Introduction

This workshop was an opportunity for various stakeholders in Australia’s heritage to discuss the performance of the EPBC Act and the Interim Review Report, released on 29 June, with the intention of focusing consideration prior to the deadline for comment on the Interim Review Report of 3 August 2009.

The workshop was organised by Australia ICOMOS and the Australian Council of National Trusts, and supported by the Donald Horne Institute for Cultural Heritage, University of Canberra and the Department of the Environment, Water, Heritage and the Arts.

Some 40 participants attended the workshop (see Attachment B). Dr Allan Hawke who is undertaking the Review attended during the afternoon session. Professor Tim Bonyhady, a member of the Expert Panel attended the entire workshop and Rosemary Warnock, also a member of the Expert Panel, attended during the afternoon session.

The workshop began with formal presentations, followed by general discussion (see the workshop program at Attachment A). An introduction from the head of the Review Secretariat in the Department of the Environment, Water, Heritage and the Arts (DEWHA), Mark Flanigan, outlined the Review process, including consultation to date with the public and stakeholders, and the Review process from now until the report is due to be tabled in October 2009. An overview of the heritage issues discussed in the Interim Review Report was also provided. Four heritage professionals with different experience of the system, Colin Griffiths, Dr Jane Lennon AM, Richard Mackay AM and Dr Mike Pearson, then provided comment on the Review’s Interim Report and their perspectives on the heritage system as it has operated since it was incorporated in the Environment Protection Biodiversity Conservation Act. Their papers/presentations are at Attachment C.

The workshop resulted in several key issues related to the current federal heritage system being identified and discussed in terms of the Review and its Interim Report. Several recommendations were developed as well as other views, including a vision of what a heritage system in Australia might include.

It should be noted the findings and recommendations presented in this report reflect the general mood of the workshop. However, no formal resolutions were proposed or adopted, and not all participants may agree with the outcomes indicated.

This report was prepared by Marilyn Truscott for Australia ICOMOS. It has not been formally endorsed by the ACNT yet, although this may occur at a later date.
General Issues

**Review and Review Interim Report**
Comment and discussion noted that the Review Interim Report contained no draft recommendations. This was regretted as it limited scope for interactive dialogue in response to the directions the Review is taking.

The workshop noted that heritage was largely limited to one chapter and there was a general lack of integration of heritage into broader discussions in the report. On the other hand, matters relevant to heritage arose in a number of chapters making it difficult to understand fully the implications for heritage.

While the Interim Report dealt with a number of issues, there was concern that the full range of issues raised in submissions were not noted and/or had not been addressed (eg. a number of the recommendations made in the ACNT submission). It was thought the final report was also not likely to deal with all heritage issues. Accordingly, the question was raised about what would happen to those issues not dealt with.

While much of the workshop discussed issues and problems with the Act, there was also a view that there were positive aspects, or indeed that generally the Act was satisfactory.

The workshop also noted the lack of specific heritage expertise in Expert Panel assisting Dr Hawke.

*Although the workshop did not explicitly make recommendations on these matters, it seems reasonable to conclude:*
- the next report should contain explicit recommendations;
- ideally, draft recommendations should be released for comment prior to the final report;
- consideration should be given to the structure of the next report to enable a more straightforward and comprehensive thematic understanding of outcomes (eg. for heritage); and
- the Review should either deal with the full range of heritage issues raised in submissions or find a way to capture and pass on those issues and recommendations which are not addressed in the final report.

**An ideal future for Australia’s heritage**
One session of the workshop considered what an ideal future for Australia’s heritage would look like, or what we might dream of for heritage. The outcome was as follows.

**General**
- A heritage that is loved and understood.
- Australia’s heritage is comprehensively conserved and celebrated and cherished.
- There is passion about heritage without nationalistic jingoism.
- Heritage is resourced, not just with funding but also expertise and information.
- Australia continues to pursue best practice and intellectual leadership.
- Both cultural and natural heritage are adequately and generously funded (The natural environment begs funding from cultural heritage!).

**Commonwealth role**
- An Environment and Heritage Act that is positive and not just regulatory (ie. add heritage to the title of the Act).
• The Commonwealth takes on state heritage roles.
• Strong Commonwealth leadership, especially demonstrated through Commonwealth heritage, and a greater whole-of-government commitment.

System
• A heritage system that really protects heritage.
• A heritage system in Australia that is ‘lateral’, incorporating natural, Indigenous and historic environments, which integrates local, state, national and world heritage, and the scope of heritage includes place, movable and intangible heritage.
• A heritage system that is transparent in its decision-making.
• A heritage system that separates heritage identification and listing (by an independent authority) and management decisions (by government) – in accordance with the Burra Charter principles and processes.
• A system that truly embraces continuous improvement – monitoring/evaluation/feedback.
Key Issues – Recommendations to the Review

The workshop identified several key issues as arising from the Review including its Interim Report. These matters were raised both by those providing formal commentary, Colin Griffiths outlining the National Trust’s views, Jane Lennon, as a former Australian Heritage Councillor, Richard Mackay as a heritage consultant and Mike Pearson as the Chair of the ACT Heritage Council (see program) as well as participants from the floor. Discussion of these issues and recommendations by the workshop are summarised below.

Listing – a broad or landscape approach to addressing heritage/integrating nature and culture

The workshop gave broad support to the concept of taking a broader or landscape approach to heritage – so long as cultural heritage does not get lost amongst natural heritage.

There was also discussion about and support for integrated approaches to heritage, linking nature and culture, as well as Indigenous and European heritage. Previous substantial efforts to foster such approaches were noted however, there was a sense that the more recent trend was towards segregation rather than integration, and the lessons of the past were in danger of being forgotten.

As in many heritage issues, Commonwealth leadership was one important way to develop and promote ongoing methodological advances.

Workshop Findings:

- broader or landscape approaches to heritage should be fostered, mindful of the need for a balanced recognition of cultural and natural heritage;
- similarly, integrated approaches to heritage, linking nature and culture, as well as Indigenous and European heritage should be fostered; and
- the Commonwealth should take a leadership role in developing and promoting these methodological advances.

