

2002

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (NO.1) 2002

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for the Environment and Heritage,
The Hon. Dr David Kemp MP)

ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (NO.1) 2002

GENERAL OUTLINE

The objects of this Bill are:

- To establish a Commonwealth heritage regime that will focus on matters of national significance and Commonwealth responsibility;
- To list places of national heritage significance in a National Heritage List using a process of community consultation, expert advice and ministerial responsibility;
- To protect and manage places in the National Heritage List;
- To list places in Commonwealth areas with heritage significance in a Commonwealth Heritage List using a process of community consultation, expert advice and ministerial responsibility;
- To advise Commonwealth agencies on actions in relation to places in the Commonwealth Heritage List; and
- To provide for the management of places in the Commonwealth Heritage List.

The Bill comprises four schedules, three of which amend the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

National Heritage List (Schedule 1)

The Bill provides for heritage places of national significance in both Australia and abroad to be included in a National Heritage List. A place in the National Heritage List will be recognised as an additional matter of national environmental significance under the EPBC Act. The EPBC Act will then regulate an action that has, will have, or is likely to have a significant impact on the National Heritage values of a place listed in the National Heritage List.

The Minister may only include a place in the National Heritage List if satisfied that the place has one or more National Heritage values. The Minister may ask the Australian Heritage Council, an expert heritage advisory body, for an assessment of the place's National Heritage values and invite public comments on the inclusion of the place in the National Heritage List.

The Minister must make plans for managing National Heritage places that are entirely within Commonwealth areas and the Commonwealth must try to prepare and implement plans for managing other National Heritage places, in co-operation with the States and self-governing Territories. In making plans for a National Heritage place, the Minister must also take into account the precautionary principle.

The Commonwealth can provide assistance for the identification, promotion, protection or conservation of National Heritage places.

Commonwealth Heritage List (Schedule 1)

The Minister may include a place in the Commonwealth Heritage List if the place is in a Commonwealth area (either in Australia or abroad) and the Minister is satisfied that the place has one or more Commonwealth Heritage values. The Minister may ask the Australian Heritage Council, an expert heritage advisory body, for an assessment of the place's Commonwealth Heritage values and invite public comments on the inclusion of the place in the Commonwealth Heritage List.

The Bill requires that a Commonwealth agency must ask the Minister for advice before taking an action that has, will have or is likely to have a significant impact on a Commonwealth Heritage place. However the agency is not required to ask the Minister's advice if the proposed action is taken in accordance with a management plan endorsed by the Minister. In endorsing plans for a Commonwealth Heritage place, the Minister must also take into account the precautionary principle.

Commonwealth agencies must make plans for managing Commonwealth Heritage places and assist in the identification of potential heritage places under their ownership or control through the development of heritage strategies and heritage registers.

The Commonwealth can provide assistance for the identification, promotion, protection or conservation of Commonwealth Heritage places.

Conservation of biodiversity and heritage (Schedule 1)

The Bill provides for conservation agreements between the Commonwealth and persons for the protection and conservation of heritage in the Australian jurisdiction. Conservation agreements must result in a net benefit to the conservation of heritage in the place covered by the agreement.

The Commonwealth may provide financial or other assistance.

Advice on Indigenous heritage (Schedule 2)

The Bill provides for the Australian Heritage Council to obtain advice from the Director of Indigenous Heritage Protection on a place's indigenous heritage values.

Register of the National Estate (Schedule 3)

Places on the Register of the National Estate that are wholly within a Commonwealth area may be taken to be included in the Commonwealth Heritage List if the Minister so determines within six months of the new regime commencing.

Delegation (Schedule 4)

The Minister or the Secretary may delegate any powers under the EPBC Act to the Director of National Parks.

Acts replaced

The Bill is presented in conjunction with the Australian Heritage Council Bill 2002; together, the Bills replace the *Australian Heritage Commission Act 1975*.

FINANCIAL IMPACT STATEMENT

The Environment and Heritage Legislation Amendment Bill (No.1) 2002, along with the Australian Heritage Council Bill 2002, will not cost the Commonwealth more than the existing legislative arrangements being replaced.

REGULATION IMPACT STATEMENT

PROBLEM

Duplication

The Commonwealth's existing heritage conservation regime is now seriously outdated and subject to significant limitations. Under the *Australian Heritage Commission Act 1975* (AHC Act), over 13 000 places are listed on the Register of the National Estate. Some of these places are of national significance but many would properly be regarded as places of State or local significance. Therefore, the Commonwealth is often involved in matters that are not appropriately the responsibility of a national government. As a result, the current regime is characterised by unnecessary inter-governmental duplication which causes uncertainty and delay for business and industry.

It is also important to recognise that the AHC Act provides no substantive protection for heritage places of national significance. The limited procedural safeguards included in the AHC Act fall well short of contemporary best practice in heritage conservation.

The deficiencies in the existing regime can be summarised as follows:

- a lack of an overarching national heritage policy on one hand and, on the other, a Commonwealth heritage regime that was involved, in great detail, at a local and State level;
- duplication in heritage laws and processes between the Commonwealth, States, Territories and local government;
- the Commonwealth being repeatedly involved in heritage protection controversies that were more properly the responsibility of the States and local government;
- community confusion about the various heritage regimes and lists in operation; and
- a lack of real protection for nationally-important heritage places.

i. Government roles and responsibilities

The current Commonwealth regime was established by the AHC Act in 1975. At that time, it was Australia's only heritage protection statute. Now all States and Territories have heritage protection legislation and many local government bodies identify and protect heritage in local planning instruments. The Commonwealth's listing of places has now been widely duplicated in State and local lists with the result that different pieces of protection and planning law can apply to one site.

The Council of Australian Governments (COAG) (1997 Agreement, section 6) agreed on the need for the rationalisation of existing Commonwealth/State arrangements for the identification, protection and management of places of heritage significance. COAG accepted that the Commonwealth's role should focus on the protection of places of national heritage significance and ensure Commonwealth compliance with State heritage and planning laws.

Implementation of the strategy envisaged by COAG was subject to widespread consultation through 1998 and 1999. It is now proposed that the Commonwealth take action to recognise the roles and responsibilities of the Commonwealth and the States consistent with the COAG Agreement.

ii. Listing processes

The Commonwealth, States, Territories and many non-government and independent organisations maintain lists of heritage places for statutory and non-statutory purposes. Multiple listing has generated confusion in the community about the implications of listing and the relationships between registers.

At the Commonwealth level, the Register of the National Estate (RNE) is a statutory list covering natural and cultural heritage places. It includes places significant at the national, State and local level. However, the RNE does not differentiate between the different levels of significance, and it is sometimes confused with other lists, including the World Heritage List, Ramsar list, State lists, and National Trust registers.

Approval processes related to a place that is listed on more than one statutory list and involving more than one regulatory authority can result in unnecessary delays, costs and uncertainty for both industry and the community.

iii. National Heritage List

The RNE contains places of all levels of significance but does not differentiate between them. COAG (1997) agreed to the establishment of a list of places of national heritage significance and accepted that this be a further matter of *national environmental significance*. The EPBC Act provides a framework for the protection of matters of national environmental significance.

It is now proposed that the identification and protection of sites of national heritage significance be included as a matter of national environmental significance in that Act. Other matters of national environmental significance, as identified by COAG, are already recognised in the EPBC Act framework.

Why is government action needed to correct the problem?

The COAG move to rationalise existing Commonwealth/State heritage management arrangements cannot be implemented without Commonwealth legislative change. The operation of the AHC Act duplicates State responsibilities and fails to provide substantive protection for heritage places of national significance. In addition, the AHC Act does not provide for the identification of places of national heritage significance as envisaged by COAG. Legislation is required to address these two shortcomings.

OBJECTIVES

What are the objectives of government action?

- To assign responsibility for identifying, protecting and managing heritage places to the appropriate level of government;
- To ensure that heritage management systems are compatible, complementary and streamlined across all levels of government to minimise duplication and provide certainty to property owners, decision makers and the community;
- To ensure that nationally-significant heritage places are identified and protected;
- To facilitate the protection of places of heritage significance on Commonwealth land (other than sites of national significance); and

- To retain the Register of the National Estate in a modified form as a valuable information resource that will provide guidance to the Minister for the Environment and Heritage when making decisions on the impact of an action on the environment under the EPBC Act.

