



Environment and Heritage Legislation Amendment Act (No. 1) 2003

No. 88, 2003

**An Act to amend legislation relating to the
environment, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
Schedule 1—Amendments relating to the National Heritage List and Commonwealth Heritage List		4
	<i>Environment Protection and Biodiversity Conservation Act 1999</i>	4
Schedule 2—Amendments relating to the Director of Indigenous Heritage Protection		80
	<i>Environment Protection and Biodiversity Conservation Act 1999</i>	80
Schedule 3—New listings of places in other lists		82
Schedule 4—Other amendments		84
	<i>Environment Protection and Biodiversity Conservation Act 1999</i>	84



Environment and Heritage Legislation Amendment Act (No. 1) 2003

No. 88, 2003

An Act to amend legislation relating to the environment, and for related purposes

[Assented to 23 September 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Environment and Heritage
Legislation Amendment Act (No. 1) 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	23 September 2003
2. Schedule 1	A single day to be fixed by Proclamation, subject to subsection (3)	1 January 2004 (s 2(1); <i>Gazette</i> 2003, GN47)
3. Schedule 2	The later of: (a) immediately after the commencement of the provisions covered by item 2 of this table; and (b) the time when section 9 of the Act that establishes the Director of Indigenous Heritage Protection commences	
4. Schedule 3	At the same time as the provisions covered by item 2 of this table	1 January 2004
5. Schedule 4	The day on which this Act receives the Royal Assent	23 September 2003

Note 1: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

Note 2: The Director of Indigenous Heritage Protection is expected to be established by the Aboriginal and Torres Strait Islander Heritage Protection Act, which may be enacted in 2002 or a later year.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

-
- (3) If the provisions covered by item 2 of the table do not commence within the period of 6 months beginning on the latest of the following days:
- (a) the day on which this Act receives the Royal Assent;
 - (b) the day on which the *Australian Heritage Council Act 2002* receives the Royal Assent;
 - (c) the day on which the *Australian Heritage Council (Consequential and Transitional Provisions) Act 2002* receives the Royal Assent;
- they commence on the first day after the end of that period.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to the National Heritage List and Commonwealth Heritage List

Environment Protection and Biodiversity Conservation Act 1999

1 After paragraph 3(1)(c)

Insert:

- (ca) to provide for the protection and conservation of heritage; and

2 After paragraph 3(2)(f)

Insert:

- (fa) includes provisions to identify places for inclusion in the National Heritage List and Commonwealth Heritage List and to enhance the protection, conservation and presentation of those places; and

3 Subsection 12(4)

Omit “Act”, substitute “section”.

4 After Subdivision A of Division 1 of Part 3

Insert:

Subdivision AA—National Heritage

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

- (1) A constitutional corporation, the Commonwealth or a Commonwealth agency 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.

Civil Penalty:

- (a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(2) A person must not, for the purposes of trade or commerce:

- (a) between Australia and another country; or
- (b) between 2 States; or
- (c) between a State and Territory; or
- (d) between 2 Territories;

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.

Civil Penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

(3) A person must not take an action in:

- (a) a Commonwealth area; or
- (b) a Territory;

that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place.

Civil Penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

(4) A person must not take an action that has, will have or is likely to have a significant impact on the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place.

Civil Penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

Note: For *indigenous heritage value*, see section 528.

(5) 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 in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

Civil Penalty:

- (a) for an individual—5,000 penalty units;

- (b) for a body corporate—50,000 penalty units.
- (6) Subsection (5) only applies to actions whose prohibition is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention. (However, that subsection may not apply to certain actions because of subsection (8).)
- (7) A person must not take outside the Australian jurisdiction an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place outside the Australian jurisdiction.

Civil Penalty:

- (a) for an individual—5,000 penalty units;
 - (b) for a body corporate—50,000 penalty units.
- (8) Subsections (1) to (5) (inclusive) and (7) do not apply to an action if:
- (a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency, Commonwealth or person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the constitutional corporation, Commonwealth agency, Commonwealth or person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

15C Offences relating to National Heritage places

- (1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, is guilty of an offence if:
 - (a) the corporation or agency takes an action; and
-

- (b) the action results or will result in a significant impact on the National Heritage values of a National Heritage place.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, is guilty of an offence if:

- (a) the corporation or agency takes an action; and
- (b) the action is likely to have a significant impact on the National Heritage values of a National Heritage place; and
- (c) the corporation or agency is reckless as to the facts in paragraph (b).

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (3) A person is guilty of an offence if:

- (a) the person takes an action; and
- (b) the action is taken for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and Territory; or
 - (iv) between 2 Territories; and
- (c) the action results or will result in a significant impact on the National Heritage values of a National Heritage place.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (4) A person is guilty of an offence if:

- (a) the person takes an action; and
- (b) the action is taken for the purposes of trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and Territory; or
 - (iv) between 2 Territories; and
- (c) the action is likely to have a significant impact on the National Heritage values of a National Heritage place; and
- (d) the person is reckless as to the facts in paragraph (c).

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (5) A person is guilty of an offence if:
- (a) the person takes an action; and
 - (b) the action is taken in:
 - (i) a Commonwealth area; or
 - (ii) a Territory; and
 - (c) the action results or will result in a significant impact on the National Heritage values of a National Heritage place.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (6) A person is guilty of an offence if:
- (a) the person takes an action; and
 - (b) the action is taken in:
 - (i) a Commonwealth area; or
 - (ii) a Territory; and
 - (c) the action is likely to have a significant impact on the National Heritage values of a National Heritage place; and
 - (d) the person is reckless as to the facts in paragraph (c).

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (7) A person is guilty of an offence if:
- (a) the person takes an action; and
 - (b) the action results or will result in a significant impact on the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place.

Note 1: For *indigenous heritage value*, see section 528.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (8) A person is guilty of an offence if:
- (a) the person takes an action; and
 - (b) the action is likely to have a significant impact on the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place; and
 - (c) the person is reckless as to the facts in paragraph (b).

Note 1: For *indigenous heritage value*, see section 528.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (9) A person is guilty of an offence if:
- (a) the person takes an action; and
 - (b) the action results or will result in a significant impact on the National Heritage values of a National Heritage place; and
 - (c) the National Heritage place is in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (10) A person is guilty of an offence if:
- (a) the person takes an action; and
 - (b) the action is likely to have a significant impact on the National Heritage values of a National Heritage place; and
 - (c) the National Heritage place is in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention; and
 - (d) the person is reckless as to the facts in paragraphs (b) and (c).

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (11) A person is guilty of an offence if:
- (a) the person takes an action; and
 - (b) the action is taken outside the Australian jurisdiction; and
 - (c) the action results or will result in a significant impact on the National Heritage values of a National Heritage place; and
 - (d) the place is outside the Australian jurisdiction.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (12) A person is guilty of an offence if:
- (a) the person takes an action; and
 - (b) the action is taken outside the Australian jurisdiction; and
 - (c) the action is likely to have a significant impact on the National Heritage values of a National Heritage place; and
 - (d) the person is reckless as to the facts in paragraph (c); and
 - (e) the place is outside the Australian jurisdiction.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (13) An offence against any of subsections (1) to (12) (inclusive) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also be guilty of an offence against section 495.

- (14) Subsections (9) and (10) only apply to actions whose prohibition is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention. (However, those subsections may not apply to certain actions because of subsection (16).)

- (15) Section 14.1 (standard geographical jurisdiction) of the *Criminal Code* does not apply to an offence created by this section.

Note: Section 5 affects the extra-territorial operation of this section.

- (16) Subsections (1) to (12) (inclusive) do not apply to an action if:
- (a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency or person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the constitutional corporation, Commonwealth agency or person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

5 Subsection 26(3) (note)

Repeal the note, substitute:

Note 1: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place on Commonwealth land, because the heritage values of a place are part of the environment. See the definition of *environment* in section 528.

Note 2: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

6 Subsection 27A(6) (note 2)

Repeal the note, substitute:

Note 2: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place on Commonwealth land, because the heritage values of a place are part of the environment. See the definition of *environment* in section 528.

Note 3: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

7 After Subdivision A of Division 2 of Part 3

Insert:

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

- (1) A person must not take outside the Australian jurisdiction an action that has, will have or is likely to have a significant impact on the environment in a Commonwealth Heritage place outside the Australian jurisdiction.

Civil Penalty:

- (a) for an individual—1,000 penalty units;
 - (b) for a body corporate—10,000 penalty units.
- (2) Subsection (1) does not apply to an action if:
 - (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister

believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or

- (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: Subdivision F of Division 1 and Subdivision A of this Division protect the environment in Commonwealth Heritage places inside the Australian jurisdiction because those places are in Commonwealth marine areas or on Commonwealth land.

27C Offences relating to Commonwealth Heritage places overseas

- (1) A person is guilty of an offence if:

- (a) the person takes an action; and
- (b) the action is taken outside the Australian jurisdiction; and
- (c) the action results or will result in a significant impact on the environment in a Commonwealth Heritage place; and
- (d) the place is outside the Australian jurisdiction.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) A person is guilty of an offence if:

- (a) the person takes an action; and
- (b) the action is taken outside the Australian jurisdiction; and
- (c) the action is likely to have a significant impact on the environment in a Commonwealth Heritage place; and
- (d) the person is reckless as to the facts in paragraph (c); and
- (e) the place is outside the Australian jurisdiction.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also be guilty of an offence against section 495.

- (4) Section 14.1 (standard geographical jurisdiction) of the *Criminal Code* does not apply to an offence created by this section.

Note: Section 5 affects the extra-territorial operation of this section.

- (5) Subsections (1) and (2) do not apply to an action if:

- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
- (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
- (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

8 Application

- (1) This item is about the application of:

- (a) Subdivision AA of Division 1 of Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999*; and
- (b) Subdivision AA of Division 2 of that Part.

Note: So far as those Subdivisions have effect in relation to places and actions outside the Australian jurisdiction, those Subdivisions apply only to persons with a jurisdictional connection with Australia or the external Territories. See subsection 5(3) of that Act.

- (2) Neither Subdivision applies to a particular action if, before the commencement of this Schedule, the Minister has decided under section 75 of that Act whether the action is a controlled action (whether the decision was that the action is a controlled action or that the action is not a controlled action).

9 Subsection 28(1) (note)

Repeal the note, substitute:

Note 1: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place from an action taken by the Commonwealth or a Commonwealth agency, because the

heritage values of a place are part of the environment. See the definition of *environment* in section 528.

Note 2: This section does not apply to decisions to authorise activities. See Subdivision A of Division 1 of Part 23.

10 At the end of Division 2 of Part 3

Add:

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

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

- (1) The regulations may provide that a specified action is taken to be an action to which a specified regulatory provision applies.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (2) To avoid doubt, if, as a result of a regulation made for the purposes of subsection (1), a regulatory provision applies to an action, the action is taken to be described in the provision.

- (3) In this section:

regulatory provision means:

- (a) a civil penalty provision set out in this Division; or
(b) a provision of this Division that creates an offence.

11 Section 34 (after table item 1A)

Insert:

1B	section 15B	the National Heritage values of a National Heritage place
----	-------------	---

1C	section 15C	the National Heritage values of a National Heritage place
----	-------------	---

12 Section 34 (after table item 16B)

Insert:

16C	section 27B	the environment in a Commonwealth Heritage place outside the Australian jurisdiction
-----	-------------	--

16D subsections the environment in a Commonwealth Heritage
27C(1) and place outside the Australian jurisdiction
(2)

13 After section 34B

Insert:

34BA Declarations relating to National Heritage places

- (1) The Minister may make a declaration under section 33 relating to a National Heritage place only if:
 - (a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the National Heritage management principles; and
 - (b) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 33 for the purposes of such a declaration only if he or she is satisfied that the management plan will promote the management of the place concerned in accordance with the National Heritage management principles.

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

Add:

34F Declarations relating to Commonwealth Heritage places

- (1) The Minister may make a declaration under section 33 relating to a Commonwealth Heritage place only if:
 - (a) the Minister is satisfied that the declaration will promote the management of the place in accordance with the Commonwealth Heritage management principles; and
 - (b) the declaration meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 33 for the purposes of such a declaration only if he or she is satisfied that the management plan will promote the management of the place concerned in accordance with the Commonwealth Heritage management principles.

15 After section 51

Insert:

51A Agreements relating to National Heritage places

- (1) The Minister may enter into a bilateral agreement containing a provision relating to a National Heritage place only if:
 - (a) the Minister is satisfied that the agreement will promote the management of the place in accordance with the National Heritage management principles; and
 - (b) the provision meets the requirements (if any) prescribed by the regulations.
- (2) The Minister may accredit a management plan under section 46 for the purposes of such a bilateral agreement only if he or she is satisfied that the plan will promote the management of the place concerned in accordance with the National Heritage management principles.

