



Australian Government
Australian Heritage Council

Protection of Australia's Commemorative Places and Monuments

Report prepared for the Minister for the Environment and Energy,
the Hon Josh Frydenberg MP



Australian Heritage Council
March 2018

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Cover image

King George V Monument, Melbourne's Domain Parklands. Photo by Madeleine Maple, Department of the Environment and Energy

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Membership of the Australian Heritage Council

Chair	The Hon Dr David Kemp AC
Historic Heritage Experts	Associate Professor Don Garden OAM Dr Jane Harrington
Indigenous Heritage Experts	Dr Lyndon Ormond-Parker Ms Rachel Perkins
Natural Heritage Experts	Dr Steve Morton Dr Jennie Whinam

This report has been prepared with the assistance of the Heritage Branch in the Australian Government Department of the Environment and Energy. In particular the Council acknowledges the contributions of the Historic Heritage Section, the Indigenous Heritage Section and the Council Secretariat in the preparation of this report.

i. Terms of Reference

In September 2017 the Minister for the Environment and Energy, the Hon Josh Frydenberg MP, asked the Australian Heritage Council (the Council) to provide advice on the adequacy of the existing legal protections for places and monuments that relate to Australia's early colonial history and interactions between European explorers and settlers and Australia's Indigenous peoples. The Minister also asked for advice as to how these protections operate in the event of damage or loss of cultural heritage values across all three levels of government, and for recommendations to enhance the protection of significant monuments. This advice was requested to be provided in the first quarter of 2018.

The Council may investigate these matters within the powers set out in the *Australian Heritage Council Act 2003*. In particular, sections 5(d), (e), (g) and (h) relate to advising the Minister and providing advice in relation to matters relating to heritage:

(d) to advise the Minister on:

- (i) promotional, research, training or educational activities relating to heritage; and
- (ii) national policies relating to heritage; and
- (iii) grants or other financial assistance relating to heritage; and
- (iv) the monitoring of the condition of places included in the National Heritage List or Commonwealth Heritage List; and
- (v) the Commonwealth's responsibilities for historic shipwrecks; and
- (vi) other matters relating to heritage;

(e) to promote the identification, assessment, conservation and monitoring of heritage;

(g) to organise and engage in research and investigations necessary for the performance of its functions.

(h) to provide advice directly to any person or body or agency either of its own initiative or at the request of the Minister.

ii. Scope of investigation

Defining places and monuments

For the purpose of this report, Council has focussed on the commemorative aspects of places and monuments from Australia's early colonial history, including those that recognise interactions between European explorers and settlers and Australia's Indigenous peoples.

Commemorative places and monuments take many forms and are used widely in Australia for a range of purposes. These may be places or items that may or may not be heritage listed. The commemoration may be simply through a name: for example through the naming of a street, city, building, or site. The commemorative place may include a sculptural or other artistic work such as a statue, gravestone or rock art; a plaque, fountain, seat or bench; an archaeological relic or ruin; a burial site; a site of a significant past event; a manmade landscape feature such as a garden, tree-planting; or a natural landscape feature or place either altered by human intervention or otherwise imbued with cultural significance, such as a scarred tree, prominent natural stone feature or purposeful placement of stones. Places and items may commemorate significant events such as loss of life and personal sacrifice; tell Indigenous traditional stories including contact with other cultures; and pay tribute to people and ideas. These commemorative places, items and monuments are understood to provide a link between present and past generations and/or a permanent marker to the memory of people, events and stories.

This report has been sought because commemorative places or monuments of the colonial era in Australia have on occasion been attacked or vandalised, and an assessment is sought as to the level of protection afforded to relevant cultural values under Australia's levels of heritage legislation.

In response to the Terms of Reference, this study largely focuses on commemorative places and monuments relating to events of the time period 1770 - 1901, although reference is made to events in Australia's history well prior to and after this time. Memorialisation of certain aspects of history reflects views and interpretation of people or events at the time, and can occur at any time: for example, the Lord Mayor of Sydney unveiled a statue to Governor Lachlan Macquarie as recently as in 2013.



Eternal Flame, Shrine of Remembrance, Melbourne. Photo by Madeleine Maple, Department of the Environment and Energy

iii. Methodology

In accordance with the Terms of Reference for this study, Council sought the advice of the Australian jurisdictional representatives of the Heritage Chairs and Officials of Australia and New Zealand (HCOANZ) in relation to the adequacy of protections for commemorative places and monuments at the three tiers of government and including Indigenous heritage protections. In particular, the Australian HCOANZ members and relevant Indigenous representatives were asked:

- What protections are afforded to commemorative places and monuments by legislation or otherwise?
- What penalties are available to enforce these protections in the event that heritage values are damaged, and in practice, how are these activated?
- In your view, are the current protection mechanisms adequate or could they be enhanced?

Advice was received from all eight states and territories, and Council would like to thank HCOANZ members and the Indigenous heritage representatives for their valuable input to this report.

Reflecting the timing for this study, the Council's research was limited to a desktop survey of available materials including internal and external reports, media articles, and limited personal communications. Of particular note are the following sources of information:

- *'Etched in Stone': An Inquiry into the Administration of the National Memorials Ordinance 1928*
- Australian Government's *State of the Environment Report 2016*
- Australian Heritage Strategy
- A thematic study on rock art prepared for the Department of the Environment and the Australian Heritage Council in May 2016 by the Centre for Rock Art Research and Management at the University of Western Australia
- A report on behalf of the Department of Environment by Dr Michael Pearson, *'Great Southern Land'*, a thematic study in relation to the maritime investigation of Terra Australis
- *Monuments and Statuary in the Northern Territory*, a report prepared by the Heritage Branch of the Department of Tourism and Culture 2018
- Places included in the National and Commonwealth Heritage lists, as well as those currently being considered by Council for listing, and those identified in relevant thematic studies.

1. Introduction

- 1.1 Commemorative places and monuments around Australia variously commemorate individuals, groups, events and stories. They range in size and variety of materials. They are located both in urban and national parks, squares and other public spaces, and on private land. They may be publicly accessible, not generally accessible or documented, or their locations hidden from public knowledge in the interests of their ongoing protection and /or cultural sensitivities.
- 1.2 The naming of streets and suburbs, electorates, buildings and institutions, reenactments of historical events, the identification and registration of heritage sites and the installation of memorials and monuments may also be considered manifestations of the commemoration of the values associated with a figure, event or place in Australia's history.
- 1.3 The number of commemorative places and monuments in Australia is sizeable. For example, the privately-run Monuments Australia website lists currently recorded monuments (across all themes and periods) at 30,626 (November 2017).¹
- 1.4 However, perhaps reflective of the time these memorials were constructed, their focus is narrow. A 2017 study found that of the 520-plus memorials, statues and monuments within the CBD of Melbourne, the memorial landscape mostly represents colonial landscapes, civic leadership and patriotic and heroic achievement. Monuments recording the achievements of men greatly outnumber those recording the achievements of women.²
- 1.5 There is a growing number of identified commemorative places and monuments relating to Indigenous heritage, and it is a priority of the AHC to continue to expand the recognition of Australia's Indigenous heritage. Indigenous commemorative places may be viewed as places or features of particular significance on a continuum within the broader cultural landscape of land and sea Country. These include a range of features and places including but not limited to: scarred trees and natural formations for example, Owl Stones and statues in such as Bibulmun Womanin Joondalup, Western Australia. In Melbourne the King's Domain Resting Place is an important such site.



Kings Domain Resting Place stone. Photo by Madeleine Maple, Department of the Environment and Energy

1 Griffith University, The importance of Rock Art, *Professor Paul Taçon; One man's battle to save and document Australia's heritage before it is lost forever.* No date given.