Is there a regulation/policy currently in place? Who administers it?

This amendment bill is designed to replace the AHC Act which is administered by the Department of the Environment and Heritage.

The authority for the establishment of a National Heritage List arises from the following:

(i) The 1997 Council of Australian Governments *Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment* which agreed to:

‘the rationalisation of the existing Commonwealth/State arrangements for the identification, protection and management of places of heritage significance through the development...of a co-operative national heritage places strategy which will....provide for the establishment of a list of places of national heritage significance.’

(ii) The *Consultation Paper on the Reform of Commonwealth Environment Legislation* issued by the Minister in 1998 which stated that:

‘The National Strategy should provide for the preparation of a national list of heritage places of exceptional value and importance to the nation as a whole.’ (p.35)

(iii) Coalition election policy *Our Living Heritage* (1998):

‘Support the establishment of a national list of heritage places for which the Commonwealth will have protective powers.’ (p.58)

(iv) The *National Strategy for Australia’s Heritage Places: A Commonwealth Consultation Paper*, issued by the Minister in 1999, which stated that the Commonwealth, in partnership with the States, would:

‘Identify and maintain a comprehensive list of places of national significance through a legislatively-defined process’ (p.11)

(v) Coalition election policy *A Better Environment* (2001):

‘Ensure that the existing Register of the National Estate continues to be recognised for the purposes of public education and the promotion of heritage conservation generally’. (p.50)

‘The new Commonwealth heritage regime, in particular the establishment of a Commonwealth Heritage List, has addressed a number of the key aspects of the Schofield Report into the management of Commonwealth-owned properties. The Coalition will continue to adopt the best practice heritage management approach in Commonwealth agencies, as articulated in the Schofield Report’. (p. 52)

OPTIONS

The only options available to the Government are: (i) to continue with the existing Commonwealth/State heritage regimes (which fails to give effect to the COAG Agreement) or (ii) to implement the COAG Agreement through the reform of Commonwealth heritage legislation.

Changes to the legislation will affect government, business, and the community to varying degrees. The most significant regulatory impacts would arise from changes to the Commonwealth's heritage assessment and approvals regime.

How action could be taken

In reforming its heritage legislation, the Government can do one of two things: (i) amend the AHC Act or (ii) incorporate a new heritage regime into the existing EPBC Act.

The required amendments to the AHC Act would be extensive. It would be necessary to establish a substantive protection regime, prescribe an approval process for proposed actions, a framework for entering into bilateral and other agreements, the establishment of different levels of assessment and a process for the establishment of management plans. To follow this route would, therefore, involve extensive changes to the older legislation and could lead to duplication of processes. It would, in particular, require duplicating the existing EPBC Act framework. This would be contrary to COAG's commitment to reduce such duplication in Commonwealth/State environmental responsibilities and to increase stakeholder certainty in approvals processes.

Incorporating a heritage protection regime within the EPBC Act would be legislatively simpler. All it would require is the inclusion of heritage as an additional matter of *national environmental significance* (Part 3). The Government's objectives would then be met by relying on the protection framework already established in the EPBC Act. This approach would also be in keeping with COAG's desire to simplify the assessment of nationally-significant heritage matters and to provide a robust framework for Federal-State co-operation on environmental matters.

Features common to both legislative approaches include:

- Limiting Commonwealth involvement in heritage assessment and approval processes to those heritage matters of national significance;
- Proponents will be able to initiate the triggering process in the Act;
- Decisions on Commonwealth involvement will be made early in the process and will be binding;
- A transparent legislative mechanism for the accreditation of State assessment processes and, in some cases, State decisions will be adopted. The goal will be to maximise reliance on State processes which meet appropriate standards. Bilateral agreements will provide for Commonwealth accreditation of State processes and, in appropriate cases, State decisions (for example, decisions under agreed management plans). Accordingly, bilateral agreements will allow the Commonwealth to accredit State systems which meet specified criteria. The Bill contains provisions to ensure that the level of protection afforded by State processes must be at least equivalent to that provided by Commonwealth processes; and
- Providing for voluntary conservation agreements to protect heritage values on private and public land.

IMPACT ANALYSIS

Who is affected by the problem, and who is likely to be affected by its proposed solutions?

The main parties affected by the problem and its proposed solutions are the Commonwealth, States and Territories, and industry.

The community will also be affected by changes in the management of the heritage environment to the extent that roles and responsibilities will be clearly established, including the recognition that the Commonwealth's role should focus on places of national heritage significance.

Identify and categorise the expected impacts of the proposed options as likely benefits, or likely costs. Determine which groups are likely to experience these benefits and costs.

Option 1: Status quo

Benefits

The heritage stakeholder community has a strong historical attachment to the Register of the National Estate which would be maintained in its present form under the status quo.

Costs

The main costs to the community, if the status quo is maintained, is that heritage places of national significance will not enjoy any substantive protection under Commonwealth law.

The main costs to the Commonwealth are:

- unnecessary duplication of State assessment and approval processes will continue;
- the Commonwealth will continue to assess matters that are of State and local heritage significance only; and
- some proposals affecting matters of genuine national heritage significance will continue to escape Commonwealth assessment and approval.

The main costs to the States arise from:

- continuing unnecessary duplication of Commonwealth assessment and approval processes; and
- uncertainty about whether and when the Commonwealth will become involved in environmental assessment and approval and the resulting high cost of managing inquiries and debates when the Commonwealth does become involved.

The main costs to industry are:

- some proposals will continue to be unnecessarily subject to both Commonwealth and State assessment and approvals;
- continuing uncertainty about whether Commonwealth assessment and approval processes are triggered, and associated delays in assessment;
- continuing delays owing to Commonwealth assessment and approval processes being triggered late in the development process; and
- the expense and delay of often being involved in major land use debates and inquiries triggered by the referral process involving places on the RNE.

Option 2: Reform of Commonwealth heritage legislation

Benefits

The main benefits to the Commonwealth are:

- improved efficiency and transparency in decision making on heritage matters involving the Commonwealth and the States;
- more focused Commonwealth involvement in heritage issues based on matters of national significance, which will lead to better use of Commonwealth resources and improved environmental outcomes;
- the removal of unnecessary duplication of heritage assessment and approval processes through the framework for accreditation of State processes and decisions;
- Commonwealth's level of involvement determined early in an assessment and approvals process;
- removal of existing indirect triggers will remove the obligation (and costs) of Commonwealth Ministers and Departments requiring impact assessment for matters that are of State or local significance only;
- opportunities for co-ordinating and streamlining Commonwealth decision-making on heritage matters involving the States;
- clear Commonwealth role in heritage matters and clear arrangements for determining whether matters of national heritage significance exist;
- the total cost of assessments and approvals processes to the Government sector will be reduced, because duplications and inefficiencies are being eliminated, particularly through accreditation and bilateral agreements;
- use of bilateral agreements, conservation agreements and other instruments to encourage a focus on long-term planning and monitoring; and
- improved protection and management of Commonwealth Heritage places.

The main benefits to States are:

- recognition that heritage matters of State or local significance will be dealt with by the States, together with greater certainty of Commonwealth responsibilities and involvement in heritage issues based on matters of national significance;
- Commonwealth will no longer be involved in heritage matters that are of only State or local significance;
- improved efficiency and transparency in decision making on heritage matters involving the Commonwealth and the States with mechanisms that involve the States in decision making;
- clear arrangements for determining whether matters of national heritage significance exist; and
- removal of unnecessary duplication of Commonwealth environmental assessment and approval processes through streamlined accreditation arrangements.

The main benefits to industry are:

- greater certainty of Commonwealth and State roles, responsibilities and processes relating to the environment, particularly Commonwealth involvement in heritage issues;
- simplified and clearer framework in which industry can pursue proposals requiring development approval;
- a framework for improved accreditation arrangements whereby only one government heritage assessment and approval process will be applied to an activity or proposal - the government best placed to undertake an assessment will do so with unnecessary duplication removed;
- a framework for integrated Commonwealth and State processes and improved public interfaces for dealing with activities and proposals involving matters of national heritage significance;

- environmental and development approvals that are not of national heritage significance will be considered in accordance with State environmental and planning processes (unless the action is being undertaken by the Commonwealth or is in a Commonwealth area);
- the delay, uncertainty and inefficiency associated with indirect triggers for Commonwealth assessments will be eliminated;
- the legislation will require an early, binding decision by the Commonwealth on whether its assessment process will apply;
- there will be set timeframes within which decisions must be made; and
- the increased use of voluntary conservation agreements, which allow a flexible approach to conserving heritage on private land.