16 After subsection 74(1)

Insert:

Inviting comments from ATSIC

- (1A) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must:
 - (a) inform the Aboriginal and Torres Strait Islander Commission; and
 - (b) invite the Commission to give the Minister comments within 10 business days (measured in Canberra) on whether the proposed action is a controlled action;if the Minister thinks that section 15B, 15C, 23, 24A, 26, 27A, 27B, 27C or 28 could be a controlling provision for the action because of the indigenous heritage value of a National Heritage place or Commonwealth Heritage place.

Note 1: Subsections 15B(4) and subsections 15C(7) and (8) protect the National Heritage values of National Heritage places, to the extent that those values are indigenous heritage values.

Note 2: Sections 23, 24A, 26, 27A, 27B, 27C and 28 protect the environment, which includes the heritage values of places. See the definition of *environment* in section 528.

17 Subsection 84(3A)

Omit “34C, 34D and 34E”, substitute “34BA, 34C, 34D, 34E and 34F”.

18 After section 137

Insert:

137A Requirements for decisions about National Heritage places

In deciding whether or not to approve for the purposes of section 15B or 15C the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with:

- (a) the National Heritage management principles; or
- (b) an agreement to which the Commonwealth is party in relation to a National Heritage place; or
- (c) a plan that has been prepared for the management of a National Heritage place under section 324S or as described in section 324X.

19 Chapter 5 (heading)

Repeal the heading, substitute:

Chapter 5—Conservation of biodiversity and heritage

20 After paragraph 176(4)(b)

Insert:

- (ba) heritage values of places;

21 Paragraph 304(a)

Repeal the paragraph, substitute:

- (a) conservation agreements between the Commonwealth and persons related to the protection and conservation of the following:
 - (i) biodiversity;
 - (ii) the world heritage values of declared World Heritage properties;
 - (iii) the National Heritage values of National Heritage places;

- (iv) the Commonwealth Heritage values of Commonwealth Heritage places; and

22 Section 304

After “biodiversity” (last occurring), insert “, those heritage values or both of those things”.

23 Subsections 305(1) to (3)

Repeal the subsections, substitute:

- (1) The Minister may, on behalf of the Commonwealth, enter into an agreement (a *conservation agreement*) with a person for the protection and conservation of all or any of the following:
 - (a) biodiversity in the Australian jurisdiction;
 - (b) the world heritage values of a declared World Heritage property in the Australian jurisdiction;
 - (c) the National Heritage values of a National Heritage place (whether inside or outside the Australian jurisdiction);
 - (d) the Commonwealth Heritage values of a Commonwealth Heritage place (whether inside or outside the Australian jurisdiction).
 - (1A) The protection and conservation of the matters in subsection (1) include all or any of the following:
 - (a) the protection, conservation and management of any listed species or ecological communities, or their habitats;
 - (b) the management of things in a way necessary for the protection and conservation of:
 - (i) the world heritage values of a declared World Heritage property; or
 - (ii) the National Heritage values of a National Heritage place; or
 - (iii) the Commonwealth Heritage values of a Commonwealth Heritage place;
 - (c) the abatement of processes, and the mitigation or avoidance of actions, that might adversely affect:
 - (i) biodiversity; or
 - (ii) the world heritage values of a declared World Heritage property; or
-

- (iii) the National Heritage values of a National Heritage place; or
- (iv) the Commonwealth Heritage values of a Commonwealth Heritage place.

Note: When the Minister is considering entering into a conservation agreement, the Minister must take into account any responsibilities of other Commonwealth Ministers that may be affected by the agreement.

- (2) However, the Minister must not enter into a conservation agreement unless satisfied that:
 - (a) in the case of a proposed agreement wholly or partly for the protection and conservation of biodiversity—the agreement:
 - (i) will result in a net benefit to the conservation of biodiversity; and
 - (ii) is not inconsistent with a recovery plan, threat abatement plan or wildlife conservation plan; and
 - (b) in the case of a proposed agreement wholly or partly for the protection and conservation of heritage values—the agreement:
 - (i) will result in a net benefit to the conservation of those heritage values; and
 - (ii) is not inconsistent with at least one of the Australian World Heritage management principles, the National Heritage management principles and the Commonwealth Heritage management principles.
- (3) For the purposes of subsection (2), in deciding whether a proposed agreement will result in a net benefit to the conservation of biodiversity or heritage values, the Minister must have regard to the matters (if any) prescribed by the regulations.

24 Saving of agreements

The amendment of section 305 of the *Environment Protection and Biodiversity Conservation Act 1999* by this Schedule does not affect the validity of a conservation agreement made before the commencement of this Schedule.

25 Saving of matters prescribed by the regulations

Matters prescribed for the purposes of section 305 of the *Environment Protection and Biodiversity Conservation Act 1999* immediately before the commencement of this Schedule are taken to be, immediately after the commencement of this Schedule, matters prescribed for the purposes of that section as amended by this Schedule.

26 Subsection 305(6)

After “agreement”, insert “that is wholly or partly for the protection and conservation of biodiversity”.

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

Repeal the paragraphs, substitute:

- (a) activities that promote the protection and conservation of all or any of the following:
 - (i) biodiversity;
 - (ii) the world heritage values of a declared World Heritage property;
 - (iii) the National Heritage values of a National Heritage place;
 - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place;
- (b) controlling or prohibiting, in any place covered by the agreement, actions or processes that might adversely affect:
 - (i) the species, ecological communities, habitats or potential habitats covered by the agreement; or
 - (ii) the world heritage values of a declared World Heritage property; or
 - (iii) the National Heritage values of a National Heritage place; or
 - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place;

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

Repeal the paragraphs, substitute:

- (a) requiring the owner to carry out specified activities, or to do specified things, that promote the conservation of all or any of the following:
 - (i) biodiversity;

- (ii) the world heritage values of a declared World Heritage property;
 - (iii) the National Heritage values of a National Heritage place;
 - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place;
- (b) restricting the use of the place, or requiring the owner to refrain from, control or refuse to permit, actions or processes that may adversely affect:
- (i) the species, ecological communities, habitats or potential habitats covered by the agreement; or
 - (ii) the world heritage values of a declared World Heritage property; or
 - (iii) the National Heritage values of a National Heritage place; or
 - (iv) the Commonwealth Heritage values of a Commonwealth Heritage place;

29 Subsection 309(3)

Omit “components of biodiversity.”, substitute:

- : (a) components of biodiversity; or
- (b) the world heritage values of a declared World Heritage property; or
- (c) the National Heritage values of a National Heritage place; or
- (d) the Commonwealth Heritage values of a Commonwealth Heritage place.

30 At the end of section 323

Add:

- (3) In this section:

cultural heritage has the meaning given by the World Heritage Convention.

natural heritage has the meaning given by the World Heritage Convention.

31 After Division 1 of Part 15

Insert:

Division 1A—Managing National Heritage places

Subdivision A—Preliminary

324A Simplified outline of this Division

The following is a simplified outline of this Division:

The Minister may only include a place in the National Heritage List if the Minister is satisfied that the place has one or more National Heritage values.

The Minister must ask the Australian Heritage Council for an assessment of the place's National Heritage values and may invite public comments on the proposed inclusion of the place in the National Heritage List.

The Minister must make plans to protect and manage the National Heritage values of National Heritage places. The Commonwealth and Commonwealth agencies must not contravene those plans.

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.

The Commonwealth and Commonwealth agencies have duties relating to National Heritage places in States and Territories.

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

Note: Section 15B prohibits an action that has a significant impact on the National Heritage values of a National Heritage place, unless the person taking the action has the approval of the Minister or certain other requirements are met.

324B Extension to places etc. outside the Australian jurisdiction

This Division extends to places, acts and omissions outside the Australian jurisdiction, except so far as the contrary intention appears.

Subdivision B—The National Heritage List

324C The National Heritage List

- (1) The Minister must keep a written record of places and their heritage values in accordance with this Subdivision. The record is called the *National Heritage List*.

Note: Later provisions of this Subdivision explain what places and heritage values are included in the National Heritage List.

- (2) A place may be included in the National Heritage List only if the Minister is satisfied that the place has one or more National Heritage values. A place that is included in the National Heritage List is called a *National Heritage place*.

324D Meaning of *National Heritage values*

- (1) A place has a *National Heritage value* if and only if the place meets one of the criteria (the *National Heritage criteria*) prescribed by the regulations for the purposes of this section. The *National Heritage value* of the place is the place's heritage value that causes the place to meet the criterion.
- (2) The *National Heritage values* of a National Heritage place are the National Heritage values of the place included in the National Heritage List for the place.
- (3) The regulations must prescribe criteria for the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places.The regulations may prescribe criteria for other heritage values of places.
- (4) To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places;
 - (d) other heritage values of places.

324E Nominations of places

- (1) A person may, in accordance with the regulations (if any), nominate to the Minister a place for inclusion in the National Heritage List.
- (2) The Minister must give the Chair of the Australian Heritage Council a written request for the Council to assess under section 324G whether the place meets any of the National Heritage criteria, unless the Minister rejects the nomination under this section.
- (3) If the Minister must give the Chair a request, he or she must give the request within 10 business days after receiving the nomination, unless:
 - (a) the place is wholly or partly outside the Australian jurisdiction; or
 - (b) the Minister includes the place in the National Heritage List under section 324F (emergency listing) within that period.
- (3A) Within 10 business days after giving the request to the Chair of the Australian Heritage Council, the Minister must publish on the Internet a brief description of the nomination.

Note: Section 324Q may affect the amount of detail in the description.
- (4) The Minister may:
 - (a) ask the person who nominated the place to provide additional information about the place within a specified period; and
 - (b) reject the nomination if the information is not provided within that period.

The period specified must be reasonable.
- (5) If the Minister asks the person for additional information, the period in subsection (3) stops running on the day the Minister asks for that information until the day after that information is provided.
- (6) The Minister may also reject the nomination if satisfied that it is vexatious, frivolous or not made in good faith.
- (7) If the Minister rejects the nomination under this section, he or she must, as soon as reasonably practicable:
 - (a) advise the person of that fact; and
 - (b) give the person written reasons for the rejection.

- (7A) If the place is wholly or partly in a foreign country, the Minister must inform the following of the fact that the nomination has been made, unless the Minister rejects the nomination under this section:
- (a) the Minister responsible for foreign affairs;
 - (b) if another Minister has administrative responsibilities relating to the place (if it is wholly in a foreign country) or to a part of the place that is in a foreign country—that other Minister.
- (8) To avoid doubt, a member of the Australian Heritage Council may make a nomination in accordance with this section on behalf of the Council. The Council may undertake research and investigations necessary for the purposes of nominating places to be included in the National Heritage List.
- (9) The Minister may, by publishing a notice in accordance with the regulations, invite nominations of places within a specified theme.

324F Emergency listing

- (1) This section applies (despite subsection 324C(2)) if the Minister believes that:
- (a) a place wholly in the Australian jurisdiction has or may have one or more National Heritage values; and
 - (b) any of those values is under threat.
- (2) The Minister may, by instrument published in the *Gazette*, include in the National Heritage List the place and the National Heritage values the Minister believes the place has or may have, whether or not the Minister has, under this Subdivision, given the Chair of the Australian Heritage Council a written request for the Council to assess under section 324G whether the place meets any of the National Heritage criteria.
- (3) Within 10 business days after including the place in the National Heritage List under this section, the Minister must give the Chair of the Australian Heritage Council a written request for the Council to assess under section 324G whether the place meets any of the National Heritage criteria.
- (4) However, subsection (3) does not apply if the Minister has already received from the Australian Heritage Council an assessment under section 324G whether the place meets any of the National Heritage criteria.

- (5) If the Minister includes the place in the National Heritage List under this section, he or she must:
- (a) within 10 business days, publish, on the Internet and in each other way required by the regulations (if any), a copy of the instrument published in the *Gazette*; and
 - (b) take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the place; and
 - (ii) advise each person identified that the place has been included in the National Heritage List; and
 - (c) within 10 business days, advise each person (if any) who nominated the place or requested the Minister in writing to include the place in the List under this section that the place has been included in the List.
- (6) If a person requests the Minister in writing to include a place in the National Heritage List under this section and the Minister has not done so within 10 business days after receiving the request, the Minister must:
- (a) publish on the Internet notice of those facts; and
 - (b) advise the person that the Minister has not included the place in the List; and
 - (c) give reasons why the Minister has not done so to the person and to anyone who requests them.

This subsection has effect (despite subsection (1)) whether or not the Minister has the belief described in that subsection in relation to the place and its heritage values (if any).