2 The Age, *Historic statues: Where Indigenous people and women go missing*, citing Grieve, G., 3 September 2017.

- 1.6 Beyond such places there are of course other sites which, while not heritage listed (at least to the present) may be regarded as importantly commemorative of Indigenous achievement, such as rock art sites. There are more than 100,000 known Indigenous art sites scattered across Australia and there is likely to be even more sites as yet not revealed to or recognised beyond local community groups.
- 1.7 The sheer number of commemorative places poses challenges to their protection and management, particularly in terms of resourcing of ongoing management and appropriate protection measures. Australia's National, state and local heritage regimes exist to identify the places and items seen by the wider community as meriting special recognition.
- 1.8 Changing attitudes and appreciation of history can also lead to questioning the appropriateness of some commemorative places and monuments. Protests against and the vandalising of some monuments on political grounds demonstrate their political nature as tangible manifestations of a past seen by some to stand for attitudes and values unacceptable today.
- 1.9 In Australia in September 2017, following demonstrations in relation to confederate statues in the US, a number of colonial monuments in Australia were vandalised. In Sydney's Hyde Park a statue of Captain James Cook was sprayed with slogans. Monuments to Queen Victoria and Governor Lachlan Macquarie were also targeted. In Perth, the statue to Yagan, an Indigenous resistance warrior has been repeatedly targeted over a number of years, by beheading.
- 1.10 Other examples of changing context in commemorative places include the changing of names that are offensive to some, or the spontaneous memorials on sites that have gained new meaning. The replacement of the names of some significant places recognising British and European explorers with Indigenous names is now well established for example, in 1993 Uluru became the first icon in Australia to be officially dual-named as Ayers Rock/Uluru, which was later changed to Uluru / Ayers Rock.
- 1.11 Such demonstrations have brought Colonial places and monuments into the spotlight and stimulated discussion about commemoration of Australia's history. Council has considered the nature, historic and political context of Colonial monuments and the ways in which values of importance to Australians symbolised by such sites can be best protected.
- 1.12 Council has sought advice on the legislative protections available for Colonial era monuments and heritage places at all three tiers of government, and the penalties available to compliance officers when monuments are damaged.
- 1.13 In addition, it has considered non-statutory means of affording protection against vandalism and other threats to our collective heritage, as alternative means of protecting Colonial monuments and sites.
- 1.14 Together these observations form the basis of a number of recommendations and summary comments. The Australian Heritage Council hopes the findings of this report will inform further dialogue and policy outcomes in relation to commemoration of Australia's past and the protection of commemorative places and monuments.

2. Threats to monuments

- 2.1 The threats to places and monuments that commemorate Australia's colonial-era heritage are varied and numerous. They include threats arising from public accessibility, environmental threats, development and industrial pressures, mining, enterprise, and weather. Inadequate protection measures and funding availability pose additional risks of destruction and deterioration of significant sites. Lack of awareness, appreciation and respect are also threats to places and monuments resulting in purposeful damage or disintegration through neglect.
- 2.2 The common character of traditional monuments, placed for maximum visibility in public parks and other open spaces, carries risks of damage and vandalism. Nevertheless, remote sites which are out of public view also face threats. For example, Indigenous rock art on the Burrup Peninsula and other sites has also been the subject of graffiti and vandalism. For this reason the local community or archaeologists may prefer to keep the exact location of art sites hidden to prevent destruction of this valuable art. The National Heritage listed place Ku-ring-gai Chase National Park, Lion, Long and Spectacle Island Nature Reserves, for example, contains valuable contact art, but reference to this art and its location is not publicised in the interests of its ongoing protection.
- 2.3 Environmental factors are another threat, particularly to Indigenous contact art, memorial gardens and landscape art. Bushfires, insects, animal interference and vegetation growth are all impediments to their protection. Extreme weather events pose additional challenges.³
- 2.4 A central threat to protection of monuments is the unavailability of adequate funding for maintenance. The costs and resourcing of ongoing maintenance is often the responsibility of state and local governments who have competing demands on finances.
- 2.5 Tourism offers both opportunities and challenges for Australia's heritage. Tourism conducted in a sensitive and sustainable manner can provide valuable education and raise awareness, and can raise necessary funds for ongoing maintenance and protection, but when managed inappropriately can damage heritage values.⁴
- 2.6 Perhaps the most important threat to the protection and maintenance of our commemorative places and monuments is their position in the public consciousness. The recent vandalism of statues portraying historic figures has brought such monuments into the spotlight and made them the focus of discussion about their role in representing current community values.
- 2.7 Colonial monuments, particularly those commemorating early explorers and administrators, are a reflection of a point in time that was almost exclusively focussed on values of settlers. They represent what was believed and understood, and what the society and government aspired to. Monuments of the colonial era were often large scale, solid and imposing statues memorialising values of exploration, courage, community building and innovation.

³ Griffith University, The importance of Rock Art, *Professor Paul Taçon; One man's battle to save and document Australia's heritage before it is lost forever*. No date given. /State of the Environment Report.

⁴ Mackay, R. *State of the Environment 2016*

- 2.8 European settlers were embarking on a new life in a new land, with fear of the unknown likely to have been an ever present undercurrent. Monuments are akin to a marker of society's thinking at the time - its past, and aspirations for the future. Newspaper coverage of the unveiling of the Captain James Cook statue in Hyde Park in 1879 provides an insight into the values being memorialised:

(The procession, of 12,000) was the largest ever seen in Sydney. The ceremony was witnessed by about 60,000 people. Two hundred children sang the National Anthem. His Excellency the Governor, Sir Hercules Robinson, unveiled the statue; and; in doing so, made a speech, in which he gave a narrative of Cook's life, and characterised him as a humane, just, and God-fearing man. He added that it would be well for the youth of Australia to imitate his nobility of character.

Newcastle Morning Herald and Miners' Advocate (NSW), 26 February 1879



Captain Cook statue, Hyde Park, Sydney. Photo by Stan Florek, Australian Museum

- 2.9 Indigenous peoples had little place in colonial memorialisation. Courageous resistance to European settlement in Australia is little known or recognised in commemorative places and monuments.
- 2.10 Contact with Europeans and the conflicts that ensued during the period of colonisation were recorded and commemorated by Aboriginal people in rock art and other special places. Rock art has been described by Aboriginal elders as their history books; the largest sites libraries. Some of the paintings, such as those of ships, were reproduced in exquisite detail from sightings tens of kilometres away, and after days, weeks, or months had passed.⁵ “There is this incredible volume of contact rock art that tells the story of encounter, contact, colonisation, invasion from an Indigenous perspective rather than the traditional history perspective of the colonisers.”⁶
- 2.11 Some significant Indigenous grave sites from this period are recognised such as the grave of Windradyne in the Central West of NSW which is listed on the NSW State Heritage Register. Windradyne was a leader of the Wiradjuri people during the conflicts that occurred in the Bathurst region during the early 19th century. After his family was massacred, Windradyne declared war on the local settlers. However, the situation was defused by a local settler named William Suttor, who had learnt the local dialect. A truce followed and the two men remained friends. When Windradyne died from his wounds in 1835, the warrior was buried on Suttor’s property with full tribal honours. The grave continues to be revered by the local Wiradjuri community.⁷
- 2.12 Assistance provided by Indigenous people to early European settlers has now been recognised and commemorated in some instances. For example, the grave of Yuranigh who was a respected Aboriginal guide to the early explorer Major Mitchell on his famous north-west exploratory journey, is listed on the NSW Heritage Register. Similarly the Burke, Wills, King and the Yandruwandha National Heritage place, along the Birdsville Track in South Australia, provides important insights into the 19th century European attitude towards the Australian environment and its Indigenous peoples, and the role of the Yandruwandha in saving King’s life.⁸



Dig Tree, the Burke, Wills, King and Yandruwandha National Heritage place, South Australia. Photo by Department of the Environment and Energy

5 Taçon, P, cited in Griffith University, The importance of Rock Art, *Professor Paul Taçon; One man's battle to save and document Australia's heritage before it is lost forever*. No date given.

6 Australian Heritage Database, Place ID: 106088, Wurrwurrwuy, viewed November 2017.

7 Prof Taçon P. Griffith University, no date given.

8 Pearson, M. *Great Southern Land*, Part 1, 2004.

- 2.13 Nevertheless, Indigenous heritage places across Australia are under threat from a range of sources such as urban and industrial development, mining, infrastructure, inappropriate visitation, lack of access for traditional purposes, and desecration of sacred objects and artworks.
- 2.14 The Council considers that further discussion is warranted about the balance of colonial monuments in Australia's public landscape. The protections and penalties against vandalism of colonial monuments are set out further in the following chapters.



Queen Victoria Monument, Melbourne's Domain Parklands. Photo by Madeleine Maple, Department of the Environment and Energy

3. Legislative protection mechanisms

- 3.1 There are a number of protections available to deter and penalise damage to colonial era commemorative places and monuments. Within statutory frameworks, the legislative protection mechanisms and penalties for heritage places and items in each state and territory are independent, but are similar in their structure and administration.
- 3.2 These protections generally rely on a place or monument being included in a heritage list or register if it is assessed as having sufficient heritage value. Not every heritage place or monument has sufficient value to meet the threshold justifying inclusion on a particular list.
- 3.3 The protection of monuments and places within each jurisdiction's legislation is summarised in the table at Attachment 1. Attachment 2 shows the legislative protections in relation to sites of Indigenous heritage, with Indigenous places commonly protected under separate legislation.
- 3.4 In addition, damage to public places through graffiti is often addressed in legislation that applies to all types of property, not just those with heritage values. For example Western Australia has the *Graffiti Vandalism Act 2016*, while in NSW there is a *Graffiti Control Act 2008*, both of which impose fines and potential prison terms for marking property.
- 3.5 Similarly general intentional damage to property is addressed through criminal law such as South Australia's *Criminal Law Consolidation Act 1935* and *Victoria's Crimes Act 1958*. Penalties include prison terms.
- 3.6 Protections for places and monuments also vary across the three tiers of government. The following summary seeks to provide explanation of those differences. A place or object may be protected at the local level, at both local and State level, or across all three tiers of Government.

