



Australian Government

Australia's Commonwealth Heritage

WORKING TOGETHER
Managing Commonwealth Heritage Places

A guide for Commonwealth Agencies



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(Clockwise from left)

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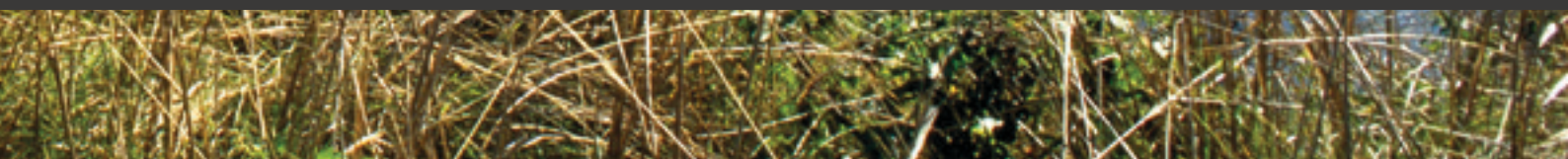


Bradshaw Defence Area (NT)

Included in the Commonwealth Heritage List in 2004.

Bradshaw Defence Area is unusually rich in vertebrate fauna, second only to Kakadu National Park. This is due to the broad range of environments occurring there including; rugged stone country, lowland woodlands, heaths and grasslands, sandstone escarpments, monsoon rainforest patches and wetlands. Bradshaw is home to a range of vulnerable and endangered species, including the nationally endangered Gouldian Finch (*Erythrura gouldinae*).

© Department of the Environment and Energy, Photographer: John Baker





North Reef Lightstation (QLD)

Included in the Commonwealth Heritage List in 2004.

Built in 1878, it is a rare example of a lighthouse built on a coral reef. The Lighthouse incorporates a rain water tank underneath the structure. It is significant as an important element in the establishment of navigational aids along the Queensland coast.

© Commonwealth of Australia (GBRMPA) Photographer: P. Koloï



Australia's Commonwealth Heritage

Introduction

Almost 400 places are included in the Commonwealth Heritage List. These places have a diversity of Indigenous, historic and natural heritage values. Commonwealth Heritage listed places are defined as places within a Commonwealth area, owned or leased by the Commonwealth, which are identified as having Commonwealth Heritage values. These places are included in the Commonwealth Heritage List by the Minister for the Environment.

Commonwealth agencies have a responsibility to identify, protect and conserve the heritage values of all properties they own or lease.

Working Together: Managing Commonwealth Heritage Places has been prepared to assist Commonwealth agencies to better understand the management requirements for Commonwealth Heritage places as set out under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the *Environment Protection and Biodiversity Conservation Regulations 2000* (Regulations).

In association with the EPBC Act and Regulations, this guide should be used as a primary reference document for those agencies managing Commonwealth heritage places. The guide has eight sections, some on key matters and includes new information to assist agencies on the divestment process.

Answers to commonly asked questions can be found in *Finding Assistance*, *Key Publications* and *Other Resources*. The Heritage Branch of the Department of the Environment and Energy can also provide advice on the management of Commonwealth Heritage places.

Comments and any feedback you may have on the guide are welcome. Please forward suggestions, comments and inquiries to:

- heritage@environment.gov.au

Photos on page 1 (clockwise from left):
Exhibition at Headland Park, Middle Head Rd, Georges Heights © Sydney Harbour Federation Trust
Interior of the Low Isles Lighthouse © Commonwealth of Australia (GBRMPA) Photographer: B. Harrigan
John Gorton Building © Department of the Environment and Energy

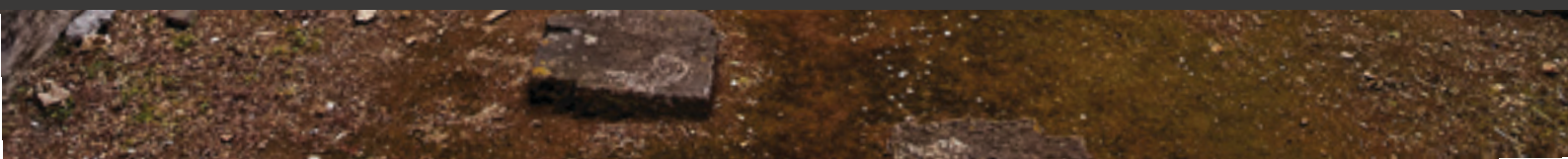


Crankmill, Kingston and Arthur's Vale Historic Area (KAVHA), Norfolk Island

Included in the Commonwealth Heritage List in 2004.