324G Assessments by the Australian Heritage Council

- (1) The Minister may give the Chair of the Australian Heritage Council a written request for the Council to assess whether a place meets any of the National Heritage criteria, whether or not the place is the subject of a nomination.
- (2) The Australian Heritage Council must give the Minister a written assessment whether a place meets any of the National Heritage criteria:
 - (a) within 12 months after the Minister gives the Chair of the Council (under this section or section 324E) the request for the assessment; or

- (b) if the place is included in the National Heritage List under section 324F (emergency listing)—within 40 business days after the Minister gives the Chair of the Council (under that section) the request for the assessment.
- (2A) If the Australian Heritage Council does not give the Minister the assessment within the period required by subsection (2) but makes all reasonable efforts to do so, the Minister may, by notice in writing, extend the period by up to 24 months.
- (2B) If the Australian Heritage Council does not give the Minister the assessment within the period as extended under subsection (2A) but makes all reasonable efforts to do so, the Minister may, by notice in writing, further extend the period by up to 24 months.
- (2C) Within 10 business days of extending the period by notice under subsection (2A) or (2B), the Minister must:
 - (a) publish on the Internet:
 - (i) a copy of the notice; and
 - (ii) the reasons for the extension; and
 - (b) give a copy of the notice to each person (if any) who nominated the place being covered by the assessment.
- (3) The Australian Heritage Council, on its own initiative, may assess whether a place wholly in the Australian jurisdiction meets any of the National Heritage criteria, whether or not the place is the subject of a nomination. If the Council does so, it may give the assessment to the Minister.

Requirements relating to assessments generally

- (3A) Before giving the Minister an assessment under this section whether a place meets any of the National Heritage criteria, the Australian Heritage Council:
 - (a) must publish, in accordance with the regulations (if any), a notice:
 - (i) stating that the Council is assessing whether the place meets any of the National Heritage criteria; and
 - (ii) inviting comments in writing, within a specified period that is reasonable having regard to the time by which the Council must give the assessment to the Minister, on whether the place meets any of the National Heritage

criteria and whether the place should be included in the National Heritage List; and

- (b) must consider, subject to subsection (5), the comments (if any) the Council receives within the period.

The Council must give the Minister a copy of the comments with the assessment.

- (4) If, in making an assessment, the Australian Heritage Council considers that a place within the Australian jurisdiction might have one or more National Heritage values, the Council must:

- (a) take all practicable steps:

- (i) to identify each person who is an owner or occupier of all or part of the place; and
(ii) if the Council considers the place might have an indigenous heritage value—to identify each indigenous person who has rights or interests in all or part of the place; and

- (b) take all practicable steps to advise each person identified that the Council is assessing whether the place meets any of the National Heritage criteria; and

- (c) give persons advised a reasonable opportunity to comment in writing whether the place should be included in the National Heritage List.

The Council must give the Minister a copy of the comments with the assessment.

Note: For *indigenous heritage value*, see section 528.

- (5) In assessing whether a place meets any of the National Heritage criteria, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets the National Heritage criteria.

- (6) If the Minister requests the Australian Heritage Council to assess whether a place meets any of the National Heritage criteria, and the place is wholly or partly in a foreign country and not the subject of a nomination, the Minister must inform the following of the fact that the Council is making the assessment:

- (a) the Minister responsible for foreign affairs;
(b) if another Minister has administrative responsibilities relating to the place (if it is wholly in a foreign country) or to a part of the place that is in a foreign country—that other Minister.

324H Inviting public comments after assessment

- (1A) This section applies if and only if, within 20 business days after the day on which the Minister receives from the Australian Heritage Council under section 324G an assessment whether a place meets any of the National Heritage criteria, the Minister decides that this section should apply. This section continues to apply even if the Minister revokes the decision.
- (1) The Minister must publish, in accordance with the regulations (if any), a notice inviting comments on the inclusion or proposed inclusion of the place in the National Heritage List. The notice may specify:
- (a) that comments should address particular matters relating to the inclusion or proposed inclusion of the place in the List; or
 - (b) that comments are to be given to the Minister in a particular way.
- (2) The notice must be published within 20 business days after the day on which the Minister receives from the Australian Heritage Council an assessment under section 324G whether the place meets any of the National Heritage criteria.
- (3) The notice must state that comments are to be given to the Minister within:
- (a) 40 business days after the notice is published; or
 - (b) if the place is included in the National Heritage List under section 324F (emergency listing)—20 business days after the notice is published.
- (4) The Minister may ask the Australian Heritage Council or a person with appropriate qualifications or expertise to assess the merits of any comments that are received by the Minister in accordance with the notice.
- (5) On the first day on which the Minister publishes the notice, the Minister must publish, in accordance with the regulations (if any):
- (a) the assessment given to the Minister under section 324G for the place; and
 - (b) a summary of the documents (if any), copies of which were given to the Minister by the Australian Heritage Council under that section with the assessment; and

- (c) if the place has not been included in the National Heritage List—one of the following:
 - (i) a statement (the *listing proposal*) that the Minister proposes that the place be included in the National Heritage List;
 - (ii) a statement that the Minister proposes that the place not be included in the National Heritage List;
 - (iii) a statement that the Minister does not have a view whether or not the place should be included in the National Heritage List; and
- (d) if the Minister publishes the listing proposal—a statement:
 - (i) identifying the National Heritage values that the Minister proposes be included in the National Heritage List for the place; and
 - (ii) explaining why the Minister believes the place has those values.

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

- (1) After receiving from the Australian Heritage Council an assessment under section 324G whether a place, except one that is or includes a place included in the National Heritage List under section 324F (whether before, on or after receipt of the assessment), meets any of the National Heritage criteria, the Minister must:
 - (a) by instrument published in the *Gazette*, include in the National Heritage List the place and its National Heritage values specified in the instrument; or
 - (b) decide not to include the place in the National Heritage List.

Note 1: Section 324F is about emergency listing.

Note 2: The Minister may include a place in the National Heritage List only if the Minister is satisfied that the place has one or more National Heritage values (see subsection 324C(2)).

Note 3: Section 324N deals with how additional National Heritage values may be included in the National Heritage List for a National Heritage place.

- (2) The Minister must comply with subsection (1):
 - (a) within 20 business days after the day on which the Minister receives the assessment; or

- (b) if section 324H applies in relation to the place—within 60 business days after the end of the period mentioned in paragraph 324H(3)(a) for the place.
- However, this subsection does not apply if the place is wholly or partly outside the Australian jurisdiction.
- (2A) The Minister must not include in the National Heritage List a place that is wholly or partly in a foreign country unless:
- (a) the Minister is satisfied that the national government of the foreign country has agreed to the inclusion in the List of the place so far as it is in the country; and
 - (b) the Minister has informed:
 - (i) the Minister responsible for foreign affairs; and
 - (ii) if another Minister has administrative responsibilities relating to the place (if it is wholly in a foreign country) or to a part of the place that is in a foreign country—that other Minister;of the proposal to include the place in the List and given the Ministers informed a reasonable opportunity to comment in writing whether the place should be included in the List; and
 - (c) the Minister responsible for foreign affairs has agreed to the inclusion in the List of the place.
- (3) If the Minister includes the place in the National Heritage List, he or she must, within a reasonable time:
- (a) take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the place in the Australian jurisdiction; and
 - (ii) advise each person identified that the place has been included in the National Heritage List; and
 - (b) if the place was nominated by a person—advise the person that the place has been included in the National Heritage List; and
 - (c) publish a copy of the instrument published in the *Gazette* and the reasons for the decision on the Internet.
- (4) If the Minister decides not to include in the National Heritage List a place (whether the decision is made after publishing a notice under section 324H or not), the Minister must:
- (a) give written reasons for the decision to anyone who asks for them; and

- (b) if the place was nominated by a person—advise the person within 10 business days of the decision and give the person written reasons for the decision; and
- (c) within 10 business days publish the decision and the reasons for the decision on the Internet.

Dealing with an emergency listing

- (5) After receiving from the Australian Heritage Council an assessment under section 324G whether a place that is or includes a place (the *listed place*) included in the National Heritage List under section 324F (whether before, on or after receipt of the assessment) meets any of the National Heritage criteria, the Minister must, by instrument published in the *Gazette*:
 - (a) do one of the following:
 - (i) state that the listed place remains in the National Heritage List with its boundary unaltered;
 - (ii) alter the boundary of the listed place described in the National Heritage List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List);
 - (iii) remove from the National Heritage List the listed place and its National Heritage values; and
 - (b) if the listed place is not removed from the National Heritage List under subparagraph (a)(iii)—do all or any of the following:
 - (i) state that specified National Heritage values included in the List under section 324F for the place remain in the List for the place;
 - (ii) include in the List for the place specified National Heritage values of the place that were not included in the List under section 324F for the place;
 - (iii) remove from the List for the place specified National Heritage values that were included in the List under section 324F for the place.
 - (5A) The Minister must comply with subsection (5):
 - (a) within 20 business days after the day on which the Minister receives the assessment; or
-

- (b) if section 324H applies in relation to the place covered by the assessment—within 15 business days after the end of the period mentioned in subsection 324H(3) for the place.

However, this subsection does not apply if the place covered by the assessment is partly outside the Australian jurisdiction.

Note: Subsection (5) cannot apply to a place wholly outside the Australian jurisdiction, because a place wholly outside the Australian jurisdiction must not be included in the National Heritage List under section 324F.

- (5B) The Minister must not alter the boundary of the listed place under subparagraph (5)(a)(ii) so as to include within the altered boundary an area in a foreign country unless:
 - (a) the Minister is satisfied that the national government of the foreign country has agreed to the inclusion in the List of the place including the area; and
 - (b) the Minister has informed:
 - (i) the Minister responsible for foreign affairs; and
 - (ii) if another Minister has administrative responsibilities relating to all or part of the area—that other Minister; of the proposal to alter the boundary in that way and given the Ministers informed a reasonable opportunity to comment in writing whether the boundary should be altered in that way; and
 - (c) the Minister responsible for foreign affairs has agreed to the inclusion in the List of the place including the area.
- (6) Section 324L does not apply to:
 - (a) an alteration (under subparagraph (5)(a)(ii) of this section) of the boundary of a place included in the National Heritage List so as to exclude part of the place (as previously included) from the description of the place in the List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List); or
 - (b) the removal of a place and its National Heritage values under subparagraph (5)(a)(iii) of this section; or
 - (c) the removal of a National Heritage value of a place under subparagraph (5)(b)(iii) of this section.
- (7) If, under subsection (5), the Minister removes from the National Heritage List a place or a National Heritage value of a place, or

alters the boundary of a place included in the List, the Minister must:

- (a) within 10 business days, publish on the Internet:
 - (i) a copy of the instrument published in the *Gazette*; and
 - (ii) the reasons for the removal or alteration; and
- (b) within 10 business days, give written reasons for the removal or alteration to each person identified by the Minister as an owner or occupier of all or part of the place; and
- (c) give written reasons for the removal or alteration to anyone else who asks the Minister for them; and
- (d) if the place was included on the List following a nomination of it by a person—within 10 business days of the removal or alteration, advise the person of the removal or alteration and give the person written reasons for it.

General requirements

- (8) Before acting under subsection (1) or (5), the Minister must consider:
 - (a) the Australian Heritage Council's assessment whether the place meets any of the National Heritage criteria; and
 - (b) the comments (if any), a copy of which was given to the Minister by the Council under section 324G with the assessment; and
 - (c) the comments (if any) received in accordance with the notice (if any) published under section 324H in relation to the place; and
 - (d) the assessment (if any) requested under subsection 324H(4) of the merits of the comments received in accordance with the notice published under section 324H in relation to the place.
- (9) The Minister must publish in accordance with the regulations (if any) a copy or summary of an instrument published in the *Gazette* under this section.

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

- (1) This section is about compliance with a provision of this Subdivision that is before this section and that requires or permits

an act to be done in relation to the place identified by express or implied reference to an earlier provision of this Subdivision.

- (2) It is sufficient compliance with the provision if the act is done in relation to a place whose boundary overlaps the boundary of the place identified by reference to the earlier provision.
- (3) This section does not affect the validity of the act so far as that depends on something other than the act being done in relation to the place.

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

- (1) The Minister may remove all or part of a place from the National Heritage List only if the Minister is satisfied that:
 - (a) ignoring subsection 324D(2), the place no longer has any National Heritage values or the part no longer contributes to any of the National Heritage values of the place; or
 - (b) it is necessary in the interests of Australia's defence or security to do so.

Note: A place or part of a place may also be removed from the National Heritage List under subsection 324J(5).

- (2) The Minister may remove one or more National Heritage values included in the National Heritage List for a National Heritage place only if the Minister is satisfied that:
 - (a) ignoring subsection 324D(2), the place no longer has the National Heritage value or values; or
 - (b) it is necessary in the interests of Australia's defence or security to do so.
- (3) The Minister may remove all or part of a place, or a National Heritage value of a place, only by instrument:
 - (a) published in the *Gazette*; and
 - (b) including a statement of the reasons for the removal.

Note: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 324M).

- (4) The instrument must deal with only one of the following kinds of removal:

- (a) removal (*removal for loss of value*) of a place, part or National Heritage value because of paragraph (1)(a) or (2)(a);
- (b) removal of a place, part or National Heritage value because of paragraph (1)(b) or (2)(b).

If the instrument purports to deal with both kinds, it has no effect so far as it deals with a removal for loss of value.