Listing - Transparency of Assessment Process

The workshop welcomed the Review Interim Report key point on heritage (Chapter 11) that:

‘There is scope for the assessment and listing processes for National and Commonwealth Heritage to be simplified and made more transparent.’

And in the Interim Report’s key points on Governance dealing with public participation (Chapter 19), the Review notes that, ‘options to further increase transparency about decisions made under the Act, including access to information, may be helpful.’

Such transparency and access to information was seen by the workshop as fundamental to the federal heritage system. However, there are several barriers to such a transparency occurring, particularly the current statutory or regulatory processes for assessment and listing, including:

- the current requirement/practice for draft AHC assessments to be confidential; and
- the current website is difficult to navigate so that the community cannot readily access the data that is available.

The workshop noted that there was no need to reinvent processes for significance assessment. The Burra Charter, could readily be adopted for the approach/principles/
process, given that it is acknowledged by all levels of government as an appropriate and effective national standard for heritage management.

A transparent assessment process permits accountability to the Australian community. This would obviate mistrust that possible errors about the heritage significance of a place are being made or aspects ignored.

**Workshop Findings:**
- the Review should develop specific recommendations to address transparency related to assessment processes;
- the Review should consider further measures to make draft AHC assessments more publicly available;
- the design and use of the EPBC website should be reviewed to promote more effective public access; and
- the Burra Charter should be explicitly adopted as part of heritage values assessment processes.

**Listing – Independence of Assessments**
The workshop agreed that the listing decision should be independent of the Minister, with the Minister making management decisions. This reflects the national standard for heritage – the Burra Charter. This bases listing on heritage significance alone, and it was recognised that such listing independence can also protect the Minister.

The workshop acknowledged that this matter is an ongoing one for debate in Australia. It has political dimensions and there have been a range of government and policy responses. It was noted that about half of the state/territory heritage systems have listing decisions independent of a minister, although some of these systems allow a call-in power.

This matter is also inextricably related to the transparency of the assessment and listing decision process (see above). Currently the process does not permit the public to identify what the AHC assessment is and how that differs from the Minister’s decision.

It was noted that if the Minister were to continue to have the decision-making power in relation to heritage listing, then it would be necessary to have the views of the AHC available. The Minister needs to state his/her position and the reasons for taking a different view, if that occurs. It should also be clear what other, non-heritage matters are considered in the assessment process.

**Workshop Findings:**
- listing decision should be independent of the Minister, with the Minister making management decisions;
- listing should be solely based on heritage significance;
- if the Minister continues to make listing decisions, the AHC assessment should be readily available and the Minister should provide reasons if he/she takes a different view; and
- if listing is not to be solely based on heritage significance, then the non-heritage factors should be explicit.

**Independence of AHC**
The independence and leadership role of the Australian Heritage Council was discussed at several points during the workshop, with participants being in favour of a significantly expanded role. There were many voices in favour of the AHC having the ability to list
places, rather than the Minister, as noted above.

One particular suggestion was that the AHC should have the ability to independently upgrade/amend existing listings.

**Workshop Findings:**

- *the independence and leadership role of the Australian Heritage Council should be greatly improved; and*
- *the AHC should have the ability to upgrade/amend listings (eg. alter the boundary and the values statement).*

**Listing - Indigenous places**

This was seen as a problem for the National Heritage List, in terms of the threshold and the requirement to make a comparative assessment for places being assessed. This could only take place by comparing sites from different Indigenous cultural groups, which is inappropriate and potentially discriminatory. The workshop recognised that it was quite a different matter for adding places to the Commonwealth Heritage List (CHL) if a ‘local’ threshold was applied, and different cultures were not being compared.

There was also the issue of a lack of a satisfactory methodology being applied for the NHL, and it is understood that the Department is working on a policy on this matter. There are some exemplary cases for the NHL, such as Budj Bim and Brewarrina, but for example at the Burrup Peninsula, the listing was only for the scientific, that is archaeological criterion, without addressing either the aesthetic importance of the rock art, or the social, intangible value to Indigenous communities. Whilst satisfying only one criterion is needed for listing, it is important to identify all values that may come over the threshold, so that protection of all such values is required and management of all relevant values occurs.

It was also noted that the Burra Charter process was applicable in the case of Indigenous heritage, and that the Burra Charter provided recognition and a process for addressing ‘intangible’ heritage and community values.

**Workshop Findings:**

- *the threshold for National Heritage listing of Indigenous heritage places should be reviewed; and*
- *a more satisfactory methodology for National Heritage assessments of Indigenous heritage places should be developed as a priority, including the need to take account of all values.*

**Listing - significance threshold for the Commonwealth Heritage List**

A question was raised about the threshold being applied in the case of the Commonwealth Heritage List, and whether it was local significance or some higher threshold.

The workshop was advised that DEWHA was reviewing this threshold, that there were a variety of views, and that there was no policy decision yet available.

The workshop unanimously agreed that the threshold should be at the local level, rather than State level. This approach is consistent with the Schofield Report’s finding that the Commonwealth should conserve all of the heritage it owns and manages, this also reflects the broad nature of Commonwealth heritage property as recognised in past RNE listings, and that the Commonwealth remains responsible for many locally significant places.
Workshop Findings:
- the threshold for Commonwealth Heritage listing should be local significance; and
- DEWHA should advise stakeholders as soon as possible about its deliberations.

Register of National Estate and Heritage Lists
The Interim Report noted that the retention of the Register of the National Estate (RNE) as a key issue (11.101). It was recognised that to date there was poor take-up of the RNE into state/local registers and lists. For example, in Queensland there was limited capacity for local governments to protect places of local significance. Until alternative statutory protection is provided for RNE places, the RNE should not lapse. The workshop recommended that there be no sunset clause for 2012, as currently the case.

Incentives should also be provided to the States/Territories to incorporate the places in the RNE in their heritage protection systems, whether at state or local government levels. The workshop in essence supported the AHC recommendation that the, ‘RNE be permitted to cease in the jurisdictions of a state/territory when the Commonwealth is satisfied that all places in that jurisdiction are appropriately protected through other statutory instruments.’