No heritage protection

- 3.7 A number of monuments are not afforded any legislative heritage protections. To name just a few examples, this is the case for a statue of William Bligh in George Street, Bligh Reserve, the Rocks, Sydney; and a statue of Joseph Banks, in Bankstown, Sydney.
- 3.8 A colonial monument or place not being recognised in statutory legislation may be the result of it having being assessed as of little historical significance to an area or State, or of it not having been assessed or recorded.

Local heritage protections

- 3.9 A place or object of local significance means it has importance or significance to the local community. Its significance can lie in its historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value.
- 3.10 The majority of local governments, regardless of which state they fall under, identify and protect local heritage places and areas through planning schemes within planning and development legislation. These take various forms and may be referred to as Local Environmental Plans, Council Development Plans,

Planning Schemes or Heritage Overlays. They require local governments to identify and maintain a register of heritage items that will necessitate certain protections according to their significance to the local area. Planning Schemes control land use and development, and may require approval for certain works. Planning Scheme legislation predominantly considers damage in the form of unauthorised building demolition and works, rather than acts such as vandalism. In the case of vandalism, criminal legislation in the relevant jurisdictions apply.

- 3.11 As an example of local government legislation, in Queensland, protection measures for places and areas of local heritage significance are contained under two instruments. The Queensland Heritage Act 1992 requires all local governments to keep a local heritage register or identify local heritage places in their planning scheme. Eight local governments in Queensland have a local heritage register. Of these, seven also include heritage places in their planning scheme.⁹
- 3.12 The Queensland State Planning Policy (SPP) requires new planning schemes to identify heritage places of local heritage significance, such as buildings, cemeteries, memorials and gardens, and heritage areas (referred to as local heritage places and local heritage areas). Local heritage areas are significant for their collective heritage values and may not exist in all local government areas.¹⁰
- 3.13 Some issues exist in the protections afforded to heritage places within planning schemes. For example, many Queensland planning schemes were developed, or substantially developed prior to the SPP commencing. These schemes were not required to include local heritage places or areas. Twenty local governments in Queensland have no local heritage places or areas identified in their planning schemes and no local heritage register.¹¹
- 3.14 The number and types of heritage places identified varies dramatically. Some local governments identify only State heritage places in their planning schemes or local heritage registers, others identify only cemeteries, whilst other local governments identify a wide range of places.¹²

State heritage protections

- 3.15 A place or object of state significance means it is of importance or significance to the state or territory. Its significance can lie in historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value.
- 3.16 Across all states and territories, individual heritage legislation provides protection for heritage places and objects. The legislation variously defines and protects objects, items, areas, places and classes of place. Most state heritage legislation includes provisions relating to damage of heritage place or objects, including maximum penalties of a certain number of penalty units (which are defined in the relevant State Penalty Unit or Crimes Acts), actual monetary penalties, and maximum terms of imprisonment.

⁹ Queensland Government Department of Infrastructure, Local Government and Planning, <http://www.dilgp.qld.gov.au/planning/local-government-planning-schemes.html>, viewed November 2017.

¹⁰ Ibid.

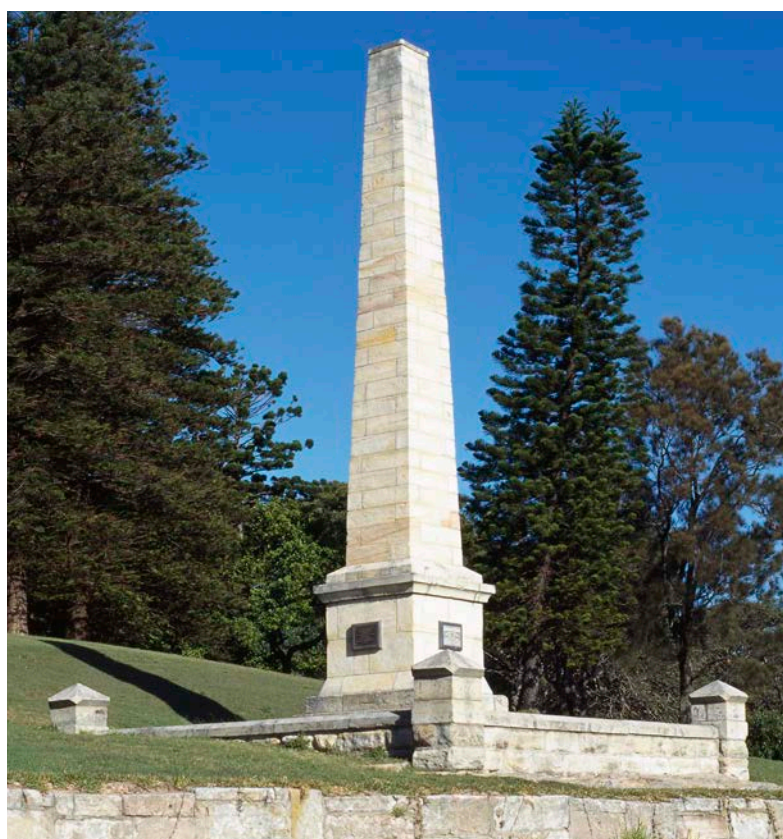
¹¹ Ibid.

¹² Ibid.

National heritage protections

- 3.17 At the national level, natural, historic and Indigenous heritage places are protected through the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The legislation protects ‘heritage places’ in the National and Commonwealth Heritage lists, and heritage values on Commonwealth land. It also sets out protections for Australian places inscribed on the World Heritage List.
- 3.18 Places in the National Heritage List reflect values or stories of national importance, which in some cases includes areas within which a statue or monument is located. These statues or monuments are only protected under the EPBC Act if they are specifically identified in the listed values for the place as an attribute or element that contributes to its significance.
- 3.19 The National Heritage values for Kurnell Peninsula Headland in New South Wales, for example, include reference to a number of elements in the place that demonstrate its outstanding heritage value to the nation under Criterion A:

...The Meeting Place Precinct, including Captain Cook’s Landing Place, includes memorials and landscape plantings commemorating the events of 1770. Place names such as Inscription Point and Point Solander, the remnant watercourse, the memorials to explorers and Indigenous inhabitants, and Cook’s maps of the Peninsula, in conjunction with Cook’s Journal, and those of officers and scientists, clearly illustrate the events of 1770. Attributes specifically associated with its Indigenous values include the watering point and immediate surrounds, and the physical evidence of Aboriginal occupation in the area broadly encompassed by the watering place and the landing stage.¹³



Monument to Captain Cook’s landing place at Kurnell, Sydney.

Photo by Daryl Chapman, Department of the Environment and Energy

¹³ Australian Heritage Database, Place ID: 105812, Kurnell Peninsula Headland, viewed March 2018.

- 3.20 Other National Heritage places where the EPBC Act provides protection for commemorative places and monuments include:
- Recherche Bay, Tasmania
 - Western Tasmania Aboriginal Cultural Landscape, Tasmania
 - Batavia Shipwreck Site, Western Australia
 - Dirk Hartog Landing Site, Western Australia
 - Burke, Wills, King and Yandruwandha National Heritage Place, South Australia and Queensland
 - Wurrwurrwuy, Northern Territory
 - Myall Creek Massacre Site, New South Wales.
- 3.21 The EPBC Act aims to protect listed heritage values from significant impacts. This includes actions that may permanently remove, destroy, damage or substantially alter the fabric of a National Heritage place. The EPBC Act is unlikely to be triggered by minor actions such as damage through graffiti or modification of a statue as these types of activities may be reversible and as such would not be considered permanent or of sufficient scale or intensity.
- 3.22 The National Capital Authority, as a Commonwealth agency under the Department of Infrastructure and Regional Development, administers legislation which oversees the selection and placement of memorials and monuments in the nation's capital.