- (5) If the instrument deals only with removal for loss of value, the instrument:
 - (a) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*; and
 - (b) takes effect (despite section 48 of that Act) on the first day on which it is no longer liable to be disallowed, or to be taken to have been disallowed, under that section as it applies in relation to the instrument because of section 46A of that Act.
- (6) Within 10 business days of publication of the instrument in the *Gazette*, the Minister must publish, on the Internet and in each other way required by the regulations (if any), a copy of the instrument.

324M Minister must consider advice of the Australian Heritage Council and public comments

- (1) Before the Minister removes from the National Heritage List under section 324L all or part of a place or one or more of a place's National Heritage values in a removal for loss of value, the Minister must:
 - (a) give the Chair of the Australian Heritage Council a written request for the Council to give the Minister advice on the proposed removal; and
 - (b) publish, on the Internet, in a daily newspaper circulating in each State and self-governing Territory and in each other way required by the regulations (if any), a notice:
 - (i) describing the proposed removal; and
 - (ii) inviting anyone to give the Minister comments, within 20 business days, on the proposed removal.

The Minister must publish the notice within 20 business days of giving the request.

- (2) The Australian Heritage Council must give the advice to the Minister within the period specified by the Minister.
- (3) The Minister must consider the advice, if he or she receives it by the end of that period, and the comments (if any) received in accordance with the notice.
- (4) In preparing the advice, the Australian Heritage Council must not consider any matter that does not relate to the National Heritage values of the place concerned.
- (5) The Minister must:
 - (a) decide whether to remove from the National Heritage List the place or part concerned, or the National Heritage value or values of the place concerned; and
 - (b) if the Minister decides to remove the place or part, or the National Heritage value or values of the place—ensure that an instrument removing the place, part or National Heritage value or values is published in the *Gazette* under subsection 324L(3);within 60 business days after the earlier of the advice being received by the Minister and the specified period for giving advice to the Minister ending.
- (6) However, the time limit in subsection (5) does not apply if the place is wholly or partly outside the Australian jurisdiction.

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

- (1) Subsection (2) has effect for the purposes of including in the National Heritage List for a National Heritage place one or more National Heritage values of the place that were not previously included in the List for the place.
- (2) Sections 324E, 324F, 324G, 324H and 324J apply as if neither of the following had happened before the application of any of those sections because of this section:
 - (a) the Minister receiving from the Australian Heritage Council an assessment whether the place meets the National Heritage criteria;
 - (b) the inclusion of the place in the National Heritage List.

- (3) However, this section does not affect the inclusion in the National Heritage List of the place or the National Heritage values that were included in the List for the place before the application of this section. In particular, subsection 324J(5) in its application because of this section does not allow the Minister to:
- (a) remove from the List the place or any of its National Heritage values that were included in the List for the place before the application of section 324F because of this section; or
 - (b) alter the boundary of the place as included in the List before the application of section 324F because of this section so as to exclude from the description of the place in the List part of the place as so included.

324P National Heritage List must be publicly available

The Minister must ensure that:

- (a) up-to-date copies of the National Heritage List are available for free to the public on request; and
- (b) an up-to-date copy of the National Heritage List is available on the Internet.

Note: The copies of the National Heritage List made publicly available may not contain certain information kept confidential under section 324Q.

324Q Certain information may be kept confidential

- (1) This section applies if the Minister considers that the heritage values of a place could be significantly damaged by the disclosure of some or all of the following information, or by the presence or actions of persons if some or all of the following information were disclosed publicly:
- (a) the place's precise location;
 - (b) the place's heritage values;
 - (c) any other information about the place.
- (2) It is sufficient compliance with this Act if only a general description of the place, its location or its National Heritage values is included in:
- (a) the National Heritage List as made publicly available; or
 - (b) an instrument or other document created for the purposes of this Act.

324R Disclosure of Australian Heritage Council's assessments and advice

- (1) A member of the Australian Heritage Council has a duty not to disclose the following to a person other than the Minister, an employee in the Department whose duties relate to the Council or another member of the Council:
- (a) an assessment under section 324G whether a place meets any of the National Heritage criteria, any information relating to the assessment or any information about the nomination (if any) that led to the making of the assessment;
 - (b) advice under section 324M concerning a place or any information relating to the advice.
- (2) However:
- (a) the duty not to disclose a thing described in paragraph (1)(a) in relation to a place does not exist after:
 - (ia) publication under section 324H of the assessment; or
 - (i) publication in the *Gazette* of an instrument under section 324J relating to the place; or
 - (ii) if the Minister is required by section 324J to do something in relation to the place by instrument published in the *Gazette* within a period specified in subsection 324J(2) or (5A) but does not—the end of that period; and
 - (b) the duty not to disclose a thing described in paragraph (1)(b) in relation to a place does not exist after:
 - (i) publication in the *Gazette* of an instrument under section 324L relating to the place; or
 - (ii) if the Minister is required by section 324M to do something in relation to the place by instrument published in the *Gazette* within the period specified in subsection 324M(5) but does not—the end of that period.
- (3) After a member of the Australian Heritage Council has ceased under subsection (2) to have a duty not to disclose:
- (a) an assessment under section 324G whether a place meets the National Heritage criteria; or
 - (b) advice under section 324M concerning a place;

the member must give a copy of the assessment or advice to anyone who asks for it.

(4) If:

- (a) a member of the Australian Heritage Council proposes to give a person under subsection (3) a copy of an assessment or advice relating to a place; and
- (b) the member is aware that, under section 324Q, it would be sufficient compliance with this Act if the copy included only a general description of the place, its location or its National Heritage values;

the member must take reasonable steps to ensure that the copy given to the person does not include a more detailed description than is necessary for sufficient compliance with this Act under that section.

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

324S Management plans for National Heritage places in Commonwealth areas

- (1) The Minister must make a written plan to protect and manage the National Heritage values of each National Heritage place:
 - (a) that is entirely within one or more Commonwealth areas; or
 - (b) that is outside the Australian jurisdiction and is entirely owned or controlled by a Commonwealth agency.

The Minister must do so as soon as practicable after the first time the place is:

- (c) included in the National Heritage List; or
- (d) entirely within one or more Commonwealth areas; or
- (e) entirely owned or controlled by a Commonwealth agency.

Note: However, section 324T precludes the Minister from making plans for managing certain places.

- (2) The Minister may, in writing, amend a plan or revoke and replace a plan.
- (3) The Minister must give notice, in accordance with the regulations, if the Minister:
 - (a) makes a plan for a National Heritage place; or

- (b) amends such a plan; or
 - (c) revokes and replaces such a plan.
- (4) A plan must:
- (a) address the matters prescribed by the regulations; and
 - (b) not be inconsistent with the National Heritage management principles (see Subdivision E).
- (5) If the National Heritage management principles change so that a plan (the *earlier plan*) is inconsistent with them, the Minister must as soon as practicable make a written instrument:
- (a) amending the earlier plan to make it consistent with the principles; or
 - (b) revoking and replacing the earlier plan.
- (6) Before making, amending or revoking and replacing a plan, the Minister must:
- (a) seek in accordance with the regulations, and consider, comments from anyone about the matters to be addressed by the proposed plan or amendment; and
 - (b) seek and consider comments from the Australian Heritage Council about those matters.

324T Restriction on ability to make plans

- (1) Despite section 324S, the Minister must not make a plan for managing so much of a National Heritage place as is in a Commonwealth reserve and covered by another plan under this Act.
- (2) Despite section 324S, the Minister must not make a plan for managing so much of a National Heritage place as is in the Territory of Heard Island and McDonald Islands and covered by a plan in operation under the *Environment Protection and Management Ordinance 1987* of that Territory.

324U Compliance with plans by the Commonwealth and Commonwealth agencies

- (1) The Commonwealth or a Commonwealth agency must not:
 - (a) contravene a plan made under section 324S; or

- (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.
- (2) If there is no plan in force under section 324S for a particular National Heritage place described in subsection (1) of that section, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the place are not inconsistent with the National Heritage management principles.

324V Multiple plans in the same document

To avoid doubt, a plan for managing a National Heritage place may be in the same document as:

- (a) one or more other plans for managing National Heritage places; or
- (b) one or more other plans that this Act or another law of the Commonwealth requires or permits to be prepared.

324W Review of plans at least every 5 years

- (1) At least once in every 5 year period after a plan for managing a National Heritage place is made under section 324S, the Minister must cause a review of the plan to be carried out.
- (2) The review must:
 - (a) assess whether the plan is consistent with the National Heritage management principles in force at the time; and
 - (b) assess whether the plan is effective in protecting and conserving the National Heritage values of the place; and
 - (c) make recommendations for the improved protection of the National Heritage values of the place.
- (3) The person carrying out the review must publish, on the Internet and in a daily newspaper circulating in each State and self-governing Territory, a notice inviting anyone to give the person comments within 20 business days on:
 - (a) whether the plan is consistent with the National Heritage management principles; and

- (b) the effectiveness of the plan in protecting and conserving the National Heritage values of the place.
- (4) In carrying out the review, the person must consider the comments (if any) received in accordance with the notice.

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

324X Plans and Commonwealth responsibilities

- (1) This section applies to a National Heritage place that is not entirely within one or more Commonwealth areas and is:
 - (a) in a State; or
 - (b) in a self-governing Territory; or
 - (c) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*.
- (2) The Commonwealth must use its best endeavours to ensure a plan for managing the place, that is not inconsistent with the National Heritage management principles, is prepared and implemented in co-operation with the State or Territory.
- (3) The Commonwealth, and each Commonwealth agency, must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the place in a way that is not inconsistent with:
 - (a) the National Heritage management principles; or
 - (b) the plan for managing the place, if one has been prepared under subsection (2).

Subdivision E—The National Heritage management principles

324Y National Heritage management principles

- (1) The regulations must prescribe principles for managing National Heritage places. The principles prescribed are the *National Heritage management principles*.

- (2) The regulations may prescribe obligations to implement or give effect to the National Heritage management principles if the obligations relate to:
 - (a) a constitutional corporation, the Commonwealth or a Commonwealth agency; or
 - (b) trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and Territory; or
 - (iv) between 2 Territories; or
 - (c) all or any of the following:
 - (i) a Commonwealth area;
 - (ii) a Territory;
 - (iii) a place outside the Australian jurisdiction that is owned or controlled by a Commonwealth agency; or
 - (d) the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place; or
 - (e) the National Heritage values of a National Heritage place in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.
- (3) A person must comply with the regulations to the extent that they impose obligations on the person.
- (4) Paragraph (2)(e) applies only to a prescribed obligation that is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention.

Subdivision F—Obligations of Commonwealth agencies

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

- (1) A Commonwealth agency that owns or controls a place that has, or might have, one or more National Heritage values must take all reasonable steps to assist the Minister and the Australian Heritage Council in the identification, assessment and monitoring of the place's National Heritage values.

- (2) A Commonwealth agency that owns or controls all or part of a National Heritage place must take all reasonable steps to assist the Minister to make a plan under section 324S for the place.

324ZA Protecting National Heritage values of places sold or leased

- (1) This section applies if a Commonwealth agency executes a contract for the sale or lease to someone else of a Commonwealth area in the Australian jurisdiction that is or includes all or part of a National Heritage place. It does not matter whether the agency executes the contract for the Commonwealth or on its own behalf.
- (1A) The Commonwealth agency must give the Minister at least 40 business days' notice before executing the contract.
- (2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the National Heritage values of the place, unless the agency is satisfied that:
- (a) having regard to other means of protecting those values, including such a covenant in the contract is unnecessary to protect them or is unreasonable; or
 - (b) including such a covenant in the contract is impracticable.
- (3) The Commonwealth agency must inform the Minister before executing the contract if:
- (a) such a covenant:
 - (i) would not, or could not be made to, bind the successors in title of the buyer or lessee; or
 - (ii) could be insufficient to ensure the ongoing protection of the National Heritage values of the place; or
 - (b) the agency is satisfied as described in subsection (2).
- The information must include written reasons why paragraph (a) applies or why the agency is satisfied as described in subsection (2).
- (4) If the Minister is informed of a matter in paragraph (3)(a) or that the Commonwealth agency is satisfied that it is unreasonable or impracticable to include such a covenant in the contract, the Minister must:
- (a) take all reasonable measures to enter into a conservation agreement with the prospective buyer or lessee for the

- protection and conservation of the National Heritage values of the place; or
- (b) advise the agency about measures to ensure the ongoing protection of the National Heritage values of the place.
- (5) If the Minister is informed that the Commonwealth agency is satisfied that it is unnecessary to include such a covenant in the contract, the Minister may advise the agency about measures to ensure the ongoing protection of the National Heritage values of the place.
- (6) If the Minister advises the Commonwealth agency under this section about measures to ensure the ongoing protection of the National Heritage values of the place, the agency must take all reasonable steps to ensure that the measures are taken.

Subdivision G—Assistance for protecting National Heritage places

324ZB Commonwealth assistance for protecting National Heritage places

- (1) The Commonwealth may give financial or other assistance for the identification, promotion, protection or conservation of a National Heritage place to:
- (a) a State or self-governing Territory in which the place or part of the place is located; or
 - (b) any other person.
- (2) The Commonwealth may give the assistance subject to conditions.

