organizations, agreed on a set of Principles intended to inform the new National Heritage System, and to shape the necessary legislation. This legislation, amendments to the EPBC Act, the so-called ‘Heritage Bills’ finally achieved passage late in 2003.

It is now over a decade since the HERCON, and the very best way to measure the accord between heritage ‘best practice’ and the operation of the National Heritage System, would be to measure its current operations against that set of Principles.

Recommendation Two

The EPBC Review to commission an opportunity for a Heritage Summit to be convened to assess the operations of the NHS against the HERCON Principles.

2b What is the best approach to harmonizing the confusing set of lists that together now provide heritage protection across the nation?

There is a proliferation of heritage lists in Australia, both statutory and non-statutory, including the National and Commonwealth Heritage Lists and the S/T lists. In addition, the Register of the National Estate continues to be referenced by communities although it no longer has statutory status.

This is a confusing and sometimes frustrating picture for those dealing with heritage across the nation, especially in rural and remote Australia.

While the National Heritage List has become the centrepiece of the Commonwealth's heritage efforts, the purpose of the National Heritage List is not clearly articulated or understood by communities.

The high expectations about the NHS promoting a new and energised 'national conversation' about heritage, has not occurred. Most of the places are already protected by some other legislative means, and as little public showcasing of NHL places has occurred, there is genuine confusion as to what has been gained by the development of the NHS.

This confusion and frustration is exacerbated by the demise of the RNE. The RNE was ground-breaking in its comprehensive scope and inclusive approach to identifying heritage places. It encompassed places from all environments (natural, historic and Indigenous), and incorporating places of all levels of heritage values.

While it afforded little heritage protection, listing on the RNE conferred value on those places listed, and bolstered community efforts to protect and conserve places of community value. The demise of the RNE creates many gaps in the identification of Australia's heritage, particularly for places of natural and Indigenous heritage values, as not all S/T jurisdictions provide statutory protection for these places.

Critically, the RNE was developed and supported by the system of National Estate Grant Program grants that enabled substantial comparative research to be undertaken for over three decades. These NEGP studies remain the most substantial national dataset of information about Australia's heritage, and as such, must be conserved and made publicly and readily accessible.

Not only has that national system of funding heritage research not been continued, but there is still uncertainty regarding the Commonwealth commitment to ensure that all the RNE material (including the information about the thousands of places researched but not listed on the RNE, and the NEGP associated 'grey' literature) is made readily and publicly accessible.

While in Britain they are considering a single heritage register, Australia continues with a proliferation of lists, with no over-arching national heritage strategy seeking to ensure that all jurisdictions pull together cohesively to ensure that all of our national heritage is identified, protected and conserved for current and future generations.

Recommendation Three

The Commonwealth should work through COAG (through the Environment Protection Heritage Council and the Cultural Ministers Council) to ensure a National Heritage Strategy is agreed and resourced;

This Strategy should include recommendations from an expert review of the role and function of all Australian heritage registers in Australia, (including the RNE, before its statutory decline).

2iii Are resource constraints impacting on the performance of the EPBC Act?

Resource constraints are impacting severely on the protection of heritage

For example, there are NO Commonwealth programs supportive of community involvement with the identification, conservation and/or presentation of cultural heritage. Indeed, 'historic' heritage (non-Indigenous cultural heritage) is specifically excluded from the new *Caring for Country* programs (replacing the Natural Heritage Trust programs that also specifically excluded 'historic' heritage).

Commonwealth heritage funding has declined, as has core Departmental heritage funding since the introduction of the NHS five years ago, in circumstances where other environmental expenditures have been increased.

Indeed, less research has been commissioned, and certainly less information about Australia's heritage has been made available by the Commonwealth since the establishment of the NHS, than was the norm under the former Australian Heritage Commission.

Currently, in contrast to the three decades of the RNE, there are

- no Commonwealth programs directed at encouraging community based heritage identification and care (in contrast to the natural environment)
- little Commonwealth investment in community or schools based educational programs about National or Commonwealth heritage places,
- few noticeable tourism links established between NHL and thematically associated S/T places, and therefore
- little community engagement with or interest in the NHS.

Recommendation Four

The Review should address the issue of resourcing for national heritage protection and conservation, in relation to the Objects of the Act.

2iv Strengthening the Role of the Australian Heritage Council

The AHC has not positioned itself as the champion of the nation's heritage. Rather, it has become narrowly and inwardly focused on listing activities.

This is in marked contrast to the role envisaged for the AHC as the national focus for heritage resurgence and capacity building at the local level.

The major cause of this failure of national leadership appears to be that the AHC does not have an independent budget, and has only limited access to heritage expertise.

So, while the AHC is able, through its legislation, to initiate research programs and reports, it has no budget capability to support these activities, and must rely on departmental funding to carry out all its work. Its capacity to champion heritage, to stimulate interest in heritage, to engage and inform the public about heritage issues, has been dramatically hampered by this lack of resourcing.