Indigenous heritage protections

- 3.23 The EPBC Act protects the Indigenous values included in World and National Heritage places. In Commonwealth areas, Indigenous heritage is protected under the EPBC Act as part of the environment. Actions which may, or are likely to have a significant impact to Indigenous heritage within a Commonwealth area are commonly assessed by the Department.
- 3.24 In addition to the EPBC Act the Department also manages the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSIHP Act), which can protect areas and objects that are of particular significance to Indigenous people. The ATSIHP Act allows the Minister for the Environment and Energy, on the application of an Indigenous person or group of persons, to make a declaration to protect an area, object or class of objects from a threat of injury or desecration.
- 3.25 The ATSIHP Act was intended to be in place for a short time while the states and territories implemented effective Indigenous heritage protections. It predates the *Native Title Act 1993* and the *Environment Protection and Biodiversity Conservation Act 1999*. The White Paper on Developing Northern Australia states that the Australian Government will consult industry and Indigenous stakeholders about possible amendments to the *Aboriginal and Torres Strait Islander Heritage Protection Act* (ATSIHP Act) to reduce regulatory overlaps while safeguarding cultural heritage.
- 3.26 At a state and territory level, Indigenous heritage is commonly protected under separate legislation. This is summarised in the table at Attachment 2.

3.27 In order to demonstrate protections at the three levels of government, the Council has considered three examples of monuments and their legislative protections. These case studies outlined below include:

- Captain Cook statue in Hyde Park, Sydney, NSW
- Captain Cook statue, Avoca Street and Belmore Road, Randwick, Sydney, NSW
- Captain Cook statue, Fitzroy and Jacka Boulevarde, St Kilda, Melbourne, Vic.

Other examples of Colonial-era monuments include, but are by no means limited to:

- Cenotaph, Darwin, NT
- Cook's Landing Place, Town of Seventeen Seventy, QLD
- Burke and Wills Dig Tree, Thargomindah, QLD
- Glass House Mountains, Sunshine Coast, QLD
- Captain Charles Sturt monument, Victoria Square, Adelaide, SA
- D'Entrecasteaux Expedition Sites, Recherche Bay, TAS
- Bowen's Landing Site, Risdon, TAS
- York Town Historic Site, TAS
- Point Hicks Light Station, East Gippsland, VIC
- Fitzroy Gardens (Cook's Cottage), Melbourne, VIC
- Cape Inscription Lighthouse and Quarters, Shark Bay, WA.

Examples of monuments/memorials to Indigenous people or events include:

- Albert Namatjira Memorial, near Hermannsburg, NT
- Warba Debar Memorial, Bicheno, TAS
- Convincing Ground, Glenelg, VIC
- Rottnest Island/Wadjemup Aboriginal Prison and Burial Ground, WA
- Pinjarra Massacre Site, WA
- Kurnell Peninsula Headland, Sydney, NSW
- The Burke, Wills, King and Yandruwandha National Heritage Place, Innamincka, SA
- Wurrwurrwuy Stone arrangements, NT
- Monument to Bungaree, Norah Head, NSW
- First Contact Point, Mapoon, QLD.

Case Study 1:

Statue of Captain James Cook, Hyde Park, Sydney

Description Case:

A bronze statue of Captain James Cook on a column, holding a chart, his right hand upraised.

A statue commemorates Captain James Cook who explored, charted and claimed the east coast of Australia for the British Empire in 1770. An inscription reads: 'DISCOVERED THIS TERRITORY 1770'.

The statue was erected by public subscription supplemented by government grants. In Sydney it was estimated that more than 60,000 people attended the unveiling and 12,000 joined the procession.

Captain James Cook claimed the whole of the east coast of Australia for Great Britain on 22 August 1770, naming eastern Australia, 'New South Wales.' (*from Monuments Australia website*)

Local protections:

The statue is mentioned as a Heritage Item in Schedule 5 of the Sydney Local Environment Plan 2012.

State protections:

Hyde Park in Sydney, which contains a number of monuments and sculptures including this statue, was gazetted as a State Heritage Register place in December 2011.

National protections:

Not currently included in a place protected under the EPBC Act.



Captain Cook statue, Hyde Park, Sydney.

Photo by Stan Florek, Australian Museum

Case Study 2:

Captain Cook statue, Avoca Street and Belmore Road, Randwick, Sydney

Description Case:

About 12ft in height, on a base of about the same height. Both in Pyrmont sandstone. Situated on a small triangular piece of land surrounded by iron railing set on a sandstone base. Cook is in naval uniform and carrying a telescope, beside him are an anchor and rope, terrestrial globe half draped with a flag and a sextant. The four sides of the base are inscribed with details of Cook's career and of the donor and of Commodore Goodenough, RN.

A statue commemorates Captain James Cook R.N. Unveiled in 1874, the statue was presented to the Municipal Council of Randwick by H.S. Gibson in 1910.

This is the first statue erected in New South Wales to Cook. It represents the Colonial wish to commemorate Cook in the 1870s and was erected by Captain Thomas Watson in the grounds of his residence Cooks Lodge on the 27th October 1874 on the anniversary of Cook's birthday. Its site on the old road to La Perouse and overlooking Botany Bay is (as Watson intended) historically interesting. *(from Monuments Australia website)*



Statue of Captain James Cook, Randwick, Sydney.
Photo by Claire Baker, Department of the Environment and Energy

Local protections:

Included in Randwick City Council's Local Environmental Plan in 1993.

State protections:

There are no state heritage protections in relation to this place.

National protections:

Not currently included in a place protected under the EPBC Act.

Case Study 3:

Captain Cook statue, Fitzroy and Jacka Boulevarde, St Kilda (Melbourne)

Description Case:

The Cook Memorial is a replica of the one at Whitby, England and was donated by Mr. Andrew Stenhouse, a member of the St. Kilda Shore committee.

The memorial appears to have been the first major memorial to Captain James Cook in Victoria when it was erected in 1914.

(from Monuments Australia website)

Local protections:

Included in the Planning Scheme for the City of Port Phillip (HO348).

State protections:

Entered in the Victoria Heritage Register as part of the 'Catani Gardens' listing.

National protections:

Not currently included in a place protected under the EPBC Act.



Captain Cook Statue, St Kilda, Melbourne.

Photo by John T Collins and the State Library of Victoria

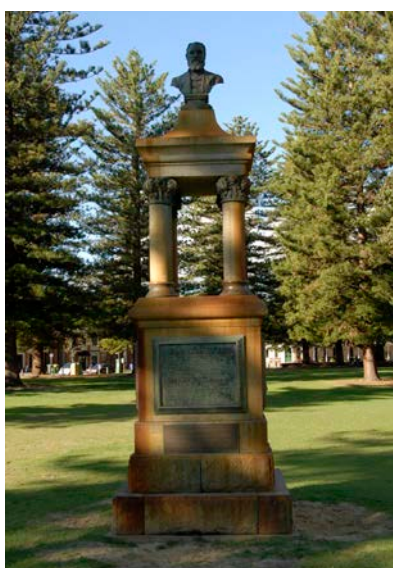
4. Penalties

- 4.1 Penalties differ across state jurisdictions as shown at Appendix 1. For example, within the *Heritage Act 1977* (NSW), the maximum penalty (s.157) for an offence (s.156) against the Act is \$1,100,000 (10,000 penalty units) and/or imprisonment for a period not exceeding 6 months. Actions like graffiti may be considered to “damage or despoil the place..... or any part of the place” (s.57). Other NSW laws would also apply such as the *Graffiti Control Act 2008* (NSW) which contains penalties including fines of up to \$440, or, for an aggravated offence, \$2,200 or 12 months imprisonment (Section 4).
- 4.2 Listed heritage places at the Australian Government level have legal protection under the EPBC Act. Where a person takes an action that has, will have or is likely to have a significant impact on a place’s listed World or National Heritage values without the necessary approval, the Department may take compliance action. There are a range of mechanisms available to the Department to respond to contraventions, including administrative responses, where the person may be required to meet the costs of remedying the damage, and preventing future damage, or civil or criminal proceedings. The compliance response depends on the severity of the offence, the circumstances that led to an offence and whether it is committed by an individual or a body corporate. Civil and criminal penalty amounts are at the discretion of the court.
- 4.3 Penalties within the EPBC Act are substantial, including significant fines and imprisonment. National Heritage values are protected from significant impacts which includes actions that may permanently remove, destroy, damage or substantially alter the fabric of a National Heritage place. The EPBC Act is unlikely to be triggered in relation to graffiti because defacement through spray paint can usually be removed and as such would not be considered significant.
- 4.4 If convicted of a criminal offence, as an example, penalties for an individual include a fine of up to \$88,200 and/or up to seven years imprisonment (s15A of the EPBC Act), for taking an action without a required approval that has or will result ‘in a significant impact on the world heritage values of a declared World Heritage property.