It was recognised that the situation in the ACT needs special consideration as there are places in the RNE on land not covered by ACT heritage provisions that will receive no protection once the RNE lapses. The Commonwealth was urged to rectify this situation.

The Interim Report noted that the large number of heritage lists created confusion and complexity, and this was unfortunate (11.97). The report also sought views on the creation of a better framework to address such problems.

The recommendation of the ACNT for a broad strategic review of heritage listing in Australia, including the future of the RNE, was underscored and supported by participants, and noted as being consistent with the 1992 IGAE and more recent discussions at the EPHC.

Concern was also expressed that heritage lists were not being properly maintained and kept up to date, and, related to other comments offered, listings need to capture all relevant values but this is not always happening.

Workshop Findings:
- with regard to the Register of the National Estate – the current sunset clause should be withdrawn, the AHC recommendation adopted, and incentives provided to States and Territories to facilitate the transfer of places from the RNE to other heritage lists;
- the problem of RNE places in the ACT not covered by ACT heritage legislation should be addressed; and
- a broad strategic review of heritage listing in Australia should be undertaken.

Commonwealth-State Relations and System
It was noted the Interim Report recommends the current Commonwealth-State relations regarding the environment and heritage be reviewed. The workshop supported such a review and discussed a number of matters related to this issue.
The workshop acknowledged that an integrated heritage system in Australia based on the principle of subsidiarity is not yet in place. This principle is consistent with the IGAE of 1992, was agreed in the COAG Heads of Agreement in 1997, and EPHC and Heritage Chairs & Officials have been working towards this ever since.

It was noted that there were two ways to go, a centralised system or a layered one. Constitutionally, the Commonwealth cannot itself elect to take over all heritage matters from the states, but the natural environment provides a model to ensure that heritage is better served than presently. In this case, the natural environment becomes a matter of national importance because of the Biodiversity Convention.

Aligning processes, providing incentives, including tax deductibility or rebates (such as the heritage taxation rebate which previously existed) and grants, and supporting local heritage studies, working more cleverly and strategically, are all examples of innovative initiatives which might be usefully pursued. The AHC’s current collaborative work with the Broken Hill Council, aimed at achieving National Heritage listing for Broken Hill and a related statutory regime that avoids needless duplication, is an example. More bilateral agreements need to be put in place. Such approaches can lead to a more seamless, layered management of Australia’s heritage.

All this needs a readjustment of the current role of the Commonwealth to recognise and resource its potential and much needed leadership role. In the past system, the Commonwealth through the Australian Heritage Commission took such leadership, fostering the emergence of state heritage legislation, systems such as the local heritage advisers, it encouraged the growth of heritage expertise (for which Australian has been internationally recognised). In many respects the Commonwealth’s management of the Nation’s heritage was much better prior to the EPBC Act and the current Commonwealth situation.

A national heritage strategy was raised as one vehicle to address the related issues of Commonwealth-State relations, the Commonwealth system and Commonwealth leadership.

Workshop Findings:
• the proposed review of Commonwealth-State relations regarding the environment and heritage was supported, especially to develop better arrangements for heritage;
• there can be strengths and weaknesses in both a centralised and layered heritage system;
• recognising the Constitutional reality, the objective should be to achieve a more seamless, effective, layered management of Australia’s heritage;
• the Commonwealth needs to firmly embrace and resource a leadership role; and
• a national heritage strategy should be considered as a vehicle to address the related issues of Commonwealth-State relations, the Commonwealth system and Commonwealth leadership.

Confusion for Community about different legislation/different jurisdictions
The workshop recognised that the roles of different legislation and at different jurisdictional levels was very confusing, and such confusion exists in the wider as well as in Indigenous communities. For example, at the federal level dealing with Indigenous heritage matters, there was the EPBC legislation as well as ATSIHPA and Native Title
legislation, all overlapping.

Education and outreach programs were seen as necessary to explain the system and mitigate such misunderstanding and any mix-ups.

**Workshop Findings:**
- greater efforts must be made in education and outreach to help explain the different legislation operating in different realms; and
- such efforts must pay particular attention to Indigenous communities.

**Protection - NES trigger for heritage**
The workshop considered the question about whether there should be a general NES (national environmental significance) trigger for heritage. At present there are triggers for World and National Heritage.

The workshop saw problems with the current triggers because of the narrow definition of ‘action’ coupled with the current ‘significant impact’ threshold.

The workshop noted that undertaking a strategic review of heritage listing activities might result in a more appropriate NES trigger for heritage.

**Workshop Findings:**
- the option of a general NES trigger for heritage should be seriously addressed by the Review; and
- such a trigger should be considered in the light of a broad strategic review of heritage listing activities.

**Protection - Cumulative impacts**
The Interim Report asked, ‘whether the ‘significant impact’ threshold is sufficiently flexible to recognise the range of impacts at varying levels’ (11.59). The Review Interim Report also sought advice on how to address the possible cumulative impact of multiple actions assessed separately (11.59).

The workshop agreed the current significant impact assessment is problematical as it does not avert the risk of cumulative impact, resulting over a series of actions not seen as having a significant impact through irreparable damage to the place and its values. It was stressed that unlike the case with many ‘actions’ that affect the natural environment, such damage to cultural heritage could be permanent. The workshop agreed that the ‘significant impact’ threshold was obscure.

It was suggested management plans have the potential capacity to anticipate impacts over time, such as exist for national parks, and thereby deal with cumulative impacts. It was suggested natural environment systems dealt better with such impacts. Another option is to include specific consideration of integrity and authenticity early in the listing process as a listing criterion, and then taking a more holistic approach to managing a property.

It was felt that more research is needed to better identify the appropriate mechanism to deal with cumulative impacts to heritage places and values.

**Workshop Findings:**
- further research is needed to address the problem of cumulative impacts, noting that management planning, and the use of integrity and authenticity,
may prove useful options.

