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A joint project of WWF Australia, the Australian Council of National Trusts and the Tasmanian Conservation Trust

National Heritage System Introduction

INTRODUCTION

Introduction of a new national heritage system

Australia has changed the way it protects its national heritage places. New laws that came into effect on 1 January 2004 combine the more successful elements of the old national heritage system with a number of new elements

The key elements of the new national heritage system are:

- The creation of a new National Heritage list to straddle the gap between World Heritage sites and State / local heritage places
- The creation of a new Commonwealth Heritage list
- The creation of the Australian Heritage Council (to replace the old Australian Heritage Commission)
- The retention of the Register of the National Estate (RNE)

The new heritage system is administered by Heritage section of the Australian Department of the Environment and Heritage (DEH).

Background to the new system

The Australian Government's previous heritage system was established under the Australian Heritage Commission Act in 1975. At that time, it was Australia's only heritage protection legislation. Today, all states and territories have heritage protection legislation and many local government bodies also identify and protect heritage. Over time, listing of places was frequently duplicated across various tiers of government with the result that several different protection and planning laws could apply to one site.

In 1997, the Council of Australian Governments (COAG) comprising the Prime Minister, Premiers and Chief Ministers and the president of the Australian Local Government Association (ALGA) agreed that there was a need to rationalise the way the Australian Government and state governments identified, protected and managed places of heritage significance (1997 Agreement, section 6).

The Council of Australian Governments accepted that the national government's role should focus on protecting places of national heritage significance and on ensuring Commonwealth compliance with state heritage and planning laws. Following consultation throughout Australia in 1998 and 1999, it was proposed that the Australian Government take action to recognise the roles and responsibilities of the various tiers of government in line with the COAG agreement.

This meant repealing the Australian Heritage Commission Act, which duplicated state responsibilities and failed to provide substantial protection for heritage places of national significance. It has been replaced by an amended *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (EPBC Act) that incorporates 'heritage' as a matter of 'national environmental significance' and has much greater powers to protect national and Commonwealth heritage places.

A further legislative change has been the replacement of the Australian Heritage Commission by an Australian Heritage Council through the passing of the *Australian Heritage Council Act 2003*.

KEY ELEMENTS OF THE NEW SYSTEM

The National Heritage List

The new National Heritage List is a list of places with outstanding heritage value to the nation, including places overseas. A place may have natural, Indigenous or historic values, or a combination of all three. Only information on a place's national heritage values is recorded in the National Heritage list.

These National Heritage values are protected under the Australian Government's *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*. Under this Act, National Heritage places are now a matter of "National Environmental Significance". This means that a person cannot take an action that has, will have, or is likely to have, a significant impact on the national heritage values of a national heritage place without the approval of the Australian Government Minister for the Environment and Heritage. It is a criminal offence not to comply with this law and there are significant penalties.

Anyone can nominate a place with outstanding heritage values for inclusion in the National Heritage List. The Australian Heritage Council assesses the values of these nominated places against set National Heritage criteria and makes recommendations to the Minister about listing. The final decision on listing is made by the Minister. There are opportunities for public comment during the course of the listing process.

Note: See the information sheet on the National Heritage List for more information

The Commonwealth Heritage List

The new Commonwealth Heritage List is a list of natural and cultural heritage places owned or controlled by the Australian Government, with significant heritage value to the nation. It includes places, or groups of places, that are in Commonwealth lands and waters or under Commonwealth control, and are identified by the Minister as having Commonwealth heritage values.

Commonwealth Heritage places are also protected under the EPBC Act, which requires that actions:

- taken on Commonwealth land which are likely to have a significant impact on the environment will require the approval of the Minister
- taken outside Commonwealth land which are likely to have a significant impact on the environment on Commonwealth land, will require the approval of the Minister
- taken by the Australian Government or its agencies which are likely to have a significant impact on the environment anywhere, will require approval by the Minister.

As the definition of 'environment' in the EPBC Act includes the heritage values of places, these provisions of the EPBC Act provide protection for the values of Commonwealth Heritage places.