The main benefits to the community are:

- enhanced protection of heritage places especially heritage places of national significance, with potential benefits such as better environmental and social outcomes; and
- while the Bill retains current opportunities for community input to heritage assessments and approvals, earlier triggering and a more certain process with explicit time-lines will ensure that community comment is considered earlier in the development process, and is therefore more effective. Decisions will continue to be transparent, and information will continue to be available to the public.

Costs

Most of the costs of the revised assessment processes will be borne by Government, and will arise from the need to revise regulations and procedures, and negotiate and implement bilateral agreements. To some degree, these costs are being incurred now by the commencement of the EPBC Act and, by including heritage as a matter of national environmental significance, the Government is able to minimise any additional administrative costs arising from its proposed changes to heritage assessment processes. Indeed, the Government expects that the costs of the administration of the proposed regime will be met from the resources redirected from the administration of the AHC Act.

Minor costs to industry will result from the need to become familiar with the new procedures and train staff to comply with them. But as industry will, in any event, have to become familiar with the assessment provisions of the EPBC Act, the additional compliance costs associated with making heritage a matter of national environmental significance under that Act should not be significant.

The inclusion of heritage as a specific obligation under the EPBC Act framework will clarify the somewhat unclear heritage protection obligations which currently exist and should also help minimise overall administrative and compliance costs.

Total costs associated with the operation of Commonwealth involvement in State heritage matters are expected to be significantly reduced as the Commonwealth will no longer be involved in matters that are the proper responsibility of the States.

CONSULTATION

The Review of Commonwealth-State Roles and Responsibilities for the Environment involved extensive consultation between the Commonwealth, States, Territories, and the Australian Local Government Association. The Review also involved consultation with relevant Ministerial Councils and non-government organisations. In December 1996, the views of key non-government organisations on a consultation paper were sought. Submissions from these organisations were

considered by the senior level Working Group conducting the review, which also held discussions with representatives of key community organisations.

The consultation process included national workshops on technical issues, the release of discussion documents, the holding of the 1998 National Heritage Convention (facilitated by the Australian Heritage Commission) and the entering into detailed discussions with the States and Territories at a Ministerial and senior officials level.

Consultation on the reform of Commonwealth heritage legislation was primarily through Senator Hill's *Consultation Paper on the Reform of Commonwealth Environment Legislation* (1998) and the *National Strategy for Australia's Heritage Places: A Commonwealth Consultation Paper* issued by the Minister in April 1999.

Who are the main affected parties? What are the views of those parties?

The main affected parties and their views are:

Governments

There was acceptance, by the States and Territories, of a number of key issues:

- the heritage roles and responsibilities of Governments;
- the process for listing places of national heritage significance; and
- the principle that the National List should aim to include the truly *outstanding* places of national heritage significance.

Agreement could not be reached on:

- the referral of State powers to the Commonwealth to enable the full protection of nationally-listed places;
- the request by States for a veto on the nomination of a place for national listing; and
- the development of common heritage protection standards.

Industry

Industry generally supports the substance of the proposed reforms, particularly the clarification of Commonwealth and State roles and responsibilities, the efficiencies that will be gained through the streamlining of the environmental assessment and approvals processes, and the simplification of the regulatory regime. Industry notes that the precise benefits of the reforms will, to some extent, depend upon implementation of accreditation arrangements and bilateral agreements between the Commonwealth and individual States and Territories.

Conservation organisations

Conservation groups are concerned that accreditation of State and Territory processes may reduce the overall level of protection for the environment. There is also concern that approaches such as the use of bilateral agreements should be transparent, and provide scope for public involvement. Conservation organisations generally support the suggested reforms relating to an integrated approach to the conservation of heritage. There was some general concern from conservation groups regarding any possible erosion of the independence of the Australian Heritage Commission. Many of the groups are also concerned that the Register of the National Estate (RNE) may not be retained. The retention of the RNE in a modified form in the revised Bills will go some way towards addressing these concerns without creating any additional regulatory impact.

CONCLUSION AND RECOMMENDED OPTION

Repealing the AHC Act and amending the EPBC Act to provide for the establishment, by the Minister, of a list of places of national heritage significance is the preferred option because it will:

- implement the Heads of Agreement on Commonwealth/State Roles and Responsibility for the Environment;
- focus Commonwealth involvement in heritage matters of national significance and eliminate the need for Commonwealth involvement in matters which are properly the responsibility of State or local governments;
- deliver significant ongoing benefits to the Commonwealth, States and Territories, and industry, particularly in terms of more streamlined and efficient heritage assessment and approvals processes; and
- implement the Government's election policy commitments in relation to heritage.

Heritage assessment and approval procedures will be simplified and streamlined. Circumstances under which Commonwealth processes are triggered will be much clearer than at present, and clear time-lines will also be set out.

Consultation with business and industry demonstrates support for, and understanding of, the proposed changes.

The proposed amendments are also likely to reduce compliance costs for business and for non-government organisations.

IMPLEMENTATION AND REVIEW

The Environment and Heritage Legislation Amendment Bill was originally introduced into the Federal Parliament in December 2000. The Bill has since lapsed and it is envisaged that it will be reintroduced with some amendments into the Winter 2002 session of the Federal Parliament. It is hoped that the Bill will be passed in the second half of 2002 and come into force at the beginning of 2003. Thereafter, the Government will monitor the operation of the amendments on an on-going basis.

ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (NO.1) 2002

NOTES ON CLAUSES AND ITEMS

Clause 1: Short Title

- 1 This item provides for the Act to be cited as the *Environment and Heritage Legislation Act (No.1) 2002*.

Clause 2: Commencement

- 2 This item provides that Sections 1-3 of the Act will commence on the day on which it receives Royal Assent. It also provides that Schedule 1 will commence on a day to be fixed by Proclamation. Schedule 2 commences immediately after the commencement of Schedule 1 or when the Director of Indigenous Heritage Protection is established under the *Aboriginal and Torres Strait Islander Heritage Protection Act* if that Act occurs after the commencement of Schedule 1. Schedule 3 will commence at the same time as Schedule 1. Schedule 4 will commence on the day on which this Act receives the Royal Assent.
- 3 The item also sets out a requirement that should only one of the Heritage Bills, in the package of three Bills, pass through Parliament, then its operation will not come into effect until the other Bills are passed.

Clause 3: Schedule(s)

- 4 This item sets out the effects of Schedules to this Act.

SCHEDULE 1 – AMENDMENTS RELATING TO THE NATIONAL HERITAGE LIST AND COMMONWEALTH HERITAGE LIST

Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

Item 1 – After paragraph 3(1)(c)

- 5 This item amends section 3(1)(c) of the EPBC Act to include the protection and conservation of heritage in the Objects of the Act.

Item 2 – After paragraph 3(2)(f)

- 6 This item amends section 3(2)(f) of the EPBC Act to recognise that, in order to achieve its objects, the EPBC Act includes provisions to identify places for the National Heritage List and the Commonwealth Heritage List and to enhance the protection, conservation and presentation of those places.

Item 3 – Subsection 12(4)

- 7 This item amends the EPBC Act so that the definition of natural and cultural heritage in this instance only applies to Section 12.

Item 4 – After Subdivision A of Division 1 of Part 3

Subdivision AA – National Heritage

Section 15B – Requirement for approval of activities with a significant impact on a National Heritage place

- 8 This section has a range of provisions that prohibits an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place except:

- i. where a person has obtained the approval of the Minister for taking the action; or
- ii. where a bilateral agreement provides that the action does not require an approval; or
- iii. where a declaration provides that an action does not require an approval.

9 The section is structured so as to rely upon the available heads of constitutional power to the greatest extent possible. Civil penalties apply for non-compliance.