**Protection - Heritage Place versus Heritage Values**

The workshop noted the confusion in the Review’s Interim Report regarding the relationship between heritage values and place (11.30-34), something that several submissions raised (noted 11.25-29). The implied recommendation in the Interim Report that, ‘shifting the balance back in favour of the concept of place and defining the importance of a whole place as a value’, is not a relevant or helpful approach and fails to recognise the fundamental concept of ‘place’ in heritage.

The workshop recognised that this confusion is not merely a ‘methodological issue’ but has the potential to be a major management issue. It risks the loss of place by separating value from place in management decisions, notionally ‘protecting’ values - which in fact may not be able to survive without the ‘place’.

It was noted that this confusion may arise from applying natural environment management methodologies to cultural places. Cultural heritage management processes, such as the Burra Charter, have a long-standing and successful approach to value-based management which recognises that it is places which are managed. It is not a matter of including the place in the values, but rather understanding that the values reside in the place, and are therefore often embodied in its fabric.

The workshop also noted that the current system of separating values from place creates problems later, when new or different values are identified during management, as ‘official values’ get locked-in during the initial listing. Changing the emphasis back to listing the actual place that demonstrates the values, may resolve this problem.

The suggested approach was to recognise that it is heritage places are which are managed for their values, and that there is something whole and integrative about the concept of place.

The workshop also noted issues regarding managing a place for all its heritage values, including those below the National Heritage threshold. There was concern that management is or may be taking a disaggregated approach to values – unhelpfully stratifying management on the basis of levels of significance.

Examples of places that have a range of values that may not occur throughout the area/place including landscapes, where different levels of heritage values also occur, for example Kakadu National Park World Heritage area. In such cases, the breadth and layering of the heritage place naturally includes different levels of significance, including local significance, but the place must be managed for all levels of values. Such a landscape approach, with regional and thematic approaches should be the preferred method for all jurisdictions. It might include recognition of individual sites as perhaps World Heritage, but that other places belong to this theme and may only have local significance. This was the original idea inherent in the COAG agreement and the conversation regarding the new system of heritage introduced in 2004.

**Workshop Findings:**

- *the proposed formulation to include place as a value is mistaken and should be dropped;*
- *the concept of managing heritage places should be integrated within the Act, noting the objective is to manage places so as to retain their values;*
• coupled to this should be the overarching concept of place as a whole and integrative concept; and
• the apparent disaggregated approach to management whereby only some values are considered by particular levels of government or particular regulatory agencies should be investigated, and an integrative approach to the management of all values strengthened.

Management – Commonwealth Heritage
The complexity and inflexibility of current provisions regarding the management of heritage was considered, including that related to Commonwealth Heritage. It was felt there could be greater flexibility with the focus on effective conservation outcomes rather than prescriptive processes or documents. Where existing agency asset management systems work well for heritage, these could be accepted as the basis for heritage management rather than some new theoretical system being imposed.

Workshop Findings:
• there should be greater flexibility regarding management systems for heritage, with the focus on effective conservation outcomes rather than prescriptive processes or documents; and
• where existing agency asset management systems work well for heritage, these should be able to be accepted as the basis for heritage management.

Ongoing Monitoring/Evaluation/Feedback
The workshop recommended that a functioning process for monitoring, evaluation and feedback is needed for all aspects of the heritage system, including protection, and the outcomes should be implemented.

The workshop saw a fully functional monitoring system for heritage as central to a well-functioning heritage management system but this was not currently in place. It is still not fully recognised as an essential part of the heritage management process. Options were noted, including the role of conservation management plans.

The Interim Report (11.82) noted that the AHC considered it could ‘provide an effective mechanism for more frequent and specific heritage monitoring and reporting than current SoE arrangements.’ The Interim Report (11.83) also notes in Chapter 22 in regard to s.516A of the EPBC Act that reporting has been less than effective, and states,

‘It may be appropriate to consider a more systematic and consistent procedure of annual review by the Commonwealth. In particular, one that incorporates specific heritage provisions in environmental performance reporting. A possible solution could be a new dedicated, external environmental monitoring and reporting entity.’

The workshop considered that the current State of the Environment (SoE) reporting appeared to have failed in its primary role to inform federal policy development, whether for cultural heritage or natural environment policy. It was recognised that SoE should be having a major influence on the direction of policy for heritage but it is not. Problems in the SoE were outlined, including that data is not consistently gathered, nor in a consistent format, despite recommendations on this since the first SoE report in 1996. Until now all SoE reports have been heavily based on surrogate data, from annual reports for example, and the SoE process including data gathering is not ongoing.

It was not apparent that the Interim Report substantially addressed SoE or these shortcomings. However, it was noted the report does raise the suggestion for a
commissioner for the environment which might take on an environmental monitoring role.

The workshop agreed that it would be helpful to have an ongoing state of the environment process, rather than the current stop-start of data collection and resourcing.

**Workshop Findings:**
- Monitoring, evaluation and feedback should be embedded and strengthened for all aspects of the heritage system; and
- The Review should seek to strengthen State of the Environment reporting, including the link to policy development, data gathering, the quality of data and an ongoing SoE effort.

**Separate Heritage Act/Scope of the Act**
The participants were divided in their views as to whether separate heritage legislation would result in improved outcomes for heritage identification and protection. There was a strong call from some for a serious consideration of this option, especially on the grounds of potential greater effectiveness.

It was generally agreed that the current legislation was unwieldy making it difficult to navigate through the various sections relevant to heritage. It was agreed that a reformatted Act that grouped heritage provisions together may mitigate this problem to some degree.

Such reformattting and repackaging would not address issues in the Act that were problematic for good heritage identification and protection. Such problems include:
- The scope and definition of heritage needed broadening, to include objects, intangible heritage and shipwrecks; and
- The current system results in heritage being a ‘Cinderella’ in the federal system, no longer providing national leadership, and that while Australia’s heritage approach had been internationally admired in the past, the lack of support and leadership had eroded this position.