Recommendation Five

The capacity of the Australian Heritage Council must be strengthened, so it can function effectively as the national independent and expert champion for heritage able to:

- manage its own dedicated funding and staff resources;
- lead and contribute to public debate about heritage issues;
- provide advice on major conservation issues.

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

The only factor the Minister should consider is the heritage significance of the place. This is to ensure there is no distortion of the assessment of the heritage values through consideration of future management or protection, or even ownership issues.

The integrity of the listing process rests on a clear understanding that the values have been rigorously and transparently assessed against agreed criteria. This integrity is invariably compromised when the assessment seeks to balance the assessment of heritage values against the possible management and other consequences of a listing decision.

The principle of separating listing and management decisions has been endorsed over decades internationally, and is noted specifically in the nationally and internationally recognised Australia ICOMOS *Burra Charter* (available at <http://www.icomos.org/australia/>).

Listing can be seen as both a statement of the value (and values) of a place, and an aspirational statement that protection and conservation can be achieved.

The listing decision is a decision about the heritage values of the place, and should not be confused with future management and protection issues.

The question should simply be: does this place hold one of more national heritage values?

Management issues change over time, and cannot necessarily be assessed at the time of listing. The better way to address protection and future management issues is through the development approval/ environmental impact process, as currently obtains in the better State heritage systems.

Recommendation Six

The Minister should only consider the assessed heritage values of the place in making listing decisions, with other mechanisms in place to provide for conservation and management as well as protection of the place.

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

The nominating process is complex, confusing and extremely difficult to navigate, and the outcomes do not so far appear to justify the extraordinary efforts required to successfully achieve a nomination.

From the community perspective – and MA has a very broad footprint right across regional and remote Australia – the National Heritage System has barely registered.

There has been no capacity building to assist local communities to understand the concept of ‘national heritage value’, and therefore to be able to develop an informed National Heritage List nomination.

There has been no Commonwealth funding to enable national research on heritage places, nor to improve access to the former RNE data and associated ‘grey’ research literature funded through the National Estate Grants programs over several decades. Without comparative data, communities are unable to develop informed National Heritage List nominations.

The thematic approach to National Heritage List nominations appears to have been a failure, and the thematic studies already undertaken have not generally been made public. This leaves the public considerably disenfranchised in relation to the NHS.

Commonwealth Heritage is clearly a core responsibility the Commonwealth. Yet, even in relation to the identification, protection and conservation of those places it owns or manages, the Commonwealth is not an exemplar of best-practice heritage management. Current outcomes of the Commonwealth Heritage System are far from exemplary.

Recommendation Seven

The Review needs to assess the nominating and listing processes associated with the NHS, including a review of community understanding of those processes.

5 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?

The key question is the question of the most appropriate role for the Commonwealth to take in the conservation and protection of the nation's heritage:

- what kind of leadership and support should the Commonwealth be providing to ensure the protection and conservation of the nation's heritage, and
- should that role be defined only by statutory capability?

Within this context, it is appropriate to ask whether the current reliance on the 'subsidiarity' principle agreed at the 1997 COAG meeting, is the most appropriate approach to providing protection and conservation?

The 'subsidiarity' principle assumes that resourcing is available to the responsible tier of government. However, subsidiarity in relation to heritage appears to have essentially facilitated a withdrawal by the Commonwealth from responsibility for the conservation of the nation's heritage at local level.

Local government across Australia is not only responsible for the majority of Australia's heritage places, it is also responsible for the conservation and protection of most of Australia's natural environment.

It would be fair to say that local government is over burdened with responsibilities, including heritage conservation and protection, and that the Commonwealth has not used the COAG processes available to it to provide the necessary support to local government to ensure it has the capacity and expertise to identify, protect and conserve local heritage.

The Discussion Paper indicates that the Review will be guided by key Australian Government policy objectives, the second of which is:
to work in partnership with the states and territories within an effective federal arrangement but no mention is made of Local Government in the Review Terms of Reference.

The Commonwealth needs to prioritise heritage conservation and commit to utilising the COAG processes to achieve a national heritage strategy. Working with all levels of government, most particularly local government, such a Strategy would be focused on long-term goals and would be adequately and appropriately resourced.

A National Heritage Strategy would ensure Commonwealth commitment to the broader conservation of Australia's heritage through a range of mechanisms to provide:

- national leadership
- national methodological research programs of broadscale benefit, to monitor national trends through State of the Environment reporting; and
- support for community and NGOs, especially at community level.

Recommendation Eight

MA recommends that the Review

- Specifically reference Local Government in the Review framing documents, and that arrangements are made to ensure local government participate in the Review
- 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 consider:
 - the principles underpinning the Act
 - the role of the legislation in relation to the broader Commonwealth responsibilities towards 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.

Conclusion

MA will monitor the progress of the Review, and hopes to have further opportunities to discuss the issues we have raised directly with the Review team.