Section 15C – Offences relating to National Heritage places

10 This section mirrors section 15B in regulating actions in relation to National Heritage places. However, it establishes criminal offences in the event of non-compliance.

Item 5 - Subsection 26(3) (note)

11 This item provides a new note which clarifies that Section 26 (requirement for approval of activities involving Commonwealth land) also provides for the protection of the heritage values of a Commonwealth Heritage place because the definition of *environment* in section 528 includes the heritage values of a place.

Item 6 - Subsection 27A(6) (note 2)

12 This item provides a new note which clarifies that Section 27A (offences relating to Commonwealth land) also provides for the protection of the heritage values of a Commonwealth Heritage place because the definition of *environment* in section 528 includes the heritage values of a place.

Item 7 - After Subdivision A of Division 2 of Part 3

Subdivision AA – Protection of Commonwealth Heritage places outside the Australian jurisdiction

27B Requirement for approval of actions with significant impact on Commonwealth Heritage places overseas

13 This section provides that a person must not take an action that has, will have or is likely to have a significant impact on the Commonwealth Heritage values of a Commonwealth Heritage place overseas except:

- (i) where a person has obtained the approval of the Minister for taking the action; or
- (ii) where a bilateral agreement provides that the action does not require an approval; or
- (iii) where a declaration provides that an action does not require an approval.

14 This section does not apply to actions taken under Regional Forest Agreements or to authorised actions in the Great Barrier Reef Marine Park.

27C – Offences relating to Commonwealth Heritage places overseas

15 This section mirrors section 27B in regulating actions in relation to Commonwealth Heritage places overseas. However, it establishes criminal offences in the event of non-compliance.

Item 8 - Application

16 This item provides an exemption from seeking an approval for an action that has, will have or is likely to have an impact on the heritage values of a National Heritage place or a Commonwealth Heritage place, if the Minister had already decided - under section 75 of the EPBC Act prior to the commencement of this Schedule - whether that action was a controlled action or not.

Item 9 - Subsection 28(1) (note)

17 This item provides a new note which clarifies that Section 28 (offences relating to Commonwealth actions) also provides for the protection of the heritage values of a Commonwealth Heritage place because the definition of *environment* in section 528 includes the heritage values of a place. For the same reason, the section provides for the protection of places entered in the Register of the National Estate.

Item 10 - At the end of Division 2 of Part 3

Subdivision C – Actions that are taken to be covered by this Division

28AA Actions that are taken to be covered by this Division

18 This section enables the Environment Minister, where appropriate, to recommend to the Governor-General that regulations be made identifying actions (or classes of actions) that are taken to have a significant impact on the environment in Commonwealth areas. The effect of this provision is to extend the scope of the existing provisions in Division 2 of Part 3 of the Act to cover a particular action or class of actions so that actions in a class specified in a regulation will be a controlled action for the purposes of the Act. Providing the Environment Minister with the ability to make such regulations will provide greater certainty for stakeholders in relation to the actions that will be covered by the provisions in Division 2 of Part 3.

Item 11 – Section 34 (after table item 1A)

19 This item adds National Heritage values in a National Heritage place as an additional matter protected by a provision of Part 3 (in this case, sections 15B and 15C).

Item 12 – Section 34 (after table item 16B)

20 This item adds the environment in a Commonwealth Heritage place outside the Australian jurisdiction as an additional matter protected by a provision of Part 3 (in this case, sections 27B and 27C(1) and (2)).

Item 13 – After section 34B

34BA Declarations relating to National Heritage places

21 This item sets out prerequisites for making declarations and accrediting management plans in relation to a National Heritage place. The intention of the item is to ensure that the declarations and management plans promote the management of the place in accordance with the National Heritage management principles.

Item 14 – At the end of Subdivision C of Division 2 of Part 4

34F Declarations relating to Commonwealth Heritage places

22 This item sets out prerequisites for making declarations and accrediting management plans in relation to a Commonwealth Heritage place. The intention of the item is to ensure that the declarations and management plans promote the management of the place in accordance with the Commonwealth Heritage management principles.

Item 15 – After section 51

51A Agreements relating to National Heritage places

23 This item sets out prerequisites for entering into a bilateral agreement concerning a National

Heritage place. The intention of the item is to ensure that a bilateral agreement, and any bilaterally accredited management plan, promotes the management of the place in accordance with the National Heritage management principles.

Item 16 - After subsection 74(1)

Inviting comments from ATSIC

24 This item requires the Environment Minister to invite the Aboriginal and Torres Strait Islander Commission to comment on any proposal to take an action which may have a significant impact on the indigenous heritage values of a National or Commonwealth Heritage place.

Item 17 – Subsection 84(3A)

25 The item provides for the Minister to declare that certain actions covered by declaration in relation to National Heritage places do not require assessment under this Part.

Item 18 – After section 137

137A – Requirements for decisions about National Heritage places

26 The item requires the Minister to take into account the National Heritage management principles and any other agreement that exists in relation to a National Heritage place when making decisions in relation to sections 15B and 15C.

Item 19 – Chapter 5 (heading)

27 This item amends the heading in Chapter 5 of the Act.

Item 20 – After paragraph 176(4)(b)

28 This item enables the Minister to include provisions about heritage values in a bioregional plan.

Item 21 – Paragraph 304(a)

29 This item expands the stated object of Part 14 to include conservation agreements that protect and conserve the values of heritage places.

Item 22 – Section 304

30 This item amends the definition of a conservation agreement to include agreements whose primary object is to enhance the conservation of heritage values or heritage values and biodiversity.

Item 23 – Subsections 305(1) to (3)

31 This item enables the Minister to enter into conservation agreements for the protection and conservation of heritage values. The section is further amended so that the Minister must not enter into a conservation agreement unless it results in a net benefit to the conservation of heritage values and is not inconsistent with either the Australian World Heritage management principles, the National Heritage management principles or the Commonwealth Heritage management principles. The Minister must also have regard to any matters prescribed by the regulations.

Item 24 - Saving of agreements

32 This item provides that the amendment of section 305 by this Schedule does not affect the validity of a conservation agreement made before the commencement of this Schedule.

Item 25 – Saving of matters prescribed by the regulations

33 This item provides that matters prescribed by the regulations for the purposes of section 305 are not affected by the commencement of this Schedule.

Item 26 – Subsection 305(6)

34 This item provides that subsection 305(6) does not apply to conservation agreements in relation to the protection and conservation of heritage values.

Item 27 – Paragraphs 306(1)(a) and (b)

35 This item describes some of the matters that may be included in a conservation agreement in relation to the protection and conservation of heritage values.

Item 28 – Paragraphs 306(2)(a) and (b)

36 This item further describes some of the matters that may be included in a conservation agreement in relation to the protection and conservation of heritage values.

Item 29 – Subsection 309(3)

37 This item provides that the requirement to publish a conservation agreement under subsection 309(1) does not apply if the Minister is satisfied that it would result in harm being done to the heritage values of a place.

Item 30 – At the end of section 323

38 In this instance, the definition of natural and cultural heritage applies only to section 323.

Item 31 - After Division 1 of Part 15

Division 1A – Managing National Heritage places

Subdivision A- Preliminary

Section 324A – Simplified outline of this Division

39 This section provides a simplified outline of Division 1A.

Section 324B – Extension to places etc. outside the Australian jurisdiction

40 This section extends the provisions of Division 1A to places, acts and omissions outside the Australian jurisdiction, unless otherwise stated.

Subdivision B – The National Heritage List

Section 324C – The National Heritage List

41 This section sets out what constitutes the National Heritage List, what it must specify and how it must be kept.

42 The Minister may include a place in the National Heritage List if satisfied that the place has one or more National Heritage values. The Minister has discretion as to whether to include a place with National Heritage values in the National Heritage List.

43 This section also provides a definition of a *National Heritage place* in the Act.

Section 324D – Meaning of *National Heritage values*

44 This section provides a definition of *National Heritage value* in the Act. If a place is included

in the National Heritage List and National Heritage values for that place are specified in the National Heritage List, the place is considered to have National Heritage values.

- 45 In deciding whether a place has National Heritage values, the Minister must consider the criteria in the regulations.
- 46 The regulations must prescribe criteria for natural, indigenous and historic heritage values of places.