**Workshop Findings:**
- The option of creating a separate Heritage Act should be seriously considered;
- If a separate Act is not to be pursued, then consideration should be given to reformattting and repackaging the heritage provisions in the Act to make them easier to understand, and the name of the Act changed to reflect the importance of the heritage provisions, eg. the Environment and Heritage Act;
- The scope of the Act should be re-considered, especially to include objects, intangible heritage and shipwrecks; and
- National leadership should be a strong theme through the final Review report.

**Resources - Funds/Information/Expert Staff**
The workshop noted the lack of resources for heritage at the federal level, from funds to expert information to expert staff. The problems range from actual funding cuts, the difficulty of accessing information (including thematic studies that have not been published), noting the unwieldy website, and the decrease in expert staff in the Heritage Division. The lack of research capacity was also discussed.

The lack of transparency in these matters was also noted, for example, the difficulty in actually identifying the decrease in funding for heritage.

**Workshop Findings:**
• the Review should address the range of resource issues, including funding, information and expert staff for heritage.

**Real conservation**

Having discussed many aspects of the systems, processes and provision for the identification, protection and management of heritage, the workshop was also very mindful of the fundamental need to support real conservation work. Such work requires funding and applying the right expertise and skills to ensure Australia’s heritage survives for current and future generations.

**Workshop Findings:**

• the Review should bear in mind the need to support real conservation work which includes funding and appropriate expertise and skills.
## Attachment A: Workshop Program

**Australia ICOMOS and Australian Council of National Trusts Workshop**

**Australia’s Heritage and the EPBC Act – Consideration of the Interim Review Report**

Monday 20 July 2009, Common Room, University House, ANU, Canberra

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<td>9.15-9.25</td>
<td><strong>Welcome</strong>  &lt;br&gt; Dr Susan McIntyre-Tamwoy, President, Australia ICOMOS  &lt;br&gt; Eric Martin AM, Australian Council of National Trusts</td>
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<td>9.25-10.00</td>
<td><strong>Overview of the Interim Report</strong>  &lt;br&gt; Mark Flanigan, Assistant Secretary, Strategic Approvals &amp; Legislation, DEWHA</td>
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<td>10.00-10.30</td>
<td>Morning tea</td>
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<td>10.30-10.45</td>
<td><strong>National Trust Views</strong>  &lt;br&gt; Colin Griffiths, Australian Council of National Trusts</td>
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<td>10.45-11.00</td>
<td><strong>Commentary</strong>  &lt;br&gt; Dr Jane Lennon AM, former Australian Heritage Commissioner and Australian Heritage Councillor</td>
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<td>11.00-11.15</td>
<td><strong>Commentary</strong>  &lt;br&gt; Richard Mackay AM, GML</td>
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<td>11.15-11.30</td>
<td><strong>Commentary</strong>  &lt;br&gt; Dr Michael Pearson, Chair, ACT Heritage Council</td>
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<td>11.30-12.30</td>
<td><strong>Discussion</strong>  &lt;br&gt; First Responses/Clarification and Prioritisation of Issues</td>
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<td>12.30-1.30</td>
<td>Lunch</td>
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<td><strong>Discussion</strong>  &lt;br&gt; Recommendations and Possible Improvements</td>
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<td>Afternoon tea</td>
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<td><strong>Discussion</strong>  &lt;br&gt; Recommendations and Possible Improvements</td>
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<td>4.45-4.55</td>
<td><strong>Rapporteur</strong>  &lt;br&gt; Colin Griffiths</td>
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<td>4.55-5.00</td>
<td><strong>Final Comments</strong></td>
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<td>5.00</td>
<td><strong>Close of Workshop</strong></td>
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Attachment B: Workshop Participants

Armes, John (ACT Historic Houses)
Ashley, Geoff (GML)
Blair, Dr Sandy
Bonyhady, Professor Tim (EPBC Review Expert Panel)
Bowler, Berlinda (Donald Horne Institute for Cultural Heritage)
Claoue-Long, Anne (ACT Heritage)
Domicelj AM, Joan
Dowling, Dr Peter (National Trust of Australia (ACT))
Dunlop, Elysah (Department of Defence, Estate Policy & Environment)
Ercan, Can (ACT Heritage)
Everett, Jono (Department of Parliamentary Services)
Flanagan, Mark (DEWHA)
Greenwood, John (Donald Horne Institute for Cultural Heritage)
Griffiths, Colin (ACNT)
Guthrie, Amy (GML)
Hansen, Karen (Department of Defence, Estate Policy & Environment)
Harkess, Donna (DEWHA)
Hawke, Dr Allan (EPBC Reviewer)
Hollow, Rosemary (DEWHA)
Ireland, Dr Tracy (Donald Horne Institute for Cultural Heritage, Australia ICOMOS Executive)
Jackson, Rachel (GML)
Lennon AM, Dr Jane
Lloyd, Megan (DEWHA)
Mackay AM, Richard (GML)
Marshall, Duncan
Martin AM, Eric (Chair, National Trust of Australia (ACT))
McDonald, Ashleigh (DEWHA)
McIntyre-Tamwoy, Dr Susan (President, Australia ICOMOS)
McMillan, Liz (DEWHA)
Meiklejohn, Paul (ACNT)
Newell, Lisa (Archaeological & Heritage Management Solutions)
Nizette, Mark (ACT Heritage)
Pearson, Dr Mike
Rappoport, Paul
Simpson, Sam (Department of Defence, Estate Policy & Environment)
Skippington, Cathy (DEWHA)
Sneddon, Dr Andrew (Uni of QLD - Social Sciences)
Sullivan AO, Sharon (Australian Heritage Council)
Treadwell, Maree (ACNT)
Truscott, Marilyn
Warnock, Rosemary (EPBC Review Expert Panel)
Wheeler, Jim (Archaeological & Heritage Management Solutions)
Williams, Alan (Archaeological & Heritage Management Solutions)
Wurst, Ilse (DEWHA)
Zatschler, Gerhard (ACT Heritage)
Attachment C: Presentations

- Mark Flanigan
- Dr Jane Lennon AM
- Richard Mackay AM
- Dr Michael Pearson
Independent Review of the EPBC Act

On 31 October 2008, the Minister for the Environment, Heritage and the Arts commissioned an independent review of the EPBC Act.