KAVHA is significant for its rare association with pre-European Polynesian settlement, there being no other pre-European Polynesian occupation sites in Australia. It demonstrates a rare occupation sequence of Polynesian and European settlement in the West Pacific.

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Australia's Commonwealth Heritage

1. Making a Heritage Strategy

- ▲ What is a Heritage Strategy?
- ▲ Who needs to prepare a Heritage Strategy?
- ▲ When does a Heritage Strategy have to be prepared?
- ▲ When should a Heritage Strategy be reviewed?
- ▲ What are the requirements for preparing a Heritage Strategy?
- ▲ How to identify Commonwealth Heritage values?

Photos (clockwise from left):
Woolwich Dock © Sydney Harbour Federation Trust
Hobart Air Traffic Control Tower © Lovell Chen, Heritage Consultants
Marine Biological Station (former) © Sydney Harbour Federation Trust

Making a Heritage Strategy

Introduction

A Heritage Strategy enables an agency to plan and direct its activities relating to heritage matters. It sets the agency's benchmarks in relation to its management and protection of heritage places under its care and ensures that the agency is compliant with the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the *Environment Protection and Biodiversity Regulations 2000* (Regulations). The preparation of a Heritage Strategy also includes the establishment of an agency heritage register which helps the agency to identify and monitor its heritage places.

This section outlines the key requirements which need to be met in relation to a heritage strategy. A brief overview of how to identify Commonwealth Heritage values is also included. Agencies are encouraged, at an early stage, to contact the Heritage Branch of the Department of the Environment and Energy to discuss the preparation of a heritage strategy via email at heritage@environment.gov.au

What is a Heritage Strategy?

A Heritage Strategy is a written document that integrates heritage conservation and management within an agency's overall property planning and management framework. Its purpose is to help an agency manage and report on the steps it has taken to protect and conserve the Commonwealth Heritage values of properties under its ownership or control. An agency's Heritage Strategy should be consistent with Commonwealth Heritage management principles.

Who needs to prepare a Heritage Strategy?

Each Commonwealth agency that owns or controls one or more places with Commonwealth Heritage values must prepare a heritage strategy (section 341ZA). The complexity of the strategy will be determined by the size of the agency's heritage property holdings and management responsibilities.

When does a Heritage Strategy have to be prepared?

Commonwealth agencies are required to prepare their heritage strategies within two years from the time they first own or control a heritage place (section 341ZA). The strategy must also be provided to the Commonwealth Minister for the Environment (the Minister) within these time periods. Extensions to these submission requirements should be discussed with the Heritage Branch of the Department of Environment and Energy. Commonwealth agencies must conduct a program to identify Commonwealth Heritage values for each place they own or control within the period mentioned in its heritage strategy (section 341ZB).

When should a Heritage Strategy be reviewed?

An agency must review its Heritage Strategy every three years and give the Minister a written report of the review (section 341A (5)). Under regulation 10.03F, the report must cover the following:

- ▶ an outline of consultation undertaken with relevant stakeholders in the review process;
- ▶ a summary of the agency's achievements against its objectives for management of its heritage places;

Making a Heritage Strategy

- ▶ an evaluation of the success of each of the matters included in a Commonwealth agency Heritage Strategy in achieving the identification, protection, conservation and presentation of Commonwealth heritage values;
- ▶ an update on the extent to which the identification and assessment of Commonwealth Heritage values of all agency property has been achieved, and the values included in an agency's heritage places register;
- ▶ an update on the progress and timeliness of the preparation of management plans for Commonwealth Heritage places;
- ▶ an outline of any physical and management changes that have occurred to the agency's Commonwealth Heritage places since the last strategy was prepared, and of any expected changes;
- ▶ an update on progress with Commonwealth Heritage training programs;
- ▶ a specification of the timeframe for updating the heritage strategy following the review; and
- ▶ an update on other heritage issues relevant to the agency's management of Commonwealth Heritage places in accordance with the Commonwealth Heritage management principles (see section—Applying the principles). The Commonwealth Heritage management principles are those management principles set out in Schedule 7B of the Regulations.