Subdivision H—Reviewing and reporting on the National Heritage List

324ZC Reviewing and reporting on the National Heritage List

- (1) At least once in every 5 year period after the National Heritage List is established, the Minister must ensure that:
- (a) a review of the National Heritage List is carried out; and
 - (b) a report of that review is tabled in each House of the Parliament.

- (2) The report must include details of:
- (a) the number of places included in the National Heritage List; and
 - (b) any significant damage or threat to the National Heritage values of those places; and
 - (c) how many plans under Subdivisions C and D for managing National Heritage places have been made, or are being prepared, and how effectively the plans that have been made are operating; and
 - (d) the operation of any conservation agreements under Part 14 that affect National Heritage places; and
 - (e) all nominations, assessments and changes to the National Heritage List under this Division during the period of review; and
 - (f) compliance with this Act in relation to National Heritage places; and
 - (g) any other matters that the Minister considers relevant.

32 After Division 3 of Part 15

Insert:

Division 3A—Managing Commonwealth Heritage places

Subdivision A—Preliminary

341A Simplified outline of this Division

The following is a simplified outline of this Division:

The Minister may only include a place in the Commonwealth Heritage List if the place is in a Commonwealth area, or is owned or leased by the Commonwealth or a Commonwealth agency outside the Australian jurisdiction, and the Minister is satisfied that the place has one or more Commonwealth Heritage values.

The Minister must ask the Australian Heritage Council for an assessment of the place's Commonwealth Heritage values and may invite public comments on the proposed inclusion of the place in the Commonwealth Heritage List.

Commonwealth agencies must make plans to protect and manage the Commonwealth Heritage values of Commonwealth Heritage places. The Commonwealth and Commonwealth agencies must not contravene those plans.

Commonwealth agencies also have other obligations.

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

341B Extension to places etc. outside the Australian jurisdiction

This Division extends to places, acts and omissions outside the Australian jurisdiction, except so far as the contrary intention appears.

Subdivision B—The Commonwealth Heritage List

341C The Commonwealth Heritage List

- (1) The Minister must keep a written record of places and their heritage values in accordance with this Subdivision. The record is called the *Commonwealth Heritage List*.

Note: Later provisions of this Subdivision explain what places and heritage values are included in the Commonwealth Heritage List.

- (2) A place may be included in the Commonwealth Heritage List only if the Minister is satisfied that the place:
- (a) either:
 - (i) is entirely within a Commonwealth area; or
 - (ii) is outside the Australian jurisdiction and is owned or leased by the Commonwealth or a Commonwealth agency; and
 - (b) has one or more Commonwealth Heritage values.

A place that is included in the Commonwealth Heritage List is called a *Commonwealth Heritage place*.

341D Meaning of *Commonwealth Heritage values*

- (1) A place has a *Commonwealth Heritage value* if and only if the place meets one of the criteria (the *Commonwealth Heritage criteria*) prescribed by the regulations for the purposes of this section. The *Commonwealth Heritage value* of the place is the place's heritage value that causes the place to meet the criterion.
- (2) The *Commonwealth Heritage values* of a Commonwealth Heritage place are the Commonwealth Heritage values of the place included in the Commonwealth Heritage List for the place.
- (3) The regulations must prescribe criteria for the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places.The regulations may prescribe criteria for other heritage values of places.
- (4) To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places;
 - (d) other heritage values of places.

341E Nominations of places

- (1) A person may, in accordance with the regulations (if any), nominate to the Minister a place for inclusion in the Commonwealth Heritage List.
- (2) The Minister must give the Chair of the Australian Heritage Council a written request for the Council to assess under section 341G whether the place meets any of the Commonwealth Heritage criteria, unless the Minister rejects the nomination under this section.
- (3) If the Minister must give the Chair a request, he or she must give the request within 10 business days after receiving the nomination, unless:

- (a) the place is wholly or partly outside the Australian jurisdiction; or
 - (b) the Minister includes the place in the Commonwealth Heritage List under section 341F (emergency listing) within that period.
- (3A) After giving the Chair of the Australian Heritage Council a written request under subsection (2), the Minister must within 10 business days publish a brief description of the nomination on the Internet. In publishing the description, the Minister may have regard to section 341Q.

Note: The description published on the Internet may not contain certain information kept confidential under section 341Q.

- (4) The Minister may:
- (a) ask the person who nominated the place to provide additional information about the place within a specified period; and
 - (b) reject the nomination if the information is not provided within that period.
- The period specified must be reasonable.
- (5) If the Minister asks the person for additional information, the period in subsection (3) stops running on the day the Minister asks for that information until the day after that information is provided.
- (6) The Minister may also reject the nomination if satisfied that it is vexatious, frivolous or not made in good faith.
- (7) If the Minister rejects the nomination under this section, he or she must, as soon as reasonably practicable:
- (a) advise the person of that fact; and
 - (b) give the person written reasons for the rejection.
- (8) To avoid doubt, a member of the Australian Heritage Council may make a nomination in accordance with this section on behalf of the Council. The Council may undertake research and investigations necessary for the purposes of nominating places to be included in the Commonwealth Heritage List.

341F Emergency listing

- (1) This section applies (despite subsection 341C(2)) if the Minister believes that:
-

- (a) a place either:
 - (i) is entirely within a Commonwealth area; or
 - (ii) is outside the Australian jurisdiction and is owned or leased by the Commonwealth or a Commonwealth agency; and
 - (b) the place has or may have one or more Commonwealth Heritage values; and
 - (c) any of those values is under threat.
- (2) The Minister may, by instrument published in the *Gazette*, include in the Commonwealth Heritage List the place and the Commonwealth Heritage values the Minister believes the place has or may have, whether or not the Minister has, under this Subdivision, given the Chair of the Australian Heritage Council a written request for the Council to assess under section 341G whether the place meets any of the Commonwealth Heritage criteria.
- (3) Within 10 business days after including the place in the Commonwealth Heritage List under this section, the Minister must give the Chair of the Australian Heritage Council a written request for the Council to assess under section 341G whether the place meets any of the Commonwealth Heritage criteria.
- (4) However, subsection (3) does not apply if the Minister has already received from the Australian Heritage Council an assessment under section 341G whether the place meets any of the Commonwealth Heritage criteria.
- (5) If the Minister includes the place in the Commonwealth Heritage List under this section, he or she must:
- (a) within 10 business days, publish, on the Internet and in each other way required by the regulations (if any), a copy or summary of the instrument published in the *Gazette*; and
 - (b) take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the place; and
 - (ii) advise each person identified that the place has been included in the Commonwealth Heritage List; and
 - (c) within 10 business days, advise each person (if any) who nominated the place or requested the Minister in writing to

include the place in the List under this section that the place has been included in the List.

- (6) If a person requests the Minister in writing to include a place in the Commonwealth Heritage List under this section and the Minister has not done so within 10 business days after receiving the request, the Minister must:
- (a) publish on the Internet notice of those facts; and
 - (b) advise the person that the Minister has not included the place in the List; and
 - (c) give reasons why the Minister has not done so to the person and to anyone who requests them.

This subsection has effect (despite subsection (1)) whether or not the Minister has the belief described in that subsection in relation to the place and its heritage values (if any).

341G Assessments by the Australian Heritage Council

- (1) The Minister may give the Chair of the Australian Heritage Council a written request for the Council to assess whether a place meets any of the Commonwealth Heritage criteria, whether or not the place is the subject of a nomination.
- (2) The Australian Heritage Council must give the Minister a written assessment whether a place meets any of the Commonwealth Heritage criteria:
 - (a) within 12 months after the Minister gives the Chair of the Council (under this section or section 341E) the request for the assessment; or
 - (b) if the place is included in the Commonwealth Heritage List under section 341F (emergency listing)—within 40 business days after the Minister gives the Chair of the Council (under that section) the request for the assessment.
- (2A) If the Australian Heritage Council does not give the Minister the assessment within the period required by subsection (2) but makes all reasonable efforts to do so, the Minister may, by notice in writing, extend the period by up to 24 months.
- (2B) If the Australian Heritage Council does not give the Minister the assessment within the period as extended under subsection (2A)

but makes all reasonable efforts to do so, the Minister may, by notice in writing, further extend the period by up to 24 months.

- (2C) Within 10 business days of extending the period by notice under subsection (2A) or (2B), the Minister must:
- (a) publish on the Internet:
 - (i) a copy of the notice; and
 - (ii) the reasons for the extension; and
 - (b) give a copy of the notice to each person (if any) who nominated the place being covered by the assessment.
- (3) The Australian Heritage Council, on its own initiative, may assess whether a place meets any of the Commonwealth Heritage criteria, whether or not the place is the subject of a nomination. If the Council does so, it may give the assessment to the Minister.

Requirements relating to assessments generally

- (3A) Before giving the Minister an assessment under this section whether a place meets any of the Commonwealth Heritage criteria, the Australian Heritage Council:
- (a) must publish, in accordance with the regulations (if any), a notice:
 - (i) stating that the Council is assessing whether the place meets any of the Commonwealth Heritage criteria; and
 - (ii) inviting comments in writing, within a specified period that is reasonable having regard to the time by which the Council must give the assessment to the Minister, on whether the place meets any of the Commonwealth Heritage criteria and whether the place should be included in the Commonwealth Heritage List; and
 - (b) must consider, subject to subsection (5), the comments (if any) the Council receives within the period.

The Council must give the Minister a copy of the comments with the assessment.

- (4) If, in making an assessment, the Australian Heritage Council considers that a place within the Australian jurisdiction might have one or more Commonwealth Heritage values, the Council must:
- (a) take all practicable steps:

- (i) to identify each person who is an owner or occupier of all or part of the place; and
 - (ii) if the Council considers the place might have an indigenous heritage value—to identify each indigenous person who has rights or interests in all or part of the place; and
- (b) take all practicable steps to advise each person identified that the Council is assessing whether the place meets any of the Commonwealth Heritage criteria; and
 - (c) give persons advised a reasonable opportunity to comment in writing whether the place should be included in the Commonwealth Heritage List.

The Council must give the Minister a copy of the comments with the assessment.

Note: For *indigenous heritage value*, see section 528.

- (5) In assessing whether a place meets any of the Commonwealth Heritage criteria, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets the Commonwealth Heritage criteria.

341H Inviting public comments after assessment

- (1A) This section applies if and only if, within 20 business days after the day on which the Minister receives from the Australian Heritage Council under section 341G an assessment whether a place meets any of the Commonwealth Heritage criteria, the Minister decides that this section should apply. This section continues to apply even if the Minister revokes the decision.
- (1) The Minister must publish, in accordance with the regulations (if any), a notice inviting comments on the inclusion or proposed inclusion of the place in the Commonwealth Heritage List. The notice may specify:
 - (a) that comments should address particular matters relating to the inclusion or proposed inclusion of the place in the List; or
 - (b) that comments are to be given to the Minister in a particular way.
- (2) The notice must be published within 20 business days after the day on which the Minister receives from the Australian Heritage

Council an assessment under section 341G whether the place meets any of the Commonwealth Heritage criteria.

- (3) The notice must state that comments are to be given to the Minister within:
 - (a) 40 business days after the notice is published; or
 - (b) if the place is included in the Commonwealth Heritage List under section 341F (emergency listing)—20 business days after the notice is published.
- (4) The Minister may ask the Australian Heritage Council or a person with appropriate qualifications or expertise to assess the merits of any comments that are received by the Minister in accordance with the notice.
- (5) On the first day on which the Minister publishes the notice, the Minister must publish, in accordance with the regulations (if any):
 - (a) the assessment given to the Minister under section 341G for the place; and
 - (b) a summary of the documents (if any), copies of which were given to the Minister by the Australian Heritage Council under that section with the assessment; and
 - (c) if the place has not been included in the Commonwealth Heritage List—one of the following:
 - (i) a statement (the *listing proposal*) that the Minister proposes that the place be included in the Commonwealth Heritage List;
 - (ii) a statement that the Minister proposes that the place not be included in the Commonwealth Heritage List;
 - (iii) a statement that the Minister does not have a view whether or not the place should be included in the Commonwealth Heritage List; and
 - (d) if the Minister publishes the listing proposal—a statement:
 - (i) identifying the Commonwealth Heritage values that the Minister proposes be included in the Commonwealth Heritage List for the place; and
 - (ii) explaining why the Minister believes the place has those values.

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

- (1) After receiving from the Australian Heritage Council an assessment under section 341G whether a place, except one that is or includes a place included in the Commonwealth Heritage List under section 341F (whether before, on or after receipt of the assessment), meets any of the Commonwealth Heritage criteria, the Minister must:

- (a) by instrument published in the *Gazette*, include in the Commonwealth Heritage List the place and its Commonwealth Heritage values specified in the instrument; or
- (b) decide not to include the place in the Commonwealth Heritage List.

Note 1: Section 341F is about emergency listing.