The review is required by section 522A of the Act.

The review will assess the operation of the Act and the extent to which the objects of the Act have been achieved.

The independent review of the Act is being undertaken by Dr Allan Hawke with support from a panel of experts.

The Department of the Environment, Water, Heritage and the Arts is providing secretariat support to Dr Hawke.

Dr Hawke and Expert Panel

Dr Allan Hawke
Rosemary Warnock
Mark Burgman
Tim Bonyhady
Paul Stein
Terms of Reference (ToR)

- The terms of reference require the review to examine the operation of the EPBC Act generally and the extent to which the objects of the Act have been achieved, including the effectiveness of the biodiversity and wildlife conservation arrangements in the Act.
- The review is guided by key Australian Government policy objectives, including to reduce and simplify regulatory burden, while maintaining appropriate and efficient environmental standards.

Public Consultation

- Stakeholder and community input and involvement are important components of the review.
- The first stage of the public consultation process was through a call for written submissions, which coincided with the release of a Discussion Paper.
- Approximately 220 written submissions were received.
- Public consultations were held in every capital city.

Public Consultation – Issues Raised

- Themes in submissions include:
  - Administration of the Act
  - Environmental Considerations
  - Protections
  - Impact of Native Vegetation
  - Sustainable Management
  - Public values
  - Economic
  - Environment
  - Efficiency
  - Engaging communities
  - Biodiversity

- Thematic analysis:
  - Administration and Implementation
  - Economic and Sustainability
  - Environmental Considerations
  - Public Values
  - Sustainable Management
Public Consultation and Other Inquiries

**Expert Workshops**
- Dr Hawke convened a biodiversity workshop with a range of experts from academia and within the Department to discuss broader landscape or ecosystem approaches to biodiversity conservation.
- ICOMOS (Australia) Heritage Workshop.

**Other inquiries**
- The Senate Standing Committee for Environment, Communication and the Arts’ inquiry into the operation of the EPBC Act
- COAG processes
  - Infrastructure Working Group (IWG)
  - Business Requirements Working Group (BRWG)
- Council for the Australian Federation (CAF) review

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**Interim Report**

- Dr Hawke’s Interim Report was released on Monday 29 June 2009.
- The purpose of the Interim Report is to reflect on the public submissions received and to identify issues of particular interest for the review.
- The Interim Report does not contain recommendations – these will be included in the final report.
- There will be a period for public comment on the Interim Report until 3 August 2009.

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**Key topics covered in the Interim Report include:**
- Commonwealth role in environmental matters in relation to the States and Territories
- Landscape approaches, including:
  - Strategic assessments
  - Bioregional planning
- Steamlining processes and performance audits
  - differences in listing approaches between Cth, State and Territory jurisdictions
- The appropriateness of the current matters of NES and potential new matters of NES, such as:
  - Greenhouse gas emissions;
  - Land clearance;
  - Water extraction; and
  - Wetlands of national importance
Headline Heritage Issues

- Complexity of the Act: current format can be difficult to navigate which may justify changes.
- Assessment and listing process: may be scope to simplify processes and make it more transparent.
- Management planning: may be scope for simplification of requirements and to ensure that focus is on achieving good heritage outcomes.
- Commonwealth heritage: Commonwealth/AHC could take a greater leadership role in the management of Commonwealth heritage as an exemplar of best practice management.

Interim Report

- There will be a period for public comment on the Interim Report until 3 August 2009.
- Dr Hawke and the Expert Panel will be holding a number of workshops with key industry and environmental NGO stakeholders throughout July and August 2009.
- The Final Report must be presented to the Minister on 31 October 2009.

Next Steps
EPBC Act 1999

- Welcomed as an advance – environment defined to include heritage
- Heritage is the Cinderella of the EPBC Act, a later addition [2003] to the omnibus legislation; not a neat fit with environmental regulation
- Public unaware of narrow scope of the heritage provisions of the Act – listing heritage icons and protecting heritage values of Commonwealth properties
- Unaware of what constitutes ‘outstanding value to the nation’ as expressed in the characteristics of a heritage place

Environment protection, biodiversity, attachment to place?

Summary of my submission to Hawke Review into EPBC Act

- The EPBC Act is too complex [932 pages], too inaccessible.
- Processes for listing heritage places and their management plans are convoluted and not easy to follow.
- There have been very few applications of the EPBC Act provisions to conserve historic heritage places.
- 13 other issues – see submission no.80!

Listing and assessment

- **Review - first key point**: scope for assessment and listing processes for National and Commonwealth Heritage to be simplified and made more transparent.
- **AHC primary role** - advise Minister on whether nominated places had heritage values ‘of outstanding value to the nation’ meriting protection by listing them under the Act, and whether Commonwealth owned places have heritage values worthy of protection under the Act.
- ‘National heritage defines the critical moments in our development as a nation and reflects achievements, joys and sorrows in the lives of Australians. It also encompasses those places that reveal the richness of Australia’s extraordinarily diverse natural heritage’ (Periodic report, 2007, p.14).

Listing and assessment - themes

- Awareness of outstanding values and their expression in a place requires broad reaching national conversation – thematic approach
- Only one theme so far: ‘Charting the Coastline’ - 2006, 400th anniversary of the Dutch exploration of Australian coast. Publication of theme report in 2005 (The Great South Land: the maritime exploration of Terra Australis) and nominations to the NHL:
  - Recherche Bay, Batavia Shipwreck Site and Survivor Camps Area 1629-Houtman Abrolhos and Dirk Hartog Landing Site 1616-Cape Inscription Area, Point Nepean and North Head Sydney.
  - 8 theme studies undertaken; requires rolling program 3 years ahead for a national conversation
National Conversation on our heritage values

Glenrowan
NHL
Do Ned's armour and Nolan's painting tell us about Irish small holders heritage of that land selection period in Victoria?