What are the requirements for preparing a Heritage Strategy?

Regulation 10.03E and Schedule 7C set out a number of requirements which must be addressed or included in a heritage strategy. The following list outlines these requirements.

A Heritage Strategy must include:

1. General Matters

a) *a statement of the agency's objective for management of its heritage places*

The clearest way for an agency to recognise its heritage management responsibilities is to include them in its corporate plan as an objective. Wording of the objective may be as simple as:

'The (agency) recognises its responsibility to identify and care for the heritage property in its control, consistent with current best practice in conservation and property management.'

b) *a description of how the Heritage Strategy operates within the agency's corporate planning framework*

The executive of the agency must ensure that the corporate plan, at the relevant program level, covers management of its heritage properties. In addition, corporate budgeting and financial reporting processes (including annual reports) should include, and make transparent, an appropriate budget to manage property with heritage values.

c) *a list of key positions within the agency, the holders of which are responsible for heritage matters*

The strategy must identify relevant personnel and their roles in identifying and managing heritage values, those responsible for decisions, approvals and actions, and those responsible for reviewing and reporting to the Minister (see also requirement (g)). A corporate level position with overall heritage responsibility must be identified.

d) *an outline of a process for consultation and liaison with other government agencies on heritage matters*

The process for consultation and liaison should address how and at what stage other relevant agencies with an interest in heritage matters will be consulted. The strategy should identify relevant state and Commonwealth legislation concerning the natural and cultural (Indigenous and historic) heritage environments (see section *Other Resources* for a reference to legislation). A checklist for approvals and/or consultation requirements would be a useful administrative tool.

Making a Heritage Strategy

- e) *an outline of a process for consultation and liaison with the community on heritage matters, including, in particular, a process for consultation and liaison with Indigenous stakeholders on Indigenous heritage matters*

The agency should provide a policy approach for consultation and liaison with the community on places with historic, Indigenous and natural heritage values. Consultation and liaison processes relevant to specific places must be outlined in management plans for individual Commonwealth Heritage places. If there is no plan in place the Commonwealth Heritage management principles, as a best practice approach, should be used in the interim to guide the management of the Commonwealth Heritage place.

The benefits of consultation include not only the gaining of additional knowledge or experience of a property, but also assist in the resolution of conflict prior to any commitment to a management regime. Community involvement should start with a consultation plan, which includes consultation with Indigenous people. If a place appears to have heritage values for Indigenous people, steps for effective consultation can be found in *Ask First: A guide to respecting Indigenous heritage places and values* (see section *Key Publications*).

An investigation of the Native Title status of the place is also recommended. You can find out more from the National Native Title Tribunal—free call 1800 640 501.

- f) *an outline of a process for resolution of conflict arising from the assessment and management of Commonwealth Heritage values*

The strategy needs to address the possible conflicts that may arise from the assessment and management of Commonwealth Heritage values of places. If a matter can be mediated, the strategy should identify the way in which the mediator would be selected or identify the person that will conduct the mediation.

- g) *an outline of processes for monitoring, reviewing and reporting on the implementation of an agency's heritage strategy*

The strategy must provide for regular monitoring, review and reporting on the conservation of Commonwealth Heritage values. It must include a timetable for the review process over the life of the strategy, identifying who is responsible for the review and reporting to the Minister.

It is also important to set in place mechanisms to monitor and evaluate the success of the strategy. An agency must review its heritage strategy every three years.

2. Heritage identification and assessment matters

- a) *an outline of the process for identifying and assessing the Commonwealth Heritage values of all agency property*

Each Commonwealth agency needs to be aware of the extent of heritage property under its control. If an agency has not already done so recently, it must undertake an inventory program to identify and assess the Commonwealth Heritage values for all places it owns or controls (section 341ZB). For best practice, this should evaluate all heritage aspects, including historic, natural and Indigenous heritage. Any assessment of a place must be undertaken against the Commonwealth Heritage criteria. Expert heritage advice should be sought in the preparation of this aspect of a heritage strategy.

- b) *a statement of the timeframes for the completion of the agency's heritage strategy and supporting documents*

This includes:

- ▶ the agency's program for heritage identification and assessment;
- ▶ the agency's register of places and their Commonwealth Heritage values; and
- ▶ the report to the Minister that includes details of the identification and assessment program and a copy of the agency's register. The strategy must outline the details of an agency's program, how it will be completed and who will be responsible.