Note 2: The Minister may include a place in the Commonwealth Heritage List only if the Minister is satisfied that the place:

- (a) is entirely within a Commonwealth area or is both outside the Australian jurisdiction and owned or leased by the Commonwealth or a Commonwealth agency; and
- (b) has one or more Commonwealth Heritage values.

See subsection 341C(2).

Note 3: Section 341N deals with how additional Commonwealth Heritage values may be included in the Commonwealth Heritage List for a Commonwealth Heritage place.

- (2) The Minister must comply with subsection (1):
- (a) within 20 business days after the day on which the Minister receives the assessment; or
 - (b) if section 341H applies in relation to the place—within 60 business days after the end of the period mentioned in paragraph 341H(3)(a) for the place.

However, this subsection does not apply if the place is wholly or partly outside the Australian jurisdiction.

- (3) If the Minister includes the place in the Commonwealth Heritage List, he or she must, within a reasonable time:
- (a) take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the place; and

- (ii) advise each person identified that the place has been included in the Commonwealth Heritage List; and
 - (b) if the place was nominated by a person—advise the person that the place has been included in the Commonwealth Heritage List; and
 - (c) publish on the Internet:
 - (i) a copy of the instrument published in the *Gazette* including the place and its Commonwealth Heritage values in the List; and
 - (ii) the Minister's reasons for including the place and those values in the List.
- (4) If the Minister decides not to include in the Commonwealth Heritage List a place (whether the decision is made after publishing a notice under section 341H or not), the Minister must:
- (a) give written reasons for the decision to anyone who asks for them; and
 - (b) if the place was nominated by a person—advise the person of the decision within 10 business days and give the person written reasons for the decision; and
 - (c) within 10 business days, publish on the Internet notice of the decision and the reasons for the decision.

Dealing with an emergency listing

- (5) After receiving from the Australian Heritage Council an assessment under section 341G whether a place that is or includes a place (the **listed place**) included in the Commonwealth Heritage List under section 341F (whether before, on or after receipt of the assessment) meets any of the Commonwealth Heritage criteria, the Minister must, by instrument published in the *Gazette*:
- (a) do one of the following:
 - (i) state that the listed place remains in the Commonwealth Heritage List with its boundary unaltered;
 - (ii) alter the boundary of the listed place described in the Commonwealth Heritage List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List);
 - (iii) remove from the Commonwealth Heritage List the listed place and its Commonwealth Heritage values; and

- (b) if the listed place is not removed from the Commonwealth Heritage List under subparagraph (a)(iii)—do all or any of the following:
 - (i) state that specified Commonwealth Heritage values included in the List under section 341F for the place remain in the List for the place;
 - (ii) include in the List for the place specified Commonwealth Heritage values of the place that were not included in the List under section 341F for the place;
 - (iii) remove from the List for the place specified Commonwealth Heritage values that were included in the List under section 341F for the place.

 - (5A) The Minister must comply with subsection (5):
 - (a) within 20 business days after the day on which the Minister receives the assessment; or
 - (b) if section 341H applies in relation to the place covered by the assessment—within 15 business days after the end of the period mentioned in subsection 341H(3) for the place.However, this subsection does not apply if the place covered by the assessment is wholly or partly outside the Australian jurisdiction.

 - (6) Section 341L does not apply to:
 - (a) an alteration (under subparagraph (5)(a)(ii) of this section) of the boundary of a place included in the Commonwealth Heritage List so as to exclude part of the place (as previously included) from the description of the place in the List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List); or
 - (b) the removal of a place and its Commonwealth Heritage values under subparagraph (5)(a)(iii) of this section; or
 - (c) the removal of a Commonwealth Heritage value of a place under subparagraph (5)(b)(iii) of this section.

 - (7) If, under subsection (5), the Minister removes from the Commonwealth Heritage List a place or a Commonwealth Heritage value of a place, or alters the boundary of a place included in the List, the Minister must:
 - (a) within 10 business days, publish on the Internet:
 - (i) a copy of the instrument published in the *Gazette*; and
-

- (ii) the reasons for the removal or alteration; and
- (b) within 10 business days, give written reasons for the removal or alteration to each person identified by the Minister as an owner or occupier of all or part of the place; and
- (c) give written reasons for the removal or alteration to anyone else who asks the Minister for them; and
- (d) if the place was included on the List following a nomination of it by a person—within 10 business days of the removal or alteration, advise the person of the removal or alteration and give the person written reasons for it.

General requirements

- (8) Before acting under subsection (1) or (5), the Minister must consider:
 - (a) the Australian Heritage Council's assessment whether the place meets any of the Commonwealth Heritage criteria; and
 - (b) the comments (if any), a copy of which was given to the Minister by the Council under section 341G with the assessment; and
 - (c) the comments (if any) received in accordance with the notice (if any) published under section 341H in relation to the place; and
 - (d) the assessment (if any) requested under subsection 341H(4) of the merits of the comments received in accordance with the notice published under section 341H in relation to the place.
- (9) The Minister must publish in accordance with the regulations (if any) a copy or summary of an instrument published in the *Gazette* under this section.

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

- (1) This section is about compliance with a provision of this Subdivision that is before this section and that requires or permits an act to be done in relation to the place identified by express or implied reference to an earlier provision of this Subdivision.
- (2) It is sufficient compliance with the provision if the act is done in relation to a place whose boundary overlaps the boundary of the place identified by reference to the earlier provision.

- (3) This section does not affect the validity of the act so far as that depends on something other than the act being done in relation to the place.

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

- (1) 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:
- (a) the place or part is no longer in a Commonwealth area; or
 - (b) the place or part is no longer owned or leased by the Commonwealth or a Commonwealth agency, if the place or part is outside the Australian jurisdiction.
- (2) The Minister may remove all or part of a place from the Commonwealth Heritage List only if the Minister is satisfied that:
- (a) ignoring subsection 341D(2), the place no longer has any Commonwealth Heritage values or the part no longer contributes to any of the Commonwealth Heritage values of the place; or
 - (b) it is necessary in the interests of Australia's defence or security to do so.

Note: A place or part of a place may also be removed from the Commonwealth Heritage List under subsection 341J(5).

- (3) The Minister may remove one or more Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place only if the Minister is satisfied that:
- (a) ignoring subsection 341D(2), the place no longer has the Commonwealth Heritage value or values; or
 - (b) it is necessary in the interests of Australia's defence or security to do so.
- (4) The Minister can remove all or part of a place, or a Commonwealth Heritage value of a place, only by instrument:
- (a) published in the *Gazette*; and
 - (b) including a statement of the reasons for the removal.

Note: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 341M).

(5) The instrument must deal with only one of the following kinds of removal:

- (a) removal (*removal for loss of value*) of a place, part or Commonwealth Heritage value because of paragraph (2)(a) or (3)(a);
- (b) removal of a place, part or Commonwealth Heritage value because of subsection (1) or paragraph (2)(b) or (3)(b).

If the instrument purports to deal with both kinds, it has no effect so far as it deals with a removal for loss of value.

(6) If the instrument deals only with removal for loss of value, the instrument:

- (a) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*; and
- (b) takes effect (despite section 48 of that Act) on the first day on which it is no longer liable to be disallowed, or to be taken to have been disallowed, under that section as it applies in relation to the instrument because of section 46A of that Act.

(7) Within 10 business days of publication of the instrument in the *Gazette*, the Minister must publish, on the Internet and in each other way required by the regulations (if any), a copy of the instrument.

341M Minister must consider advice of the Australian Heritage Council and public comments

(1) Before the Minister removes from the Commonwealth Heritage List under section 341L all or part of a place or one or more of a place's Commonwealth Heritage values in a removal for loss of value, the Minister must:

- (a) give the Chair of the Australian Heritage Council a written request for the Council to give the Minister advice on the proposed removal; and
- (b) publish, on the Internet, in a daily newspaper circulating in each State and self-governing Territory and in each other way required by the regulations (if any), a notice:
 - (i) describing the proposed removal; and
 - (ii) inviting anyone to give the Minister comments, within 20 business days, on the proposed removal.

The Minister must publish the notice within 20 business days of giving the request.

- (2) The Australian Heritage Council must give the advice to the Minister within the period specified by the Minister.
- (3) The Minister must consider the advice, if he or she receives it by the end of that period, and the comments (if any) received in accordance with the notice.
- (4) In preparing the advice, the Australian Heritage Council must not consider any matter that does not relate to the Commonwealth Heritage values of the place concerned.
- (5) The Minister must:
 - (a) decide whether to remove from the Commonwealth Heritage List the place or part concerned, or the Commonwealth Heritage value or values of the place concerned; and
 - (b) if the Minister decides to remove the place or part, or the Commonwealth Heritage value or values of the place—ensure that an instrument removing the place, part or Commonwealth Heritage value or values is published in the *Gazette* under subsection 341L(4);within 60 business days after the earlier of the advice being received by the Minister and the specified period for giving advice to the Minister ending.
- (6) However, the time limit in subsection (5) does not apply if the place is wholly or partly outside the Australian jurisdiction.

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

- (1) Subsection (2) has effect for the purposes of including in the Commonwealth Heritage List for a Commonwealth Heritage place one or more Commonwealth Heritage values of the place that were not previously included in the List for the place.
- (2) Sections 341E, 341F, 341G, 341H and 341J apply as if neither of the following had happened before the application of any of those sections because of this section:

- (a) the Minister receiving from the Australian Heritage Council an assessment whether the place meets the Commonwealth Heritage criteria;
 - (b) the inclusion of the place in the Commonwealth Heritage List.
- (3) However, this section does not affect the inclusion in the Commonwealth Heritage List of the place or the Commonwealth Heritage values that were included in the List for the place before the application of this section. In particular, subsection 341J(5) in its application because of this section does not allow the Minister to:
- (a) remove from the List the place or any of its Commonwealth Heritage values that were included in the List for the place before the application of section 341F because of this section; or
 - (b) alter the boundary of the place as included in the List before the application of section 341F because of this section so as to exclude from the description of the place in the List part of the place as so included.

341P Commonwealth Heritage List must be publicly available

The Minister must ensure that:

- (a) up-to-date copies of the Commonwealth Heritage List are available for free to the public on request; and
- (b) an up-to-date copy of the Commonwealth Heritage List is available on the Internet.

Note: The copies of the Commonwealth Heritage List made publicly available may not contain certain information kept confidential under section 341Q.

341Q Certain information may be kept confidential

- (1) This section applies if the Minister considers that the heritage values of a place could be significantly damaged by the disclosure of some or all of the following information, or by the presence or actions of persons if some or all of the following information were disclosed publicly:
 - (a) the place's precise location;
 - (b) the place's heritage values;

- (c) any other information about the place.
- (2) It is sufficient compliance with this Act if only a general description of the place, its location or its Commonwealth Heritage values is included in:
 - (a) the Commonwealth Heritage List as made publicly available; or
 - (b) an instrument or other document created for the purposes of this Act.

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

- (1) A member of the Australian Heritage Council has a duty not to disclose the following to a person other than the Minister, an employee in the Department whose duties relate to the Council or another member of the Council:
 - (a) an assessment under section 341G whether a place meets any of the Commonwealth Heritage criteria, any information relating to the assessment or any information about the nomination (if any) that led to the making of the assessment;
 - (b) advice under section 341M concerning a place or any information relating to the advice.
- (2) However:
 - (a) the duty not to disclose a thing described in paragraph (1)(a) in relation to a place does not exist after:
 - (ia) publication under section 341H of the assessment; or
 - (i) publication in the *Gazette* of an instrument under section 341J relating to the place; or
 - (ii) if the Minister is required by section 341J to do something in relation to the place by instrument published in the *Gazette* within a period specified in subsection 341J(2) or (5A) but does not—the end of that period; and
 - (b) the duty not to disclose a thing described in paragraph (1)(b) in relation to a place does not exist after:
 - (i) publication in the *Gazette* of an instrument under section 341L relating to the place; or
 - (ii) if the Minister is required by section 341M to do something in relation to the place by instrument

published in the *Gazette* within the period specified in subsection 341M(5) but does not—the end of that period.

- (3) After a member of the Australian Heritage Council has ceased under subsection (2) to have a duty not to disclose:
- (a) an assessment under section 341G whether a place meets the Commonwealth Heritage criteria; or
 - (b) advice under section 341M concerning a place;
- the member must give a copy of the assessment or advice to anyone who asks for it.
- (4) If:
- (a) a member of the Australian Heritage Council proposes to give a person under subsection (3) a copy of an assessment or advice relating to a place; and
 - (b) the member is aware that, under section 341Q, it would be sufficient compliance with this Act if the copy included only a general description of the place, its location or its Commonwealth Heritage values;
- the member must take reasonable steps to ensure that the copy given to the person does not include a more detailed description than is necessary for sufficient compliance with this Act under that section.