Offence	Penalties	
	Civil penalty	Criminal offence
World Heritage Significant impact on the World heritage values of a World Heritage listed place	Section 12 individual: up to \$1.05 million corporation: up to \$10.5 million	Section 15A Up to \$88,200 and/or up to seven years prison
National Heritage Significant impact on the National heritage values of a National Heritage listed place	Section 15B individual: up to \$1.05 million corporation: up to \$10.5 million	Section 15C Up to \$88,200 and/or up to seven years prison

5. Non-statutory protections

- 5.1 The Council notes that further discussion and recognition is already occurring that enriches the story our monuments tell today. For example shared stories and Indigenous viewpoints are reflected in school curriculum, public information and political debate, and information available in Citizenship tests, can provide a more accurate and balanced history. Welcome to Country and Acknowledgement of Country is approaching standard practice in ceremonial and official business in Australia and in everyday practice is another way respect can be shown.
- 5.2 Respect and awareness of Indigenous issues and treatment in Australia, not just in colonial times, is vital in countering the types of political protest which result in vandalism to colonial statues as has been recently seen.
- 5.3 A media theme following protestors' actions has been to question whether monuments should be removed, replaced, or expanded upon. There have been calls for the removal of statues of colonial figures because of their treatment of Indigenous Australians. These include John Batman and Angus McMillan, a leading settler of Gippsland. Similarly, monuments to Governor Lachlan Macquarie, Thomas Mitchell and Alfred Canning have recently been criticised because of the treatment of Aboriginal people by these men.
- 5.4 An example of where steps have been taken to expand on monuments can be successfully seen at the site of the Maitland Brown Memorial, commonly known as the Explorers' Monument in Fremantle, WA. A 1913 description of the events surrounding the monument caused division due to its one-sided account, the viewpoint of the early European settlers. Eighty-one years later in 1994, the United Nations Year of Indigenous Peoples, a second plaque, a 'counter-memorial', was added to the monument's base by the local Indigenous community in response. The plaque acknowledges the right of Indigenous people to defend their traditional lands and solemnly commemorates "all those Aboriginal people who died during the invasion of their country".¹⁴ Supporters of the monument state that the monument now stands for reconciliation, rather than division.¹⁵



*Maitland Brown Memorial (Explorer's Monument),
Fremantle, 2007. Photo is Public Domain*

¹⁴ Ibid.

¹⁵ ABC Kimberley, *The controversial statue that was added to, not torn down or vandalised*, 29 August 2017.

- 5.5 The addition of the new plaque didn't edit history, but added to the story. It is a striking example of how a dialogue can occur in memorialisation where one view of the past takes issue with another and history is seen, not as some final statement, but a contingent and contested narrative.¹⁶ "We're actually saying that this monument is not the final truth about this event, that we can revisit this event, this question, and approach it in different ways."¹⁷ Expansion could see colonial monuments turned into points of reflection and tools for education, instead of attempts to 'tidy up the past' by their removal.¹⁸
- 5.6 Another site which provides a useful example of where a shared history can lead to a site of reflection and healing is the Myall Creek Massacre and Memorial Site in NSW. A monument commemorates the unprovoked massacre of about twenty-eight Wirrayaraay women, children and old men by a group of stockmen in 1838. This is the only massacre for which Europeans were charged, found guilty and punished. The Memorial has great symbolic significance for the reconciliation of Aboriginal and other Australians. At the dedication in 2000, descendants of those who were murdered, and descendants of those who carried out the massacre came together in an act of personal reconciliation. A plaque at the site states "ERECTED ON 10 JUNE 2000 BY A GROUP OF ABORIGINAL AND NON-ABORIGINAL AUSTRALIANS IN AN ACT OF RECONCILIATION, AND IN ACKNOWLEDGEMENT OF THE TRUTH OF OUR SHARED HISTORY."¹⁹
- 5.7 Today a commemoration service to those who were killed it is an annual event, with several hundred people gathering from across Australia to attend. The Memorial Site sees descendants of both the perpetrators and victims come together to reflect and commemorate.
- 5.8 The Myall Creek Site is included in the National Heritage List for outstanding value to the nation in relation to the course of Australia's history. Since 1838, the Myall Creek massacre has continued to reflect the evolving relationship between Indigenous and non-Indigenous people. The debate surrounding the outcomes of the trials in the late 1800s reflected the broader debate on the status and treatment of Indigenous people. The Myall Creek massacre also reflected the 'great Australian silence' on Indigenous issues from the 1830s to the 1950s and it was used to educate people on Australia's Indigenous history during the 1960s-80s. The site has become part of Australia's reconciliation movement.²⁰
- 5.9 These examples serve to highlight the progress towards reconciliation and remembrance that can be achieved with alternative approaches to memorialising Australia's history. Council considers that heritage sites should reflect Indigenous stories of European settlement in addition to European historical accounts.
- 5.10 The Council considers that a move towards commemoration of shared history is 'reconnecting the long-separated categories of 'settler' and 'Aboriginal' heritage, a separation that implies that authentic Aboriginal history stopped in 1788 when the history of settlers began and that 'real' Aboriginal heritage for the main part includes only traditional sites.'²¹ It is important to acknowledge that Aboriginal people struggled for survival, adapted and negotiated, and importantly co-existed in many of the sites that are now regarded as exclusively the heritage of early European settlers. Colonial sites were shared in many different ways and should be recognised and interpreted as Aboriginal places too. Place managers, such as Sydney Living Museums, consider it their role to promote the stories of this shared heritage in what can be termed 'next generation' heritage practice.²²

16 SBS NITV, *Monumental errors: how Australia can fix its racist colonial statues*, 28 August 2017.

17 Scates, B. Australian National University Professor of History, cited in ABC News, *The controversial statue that was added to, not torn down or vandalised*, 29 August 2017.