Section 324E – Nominations of places

47 This section sets out how someone may nominate a place for the National Heritage List and what must be done with the nomination. It also sets out that:

- i the Minister may ask the nominator for additional information and reject the nomination if the information is not provided within a specified period; or
- ii the Minister may reject the nomination if satisfied that it is vexatious, frivolous or not made in good faith; or
- iii the Minister must ask the Australian Heritage Council for an assessment of the place's National Heritage values unless he or she rejects the nomination for the above reasons.

48 The Minister must advise the nominator of his or her decision to reject a nomination as soon as reasonably practicable.

49 The section also provides for the Minister to invite nominations of places within a specified national heritage theme.

50 The Council may nominate a place for inclusion in the National Heritage List.

Section 324F – Emergency listing

51 Where the Minister considers that a place has one or more National Heritage values and one or more of these values are under threat, the Minister may include the place in the National Heritage List before obtaining an assessment from the Australian Heritage Council.

52 The Minister must take all practicable steps to identify any owners or occupiers of a place and notify each person of the place's inclusion in the National Heritage List. The Minister must also advise any nominator of the place's inclusion in the National Heritage List and publish a notice of the listing in accordance with the regulations.

53 The section also sets out the period in which the Minister must request an assessment from the Australian Heritage Council after the place is entered in the National Heritage List under this provision.

Section 324G – Assessments by the Australian Heritage Council

54 This section sets out the timeframe for assessments by the Council for both nominated places (Section 324E) and emergency listing of places (Section 324F).

55 The section also sets out with whom the Council must consult during the period of assessment.

56 The Council must only consider matters relating to the place's National Heritage values when making assessments.

- 57 A copy of comments received during the period of assessment must be forwarded to the Minister with the assessment.
- 58 The Minister can refer an assessment to the Council in the absence of a nomination.
- 59 The Council may, on its own initiative, assess whether a place meets any of the National Heritage criteria, whether or not the place is the subject of a nomination.

Section 324H – Requirement to invite public comments

- 60 This section sets out the requirement for the Minister to invite public comment on the inclusion or proposed inclusion of a place in the National Heritage List. The section also sets out when the Minister must publish a notice and what the notice must include. Furthermore, the notice may specify that public comments should address particular matters and that they should be provided in a particular way.
- 61 The period for public comment is set out depending on whether or not a place is included in the National Heritage List under an emergency listing.
- 62 This section also provides an option for the Minister to ask the Australian Heritage Council or, if required, another person with appropriate expertise, to undertake an assessment of public comments on the proposed inclusion of a place in the National Heritage List.
- 63 The Minister is not required to publish a notice concerning a place if the Council finds that the place does not meet any of the National Heritage criteria, unless the place is being included in the National Heritage List under an emergency listing.

Section 324J – Decision about inclusion of a place in the National Heritage List

- 64 This section sets out what the Minister must do within sixty days after the end of the period in which any public comments must be provided. There are exceptions for emergency listing and listing outside the Australian jurisdiction.
- 65 The Minister must decide either to include or not include a place in the National Heritage List. That is, the Minister has a broad discretion as to whether to include a place in the National Heritage List and he or she may take into account social and economic considerations. A place is included in the National Heritage List by instrument published in the Gazette.
- 66 If the Minister includes the place in the National Heritage List, the Minister must attempt to identify each owner or occupier of the place and advise them of the listing. The Minister must also advise any nominator of the place whether or not it has been included in the National Heritage List, and give written reasons for the decision to anyone who asks for them.
- 67 In the case of a place that was listed on the National Heritage List under an emergency listing process (section 324F), the Minister must, within fifteen business days after the end of the period in which any public comments must be provided, decide either that the place, or part of the place, should remain in the National Heritage List or decide to remove the place from the National Heritage List. If the place remains in the National Heritage List, the Minister may also include one or more additional National Heritage values for the place, or remove one or more values that were previously included for the place. The Minister must, within a reasonable time, give reasons for a removal or alteration to each owner or occupier and any nominators.

- 68 The provisions of section 324L about removal of places or National Heritage values from the National Heritage List do not apply to places that were entered in the National Heritage List under an emergency listing process. This means that the Minister may alter the boundary of an emergency listed place, remove the place, or remove one or more of the place's National Heritage values from the National Heritage List under this section, even if the place continues to have one or more National Heritage values.
- 69 The Minister must consider the Australian Heritage Council's assessment of whether the place meets any of the National Heritage criteria, any comments that were received during the period of assessment, any public comments and any assessment of these comments before making a decision on whether to enter a place in the National Heritage List under this section, or whether to keep, alter or remove a place listed under an emergency listing process.
- 70 The Minister must publish, in accordance with any regulations, a copy or summary of any instrument published in the Gazette under this section.

Section 324K – Listing process not affected by changing boundaries of a place

- 71 This section provides that the boundaries of a place may be changed during the stages of nomination, assessment and listing, without it affecting compliance with the provisions in this Subdivision, as long as the boundaries overlap during each stage of the listing process.

Section 324L – Removal of places or National Heritage values from the National Heritage List

- 72 The Minister can only remove a place or part of a place if satisfied that the place or part does not have any National Heritage values. The Minister can only remove one or more National Heritage values from a place if satisfied the place no longer has the National Heritage value or values.
- 73 The Minister may also remove a place or part of a place or one or more National Heritage values from the National Heritage List if satisfied that it is necessary in the interests of Australia's defence or security to do so.
- 74 The Minister must publish an instrument in the Gazette and that instrument is disallowable unless the instrument removes the place only because of Australia's defence or national security.
- 75 The Minister must publish, in accordance with any regulations, a copy or summary of the instrument.

Section 324M – Minister must consider advice of the Australian Heritage Council

- 76 Before removing a place or part of a place from the National Heritage List or before removing one or more of a place's values from the National Heritage List, the Minister must ask for the advice of the Australian Heritage Council. However, the Minister is not required to ask for and consider the advice of the Council if the removal is because of Australia's defence or national security.
- 77 The Council must give the advice to the Minister within the period specified by the Minister, and the Minister must consider the advice if he or she receives it by the end of that period. The Council must not consider any matter that does not relate to the National Heritage values of the place concerned.

78 The Minister must, within sixty business days after the earlier of the advice being received and the specified period for giving advice ending:

- (i) decide whether or not to remove the place, part or value/s from the National Heritage List; and
- (ii) with a removal ensure that an instrument removing the place, part or value/s is published in the Gazette.

This time limit does not apply if the place is outside the Australian jurisdiction.

Section 324N – Specifying one or more additional National Heritage values for a National Heritage place

79 This section sets out how the Minister can specify in the National Heritage List one or more additional National Heritage values. The place is treated like a new nomination but only for the specified additional National Heritage values and the original listing of that place is not affected by the requirements of this section.

Section 324P – National Heritage List must be publicly available

80 The National Heritage List must be available on the Internet and must also be available in hardcopy when requested. The copies must be up-to-date.

Section 324Q – Certain information may be kept confidential

81 This section provides for the Minister to keep some details of places confidential where the Minister considers that a place may be significantly damaged by having information disclosed about it publicly. In such cases, a general description of the place can suffice for publication purposes.

Section 324R – Disclosure of Australian Heritage Council’s assessments and advice

82 This section specifies that there is a period in which a Council member must not disclose an assessment, advice or any related information, except for the official purposes of the Council.

83 A member of the Council must give a copy of the assessment or advice to anyone who asks for it in after this period has expired. However, the member should take reasonable steps to ensure that he or she does not provide a more detailed description than is necessary for sufficient compliance with the Act if the member is aware that section 324Q applies.

Subdivision C – Management plans for National Heritage places in Commonwealth areas

Section 324S – Management plans for National Heritage places in Commonwealth areas

84 This section requires the Minister to prepare management plans for National Heritage places which are completely within Commonwealth areas or that are outside the Australian jurisdiction and entirely owned or controlled by a Commonwealth agency. The plan must not be inconsistent with the National Heritage principles and must address the matters prescribed by the regulations.

85 The Minister when making, amending or replacing a plan must seek and consider any comments on the proposed plan or amendment.