- Values of 116 places on the National Heritage List - highlighted in our national museums?

Listing and assessment – separate from management

- Minister - only consider heritage significance of places when accepting AHC advice for listing. EPBC Act currently allows Minister to consider a range of factors.

- This key issue has a long history, eg. listing of Fraser Island on the RNE in 1976

- Integrity of listing process based on clear understanding of heritage values, not on selecting heritage values compatible with some management scenarios

- Listing decisions follow objective deliberations by expert group arriving at statement of heritage values of significance in that place, and implying a hope that protection and conservation achievable.

Listing and assessment- whose role?

- [11.20] Under the EPBC Act heritage listing brings with it significant potential impacts on property rights and serious penalties for non-compliance.

- Current listing system grounded on the concept that if such statutory protections are to be extended then these decisions should be made by the Minister.

- Alternative view - existence or not of heritage value is best treated as a matter of expert analysis and judgment. Therefore listing should be undertaken by an independent body at arms length from government and politics. More likely to build understanding in the Australian public of what values are expressed in our heritage places.
Listing and assessment

- [11.22]… 2006 amendments to Act attempted to provide more open and consultative approach. More needed re greater public participation and transparency [in the assessment and listing of nationally significant places]. Current system complex; need to simplify the process. Some will perceive this negatively.

- Publishing initial assessments of potential NHL or CHL places for comment on AHC website would allow comments over longer period - possibly soliciting new historical or aesthetic information, and in the process educating the public about likely ‘heritage values of outstanding significance to the nation.’

- Review acknowledged [19.68] need for greater public access to heritage information

Is heritage of contemporary relevance?

Commonwealth heritage place protection

- CH List v. NHL—only level of heritage protection available to places within the Commonwealth’s control, very different purpose, similarity in listing process
- C’wealth legislation - addresses all levels of heritage under its jurisdiction: local through to World Heritage
- Greatest failure - nominations of Commonwealth Heritage places to CHL, initial 332 places, only 8 added by 2007
- Heritage strategies - basis of the Commonwealth heritage amendments to Act in 2004 + ‘stranded’ places awaiting transfer from RNE to CHL
- at 11.98, AHC recommended that agency strategies be linked to nominations/inclusion in the CHL
 Monitoring/reporting - background

- Review report, ch. 21-no mention of heritage
- National Heritage protocol – HCOANZ report to Ministerial Council
- Complex Act
  - lack of resources to promote implementation and better understanding of the Act
  - lack of commitment to good conservation outcomes cf. facilitating development
  - lack of suitable heritage expertise with sufficiently high level experience to administer the legislation while the protection decisions rest either with the Minister or the Approvals and Wildlife Division.
- And no formal reporting

 Monitoring/reporting

- Lack of formal reporting process - major deficiency
- [State of the Environment report - tabled every 5 years in Commonwealth Parliament; emerging trends 2006:]
  - Heritage - off political agenda cf 1990s
  - Public $ for historic built heritage declined
  - Recording of Indigenous heritage places increased
  - Continued interest in Aboriginal art forms - promotion as part of national identity
  - Cataloguing of heritage collections static
  - Move from object particularisation per se continues
  - Intangible heritage given more legitimacy with UNESCO Convention on Intangible Heritage
  - Lack of history teaching in schools related to heritage amnesia
  - Tertiary education continues in academic 'silos' - reinforced by conservation training programs based on separate disciplines
- RNE ground-breaking comprehensive scope, remains only national dataset about Australia's heritage, used in SoE since 1990s, sunset 2012, could act as statutory reference for Minister considering impacts under EPBC Act - show Commonwealth leadership in considering the state or condition of Australia's heritage.
- AHC under s.24A of its Act could be directed to prepare annual reports on state of nation's heritage - more frequent and specific than SoE reporting

 Resourcing

- Extraordinary to create new national system and then cut budgets every year since
- [11.118] AHC noted that resourcing is an issue in conducting its duties in relation to both EPBC Act and AHC Act
- Hawke Review noted, Ch 22, administration of the EPBC Act hampered by lack of resources - appropriately trained people, information and funds
- Senate Committee-'strongly supportive of more resources being allocated to ensure compliance with the Act.'
Monitoring compliance, protecting heritage

Conclusion

Hawke Review discussion of issues, clear evidence.
Action now to:
- streamline listing and assessment processes, make them more transparent to the public, engage in a national conversation on our heritage values,
- continue to separate listing from management considerations,
- ensure Commonwealth agencies protect all heritage values on their properties,
- give greater independence to AHC to list heritage places, monitor the condition of our heritage values and ensure adequate resourcing for these tasks.

Cinderella needs glass slippers for the task of heritage protection.
Australia's Heritage & the EPBC Act
Comments on the Interim Report
Richard Mackay         July 2009

Stated objectives:
• Enable public engagement
• Identify 'major themes'

Issues are gathered into 'themes':
The absence of draft recommendations limits opportunities for re-active public engagement.
This process mirrors the NHL listing process.

Port Arthur
• Transparency of listing process
• Cross jurisdictional issues

Why must the assessment process be confidential?
Should the focus be on Constitutional demarcation or the delivery of outcomes which conserve our heritage?
Jurisdictional overlap
COAG / IGAE / EPHC
plus:
VERY ABLE
Needs only ‘U’
to become:

LAUGHABLY EPIC COVERAGE!

Greater Blue Mountains

• Whose values?
• Places have multiple values?
• How can values be updated?

Values were present long before Commonwealth and State limits of power were determined. How and why can it take years to update value statements?
Places and Values

- ‘Places’ as part of ‘value’ statements?
- More than a methodological issue?

Cultural heritage has a well-developed approach to value-based management, which recognises that places are managed.

The Act seeks unsuccessfully to apply natural environment methods to cultural places.

Asset Managers

- CHL places have existing institutional owners
- The Act does not engage with existing asset management systems
- CHL heritage management therefore becomes tangential

Owners and managers of listed places require greater incentives and better recognition of their existing asset management.

Significant Impact?