18 ABC Radio National, Saturday Extra, 7 October 2017.

19 Monument Australia, Myall Creek Massacre, <http://monumentaaustralia.org.au>, viewed Nov 2017.

20 Australian Heritage Database, Place ID: 105869, Myall Creek Massacre and Memorial Site, viewed Nov 2017.

21 Historic Houses Trust, Insights, *Shared Country: New light on Aboriginal & Settler Heritage*, Winter 2009, Issue 59.

22 Historic Houses Trust, Insights, *Shared Country: New light on Aboriginal & Settler Heritage*, Winter 2009, Issue 59.

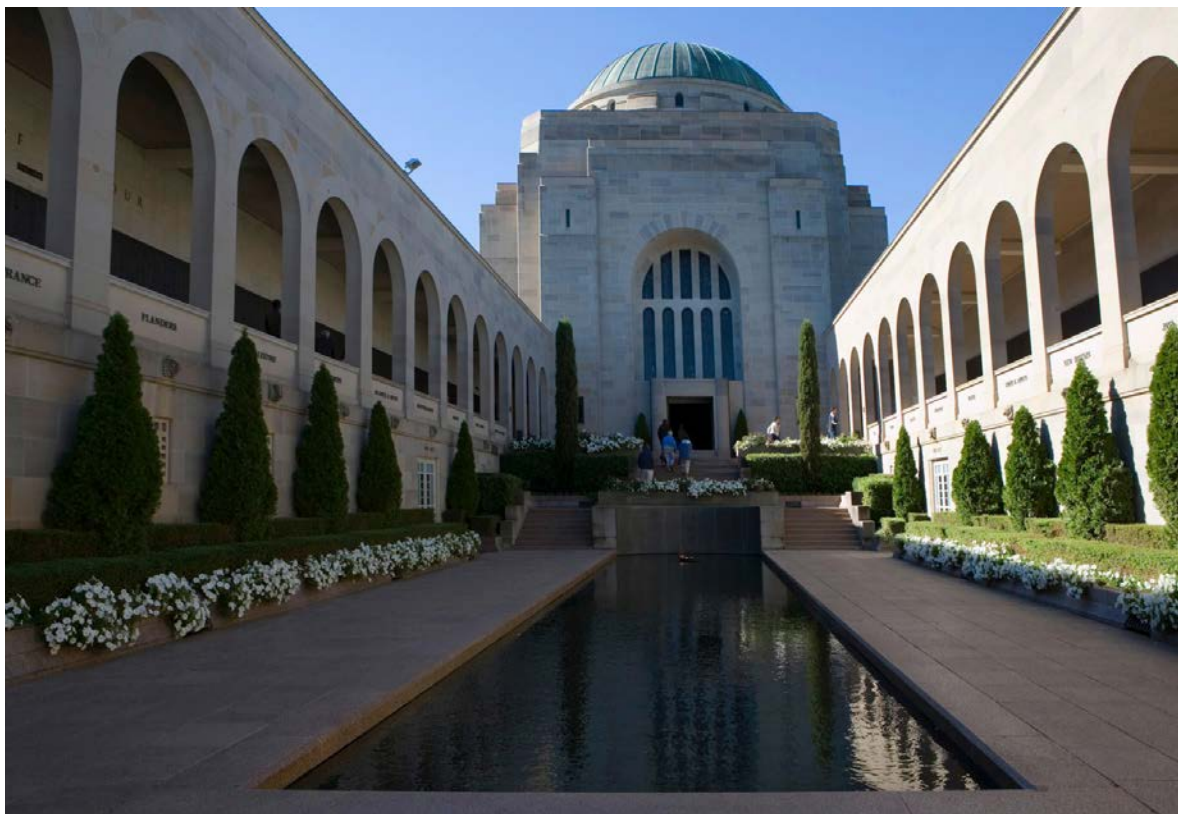
- 5.11 Recognition of heritage sites that record the Indigenous story would provide acknowledgement and protection for this important element of Australia's colonial history. Specifically, in relation to contact art, priorities for National Heritage listing would include the rock art of:
- Djulirri, in the Wellington Range, Arnhem Land; and
 - * Northern Sydney Complex of sites in the Sydney Hawkesbury Sandstone Basin, NSW.
- 5.12 While the impact of European settlement has long been acknowledged and steps towards greater recognition have been made, the violent conflicts between early European settlers and Aboriginal people are known and acknowledged to a much lesser extent. Further acknowledgment of these conflicts, including stories of Aboriginal resistance, could help to build recognition of the pride of Aboriginal people in their heritage.
- 5.13 Some progress is being made towards further study, education, interpretation and commemoration of these issues. For example, an exhibition is currently being curated for the Melbourne Museum, "First Peoples: Our Shared History", telling stories from the Indigenous perspective on the sites across Victoria where violence occurred.²³ Additionally, modern writers have exposed facts about this time in Australia's history through literary fictions and factual essays. However, Council considers further discussion at the national level is warranted.
- 5.14 An open dialogue on settler conflicts could potentially create a shift in the perception of Aboriginal people both from within and without, and create a ripple effect in other aspects of life.
- 5.15 Currently monuments to the colonial conflicts are limited in number and localised. Calls have been made for a national monument to these battles, with one proponent suggesting the memorial be sited with prominence in the nation's capital between the War Memorial and Parliament House, to commemorate the Indigenous battles in a spatially and philosophically significant location.²⁴
- 5.16 It is evident that regardless of the legislative protections for individual monuments, a broader issue and discussion is needed on the issues of what to preserve and how best to do this in a sensitive and respectful way.
- 5.17 While it is beyond the scope of the Council within this report to make suggestions on what could be done more broadly to combat the philosophical challenges associated with colonial era monuments, it does consider that further investigation in this area is warranted at the national level, with a national dialogue central to this body of work.
- 5.18 Council also notes the significance of 2018 as the 250th anniversary of James Cook's departure from England on the Endeavour, charting the east coast of Australia and observing Aboriginal peoples; and the impending 250th anniversary in 2020 of the first contact made by James Cook and his fleet with Aboriginal people.
- 5.19 The Council notes the important opportunity these anniversaries provide for discussion, and to bring attention to, remember and pay respect to the stories of the Indigenous peoples involved and the significant changes that occurred as a result of these expeditions.

²³ Grieves, G. on ABC Radio National Saturday Extra, Saturday 7 October 2017.

²⁴ McKenna, M. Historian, Writer, on ABC Radio National Saturday Extra, Saturday 7 October 2017

6. Adequacy of protections

- 6.1 Feedback from all the Australian jurisdictional representatives of HCOANZ sought for this report was that in general, the current legislative heritage protections in place for commemorative monuments and statues are considered appropriate and adequate. Some jurisdictions however raised issues such as limited staff time and resources affecting their ability to enforce compliance; conflicting community views on monuments; and that in some cases, only listed places are protected under heritage legislation.
- 6.2 Council is therefore of the view that Australia's historic heritage legislation does not require amendment to better protect commemorative places and monuments from wilful damage. While there are a wide range of threats to such items, it appears that the combination of heritage and graffiti or other property damage laws are sufficient to protect their heritage values.
- 6.3 There is a need however to consider the adequacy of the protection for Indigenous heritage places at the state and Commonwealth levels, including through reform of the ATSIHP Act. The Council considers that there is scope to improve the effectiveness of Indigenous heritage legislation, taking into consideration previous reviews in this area.
- 6.4 As noted in the previous section though, there are many non-statutory tools that could be better used to build community support for and engagement with these places and monuments by providing a more balanced representation of our history.



Reflection Pool at Australian War Memorial, ACT.
Photo by Steve Wray, Department of the Environment and Energy

7. Recommendations

Recommendation 1:

That the existing legal protections at each level of government for places and monuments that relate to Australia's early colonial history and interactions between European explorers and settlers and Australia's Indigenous people are adequate.

Recommendation 2:

That consideration be given by those responsible for colonial heritage sites to the most appropriate way to tell Indigenous stories of Australia's settlement in addition to stories of British arrival and colonisation; and that colonial sites be recognised as part of a shared heritage.

Recommendation 3:

That consideration be given to how statutory protection for Indigenous heritage places more broadly can be made more effective; and this matter be taken up by the Heritage Chairs and Officials of Australia and New Zealand.

Recommendation 4:

That further consideration of the memorialisation of the colonial period be undertaken at the national level through the Heritage Chairs and Officials of Australia and New Zealand, with a national dialogue central to this body of work.

Recommendation 5:

That the significance of the upcoming anniversaries of Captain James Cook's voyages be recognised at the national level as an opportunity for recognition and promotion of the Aboriginal and shared history of the Cook landings and the colonial period that followed.

8. Summary

- 8.1 The Australian Heritage Council has direct responsibilities in relation to the identification and protection of Commonwealth and National Heritage places. At this level the protection of individual monuments occurs when they are identified as contributory values or attributes of values in the listing of a place. State and local government protection varies between jurisdictions: from individual statues and memorials being included in a register, to blanket protection for all Indigenous places, objects and ancestral remains, to a broader view of places that include monuments.
- 8.2 While the protection of all heritage places can always be improved, the unanimous view across jurisdictions is that the current legislative and policy framework is considered adequate for historic commemorative places and monuments. The recent threats to such places are most appropriately dealt with through criminal legislation that relates to property damage. The protection of Indigenous heritage places can be strengthened at the State and Commonwealth levels.
- 8.3 There is a wider conversation that can be facilitated in relation to these and all sites whose value to the community becomes contested. While they may represent community views at a certain point in time, there needs to be recognition that without balance, these places and monuments can have the opposite effect to what was originally intended.



Statue of Simpson and Donkey, Australian War Memorial ACT.
Photo by Mark Mohell, Department of the Environment and Energy

Attachments

Attachment 1

Overview of Heritage Legislation in
States and Territories for **Historic Places**

Attachment 2

Overview of State & Territory
Aboriginal Heritage Legislation

Attachment 1

Overview of Heritage Legislation in States and Territories for Historic Places

Jurisdiction	Title	What is protected	Who is responsible for compliance	Penalties
Commonwealth	<i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cwlth)	<p>The Act protects natural, historic and Indigenous heritage places included in the World, National and Commonwealth Heritage lists, and heritage values on Commonwealth land.</p> <p>The Act requires approval from the minister if an action has, will have, or is likely to have a significant impact on a matter of national environmental significance.</p>	Department of the Environment and Energy	A person found guilty of an offence against the Act may be liable to a penalty not exceeding \$1.05 million for an individual or \$10.5 million for a corporation. Criminal offences also apply.
ACT	<i>Heritage Act 2004</i> (ACT)	<p>The ACT Heritage Council (the Council) is responsible for keeping a register of places and objects in the ACT which have heritage significance.</p> <p>The Act requires relevant permits or an exemption to undertake works on registered places.</p>	<p>ACT Heritage Council</p> <p>Environment, Planning and Sustainable Development Directorate</p>	A person found guilty of an offence against the Act may be liable to a penalty not exceeding 1,000 penalty units (\$210,000).
Northern Territory	<i>Heritage Act 2011</i> (NT)	<p>The Act protects heritage places and objects and protected classes of heritage places and objects.</p> <p>The Act requires relevant permits or an exemption to undertake works on registered places.</p>	<p>Northern Territory Heritage Council</p> <p>Department of Tourism and Culture</p>	A person found guilty of an offence against the Act may be liable to a penalty not exceeding 400 penalty units (\$61,600) or imprisonment for 2 years. Stop work and repair orders also apply.