Australian Government agencies also need to have management plans for the heritage places they own or control. If an agency does not have an endorsed management plan and proposes doing something that may have a significant impact on the heritage values of the place it owns or controls, it will have to ask the Minister for the Environment and Heritage for advice. Agencies will not need to ask for advice if the proposed action is taken in accordance with a plan endorsed by the Minister. Government agencies must also not act inconsistently with the Commonwealth Heritage management principles that are detailed in regulations to the EPBC Act.

Australian Government agencies will also be required to identify the Commonwealth heritage values of all places they own or control by developing a heritage inventory or register, and to develop an overall strategic plan for managing their heritage places.

Anyone can nominate a place with significant Commonwealth Heritage value to the nation for inclusion in the Commonwealth Heritage list. The Australian Heritage Council assesses the values of these nominated places against set Commonwealth Heritage criteria and makes recommendations to the

Minister about listing. The final decision on listing is made by the Minister. There are opportunities for public comment during the course of the listing process.

Note: See the information sheet on the Commonwealth Heritage List for more information

The Australian Heritage Council (AHC)

The Australian Heritage Council is the new national heritage system's independent, expert heritage advisory body. The Australian Heritage Council replaces the previous "Australian Heritage Commission" as the main adviser to the Australian Government Minister for the Environment and Heritage on heritage matters. The Council's role is to:

- assess nominations to the new National and Commonwealth Heritage Lists
- advise the Minister for the Environment and Heritage on specified matters relating to heritage places
- promote the identification, assessment and conservation of National and Commonwealth heritage
- compile and maintain the Register of the National Estate
- perform any other functions conferred on the Council by the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The Minister for the Environment and Heritage appoints a chair, six members and up to two associate members to the Australian Heritage Council, all of whom must have appropriate experience or expertise in heritage. Two of the members must be Indigenous representatives with experience or expertise in Indigenous heritage. Two members must have expertise in the natural heritage arena and two must have historic heritage expertise.

Council members are appointed on a part-time basis, for no more than three years, and associate members for no more than one year. A Council member cannot be appointed for more than two consecutive terms.

The Register of the National Estate

Under the new national heritage system, system, the Register of the National Estate - a list of some 13,000 natural and cultural heritage places throughout Australia - is retained as an evolving and comprehensive record of Australia's natural, cultural and Indigenous heritage places that are worth keeping for the future. The Australian Heritage Council compiles and maintains the Register. Places on the Register that are in Commonwealth areas, or subject to actions by the Australian Government, are protected under the EPBC Act by the same provisions that protect Commonwealth Heritage places.

The Register is a reference database and is used for public education and the promotion of heritage conservation generally. Places can still be added to the Register of the National Estate, and it has its own set of listing criteria (these can be found on the Australian Heritage Council's website).

Distinctively Australian

In the May 2003 Budget, it was announced that \$52.6 million would be provided over four years for the *Distinctively Australian* program to protect and promote Australia's national heritage places. This will not be a grants program but instead will be closely tied to the implementation of the new heritage system.