86 The Minister must give notice when making, amending or replacing a plan.

Section 324T – Restriction on ability to make plans

87 This section provides that the Minister must not make a plan for a National Heritage place that is in a Commonwealth reserve or in the Territory of Heard and McDonald Islands and covered by another plan.

Section 324U – Compliance with plans by the Commonwealth and Commonwealth agencies

88 The Commonwealth or a Commonwealth agency must not contravene a plan for managing a National Heritage place under section 324S.

Section 324V – Multiple plans in the same document

89 This section allows for multiple plans for National Heritage places to exist in the same document.

Section 324W – Review of plans at least every 5 years

90 This section requires the Minister to review plans at least once in every five year period and ensure that the review addresses whether the plan is consistent with the current National Heritage management principles.

Subdivision D – Management of National Heritage places in States and self-governing Territories

Section 324X – Plans and Commonwealth responsibilities

91 This section provides that the Commonwealth must use its best endeavours to ensure that management plans are prepared for National Heritage places that lie wholly or partially within an area under State or Territory jurisdiction. A management plan should not be inconsistent with the National Heritage management principles.

92 The Commonwealth and each Commonwealth agency should act in accordance with the National Heritage management principles and the management plan for the place.

Subdivision E – The National Heritage management principles

Section 324Y – National Heritage management principles

93 This section provides for National Heritage management principles to be prescribed by regulations.

94 The regulations may also prescribe obligations to implement or give effect to the National Heritage management principles. The section sets out under what circumstances obligations can be prescribed.

Subdivision F – Obligations of Commonwealth agencies

Section 324Z – Obligation to assist the Minister and the Australian Heritage Council

95 This section obliges a Commonwealth agency to provide reasonable assistance to the Minister for the Environment and Heritage and the Australian Heritage Council in identifying and assessing the National Heritage values of any place it owns or controls.

96 This section also requires a Commonwealth agency that owns or controls all or part of a National Heritage place to assist the Minister for the Environment and Heritage in making a management plan for the place.

Section 324ZA – Protecting National Heritage values of places sold or leased

97 This section provides for the ongoing protection of the National Heritage values of a National Heritage place by requiring that such values be protected by a covenant if the land is sold or let by the Commonwealth or a Commonwealth agency. However, there are exceptions if the

inclusion of a covenant in the contract is impracticable, or unnecessary because there are other means of protecting those values, such as entry in a state heritage register for example.

- 98 The Commonwealth agency must inform the Minister if the inclusion of a covenant in the contract could not bind the successors in title of the buyer or lessee of the National Heritage place, could not ensure the ongoing protection of its National Heritage values, or would be unreasonable or impracticable. In these situations the Minister must either attempt to enter into a conservation agreement with the prospective buyer or lessee in order to protect the National Heritage values of the place or the Minister must advise the agency about measures to ensure the ongoing protection of the place's National Heritage values and the agency must take reasonable steps to ensure that the measures are taken.
- 99 The Commonwealth agency must inform the Minister if it is satisfied that there are other means of protecting the National Heritage values so that the inclusion of a covenant is unnecessary. In this situation, the Minister may advise the agency about measures to ensure the ongoing protection of the place's National Heritage values. The agency must take reasonable steps to ensure that the measures are taken.

Subdivision G – Assistance for protecting National Heritage places

Section 324ZB – Commonwealth assistance for protecting National Heritage places

100 This section provides for the Commonwealth to give financial or other assistance to State or Territory governments or any other person to help identify, promote, protect or conserve National Heritage places.

Subdivision H – Reviewing and reporting on the National Heritage List

Section 324ZC – Reviewing and reporting on the National Heritage List

101 This item sets out the reviewing and reporting requirements for the National Heritage List.

Item 32 - After Division 3 of Part 15

Division 3A – Managing Commonwealth Heritage places

Subdivision A - Preliminary

Section 341A – Simplified outline of this Division

102 This section provides a simplified outline of Division 3A.

Section 341B – Extension to places etc. outside the Australian jurisdiction

103 This section extends the provisions of Division 3A to places, acts and omissions outside the Australian jurisdiction, unless otherwise stated.

Subdivision B – The Commonwealth Heritage List

Section 341C – The Commonwealth Heritage List

104 This section sets out what constitutes the Commonwealth Heritage List, what it must specify and how it must be kept.

105 The Minister may include a place in the Commonwealth Heritage List if it is entirely within a Commonwealth area and the Minister is satisfied that the place has one or more Commonwealth Heritage values. The Minister has discretion as to whether to include a place with Commonwealth Heritage values in the Commonwealth Heritage List.

106 This section also provides a definition of a *Commonwealth Heritage place* in the Act.

Section 341D – Meaning of *Commonwealth Heritage values*

107 This section provides a definition of *Commonwealth Heritage value* in the Act. If a place is included in the Commonwealth Heritage List and Commonwealth Heritage values for that place are specified in the Commonwealth Heritage List, the place is considered to have Commonwealth Heritage values.

108 In deciding whether a place has Commonwealth Heritage values, the Minister must consider the criteria in the regulations.

109 The regulations must prescribe criteria for natural, indigenous and historic heritage values of places.

Section 341E – Nominations of places

110 This section sets out how someone may nominate a place for the Commonwealth Heritage List and what must be done with the nomination. It also sets out that:

- i the Minister may ask the nominator for additional information and reject the nomination if the information is not provided within a specified period; or
- ii the Minister may reject the nomination if satisfied that it is vexatious, frivolous or not made in good faith; or
- iii the Minister must ask the Australian Heritage Council for an assessment of the place's Commonwealth Heritage values unless he or she rejects the nomination for the above reasons.

111 The Minister must advise the nominator of his or her decision to reject a nomination as soon as reasonably practicable.

112 The Council may nominate a place for inclusion in the Commonwealth Heritage List.

Section 341F – Emergency listing

113 Where the Minister considers that a place has one or more Commonwealth Heritage values and one or more of these values are under threat, the Minister may include the place in the Commonwealth Heritage List before obtaining an assessment from the Australian Heritage Council.

114 The Minister must take all practicable steps to identify any owners or occupiers of a place and notify each person of the place's inclusion in the Commonwealth Heritage List. The Minister must also advise any nominator of the place's inclusion in the Commonwealth Heritage List and publish a notice of the listing in accordance with the regulations.

115 The section also sets out the period in which the Minister must request an assessment from the Australian Heritage Council after a place is entered in the Commonwealth Heritage List under this provision.

Section 341G – Assessments by the Australian Heritage Council

116 This section sets out the timeframe for assessments by the Council for both nominated places

(Section 341E) and emergency listing of places (Section 341F).

117 The section also sets out with whom the Council must consult during the assessment period.

118 The Council must only consider matters relating to the place's Commonwealth Heritage values when making assessments.

119 A copy of comments received during the period of assessment must be forwarded to the Minister with the assessment.

120 The Minister may refer an assessment to the Council in the absence of a nomination.

121 The Council may, on its own initiative, assess whether a place meets any of the Commonwealth Heritage criteria, whether or not the place is the subject of a nomination.

Section 341H – Requirement to invite public comments

122 This section sets out the requirement for the Minister to invite public comment on the inclusion or proposed inclusion of a place in the Commonwealth Heritage List. The section also sets out when the Minister must publish a notice and what the notice must include. Furthermore, the notice may specify that public comments should address particular matters and that they should be provided in a particular way.

123 The period for public comment is set out depending on whether or not a place is included in the Commonwealth Heritage List under an emergency listing.

124 This section also provides an option for the Minister to ask the Australian Heritage Council or, if required, another person with appropriate expertise, to undertake an assessment of public comments on the proposed inclusion of a place in the Commonwealth Heritage List.

125 The Minister is not required to publish a notice concerning a place if the Council finds that the place does not meet any of the Commonwealth Heritage criteria, unless the place is being included in the Commonwealth Heritage List under an emergency listing.

Section 341J – Decision about inclusion of a place in the Commonwealth Heritage List

126 This section sets out what the Minister must do within sixty days after the end of the period in which any public comments must be provided. There are exceptions for emergency listing and listing of places outside the Australian jurisdiction.

127 The Minister must decide either to include or not include a place in the Commonwealth Heritage List. That is, the Minister has a broad discretion as to whether to include a place in the Commonwealth Heritage List. A place is included in the Commonwealth Heritage List by instrument published in the Gazette.