Jurisdiction	Title	What is protected	Who is responsible for compliance	Penalties
New South Wales	<i>Heritage Act 1977</i> (NSW)	<p>The Act protects a range of items through inclusion in the State Heritage Register. Items listed in Local Environmental Plans are also protected under the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>The Act requires relevant permits or an exemption when undertaking changes and development on listed places. The Act also has provisions requiring owners of heritage places to undertake essential repair or maintenance work.</p>	Office of Environment and Heritage	<p>A person found guilty of an offence against the Act may be liable to a penalty not exceeding 10,000 penalty units (\$1,100,000) or imprisonment for a period not exceeding 6 months, or both. Stop work and no development orders also apply.</p>
Queensland	<i>Queensland Heritage Act 1992</i> (QLD)	<p>Places of cultural heritage significance are protected by the Act and are entered in the Queensland Heritage Register.</p> <p>The Act requires relevant permits or an exemption when undertaking changes and development on listed places. The Act also has provisions requiring owners of heritage places to undertake essential repair or maintenance work.</p>	Department of Environment and Heritage Protection	<p>A person found guilty of an offence against the Act may be liable to a penalty not exceeding 17,000 penalty units (\$2,072,300). Restoration, non-development, education and public benefit orders also apply.</p>

Jurisdiction	Title	What is protected	Who is responsible for compliance	Penalties
South Australia	<i>Heritage Places Act 1993 (SA)</i>	<p>The South Australian Heritage Register contains a description of places of heritage value in South Australia. It includes heritage areas, places and related objects of State significance.</p> <p>The Act requires relevant permits or an exemption to undertake works on registered places. The Act also contains provisions regarding neglect of heritage places.</p>	<p>South Australia Heritage Council</p> <p>Department of Environment, and Water</p>	<p>A person found guilty of an offence against the Act may be liable to a penalty not exceeding \$120,000. Stop orders apply with penalties up to \$120,000 for persons failing to comply.</p> <p>‘No development orders’ can apply with a maximum penalty of up to \$120,000.</p> <p>Enforcement of Heritage Agreements can apply. ERD Court Orders can apply (on application). Protection orders can be issued by the Minister.</p>
Tasmania	<i>Historic Cultural Heritage Act 1995 (Tas)</i>	<p>Provides for the protection of heritage places of state-level significance, principally by entering them in the Tasmanian Heritage Register.</p> <p>The Act requires relevant permits or an exemption to undertake works on registered places.</p>	<p>Tasmanian Heritage Council</p> <p>Heritage Tasmania</p>	<p>The Regulations provide for the imposition of a fine not exceeding 10,000 penalty units (\$1,570,000) for a body corporate or 5,000 (\$785,000) for an individual. In the case of a continuing offence, a further fine not exceeding 20 penalty units (\$3,140) for each day during which the offence continues. Stop work and repair notices also apply.</p>

Jurisdiction	Title	What is protected	Who is responsible for compliance	Penalties
Victoria	<i>Heritage Act 2017</i> (Vic)	<p>The Act identifies and protects heritage places and objects that are of state-level cultural heritage significance through registration on the Victorian Heritage Register.</p> <p>The Act requires relevant permits or an exemption to undertake works on registered places.</p>	Heritage Victoria, within Department of Environment, Water, Land and Planning	Penalties include fines of up to 9,600 penalty units (\$1,492,416) for a company, and for individuals up to five years jail and/or fine of 4,800 penalty units (\$746,208). Stop work and rectification orders also apply.
Western Australia	<i>Heritage of Western Australia Act 1990</i> (WA)	<p>Identifies and conserves places of state heritage significance through inclusion of the State Register of Heritage Places. Includes areas of land, works or buildings.</p> <p>Under the Act it is an offence to damage or despoil a place or any part of, unless authorised to do so.</p>	<p>Department of Planning, Lands and Heritage</p> <p>Heritage Council of Western Australia</p>	<p>Penalties include: \$1,000,000 and imprisonment for 2 years, plus a daily penalty of \$50,000.</p> <p>Stop Work orders also apply, and a court may make a restoration order where a person is convicted of an offence.</p>

Attachment 2

Overview of State & Territory Aboriginal Heritage Legislation

Jurisdiction	Title	What is protected	Information	Management Process	Consultation?	Decision Making
Commonwealth	<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i> (Cwlth)	Specified areas and objects (including Aboriginal remains) in Australia and in Australian waters of particular significance to Aboriginals in accordance with Aboriginal tradition.	<p>Protected from injury or desecration.</p> <p>Intended to provide a last resort avenue for Aboriginal people to try to stop development projects approved under state laws and to encourage better state laws.</p> <p>Creates a power to override the effect of approvals given under other state or Commonwealth laws (including EPBC Act and Native Title Act).</p> <p>(Note: Pre-dates Native Title Act and EPBC Act).</p>	<p>Applications to the Minister can be oral or in writing.</p> <p>S9 – area -enables emergency declaration of up to 30 days. Can extend up to additional 30 days. Past this point, new s9 application required. Internal analysis.</p> <p>S10 – area - enables declaration for a period of time specified in the declaration. Reporter appointed by Minister.</p> <p>S12 – objects – enables declaration to identify the object(s) and provide provisions for protection and preservation from injury and desecration. Internal analysis.</p> <p>S18 – emergency declarations re areas or objects – serious and immediate threat before a s9 declaration can be made. Lasts for 48 hours. Use only once in 3 months.</p> <p>S20 Discovery of Aboriginal remains – precedence over State laws. Consultation with relevant Aboriginal parties.</p> <p>S21 Disposal of Aboriginal remains – including return, deal with in accordance with reasonable directions of the relevant Aboriginal people, transfer to prescribed authority for safe-keeping (only one currently is National Museum of Australia).</p>	<p>S9 and 12 consultation is limited and to seek clarification.</p> <p>S10 reports require detailed consultation with all interested parties.</p> <p>S13 Minister can appoint a mediator to reach settlement between parties outside of other processes.</p> <p>S20 and 21 with relevant Aboriginal people.</p> <p>Notification to applicant when declarations are made or refused.</p>	<p>Minister makes decisions (apart from s18).</p> <p>S18 decision can be made by authorised officer (senior SES in Department)</p> <p>No statutory timeframe for decisions.</p> <p>Minister either makes declaration or refuses to make a declaration.</p> <p>If applicant withdraws, no requirement for declaration.</p>

Jurisdiction	Title	What is protected	Information	Management Process	Consultation?	Decision Making
ACT	<i>Heritage Act 2004</i> (ACT)	All Aboriginal places and objects.	Establishes a heritage council and register, allows for the council to give 'heritage directions' that can require ongoing maintenance and protection Makes it an offence not to report the discovery of Aboriginal place or object, to diminish or damage a place or object. Sets up heritage agreements	If development is likely to impact upon heritage a cultural heritage specialist consults with each Representative Aboriginal Organisation (RAO). Voluntary heritage agreements are encouraged.	The ACT Heritage Council is required to consult with RAOs.	The Heritage Council advises the responsible Minister who then makes decisions on heritage places and objects.
	<i>Heritage Objects Act 1991</i> (ACT)		Sets up register			

Jurisdiction	Title	What is protected	Information	Management Process	Consultation?	Decision Making
Northern Territory	<i>Heritage Act 2011</i> (NT)	Blanket protection for sites that are sacred or significant according to Aboriginal tradition.	Establishes heritage council that approve places/objects of significance All to be approved unless frivolous or vexatious Minister then approves/rejects Makes it an offence to damage or remove a heritage place or object Strict liability	On non-sacred site, permit is required to harm heritage. Authority certificate must be obtained to work on any sacred site	Traditional owners must be notified of survey work, involved in fieldwork, and consulted and acknowledged for their contribution. On sacred sites, the AAPA consults and works directly with custodians.	Non sacred sites → minister Sacred sites → AAPA Minister can review decisions of the AAPA
	<i>Aboriginal Sacred Sites Act 1989</i> (NT)		Establishes Aboriginal Areas Protection Authority, made up of 10 female and 10 male custodians from the land councils. Custodians are to facilitate the care of sacred sites, via forming committees, maintaining a register, conduction research and generally enforcing the Act. 99.95% success rate in protecting sacred sites.			
New South Wales	<i>National Parks and Wildlife Act 1974</i> (NSW) Note: only part 6 of the Act specific to Aboriginal cultural heritage	All Aboriginal places, Aboriginal objects and Aboriginal human remains.	Establishes the Aboriginal Cultural Heritage Advisory Committee ²⁵ Governs the declaration of 'places of significance' ²⁶ and ensures for their protection Sets up Aboriginal Heritage impact permits Makes harming/desecrating Aboriginal objects/places an offence	Due diligence code of practice with penalties for non-compliance. Permits can be issued where harm to an Aboriginal object or place cannot be avoided.	Consultation with traditional owners, custodians and people with ties to a site.	Permit decisions rest with the Director General of the NSW Office of Environment and Heritage. Appeals can be taken to the Land and Environment Court.
	<i>Heritage Act 1977</i>					