The requirements for heritage assessments and a register are addressed in regulation 10.03G.

Making a Heritage Strategy

3. Matters relating to the management of Commonwealth Heritage values

- a) *a description of how the agency's heritage places register will be maintained, updated and made accessible to the public*

An agency's heritage place register should be kept in electronic format. If an agency manages a large number of heritage properties, it may find efficiencies in the use of database software.

The register should be accessible to all property management staff, including those responsible for property maintenance. Once data is entered, it should be reviewed and updated on a regular basis.

- b) *a statement of the timeframe for the preparation of management plans for the agency's Commonwealth Heritage places*

The strategy should include a section on roles and responsibilities to identify who is required to complete the plans and who has authority to approve the final product. The time-frame should consider any works or major changes proposed for properties with Commonwealth Heritage values. Management plans should be a priority for these places. Note: a single management plan can cover more than one place provided all the requirements under the EPBC Act are met for each property.

- c) *an outline of the existing use of places with Commonwealth Heritage value, by the agency*

This requirement could be addressed by reference to the agency's heritage register, if one has already been prepared, which includes a sequential summary of the use of a place with Commonwealth Heritage value (regulation, 10.03G(2) (e)). If a heritage register has not yet been prepared then the strategy should set out this information.

- d) *an outline of current or expected development works, disposal or other proposals that may affect Commonwealth Heritage values*

Information about anticipated major works that may affect the Commonwealth Heritage values are required to be provided, if the information is available for the three year period of the strategy. Should development work, disposal or other actions impacting a Commonwealth Heritage place be proposed during the period of the strategy, then these should be addressed in the management plan for the place.

It is important to note that some development works may have to be referred under the EPBC Act. Go to the section *Making a Referral* for further information.

- e) *an outline of the process to ensure that Commonwealth Heritage values are considered in the agency's planning for future development, works, divestment or other proposals*

Agencies should identify heritage issues early in the project planning process to ensure proposals for development and other significant changes do not destroy or degrade heritage values. Consultation with the Heritage Branch of the Department of the Environment and Energy is encouraged, or seek advice from a heritage consultant to help identify options for managing change. Management plans should also address issues relating to change. The heritage strategy should outline how heritage values are being considered in the agency's property planning processes, and the consultation arrangements for each stage of planning.

Management plans can guide major changes to a place to ensure heritage values are conserved (see section *Developing Management Plans*).

- f) *a plan and budget for the maintenance and long-term conservation of Commonwealth Heritage values*

As a matter of good practice the plan and budget should be reconciled with (and made transparent in) an agency's audited annual report. The plan should also include information on how the budget is prepared.

Making a Heritage Strategy

- g) *an outline of the process by which the success of the agency in conserving Commonwealth Heritage values will be monitored and reviewed*

An agency must review its heritage strategy every three years and report to the Minister on the review.

To facilitate its process of triennial reviews, the agency should establish benchmarks against which it can measure success in conserving the Commonwealth Heritage values of properties under its ownership or control.

4. Commonwealth Heritage training and promotion matters

- a) *a program for training of agency staff about Commonwealth Heritage obligations and best practice heritage management*

The scope of training needs for heritage property identification and management should be made explicit by linking it to the relevant corporate objectives.

- b) *a program for promoting community awareness of Commonwealth Heritage values, as appropriate*

A promotion program could include publication, public education and awareness initiatives.

How to identify Commonwealth Heritage values?

Identifying heritage values can be a complex issue. Identification may be undertaken by gathering information about a specific property through research and review of available physical, oral, documentary and other information; including information from Indigenous people. The Heritage Branch of the Department of the Environment and Energy can assist agencies in this task. It may be necessary to engage appropriately qualified specialists to assist in undertaking a heritage assessment. A definition of Commonwealth Heritage values is included in the glossary at the end of this publication.

In some cases agencies may wish, or need to dispose of places that have not been assessed for heritage values. For information on the matters to consider in these circumstances see the section *Making a Referral* at the heading—*Can agencies make changes to a heritage place?*

Some common ways of identifying Commonwealth Heritage values include:

- a) *heritage studies*

Thematic or regional studies are generally considered a good approach for generating the identification of heritage places. They can be developed from histories of land use, agency activities or other regional characteristics or themes related to the Commonwealth Heritage criteria. Expert assistance is usually required to prepare these studies.