128 If the Minister includes the place in the Commonwealth Heritage List, the Minister must attempt to identify each owner or occupier of the place and advise them of the listing. The Minister must also advise any nominator of the place whether or not it has been included in the Commonwealth Heritage List, and give written reasons for the decision to anyone who asks for them.

129 In the case of a place that was listed on the Commonwealth Heritage List under an emergency listing process (section 341F), the Minister must, within fifteen business days after the end of the period in which any public comments must be provided, decide either that the place, or part

of the place, should remain in the Commonwealth Heritage List or decide to remove the place from the Commonwealth Heritage List. If the place remains in the Commonwealth Heritage List, the Minister may also include one or more additional Commonwealth Heritage values for the place, or remove one or more values that were previously included for the place. The Minister must, within a reasonable time, give reasons for a removal or alteration to each owner or occupier and any nominators.

- 130 The provisions of section 341L about removal of places or Commonwealth Heritage values from the Commonwealth Heritage List do not apply to places that were entered in the Commonwealth Heritage List under an emergency listing process. This means that the Minister may alter the boundary of an emergency listed place, remove the place, or remove one or more of the place's Commonwealth Heritage values from the Commonwealth Heritage List under this section, even if the place continues to have one or more Commonwealth Heritage values.
- 131 The Minister must consider the Australian Heritage Council's assessment of whether the place meets any of the Commonwealth Heritage criteria, any comments that were received during the period of assessment, any public comments and any assessment of these comments before making a decision on whether to enter a place in the Commonwealth Heritage List under this section, or whether to keep, alter or remove a place listed under an emergency listing process.
- 132 The Minister must publish, in accordance with any regulations, a copy or summary of any instrument published in the Gazette under this section.

Section 341K – Listing process not affected by changing boundaries of a place

- 133 This section provides that the boundaries of a place may be changed during the stages of nomination, assessment and listing, without it affecting compliance with the provisions in this Subdivision, as long as the boundaries overlap during each stage of the listing process.

Section 341L – Removal of places or Commonwealth Heritage values from the Commonwealth Heritage List

- 134 The Minister must remove all or part of a place from the Commonwealth Heritage List as soon as practicable after the Minister becomes aware that the place or part is no longer in a Commonwealth area or if the place is outside the Australian jurisdiction and is no longer owned or leased by the Commonwealth or a Commonwealth agency.
- 135 The Minister can only remove a place or part of a place if satisfied that the place or part does not have any Commonwealth Heritage values. The Minister can only remove one or more Commonwealth Heritage values from a place if satisfied the place no longer has the Commonwealth Heritage value or values.
- 136 The Minister may also remove a place or part of a place or one or more Commonwealth Heritage values from the Commonwealth Heritage List if satisfied that it is necessary in the interests of Australia's defence or security to do so.
- 137 The Minister must publish an instrument in the Gazette and that instrument is disallowable unless the instrument removes the place only because of Australia's defence or national security.
- 138 The Minister must publish, in accordance with any regulations, a copy or summary of the instrument.

Section 341M – Minister must consider advice of the Australian Heritage Council

139 Before removing a place or part of a place from the Commonwealth Heritage List or before removing one or more of a place's values from the Commonwealth Heritage List, the Minister must ask for the advice of the Australian Heritage Council. However, the Minister is not required to ask for and consider the advice of the Council if the removal is because of Australia's defence or national security or because the place is not within a Commonwealth area.

140 The Council must give the advice to the Minister within the period specified by the Minister, and the Minister must consider the advice if he or she receives it by the end of that period. The Council must not consider any matter that does not relate to the Commonwealth Heritage values of the place concerned.

141 The Minister must, within sixty business days after the earlier of the advice being received and the specified period for giving advice ending:

- (i) decide whether or not to remove the place, part or value/s from the Commonwealth Heritage List; and
- (ii) with a removal ensure that an instrument removing the place, part or value/s is published in the Gazette.

This time limit does not apply if the place is outside the Australian jurisdiction.

Section 341N – Specifying one or more additional Commonwealth Heritage values for a Commonwealth Heritage place

142 This section sets out how the Minister can specify in the Commonwealth Heritage List one or more additional Commonwealth Heritage values. The place is treated like a new nomination but only for the specified additional Commonwealth Heritage values and the original listing of that place is not affected by the requirements of this section.

Section 341P – Commonwealth Heritage List must be publicly available

143 The Commonwealth Heritage List must be available on the Internet and must also be available in hardcopy when requested. The copies must be up-to-date.

Section 341Q – Certain information may be kept confidential

144 This section provides for the Minister to keep some details of places confidential where the Minister considers that a place may be significantly damaged by having information disclosed about it publicly. In such cases, a general description of the place can suffice for publication purposes.

Section 341R – Disclosure of Australian Heritage Council's assessments and advice

145 This section specifies that there is a period in which a Council member must not disclose an assessment, advice or any related information, except for the official purposes of the Council.

146 A member of the Council must give a copy of the assessment or advice to anyone who asks for it after this period has expired. However, the member must take reasonable steps to ensure that he or she does not provide a more detailed description than is necessary for sufficient compliance with the Act if the member is aware that section 341Q applies.

Subdivision C – Management plans for Commonwealth Heritage places.

Section 341S – Management plans for Commonwealth Heritage places

147 This section requires a Commonwealth agency that owns or controls a Commonwealth

Heritage place to prepare a plan for managing that place. The agency must complete the plan within the period mentioned in its heritage strategy. The plan must not be inconsistent with the Commonwealth Heritage management principles and must address the matters prescribed by the regulations.

148 A Commonwealth agency when making, amending or replacing a plan must ask for, and take into account, advice from the Minister in relation to the proposed plan or amendment. The Minister must consult with the Australian Heritage Council before giving advice. A Commonwealth agency must also consider any other comments it receives about the plan.

149 The agency must give notice when making, amending or replacing a plan.

Section 341T – Endorsing management plans for Commonwealth Heritage places

150 This section provides for the Minister to endorse management plans that have been prepared by a Commonwealth agency for Commonwealth Heritage places. The Minister may endorse a plan if satisfied that it adequately provides for the conservation of the Commonwealth Heritage values of a place. The Minister must not endorse the management plan if the Minister believes it is inconsistent with the Commonwealth Heritage management principles.

Section 341U – Restriction on ability to make plans

151 This section provides that a Commonwealth agency must not make a plan for a Commonwealth Heritage place that is in a Commonwealth reserve or in the Territory of Heard and McDonald Islands and covered by another plan.

Section 341V – Compliance with plans by the Commonwealth and Commonwealth agencies

152 The Commonwealth or a Commonwealth agency must not contravene a plan for managing a Commonwealth Heritage place under section 341S.

Section 341W – Multiple plans in the same document

153 This section allows for multiple plans for Commonwealth Heritage places to exist in the same document.

Section 341X – Review of plans at least every 5 years

154 This section requires the Minister to review plans at least once in every five year period and ensure that the review addresses whether the plan is consistent with the current Commonwealth Heritage management principles.

Subdivision D – The Commonwealth Heritage management principles

Section 341Y – Commonwealth Heritage management principles

155 This section provides for Commonwealth Heritage management principles to be prescribed by regulations.

156 The regulations may also prescribe obligations to implement or give effect to the Commonwealth Heritage management principles. The section sets out under what circumstances obligations can be prescribed.

Subdivision E – Obligations of Commonwealth agencies

Section 341Z – Obligation to assist the Minister and the Australian Heritage Council

157 This section obliges a Commonwealth agency to provide reasonable assistance to the Minister

for the Environment and Heritage and the Australian Heritage Council in identifying and assessing the Commonwealth Heritage values of any place it owns or controls.

Section 341ZA – Heritage strategies

158 This section requires a Commonwealth agency that owns or controls one or more places to make a heritage strategy within two years of the later of the commencement of this Act or after it first owns or controls a place.

159 The strategy must set out the period in which the agency will:

- i conduct a program to identify Commonwealth Heritage values
- ii produce a register of Commonwealth Heritage values
- iii make management plans for Commonwealth Heritage places

160 The agency should provide the Minister with a copy of the strategy and any subsequent amendments to the strategy.

161 The Commonwealth agency should review its heritage strategy every three years and provide the Minister with a report of the review, in accordance with any regulations.