²⁵ s 27

²⁶ See section 6 generally

Jurisdiction	Title	What is protected	Information	Management Process	Consultation?	Decision Making
Queensland	<i>Aboriginal Cultural Heritage Act 2003</i> (QLD)	Blanket protection for areas and objects of traditional, customary and archaeological significance.	<p>Creates a statutory duty of care that requires people to ‘respect, value and protect’ the State’s Aboriginal cultural heritage → duty to do no damage</p> <p>Ensures Aboriginal people are at the forefront of the process</p> <p>Establishes a study of heritage</p> <p>Can result in prosecution and fines of \$75,000 for individuals and \$750,000 for corporations</p> <p>Recognises Aboriginal obligations owed to Country; and guardianship of land</p> <p>Recognises Aboriginal ownership of:</p> <ul style="list-style-type: none"> • Human remains • Cultural heritage held in State collections • Lawfully removed cultural heritage <p>Establishes a database and register of Aboriginal cultural heritage</p> <p>Note: has recorded over 23,000 sites/items</p>	<p>Mandatory for explorers undertaking an Environmental Impact Statement (EIS) to also carry out heritage assessments and CHMPs.</p> <p>When an EIS is not required explorers can:</p> <ul style="list-style-type: none"> • comply with gazetted duty of care guidelines • negotiate a voluntary CHMP with relevant Indigenous groups • negotiate other cultural heritage agreement with relevant Indigenous party • proceed in compliance with native title protection conditions. 	<p>Aboriginal parties are identified via the native title system and notified of proposed activities. Firstly, Registered Native Title Holders, then Claimants and then ‘failed claimants’ are identified. If there is no native title party, Aboriginal people with a ‘particular knowledge’ can be identified. Aboriginal Cultural Heritage Bodies (registered by the Minister) identify parties for particular areas.</p>	<p>For mandatory CHMPs, when agreement cannot be reached, a proposed CHMP can be referred to the Land Court. The tribunal will make a recommendation to the responsible Minister who makes the decision. Where CHMPs are not mandatory there is no government or ministerial decision-making.</p>

Jurisdiction	Title	What is protected	Information	Management Process	Consultation?	Decision Making
South Australia	<i>Aboriginal Heritage Act 1988</i> (SA)	Blanket protection of Aboriginal sites, objects and remains, significant to tradition, anthropology and/or history.	<p>Establishes an Aboriginal heritage register, but also implements blanket protection for all heritage</p> <p>Establishes an Aboriginal Heritage Committee of indigenous people – function is to advise the minister with respect to measures necessary for protection of heritage</p> <p>Gives funding to Aboriginal organisation to keep local archives of Heritage</p> <p>Makes it an offence not to report discovery of Aboriginal objects or sites (does not apply to traditional owners)</p> <p>Makes it an offence to damage/disturb/interfere with any Aboriginal sites/objects/remains</p> <p>Makes a duty to take reasonable care of an object in ownership or possession</p> <p>Establishes a surrendering process</p> <p>Makes it an offence to divulge information in contravention of tradition</p>	<p>Declaration as to whether or not a site is an Aboriginal site is required before undertaking exploration.</p> <p>Following determination, applicant can seek authorisation from minister to destroy or interfere.</p>	<p>Groups that must be consulted by the Minister before making a determination or authorisation are:</p> <ul style="list-style-type: none"> the Aboriginal Heritage Committee any Aboriginal organisation with a particular interest in the matter any traditional owners and other Aboriginal persons who in the Minister's opinion, have a particular interest in the matter. 	<p>Decisions to damage or disturb an Aboriginal site object or remains rest with the responsible Minister.</p> <p>Decisions can only be appealed through the Supreme Court of South Australia.</p>

Jurisdiction	Title	What is protected	Information	Management Process	Consultation?	Decision Making
Tasmania	<i>Historic Cultural Heritage Act 1995</i> (Tas) Note: not specific to Aboriginal cultural heritage	Blanket protection of 'relics' prior to Settlement, protected sites and objects	Promote the identification, assessment, protection and conservation of places having historic cultural heritage significance and to establish the Tasmanian Heritage Council. ²⁷	Heritage assessment undertaken prior to exploration activities. Permit required before interference is allowed.	Interim Aboriginal Heritage Council was established in 2012 (no longer interim) to provide advice to the Minister	Director of National parks and Wildlife makes a recommendation to the Minister for Heritage Decisions appealed through the Supreme Court
	<i>Aboriginal Lands Act 1995</i>		Establishes land councils which that have a function of managing Aboriginal land			
	<i>Aboriginal Relics Act 1975</i>		Establishes the Aboriginal Relics Advisory Council – only two of 8 members need be Aboriginal Ensures for management and maintenance of protected sites No person shall interfere with a protected site	Establishes the Aboriginal Relics Advisory Council – only two of 8 members need be Aboriginal Ensures for management and maintenance of protected sites No person shall interfere with a protected site		

²⁷ http://www.heritage.tas.gov.au/hist_act.html

Jurisdiction	Title	What is protected	Information	Management Process	Consultation?	Decision Making
Victoria	<i>Victorian Aboriginal Heritage Act 2006</i>	All Aboriginal places, Aboriginal objects and Aboriginal human remains.	<p>Establishes 'registered Aboriginal parties' as primary 'guardians, keepers and knowledge holders' of Aboriginal cultural heritage</p> <p>Sets up for the giving back of all remains, and secret or sacred objects</p> <p>Sets up 'protection declarations'</p> <p>Makes it an offence not to report Aboriginal places or objects</p> <p>Makes it an offence to knowingly harm Aboriginal cultural heritage (or was reckless/negligent as to knowing whether it was Aboriginal cultural heritage)</p> <p>Sets up a program of cultural heritage agreements</p>	<p>Cultural Heritage Management Plans (CHMPs) required for 'high impact' exploration activities. Cultural Heritage Permits required for 'low impact' activities.</p> <p>When a heritage plan or permit is not required a voluntary Cultural Heritage Agreement between the explorer and Aboriginal party(ies) can be created.</p>	Traditional owners or people with historical attachment to an area may be recognised as Registered Aboriginal Parties.	Permits & plans must be approved by the relevant Registered Aboriginal Party (RAP). Where no RAP exists, the Secretary of the Department of Planning and Community Development, or the Aboriginal Heritage Council, may approve the permit or plan. Decisions may be appealed at the Victorian Civil and Administrative Tribunal.
	<i>Heritage Act 1995 (Vic)</i> Note: not specific to Aboriginal cultural heritage		Provides for the protection and conservation of historical places and objects of cultural heritage significance and the registration of such places and objects. The Act establishes a Heritage Council to oversee heritage policy and implementation; and a Victorian Heritage Register, for listing and protection of places of significance to the state of Victoria. ²⁸			

²⁸ Heritage Council of Victoria's submission on the Review of the Protection of Movable Cultural Heritage Act and Regulations, Comments made in response to the January 2009, Discussion Paper

Jurisdiction	Title	What is protected	Information	Management Process	Consultation?	Decision Making
Western Australia	<i>Aboriginal Heritage Act 1972 (WA)</i> Note: generally out-dated, but under review	Automatic preservation of a comprehensive range of sites according to importance and significance Applies to 'places' and 'objects'	Any finding of Aboriginal Cultural Heritage must be reported It is an offence to "excavates, destroys, damages, conceals or in any way alter" an Aboriginal site	Due Diligence guidelines may be used, consent required to harm any Aboriginal site	No definitive list, but suggestions include: native title holders, native title claimants, informants, other Aboriginal people who demonstrate knowledge	Minister, acting with the advice of the Aboriginal Cultural Material Committee Note: no requirement that the Committee consists of Aboriginal persons