- b) *search of heritage lists*

Heritage places may have already been identified on a range of statutory and nonstatutory lists.

This information can be included in an agency register but must be entered on the advice of people with appropriate experience, knowledge and training in heritage assessment. On the ground inspections may also be required to check the characteristics or condition of the place.

Agency register

All places that are included in the Commonwealth Heritage List, along with those places with potential Commonwealth Heritage values, need to be entered in the agency register. The requirements for an agency register are set out in regulation 10.03G(2).

Making a Heritage Strategy

The Heritage Branch of the Department of the Environment and Energy can provide advice on the establishment and management of an agency register. Early consultation on this matter is encouraged.

The complexity of an agency register will depend upon the number of places the agency has. If there are many heritage places in the agency's estate, then an electronic database may need to be developed. The register could also be linked to an asset management database that includes processes for monitoring, compliance and review.

Heritage registers have been established by agencies such as the Commonwealth Scientific and Industrial Research Organisation and the Department of Defence. The Heritage Branch of the Department of the Environment and Energy can provide advice on what to include in a database, however, expert advice on database construction may also be required to ensure efficient and effective operation.

Seeking advice

Agencies must seek appropriate professional advice when identifying and assessing Commonwealth Heritage values. The Heritage Branch of the Department of the Environment and Energy can provide guidance on these matters. Expert assistance is usually required for heritage assessment and register construction tasks.

In particular it is important to ensure that relevant Indigenous people are actively involved in the process of identifying their heritage places and values. Be aware that Indigenous involvement in the identification processes may be the only way to establish some values (see section *Key Publications* for the *Ask First* publication).

The information provided above has been prepared to assist Commonwealth agencies to understand their obligations under the EPBC Act. It should not be used as a substitute for a direct reference to the applicable legislation, or legal advice about an agency's obligations under the EPBC Act.

EPBC Act Quick Guide for Commonwealth Agencies: Heritage Strategies

Section 341ZA

Commonwealth agency obligations to prepare a written Heritage Strategy

Section 341ZA(1)(a)

Commonwealth agency must prepare a written Heritage Strategy

Section 341ZA(1)(b)

Commonwealth agency must give a copy of the Strategy to the Minister

Section 341ZA(1A)

Agency must consult the Australian Heritage Council

Section 341ZA(3)(d)

A Heritage Strategy must be consistent with the Commonwealth Heritage Management principles

Section 341ZA(5)

Agency must review Heritage Strategy every three years

Section 341ZB

Heritage assessments and registers

Section 341ZE

Protecting Commonwealth Heritage values of places sold or leased

EPBC Regulations 2000

Regulation 10.03D SCH. 7B

Commonwealth Heritage management principles

Regulation 10.03E SCH. 7C

Content requirements for a Heritage Strategy

Regulation 10.03F

Report about review of a Heritage Strategy

Regulation 10.03G

Heritage assessments and registers



Carillon (ACT)

Included in the Commonwealth Heritage List in 2004.

The Carillon is a significant design feature in the important landscape of the Parliamentary Triangle. The Carillon is a good example of the late twentieth century Brutalist style, incorporating stark vertical elements and hard angles.

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Australia's Commonwealth Heritage

2. Applying the Principles

- ▲ What are the Commonwealth Heritage management principles?
- ▲ What do the Commonwealth Heritage management principles mean in practice?
- ▲ When should the Commonwealth Heritage management principles be used?

Photos (clockwise from left):
Headland Park, Middle Head © Sydney Harbour Federation Trust
Mt Stromlo Observatory Director's Residence © ANU, Photographer: Stuart Hay
North Hobart Post Office © Department of the Environment and Energy

Applying the Principles

Introduction

Heritage management principles provide a framework for best practice in managing heritage properties. They set the standard and the scope for the way places should be managed in order to best protect heritage values for generations ahead.

The Commonwealth Heritage management principles should be used when preparing and implementing management plans and management arrangements for a Commonwealth Heritage place. In the absence of a management plan, the principles should also guide the management of heritage values.

This section outlines the Commonwealth Heritage management principles and describes when and how they should be used.

What are the Commonwealth Heritage management principles?

