30 October 2013

Grant Caine
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Australian National Audit Office
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By email: EPBCActComplianceaudit@anao.gov.au

Dear Mr Caine

Performance audit of managing compliance with the Environment Protection and Biodiversity Conservation Act 1999 conditions of approval

Thank you for the letter of 3 October from your office inviting an Australia ICOMOS submission regarding this audit. Australia ICOMOS appreciates the invitation and opportunity to contribute.

Australia ICOMOS’ focus is on cultural heritage places, and the EPBC Act engages with such places especially through the National and Commonwealth Heritage Lists. The membership of Australia ICOMOS is involved with such places on a daily basis in all parts of Australia. By way of background, Australia ICOMOS was heavily involved in the development of the heritage provisions of the current legislation, and maintains a keen interest in its operations.

The issue raised in this audit is an important one, which is part of a suite of concerns about how well the EPBC Act performs in actually achieving the desired conservation objectives. In particular, in the case of National Heritage places, it is possible that the Commonwealth is the only regulatory body, so the EPBC Act plays a vital role.

Australia ICOMOS makes the following key points:

- we are not aware of any publicly available data on the performance of the Department in managing compliance with conditions of approval, and are therefore not able to make any meaningful comment. Hopefully the audit will develop or access such data;
- there is an ongoing staffing crisis in the heritage branches of the Department. A recent answer to a Senate Estimates question on notice indicated that, ‘Over the last four years (2010-11 to 2013-14) the total reduction in heritage staffing has been 54 FTE.’ We understand this to be at least 50% of the heritage staff that has been lost, and suspect historic heritage, and possibly Indigenous heritage staffing losses have been greatest. As a result, the capacity of the heritage staff to undertake or contribute to any compliance and enforcement activities is minimal and unlikely to be adequate. The recent announcement that a further 150 staff are to be lost from the Department cannot improve this very difficult situation;
- there is uncertainty about the heritage expertise and capacity of staff who do manage compliance, as the compliance function is understood to lie outside of the remaining heritage branches of the Department. It is not clear that separating the compliance function for heritage from the actual heritage branches is the best arrangement for effective compliance monitoring;
the bigger questions about the effectiveness of the EPBC Act remain – is it actually effective in achieving protection? It is noted that the Hawke review did not consider this fundamental question.

I can be contacted directly on (08) 8362 6399 (work) or at liz@mcdougallvines.com.au.

Yours faithfully

MS ELIZABETH VINES OAM, FRAIA, MICOMOS
President, Australia ICOMOS