- ‘Significant impact’ or cumulative impact?
- Integrity and authenticity
- Manage to retain ‘National Heritage’ values or all heritage values?

The threshold for understanding both ‘actions’ and ‘significant impact’ are, at best, obscure.
Monitoring / Evaluation

- No comprehensive review of management plan effectiveness
- Lack of monitoring
- Evaluation and review

Is this one area in which the Act provides a framework to steal shamelessly from the natural environment?

WWF, IUCN and the Nature Conservancy all have well developed models.

Simplify processes

Manage places to retain values
Australia's Heritage & the EPBC Act
Comments on the Interim Report

Richard Mackay
July 2009
The Interim Report, on the whole, simply summarises and discusses the submissions, rather than presenting draft recommendations that can be responded to. Some likely directions are suggested, but they are very tentative.

So my comments are more in the form of reinforcing points made already in submissions, rather than responding to the report.

Wearing my hat as Chair of the ACT Heritage Council I want to focus some of my comments on the Interim Report from the perspective of the State/Territory heritage agency.

The terms of reference for the review indicate it is to be guided by key Australian Government policy objectives, including (3 (b)) ‘to work in partnership with the States and Territories within an effective federal arrangement’, and (d) ‘the Australian Government’s deregulation agenda to reduce and simplify the regulatory burden on people, businesses and organisations, while maintaining appropriate and efficient environmental standards’

My view is that the Commonwealth’s emphasis has been on the deregulation agenda rather than on working in partnership to maintain appropriate and efficient environmental standards in heritage. The Commonwealth seems fixed on abrogating any obligations for heritage protection where it sees the States or Territories (and local government) as being ‘responsible’. Whether the States and Territories and local government are in a position to satisfactorily perform those ‘responsibilities’ seems not to be an issue. With regards heritage, the concept of Commonwealth leadership is dead.

In this regard the Australian Heritage Council submission recommends, very sensibly in my view, that rather than ceasing altogether in 2012, the RNE be permitted to cease in the jurisdiction of a state or territory when the Commonwealth is satisfied that all places in that jurisdiction are appropriately protected through other statutory instruments.

This is particularly relevant in the ACT, where one of the triggers for the National Capital Authority to recognise heritage values in planning decisions on Designated Land, where the ACT Heritage Act does not have planning power, is listing on the RNE. While many heritage places in Designated Land are now also entered in the ACT Heritage Register, which is the other trigger for NCA consideration of heritage values, at least a dozen RNE places are not yet so listed, and some are not yet nominated to the ACT Register, so it appears likely that a number of places currently protected by the Commonwealth because of their RNE status would cease to be protected from 2012.

In some other jurisdictions the RNE remains the most comprehensive listing of places with heritage values, and until such places can be recognized under the State and Territory or local government listing systems, the RNE remains a very important
information and lobbying tool for communities. To remove what little power RNE listing provides local communities before it can be replaced by state or local protection appears to me to be counter to the spirit of the Commonwealth’s deregulation ‘while maintaining appropriate and efficient environmental standards’. The Interim Report gives no real sense of where the Review Committee sits in relation to this issue. (11. 75, 1.95 ff)

Many heritage places in the ACT are protected through the Commonwealth system, as Commonwealth Heritage Listed and National Heritage Listed places (and many of these are also listed in the Act Heritage Register), and by the NCA via the National Capital Plan. This includes not only the obvious national icons, but many places related to the development of Canberra, the ANU and CSIRO. Confidence in the Commonwealth’s process in protecting the heritage of the Canberra community (and of other Australians) is heavily eroded by the poor review and audit systems applied to the management of CHL places.

In a rough count of 23 CHL places on Designated Land, less than half have a management plan. Where management plans exist, there appears to be little or no monitoring or audit of the effectiveness of the plan, by either the managing authority or DEWHA. One glaring case on National Land where the management plan process has totally collapsed is the High Court and National Gallery Precinct. This National Listed area has a management plan developed for the National Capital Authority and adopted in 2006 (of which I was a co-author). Since then the National Portrait Gallery has been constructed within the precinct, and the new entrance of the National Gallery is being constructed, both entailing substantial changes to both the significance and the management circumstances of the Precinct. Yet the Management Plan has not been revised, even though it is now a deeply flawed basis for the management of heritage values.

Given this local Territory perspective, I would urge the Review to firm up its Interim Report views on rationalizing the requirements for management plans and concentrating on good heritage outcomes instead of recipe-driven box-ticking (11.39, 11.41), and to make recommendations about ongoing review of the effectiveness and implementation of management plans. Amending the EPBC Act to require DEWHA to actively promote, monitor and report on the preparation and effective implementation and review of management plans would go far in restoring confidence in the system.

Having worked for a number of Commonwealth agencies on the preparation of heritage Strategies and Agency heritage registers, I strongly urge the Review to make recommendations about the formal linking of identification of heritage values in agency heritage audits, and the nomination of these places to the CHL. (11.76, 11.98). The perception from the heritage profession is that the Commonwealth is half hearted in its desire to lead by example, and that powerful or uninterested agencies can simply ignore heritage places not flagged by others, and carry on business as usual.

Empowering DEWHA with an obligation to monitor and publicly report on the completion or heritage registers and the transference of that information into the CHL either by DEWHA actions or those of managing agencies (as recommended by the
AHC), would make the regime much more effective.

The Interim Report categorises the issue of the difference between listing values and protecting places as ‘an important methodological issue’ (11.29). However, I think it has the potential to be a major management issue as well, especially where the Minister is making decisions about listings and actions. Past experience has shown that the Minister can make decisions that separate values from place to the extent that components of the place that are critical to representing values can be demolished on the contorted belief that intangible values can continue to exist in some sort of heritage virtual world, without the physical fabric that tied the values to the place.

The separation of values from place creates downstream problems, such as how to deal with new or altered values identified during management planning processes, when the ‘official values’ are locked into the initial legal listing. Changing the emphasis back to listing the physical place that demonstrates, reflects or is enriched by associated values, might help work around these methodological issues. (Review key point 11.23 - 11.31)