COMPARISON OF DIFFERENT NATION-WIDE HERITAGE LISTS

	World Heritage National Heritage	National Heritage	Commonwealth Heritage	Register of the National Estate
<i>Administration of legislation</i>	Minister for the Environment and Heritage	Minister for the Environment and Heritage	Minister for the Environment and Heritage	Australian Heritage Council
<i>Nomination</i>	Australian Government	Any person including the Minister and the Australian Heritage Council	Any person including the Minister and the Australian Heritage Council	Any person
<i>Values</i>	Outstanding universal value	Outstanding heritage value to the nation	Significant Commonwealth heritage value	National Estate value
<i>Types of value</i>	Natural and cultural	Natural, Indigenous, historic	Natural, Indigenous, historic	Natural, Indigenous, historic
<i>Criteria</i>	World Heritage Committee	EPBC Act	EPBC Act	AHC Act
<i>Assessment</i>	World Heritage Bureau	Australian Heritage Council	Australian Heritage Council	Australian Heritage Council
<i>Decision on listing</i>	World Heritage Committee	Minister for the Environment and Heritage	Minister for the Environment and Heritage	Australian Heritage Council
<i>Tenure</i>	Any tenure may be listed but status of tenure unaffected	Any tenure may be listed but status of tenure unaffected	Only Commonwealth areas may be listed but status of tenure unaffected	Any tenure may be listed but status of tenure unaffected
<i>Legal Protection</i>	A person must not take an action that has, will have, or is likely to have, a significant impact on the world heritage values of a declared World Heritage property, without approval from the Australian Government Minister for the Environment and Heritage; under EPBC Act 1999 (Cth)	A person must not take an action that has, will have, or is likely to have, a significant impact on the national heritage values of a national heritage place, without approval from the Australian Government Minister for the Environment and Heritage; under EPBC Act 1999 (Cth)	A person must not take an action that has, will have, or is likely to have, a significant impact on the environment (including heritage values) in a Commonwealth heritage place, without approval from the Australian Government Minister for the Environment and Heritage; under EPBC Act 1999 (Cth)	The Australian Government Minister for the Environment and Heritage must have regard to information in the Register in making any decision under the to which the information is relevant.
<i>Management Obligations</i>	If place is in State or Territory the Minister must use best endeavours to develop a management plan that satisfies the World Heritage management principles in conjunction with State or Territory government; if place is whole or partly on Commonwealth land, Minister is obliged to develop a management plan	If place is in State or Territory the Minister must use best endeavours to develop a management plan that satisfies the National Heritage management principles in conjunction with State or Territory government; if place is whole or partly on Commonwealth land, Minister is obliged to develop a management plan	Minister / agency obliged to develop management plan that complies with the Commonwealth Heritage principles.	No obligation for management plan.

MORE INFORMATION

The Department of Environment and Heritage, Canberra

The Heritage Division of the Department of Environment and Heritage in Canberra administers the new heritage system, including the Commonwealth Heritage list. The Heritage Division of the Department is divided into historic heritage, natural heritage and Indigenous heritage sections. Within each of these sections there is a Heritage assessment team (dealing with new nominations assessing their eligibility for the Commonwealth Heritage List) and a heritage management team (dealing with ongoing management of places once they are added to the Commonwealth Heritage List).

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The EPBC Unit Heritage Outreach Officer

The EPBC Unit Heritage Outreach Officer is an independent national heritage information service co-hosted by WWF Australia, the Australian Council of National Trusts and the Tasmanian Conservation Trust. The Unit provides free and independent information about the new national heritage system, including the Commonwealth Heritage list, particularly to community organizations. A large part of the Unit's work is conducting face-to-face sessions about the new heritage system.

The EPBC Unit produces a monthly e-bulletin that provides information on the latest place nominations and listings (including opportunities to comment) by State. To receive it simply send an email with the subject "SUBSCRIBE" to heritage@wwf.org.au.

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Links to more information

Information about the new national heritage regime can be found at <http://www.deh.gov.au/heritage/national/index.html> (National heritage) or <http://www.deh.gov.au/heritage/commonwealth/index.html> (Commonwealth heritage).

Anyone can nominate a place to either of these new lists. For information about how to nominate a place for listing (including the listing criteria) see <http://www.deh.gov.au/heritage/national/listing.html> (for the National List) or <http://www.deh.gov.au/heritage/commonwealth/listing.html> (for the Commonwealth list).

To find out whether a place in your State or region has been nominated for listing, is open for comment on the proposed listing, or has been listed, use the DEH "Heritage Notifications" database which can be found at http://www.deh.gov.au/cgi-bin/epbc/heritage_ap.pl

DEH has produced a range of Fact Sheets about the new national heritage system. They can be found at <http://www.deh.gov.au/heritage/publications/factsheets/index.html>.

Once a place becomes listed on the National or Commonwealth Heritage list it is protected under the EPBC Act. To find out more about how this works see <http://www.deh.gov.au/heritage/national/natlaw.html>.

To find out more about the EPBC Act in general see the EPBC Unit's webpage at www.wwf.org.au/epbc.

To find out about current development referrals under the EPBC Act (development proposals that are likely to have a significant impact on a matter protected under the EPBC Act, including places on the National Heritage list) see http://www.deh.gov.au/cgi-bin/epbc/epbc_ap.pl?name=public_notifications&limit=7&text_search=.