Section 341ZB – Heritage assessments and registers

162 A Commonwealth agency must identify Commonwealth Heritage values for each place it owns or controls and produce a register of values for each place within the period mentioned in its heritage strategy. The agency must provide the Minister with a report on the details of the program and a copy of the register.

Section 341ZC – Minimising any impact on heritage values

163 This section prescribes that before a Commonwealth agency takes an action relating to a Commonwealth Heritage place or a National Heritage place, the agency must take into account the Commonwealth Heritage values and/or National Heritage values of the place and minimise any impact on the Commonwealth Heritage values and/or National Heritage values of the place.

164 If the action is likely to have a significant impact on a Commonwealth Heritage place, the agency must also seek the Minister's advice under Section 341ZD.

Section 341ZD – Requirement to ask Minister for advice

165 This section prescribes that a Commonwealth agency must seek the Minister's advice before taking an action that has, will have or is likely to have a significant impact on a Commonwealth Heritage place. Advice need not be sought if an accredited management plan is in force for that place and the action is provided for, and will be taken in accordance with, that plan.

166 The Minister must consult with the Australian Heritage Council in preparing the advice.

167 If the Minister's advice is that the action will not have a significant impact on the Commonwealth Heritage place or that it can be modified so that it will not have a significant impact, and that advice is taken, the action may not need to be referred for approval under Section 28 of the EPBC Act.

168 The action still needs to be referred for approval under Section 28 of the EPBC Act if the advice is that the action is likely to have a significant impact on the Commonwealth Heritage place. This is because compliance with Section 341ZD does not remove the obligation to refer actions for approval that are likely to have a significant impact on a Commonwealth Heritage place.

Section 341ZE – Protecting Commonwealth Heritage values of places sold or leased

169 This section provides for the ongoing protection of the Commonwealth Heritage values of a Commonwealth Heritage place by requiring that such values be protected by a covenant if the land is sold or let by the Commonwealth or a Commonwealth agency. However, there are exceptions if the inclusion of a covenant in the contract is impracticable, or unnecessary because there are other means of protecting those values, such as entry in a state heritage register for example.

170 The Commonwealth agency must inform the Minister if the inclusion of a covenant in the contract could not bind the successors in title of the buyer or lessee of the Commonwealth Heritage place, could not ensure the ongoing protection of its Commonwealth Heritage values, or would be unreasonable or impracticable. In these situations the Minister must either attempt to enter into a conservation agreement with the prospective buyer or lessee in order to protect the Commonwealth Heritage values of the place or the Minister must advise the agency about measures to ensure the ongoing protection of the place's Commonwealth Heritage values and the agency must take reasonable steps to ensure that the measures are taken.

171 The Commonwealth agency must inform the Minister if it is satisfied that there are other means of protecting the Commonwealth Heritage values so that the inclusion of a covenant is unnecessary. In this situation, the Minister may advise the agency about measures to ensure the ongoing protection of the place's Commonwealth Heritage values. The agency must take reasonable steps to ensure that the measures are taken.

Subdivision F – Advice for authorising actions in Indian Ocean Territories

Section 341ZF - Minister's advice on authorisation of actions affecting Commonwealth Heritage places

172 This section prescribes that a governing authority of Christmas or Cocos (Keeling) Islands must ask the Minister for advice about an action that might have a significant impact on a Commonwealth Heritage place before it decides whether to give an authorisation for a person to take the action under a law applying in the Territory. This means, for example, that the governing authority must ask the Minister for advice before providing a planning or building approval for a development that might have a significant impact on the heritage values of a Commonwealth Heritage place.

173 The Minister must give the advice to the authority within a reasonable time.

174 The Minister must consult with the Australian Heritage Council in preparing the advice.

175 The Minister may ask the authority for extra information about the action before giving the advice.

Subdivision G – Assistance for protecting Commonwealth Heritage places

Section 341ZG – Commonwealth assistance for protecting Commonwealth Heritage places

176 This section provides for the Commonwealth to give financial or other assistance to any person to help identify, promote, protect or conserve Commonwealth Heritage places.

Subdivision H – Reviewing and reporting on the Commonwealth Heritage List

Section 341ZH – Reviewing and reporting on the Commonwealth Heritage List

177 This section sets out the reviewing and reporting requirements for the Commonwealth Heritage List.

Item 33 – At the end of subsection 367(1)

178 When making a plan for a Commonwealth reserve and the reserve includes a National Heritage place or a Commonwealth Heritage place, there is a requirement to take into account the National Heritage or Commonwealth Heritage management principles as the case may be, and to address the matters that must be addressed by a management plan for a National Heritage or Commonwealth Heritage place under section 324U or 341U.

Item 34 – Part 16 (heading)

179 This item substitutes a new heading for Part 16 of the EPBC Act.

Item 35 – Subsection 391(3) (after table item 11)

180 This item refers to the Minister's obligation to consider the precautionary principle when making a plan for managing a National Heritage place that is entirely within one or more Commonwealth areas.

Item 36 – Subsection 391(3) (after table item 13)

181 This item refers to the Minister's obligation to consider the precautionary principle when deciding whether to endorse a plan for managing a Commonwealth Heritage place.

Item 37 – At the end of Part 16

182 This item makes it explicit that the Minister must consider the information in the Register of the National Estate in making any decision under the EPBC Act to which the information is relevant.

Item 38 – After Subparagraph 495(2)(a)(i)

183 This item provides that the executive officers of a body corporate will be, in some circumstances, liable for offences by the body corporate in relation to National Heritage places.

Items 39 to 55 (inclusive) – Section 528

184 This item sets out the meaning, within the Act, of the following terms:

- *Australian Heritage Council*
- *Commonwealth Heritage criteria*
- *Commonwealth Heritage List*
- *Commonwealth Heritage management principles*
- *Commonwealth Heritage place*
- *Commonwealth Heritage value*
- *cultural heritage* (removal of definition)
- *environment* (substitution of definition)
- *heritage value*
- *indigenous heritage value*
- *National Heritage criteria*
- *National Heritage List*
- *National Heritage management principles*
- *National Heritage place*
- *National Heritage value*
- *natural heritage* (removal of definition)
- *place*

SCHEDULE 2 – AMENDMENTS RELATING TO THE DIRECTOR OF INDIGENOUS HERITAGE PROTECTION

Environment Protection and Biodiversity Conservation Act 1999

Item 1 – After subsection 324G(4)

185 This item requires the Council to seek the advice of the Director of Indigenous Heritage Protection on nominations for the National Heritage List that the Council considers may have indigenous heritage value.

Item 2 – After paragraph 324J(8)(b)

186 This item requires the Minister to consider the advice (if any) of the Director of Indigenous Heritage Protection before making a decision on whether or not to enter a place in the National Heritage List under subsections 324J(1) and (5).

Item 3 – After subsection 341G(4)

187 This item requires the Council to seek the advice of the Director of Indigenous Heritage Protection on nominations for the Commonwealth Heritage List that the Council considers may have indigenous heritage value.

Item 4 – After paragraph 341J(8)(b)

188 This item requires the Minister to consider the advice (if any) of the Director of Indigenous Heritage Protection before making a decision on whether or not to enter a place in the Commonwealth Heritage List under subsections 341J(1) and (5).

SCHEDULE 3 – TRANSITIONAL PROVISION: PLACES INCLUDED IN THE REGISTER OF THE NATIONAL ESTATE

Item 1 – Places may be taken to be included in the Commonwealth Heritage List

189 This item provides that the Minister may determine that places on the Register of the National Estate (including the Interim List) are to be transferred to the Commonwealth Heritage List without a formal assessment by the Council. This can occur only within six months of the new regime commencing.

SCHEDULE 4 – OTHER AMENDMENT

Item 1 – Subsections 515(1) and (2)

190 The purpose of this item is to allow the powers and functions of the Minister and the Secretary to be delegated to the Director of National Parks. Currently section 515 of the EPBC Act only allows the powers and functions of the Minister and the Secretary to be delegated to the officers and employees of the Department. The Director of National Parks is not necessarily an officer or employee of the Department.