Subdivision C—Management plans for Commonwealth Heritage places

341S Management plans for Commonwealth Heritage places

- (1) A Commonwealth agency must make a written plan to protect and manage the Commonwealth Heritage values of a Commonwealth Heritage place it owns or controls. The agency must do so within the period mentioned either:
- (a) at the time the agency starts owning or controlling the place, in the agency's heritage strategy under section 341ZA; or
 - (b) after that time, in the agency's first such strategy.

Note: However, a Commonwealth agency must not make plans for managing certain places (see section 341U).

- (2) The Commonwealth agency may, in writing, amend the plan or revoke and replace the plan.
- (3) A Commonwealth agency must give notice, in accordance with the regulations, if the agency:
 - (a) makes a plan for a Commonwealth Heritage place; or
 - (b) amends such a plan; or
 - (c) revokes and replaces such a plan.

Note: Subdivision E imposes other obligations on Commonwealth agencies.
- (4) A plan must:
 - (a) address the matters prescribed by the regulations; and
 - (b) not be inconsistent with the Commonwealth Heritage management principles (see Subdivision D).
- (5) If the Commonwealth Heritage management principles change so that a plan (the *earlier plan*) is inconsistent with them, the agency concerned must as soon as practicable make a written instrument:
 - (a) amending the earlier plan to make it consistent with the principles; or
 - (b) revoking and replacing the earlier plan.
- (6) Before making, amending or revoking and replacing a plan, the agency concerned must:
 - (a) ask the Minister for advice on the proposed plan or amendment and must take account of any such advice received from the Minister; and
 - (b) seek in accordance with the regulations, and consider, comments from anyone about the matters to be addressed by the proposed plan or amendment.
- (7) The Minister must consult with the Australian Heritage Council in preparing an advice for the purposes of this section.

341T Endorsing management plans for Commonwealth Heritage places

- (1) A Commonwealth agency that makes a plan for managing a Commonwealth Heritage place may ask the Minister to endorse the plan. If the Commonwealth agency does so, it must give the Minister a copy of the plan.

Note: An agency that has a plan endorsed under this section is not required to ask for advice under section 341ZD about taking certain actions.

- (1A) The Minister must decide within 60 business days of being given the copy of the plan whether or not to endorse the plan.
- (1B) Within 10 business days of making the decision, the Minister must inform the Commonwealth agency in writing of the decision and publish on the Internet a notice of the decision.
- (2) The Minister:
 - (a) may only endorse a plan that the Minister is satisfied provides for the conservation of the Commonwealth Heritage values of the place concerned; and
 - (b) must not endorse a plan that the Minister considers is inconsistent with the Commonwealth Heritage management principles (see Subdivision D).
- (3) The Minister may, at any time, revoke an endorsement of a plan if the Minister considers it appropriate to do so.

341U Restriction on ability to make plans

- (1) Despite section 341S, a Commonwealth agency must not make a plan for managing so much of a Commonwealth Heritage place as is in a Commonwealth reserve and covered by another plan under this Act.
- (2) Despite section 341S, a Commonwealth agency must not make a plan for managing so much of a Commonwealth Heritage place as is in the Territory of Heard Island and McDonald Islands and covered by a plan in operation under the *Environment Protection and Management Ordinance 1987* of that Territory.

341V Compliance with plans by the Commonwealth and Commonwealth agencies

- (1) The Commonwealth or a Commonwealth agency must not:
 - (a) contravene a plan made under section 341S; or
 - (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.

- (2) If there is no plan in force under section 341S for a particular Commonwealth Heritage place, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the place are not inconsistent with the Commonwealth Heritage management principles.

341W Multiple plans in the same document

To avoid doubt, a plan for managing a Commonwealth Heritage place may be in the same document as:

- (a) one or more other plans for managing Commonwealth Heritage places; or
- (b) one or more other plans that this Act or another law of the Commonwealth requires or permits to be prepared.

341X Review of plans at least every 5 years

- (1) At least once in every 5 year period after a plan for managing a Commonwealth Heritage place is made under section 341S, the Commonwealth agency concerned must cause a review of the plan to be carried out.
- (2) The review must:
 - (a) assess whether the plan is consistent with the Commonwealth Heritage management principles in force at the time; and
 - (b) assess whether the plan is effective in protecting and conserving the Commonwealth Heritage values of the place; and
 - (c) make recommendations for the improved protection of the Commonwealth Heritage values of the place.
- (3) The person carrying out the review must publish, on the Internet and in a daily newspaper circulating in each State and self-governing Territory, a notice inviting anyone to give the person comments within 20 business days on:
 - (a) whether the plan is consistent with the Commonwealth Heritage management principles; and
 - (b) the effectiveness of the plan in protecting and conserving the Commonwealth Heritage values of the place.
- (4) In carrying out the review, the person must consider the comments (if any) received in accordance with the notice.

Subdivision D—The Commonwealth Heritage management principles

341Y Commonwealth Heritage management principles

- (1) The regulations must prescribe principles for managing Commonwealth Heritage places. The principles prescribed are the *Commonwealth Heritage management principles*.
- (2) The regulations may prescribe obligations to implement or give effect to the Commonwealth Heritage management principles.
- (3) A person must comply with the regulations to the extent that they impose obligations on the person.

Subdivision E—Obligations of Commonwealth agencies

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

A Commonwealth agency that owns or controls a place that has, or might have, one or more Commonwealth Heritage values must take all reasonable steps to assist the Minister and the Australian Heritage Council in the identification, assessment and monitoring of the place's Commonwealth Heritage values.

341ZA Heritage strategies

- (1) If a Commonwealth agency owns or controls one or more places, the agency must:
 - (a) prepare a written heritage strategy for managing the places to protect and conserve their Commonwealth Heritage values; and
 - (b) give a copy of the strategy to the Minister;as soon as practicable and in any event within 2 years after the later of:
 - (c) the time the agency first owns or controls a place; and
 - (d) the commencement of this section.

Note: The heritage strategy will apply to every place the agency owns or controls.

- (1A) Before making a heritage strategy, the Commonwealth agency must consult the Australian Heritage Council and take into account any advice the agency receives from the Council.
- (2) The Commonwealth agency may, in writing, amend the heritage strategy or revoke and replace the heritage strategy. The Commonwealth agency must give the Minister a copy of the amended or replacement strategy within 20 business days of the amendment or replacement.
- (3) A heritage strategy must:
 - (a) mention the period within which the Commonwealth agency must make a plan under section 341S; and
 - (b) mention the period within which the Commonwealth agency must do the things mentioned in subsection 341ZB(1); and
 - (c) address the matters prescribed by the regulations (if any); and
 - (d) not be inconsistent with the Commonwealth Heritage management principles.
- (4) The Minister must advise the Commonwealth agency whether or not the agency's heritage strategy (whether original, amended or replacement) is inconsistent with the Commonwealth Heritage management principles.
- (5) At least once in every 3 year period after a heritage strategy is made, the Commonwealth agency concerned must cause a review of the strategy to be carried out.
- (6) The agency must give the Minister a written report of the review. The report must address the matters prescribed by the regulations (if any).

341ZB Heritage assessments and registers

- (1) A Commonwealth agency must do all of the following within the period mentioned in its heritage strategy:
 - (a) conduct a program to identify Commonwealth Heritage values for each place it owns or controls;
 - (b) produce a register that sets out, for each place it owns or controls, the Commonwealth Heritage values (if any) of that place;
 - (c) give the Minister a written report that includes:

- (i) details of the program; and
 - (ii) a copy of the register.
- (2) The regulations may prescribe all or any of the following:
 - (a) how Commonwealth heritage values may be identified for a place;
 - (b) matters a register must address;
 - (c) matters a report to the Minister must address.
- (3) A Commonwealth agency must keep its register up to date.
- (4) A register may be kept electronically.
- (5) If a report under paragraph (1)(c) indicates that a place owned or controlled by a Commonwealth agency may have one or more Commonwealth Heritage values, information from the report may be used or referred to in a nomination of the place for inclusion in the Commonwealth Heritage List.

341ZC Minimising adverse impact on heritage values

A Commonwealth agency must not take an action that has, will have or is likely to have an adverse impact on the National Heritage values of a National Heritage place or the Commonwealth Heritage values of a Commonwealth Heritage place, unless:

- (a) there is no feasible and prudent alternative to taking the action; and
- (b) all measures that can reasonably be taken to mitigate the impact of the action on those values are taken.

341ZD Requirement to ask Minister for advice

- (1) Before a Commonwealth agency takes an action that has, will have or is likely to have a significant impact on a Commonwealth Heritage place, the agency must ask the Minister for advice about taking the action.
- (2) However, the agency is not required to ask for the advice if:
 - (a) the agency has a plan for managing the place that is endorsed by the Minister under section 341T; and
 - (b) the action is provided for or taken in accordance with the plan.

- (3) Within 30 business days after an agency asks for advice under subsection (1), the Minister must give written advice to the agency. The Minister must consult with the Australian Heritage Council in preparing the advice.
- (4) The Minister may ask an agency to provide additional information about the action or place concerned. If the Minister does so, the period in subsection (3) stops on the day the Minister asks for that information until the day after that information is provided.

341ZE Protecting Commonwealth Heritage values of places sold or leased

- (1) This section applies if a Commonwealth agency executes a contract for the sale or lease to someone else of a Commonwealth area in the Australian jurisdiction that is or includes all or part of a Commonwealth Heritage place. It does not matter whether the agency executes the contract for the Commonwealth or on its own behalf.
- (1A) The Commonwealth agency must give the Minister at least 40 business days' notice before executing the contract.
- (2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the Commonwealth Heritage values of the place, unless the agency is satisfied that:
 - (a) having regard to other means of protecting those values, including such a covenant in the contract is unnecessary to protect them or is unreasonable; or
 - (b) including such a covenant in the contract is impracticable.
- (3) The Commonwealth agency must inform the Minister before executing the contract if:
 - (a) such a covenant:
 - (i) would not, or could not be made to, bind the successors in title of the buyer or lessee; or
 - (ii) could be insufficient to ensure the ongoing protection of the Commonwealth Heritage values of the place; or
 - (b) the agency is satisfied as described in subsection (2).The information must include written reasons why paragraph (a) applies or why the agency is satisfied as described in subsection (2).

- (4) If the Minister is informed of a matter in paragraph (3)(a) or that the Commonwealth agency is satisfied that it is unreasonable or impracticable to include such a covenant in the contract, the Minister must:
 - (a) take all reasonable measures to enter into a conservation agreement with the prospective buyer or lessee for the protection and conservation of the Commonwealth Heritage values of the place; or
 - (b) advise the agency about measures to ensure the ongoing protection of the Commonwealth Heritage values of the place.
- (5) If the Minister is informed that the Commonwealth agency is satisfied that it is unnecessary to include such a covenant in the contract, the Minister may advise the agency about measures to ensure the ongoing protection of the Commonwealth Heritage values of the place.
- (6) If the Minister advises the Commonwealth agency under this section about measures to ensure the ongoing protection of the Commonwealth Heritage values of the place, the agency must take all reasonable steps to ensure that the measures are taken.

Subdivision F—Advice for authorising actions in Indian Ocean Territories

341ZF Minister’s advice on authorisation of actions affecting Commonwealth Heritage places

- (1) This section applies in relation to:
 - (a) an authority established for the government of the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands by or under a law applying in the Territory; and
 - (b) an action that has, will have or is likely to have a significant impact on a Commonwealth Heritage place in the Territory.
- (2) The authority must ask the Minister for advice about the action before the authority decides whether to give an authorisation (however described) under a law applying in the Territory, or under an instrument made under such a law, for a person to take the action.

- (3) The Minister must give the authority written advice about the action within a reasonable time of being asked. The Minister must consult the Australian Heritage Council in preparing the advice.
- (4) The Minister may ask the authority for extra information about the action before giving the advice.

Subdivision G—Assistance for protecting Commonwealth Heritage places

341ZG Commonwealth assistance for protecting Commonwealth Heritage places

- (1) The Commonwealth may give financial or other assistance for the identification, promotion, protection or conservation of a Commonwealth Heritage place to any person.
- (2) The Commonwealth may give the assistance subject to conditions.

Subdivision H—Reviewing and reporting on the Commonwealth Heritage List

341ZH Reviewing and reporting on the Commonwealth Heritage List

- (1) At least once in every 5 year period after the Commonwealth Heritage List is established, the Minister must ensure that:
 - (a) a review of the Commonwealth Heritage List is carried out; and
 - (b) a report of that review is tabled in each House of the Parliament.
- (2) The report must include details of:
 - (a) the number of places included in the Commonwealth Heritage List; and
 - (b) any significant damage or threat to the Commonwealth Heritage values of those places; and
 - (c) how many plans under Subdivision C for managing Commonwealth Heritage places have been made, or are being prepared, and how effectively the plans that have been made are operating; and

- (d) the operation of any conservation agreements under Part 14 that affect Commonwealth Heritage places; and
- (e) all nominations, assessments and changes to the Commonwealth Heritage List under this Division during the period of review; and
- (f) compliance with this Act in relation to Commonwealth Heritage places; and
- (g) any other matters that the Minister considers relevant.