The Commonwealth Heritage management principles are set out in the regulation 10.03D and Schedule 7B of the EPBC Regulations and are as follows:

1. The objective in managing Commonwealth Heritage places is to identify, protect, conserve, present and transmit, to all generations, their Commonwealth Heritage values.
2. The management of Commonwealth Heritage places should use the best available knowledge, skills and standards for those places, and include ongoing technical and community input to decisions and actions that may have a significant impact on their Commonwealth Heritage values.
3. The management of Commonwealth Heritage places should respect all heritage values of the place and seek to integrate, where appropriate, any Commonwealth, State, Territory and local government responsibilities for those places.
4. The management of Commonwealth Heritage places should ensure that their use and presentation is consistent with the conservation of their Commonwealth Heritage values.
5. The management of Commonwealth Heritage places should make timely and appropriate provisions for community involvement, especially by people who:
 - a) have a particular interest in, or associations with, the place; and
 - b) may be affected by the management of the place.
6. Indigenous people are the primary source of information on the value of their heritage. The active participation of Indigenous people in identification, assessment and management is integral to the effective protection of Indigenous heritage values.
7. The management of Commonwealth Heritage places should provide for regular monitoring, review and reporting on the conservation of Commonwealth Heritage values.

Applying the Principles

What do the Commonwealth Heritage management principles mean in practice?

Commonwealth Heritage Management Principle	How to manage a Commonwealth Heritage place in accordance with the Principles
1. The objective in managing Commonwealth Heritage places is to identify, protect, conserve, present and transmit, to all generations, their Commonwealth Heritage values.	<p>Principle 1 explains what is trying to be achieved in the management of Commonwealth Heritage places.</p> <p>Having a good comprehension of the Commonwealth Heritage values will enable agencies to develop an overall framework for long term conservation and protection. The best way of achieving this is to develop a management plan that applies the framework outlined in the following section <i>Developing Management Plans</i>. The recommended framework for a management plan provided in this publication has been developed using best practice standards. Adopting this recommended framework will contribute to the implementation of the Commonwealth Heritage management principles.</p> <p>The success of a management plan is reliant on timely implementation. Once developed, the management plan should become part of the day-to-day management and decision-making processes of the place.</p> <p>Please note that the Commonwealth Heritage values of a place have been formally assessed as part of the listing process and are as stated in the official values table for the place. The official values table should be used whenever you are asked for the Commonwealth Heritage values of a place. However, this does not preclude the identification of potential new Commonwealth Heritage values or other values (see Principle 3).</p>
2. The management of Commonwealth Heritage places should use the best available knowledge, skills and standards for those places, and include ongoing technical and community input to decisions and actions that may have a significant impact on their Commonwealth Heritage values.	<p>Principle 2 is about the skills and standards required to manage Commonwealth Heritage places, which includes seeking expert advice and consulting with the community, particularly in relation to Indigenous places.</p> <p>To better understand how to manage heritage values (natural, Indigenous and historic) agencies may draw on the objectives of the heritage provisions of the EPBC Act and Regulations, and industry standards and methodologies included in documents such as <i>The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance 2013</i>, the <i>Australian Natural Heritage Charter</i> and <i>Ask First: A guide to respecting Indigenous heritage places and values</i>.</p> <p>These are available at:</p> <ul style="list-style-type: none"> • www.heritage.gov.au <p>The agency should also refer to state and territory management publications and other management guides.</p>