33 At the end of subsection 367(1)

Add:

- ; and (j) if the reserve includes a National Heritage place:
 - (i) not be inconsistent with the National Heritage management principles; and
 - (ii) address the matters prescribed by regulations made for the purposes of paragraph 324S(4)(a); and
- (k) if the reserve includes a Commonwealth Heritage place:
 - (i) not be inconsistent with the Commonwealth Heritage management principles; and
 - (ii) address the matters prescribed by regulations made for the purposes of paragraph 341S(4)(a).

34 Part 16 (heading)

Repeal the heading, substitute:

Part 16—Precautionary principle and other considerations in making decisions

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

Insert:

11A	324S	about making a plan for managing a National Heritage place
-----	------	--

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

Insert:

13A 341T about endorsing a plan for managing a Commonwealth Heritage place

37 At the end of Part 16

Add:

391A Minister must consider information in the Register of the National Estate in making decisions

Subject to this Act, the Minister must have regard to information in the Register of the National Estate kept under the *Australian Heritage Council Act 2003* in making any decision under this Act to which the information is relevant.

38 After subparagraph 495(2)(a)(i)

Insert:

(ia) section 15C (Offences relating to National Heritage places); or

39 Section 528

Insert:

Australian Heritage Council means the body established by the *Australian Heritage Council Act 2003*.

40 Section 528

Insert:

Commonwealth Heritage criteria has the meaning given by subsection 341D(1).

41 Section 528

Insert:

Commonwealth Heritage List means the list kept under Subdivision B of Division 3A of Part 15.

42 Section 528

Insert:

Commonwealth Heritage management principles has the meaning given by section 341Y.

43 Section 528

Insert:

Commonwealth Heritage place has the meaning given by subsection 341C(2).

44 Section 528

Insert:

Commonwealth Heritage value has the meaning given by section 341D.

45 Section 528 (definition of *cultural heritage*)

Repeal the definition.

46 Section 528 (paragraph (d) of the definition of *environment*)

Repeal the paragraph, substitute:

- (d) heritage values of places; and
- (e) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b) or (c).

Note: The places mentioned in paragraph (d) of the definition of *environment* include places included in the Register of the National Estate kept under the *Australian Heritage Council Act 2003*.

47 Section 528

Insert:

heritage value of a place includes the place's natural and cultural environment having aesthetic, historic, scientific or social significance, or other significance, for current and future generations of Australians.

48 Section 528

Insert:

indigenous heritage value of a place means a heritage value of the place that is of significance to indigenous persons in accordance

with their practices, observances, customs, traditions, beliefs or history.

49 Section 528

Insert:

National Heritage criteria has the meaning given by subsection 324D(1).

50 Section 528

Insert:

National Heritage List means the list kept under Subdivision B of Division 1A of Part 15.

51 Section 528

Insert:

National Heritage management principles has the meaning given by section 324Y.

52 Section 528

Insert:

National Heritage place has the meaning given by subsection 324C(2).

53 Section 528

Insert:

National Heritage value has the meaning given by section 324D.

54 Section 528 (definition of *natural heritage*)

Repeal the definition.

55 Section 528

Insert:

place includes:

- (a) a location, area or region; and

- (b) a building or other structure, or group of buildings or other structures (which may include equipment, furniture, fittings and articles associated or connected with the building or structure, or group of buildings or structures); and
- (c) in relation to the protection, maintenance, preservation or improvement of a place—the immediate surroundings of a thing in paragraph (a) or (b).

Schedule 2—Amendments relating to the Director of Indigenous Heritage Protection

Environment Protection and Biodiversity Conservation Act 1999

1 After subsection 324G(4)

Insert:

- (4A) If, in making an assessment, the Australian Heritage Council considers that the place might have indigenous heritage value, it must:
- (a) ask the Director of Indigenous Heritage Protection to provide written advice on the place's indigenous heritage value:
 - (i) within 40 business days if the Minister requested the assessment under section 324E or this section; or
 - (ii) within 20 business days if the Minister requested the assessment under section 324F (emergency listing); or
 - (iii) within a reasonable period if the Council is making the assessment under this section on the Council's own initiative; and
 - (b) if the Director provides the advice on time—consider the advice and give a copy of it to the Minister with the assessment.

Note: This item will only commence after the commencement of section 9 of the Act that establishes the Director of Indigenous Heritage Protection (see section 2 of this Act).

2 After paragraph 324J(8)(b)

Insert:

- (ba) the advice (if any) of the Director of Indigenous Heritage Protection, a copy of which was given to the Minister by the Council under paragraph 324G(4A)(b) with the assessment; and

Note: This item will only commence after the commencement of section 9 of the Act that establishes the Director of Indigenous Heritage Protection (see section 2 of this Act).

3 After subsection 341G(4)

Insert:

- (4A) If, in making an assessment, the Australian Heritage Council considers that the place might have indigenous heritage value, it must:
- (a) ask the Director of Indigenous Heritage Protection to provide written advice on the place's indigenous heritage value:
 - (i) within 40 business days if the Minister requested the assessment under section 341E or this section; or
 - (ii) within 20 business days if the Minister requested the assessment under section 341F (emergency listing); or
 - (iii) within a reasonable period if the Council is making the assessment under this section on the Council's own initiative; and
 - (b) if the Director provides the advice on time—consider the advice and give a copy of it to the Minister with the assessment.

Note: This item will only commence after the commencement of section 9 of the Act that establishes the Director of Indigenous Heritage Protection (see section 2 of this Act).

4 After paragraph 341J(8)(b)

Insert:

- (ba) the advice (if any) of the Director of Indigenous Heritage Protection, a copy of which was given to the Minister by the Council under paragraph 341G(4A)(b) with the assessment; and

Note: This item will only commence after the commencement of section 9 of the Act that establishes the Director of Indigenous Heritage Protection (see section 2 of this Act).

Schedule 3—New listings of places in other lists

1A Including World Heritage properties in National Heritage List

- (1) This item applies to a place consisting of a property that, at any time within 6 months after this item commences, is included in the World Heritage List after being submitted by the Commonwealth to the World Heritage Committee under Article 11 of the World Heritage Convention. It does not matter whether the property was first included in the List before, on or after the commencement of this item.

Place may be included in National Heritage List within 6 months

- (2) The Minister may, by instrument published in the *Gazette* within 6 months after this item commences, include in the National Heritage List the place and the National Heritage values it has because of subitem (3). To avoid doubt:
- (a) all those values must be included in the List if the Minister includes the place in the List under this item; and
 - (b) this item does not prevent the Minister from including in the List at any time under the *Environment Protection and Biodiversity Conservation Act 1999*:
 - (i) the place; and
 - (ii) a National Heritage value the place has because of subitem (3) or otherwise.

World heritage values taken to cause place to meet National Heritage criteria

- (3) For the purposes of this item and the *Environment Protection and Biodiversity Conservation Act 1999*, each world heritage value that the World Heritage Committee has identified the property as having is taken to cause the place to meet a National Heritage criterion.

Note: This has the effect that, under subsection 324D(1) of the *Environment Protection and Biodiversity Conservation Act 1999*, the place has a National Heritage value corresponding to that world heritage value. Under that subsection, the place will also have another National Heritage value if the place has a heritage value that causes the place to meet one of the National Heritage criteria apart from this item.

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

- (1) In this item:
- Register of the National Estate* means the Register of the National Estate kept under the *Australian Heritage Commission Act 1975*, including the Interim List kept under section 26 of that Act, as in force immediately before this item commences.
- (2) Within 6 months after this item commences, the Minister may determine that the Commonwealth Heritage List is taken to include a place if:
- (a) the place:
 - (ia) is, or is part of, a place to which item 1A (about World Heritage properties) applies; or
 - (i) was included, immediately before this item commences, in the Register of the National Estate; or
 - (ii) is part of a place that was included, immediately before this item commences, in the Register of the National Estate; and
 - (b) the place is within a Commonwealth area; and
 - (c) the Minister is satisfied that the place has one or more Commonwealth Heritage values.
- (3) The Minister must ensure that the Commonwealth Heritage List specifies the Commonwealth Heritage value or values for each place that the Minister determines is taken to be included in the Commonwealth Heritage List.
- (4) A determination under subitem (2) must be in writing and a copy of the determination must be published in the *Gazette*.

Schedule 4—Other amendments

Environment Protection and Biodiversity Conservation Act 1999

1A After section 74

Insert:

74A Minister may request referral of a larger action

- (1) If the Minister receives a referral in relation to a proposal to take an action by a person, and the Minister is satisfied the action that is the subject of the referral is a component of a larger action the person proposes to take, the Minister may decide to not accept the referral.
- (2) If the Minister decides to not accept a referral under subsection (1), the Minister:
 - (a) must give written notice of the decision to the person who referred the proposal to the Minister; and
 - (b) must give written notice of the decision to the person who is proposing to take the action that was the subject of the referral; and
 - (c) may, under section 70, request of the person proposing to take the action that was the subject of the referral, that they refer the proposal, to take the larger action, to the Minister.
- (3) To avoid doubt, sections 73 and 74 do not apply to a referral that has not been accepted in accordance with subsection (1).
- (4) If the Minister decides to accept a referral under subsection (1), the Minister must, at the time of making a decision under section 75:
 - (a) give written notice of the decision to the person who referred the proposal to the Minister;
 - (b) publish in accordance with the regulations (if any), a copy or summary of the decision.

1B After subsection 75(1)

Insert:

(1AA) To avoid doubt, the Minister is not permitted to make a decision under subsection (1) in relation to an action that was the subject of a referral that was not accepted under subsection 74A(1).

1C Subsection 77(3)

Repeal the subsection.

1D Subsection 77(5)

Repeal the subsection.

1E After section 77

Insert:

77A Action to be taken in a particular manner

(1) If, in deciding whether the action is a controlled action or not, the Minister has made a decision (the *component decision*) that a particular provision of Part 3 is not a controlling provision for the action because the Minister believes it will be taken in a particular manner (whether or not in accordance with an accredited management plan for the purposes of a declaration under section 33 or a bilaterally accredited management plan for the purposes of a bilateral agreement), the notice, to be provided under section 77, must set out the component decision, identifying the provision and the manner.

Note: The Minister may decide that a provision of Part 3 is not a controlling provision for an action because he or she believes that the action will be taken in a manner that will ensure the action will not have (and is not likely to have) an adverse impact on the matter protected by the provision.

(2) A person must not take an action, that is the subject of a notice that includes a particular manner under subsection (1), in a way that is inconsistent with the manner specified in the notice.

Civil penalty:

- (a) for an individual—1,000 penalty units, or such lower amount as is prescribed by the regulations;
- (b) for a body corporate—10,000 penalty units, or such lower amount as is prescribed by the regulations.

1F Paragraph 78(1)(b)

Omit “in the notice under subsection 77(3)”, substitute “under subsection 77A(1) in the notice given under section 77”.

1G Application

The amendment of paragraph 78(1)(b) of the *Environment Protection and Biodiversity Conservation Act 1999* made by this Schedule applies in relation to notices given under section 77 of that Act after the commencement of that amendment.

1H Section 137

Repeal the section, substitute:

137 Requirements for decisions about World Heritage

In deciding whether or not to approve, for the purposes of section 12 or 15A, the taking of an action and what conditions to attach to such an approval, the Minister must not act inconsistently with:

- (a) Australia’s obligations under the World Heritage Convention; or
- (b) the Australian World Heritage management principles; or
- (c) a plan that has been prepared for the management of a declared World Heritage property under section 316 or as described in section 321.

1J Section 318

Repeal the section, substitute:

318 Commonwealth compliance with plans

- (1) The Commonwealth or a Commonwealth agency must not:
 - (a) contravene a plan made under section 316; or
 - (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.
- (2) If there is no plan in force under section 316 for a particular property described in subsection (1) of that section, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the

property are not inconsistent with the Australian World Heritage management principles.

1K Section 330

Repeal the section, substitute:

330 Commonwealth compliance with plans

- (1) The Commonwealth or a Commonwealth agency must not:
 - (a) contravene a plan made under section 328; or
 - (b) authorise another person to do, or omit to do, anything that, if it were done or omitted to be done by the Commonwealth or the Commonwealth agency (as appropriate), would contravene such a plan.

- (2) If there is no plan in force under section 328 for a particular wetland described in subsection (1) of that section, the Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that its acts (if any) relating to the wetland are not inconsistent with the Australian Ramsar management principles.

1 Subsections 515(1) and (2)

After “Department”, insert “or to the Director”.

2 After Part 20

Insert:

Part 20A—Publication of information on the Internet

515A Publication of information on the Internet

Without limiting the operation of section 170A, the Secretary must publish on the Internet each week a list of:

- (a) all permits issued or granted under this Act in the immediately preceding week; and
- (b) all matters required by this Act to be made available to the public in the immediately preceding week.

Schedule 4 Other amendments

*[Minister's second reading speech made in—
House of Representatives on 27 June 2002
Senate on 15 November 2002]*

(155/02)