Applying the Principles

Commonwealth Heritage Management Principle	How to manage a Commonwealth Heritage place in accordance with the Principles
<p>3. The management of Commonwealth Heritage places should respect all heritage values of the place and seek to integrate, where appropriate, Commonwealth, State, Territory and local government responsibilities for those places.</p>	<p>Principle 3 is about managing the Commonwealth Heritage values of a place while recognising that there may be other statutory requirements for heritage management. The Commonwealth Heritage values are as stated in the official values table for each place.</p> <p>Research should be conducted to identify whether the place has heritage values at any other level of statutory responsibility. This should include a search of the following:</p> <p>National</p> <p>National and Commonwealth Heritage places are found in the Australian Heritage Database which can be accessed from:</p> <ul style="list-style-type: none"> • www.environment.gov.au/cgi-bin/ahdb/search.pl <p>A check should also be made to confirm whether there are any protected matters of national environmental significance (NES) which need to be considered. Seven matters of NES are referred to in the EPBC Act. All NES places can be identified using the map, co-ordinates or Local Government search options from:</p> <ul style="list-style-type: none"> • www.environment.gov.au/erin/ert/epbc/index.html <p>State, territory and local</p> <p>Conduct a search of the following:</p> <ul style="list-style-type: none"> ▶ State and Territory heritage lists. Links to all state and territory statutory lists can be accessed from: <ul style="list-style-type: none"> • www.environment.gov.au/heritage/index.html ▶ Indigenous heritage registers in your state. These are generally maintained by a state heritage, Indigenous affairs, National Parks or conservation agency. ▶ Protected species listings for flora and fauna. Links to each state and territory can be accessed from: <ul style="list-style-type: none"> • www.environment.gov.au/biodiversity/threatened/index.html ▶ Planning instruments with heritage provisions and controls such as Local Environment Plans (LEPs), Regional Environment Plans (REPs), Master plans, Development Control Plans (DCPs) and Heritage overlays. <p>Inclusion of a Commonwealth Heritage place on one or more of the above statutory lists will require that the administrative systems, processes and arrangements (relating to other listings) are incorporated into a management plan for that place. It will also involve working with all levels of government to ensure that all heritage values are respected in any decisions made about the place. This principle acknowledges that Commonwealth Heritage places may already be part of an existing management regime with pre-existing requirements.</p>

Applying the Principles

Commonwealth Heritage Management Principle	How to manage a Commonwealth Heritage place in accordance with the Principles
	<p>Non-statutory heritage registers and lists may also provide useful information when developing a management plan for a Commonwealth Heritage place. A number of non-government organisations maintain heritage databases which can be searched online or by calling directly. These lists are generally maintained by professional and community groups and are specific to a type of heritage or heritage place.</p> <p>Some examples of these groups and databases include:</p> <ul style="list-style-type: none"> ▶ National Trust of Australia in each state and territory; <ul style="list-style-type: none"> • www.nationaltrust.org.au ▶ Royal Australian Institute of Architects; <ul style="list-style-type: none"> • www.architecture.com.au ▶ Engineering Heritage Australia; <ul style="list-style-type: none"> • www.engineersaustralia.org.au/Communities-And-Groups/Special-Interest-Groups/Engineering-Heritage-Australia ▶ Australian Institute of Landscape Architects; and <ul style="list-style-type: none"> • www.aila.org.au ▶ Australian Natural Heritage Assessment Tool (ANHAT). <ul style="list-style-type: none"> • www.environment.gov.au/heritage/publications/australian-natural-heritage-assessment-tool <p>The management plan should be developed from an understanding of the heritage management requirements of the EPBC Act and any other heritage controls. Using a recognised and accepted methodology, it should address how the requirements fit into the existing overall management of the place.</p>
<p>4. The management of Commonwealth Heritage places should ensure that their use and presentation is consistent with the conservation of their Commonwealth Heritage values.</p>	<p>Principle 4 is about how the place is used and how it is presented to the public. Use and presentation should not have an adverse impact on heritage values.</p> <p>In developing a management plan, the agency should identify:</p> <ul style="list-style-type: none"> ▶ how the Commonwealth Heritage place is used and any proposed changes to the use of the place. Proposed changes may include disposal of the property, subdivision or re-development; ▶ how the place is interpreted and how it will be presented to and accessed by the public, ensuring that proposals are sympathetic to and/or appropriate for the heritage values of the place; ▶ any known or anticipated pressures on the Commonwealth Heritage values of the place, taking into consideration current and future threats including those that originate outside the place; and ▶ any constraints on the management of the place, including operational requirements that may affect its Commonwealth Heritage values. <p>Identifying and describing these factors will assist with the development of policies relating to the use of a place and its presentation.</p>

Applying the Principles

Commonwealth Heritage Management Principle	How to manage a Commonwealth Heritage place in accordance with the Principles
<p>5. The management of Commonwealth Heritage places should make timely and appropriate provisions for community involvement, especially by people who:</p> <ul style="list-style-type: none"> a) have a particular interest in, or associations with, the place; and b) may be affected by the management of the place. 	<p>Principle 5 is about involving the community in decisions affecting the place. This is usually achieved via the consultation phase of a management plan but can also occur as part of the EPBC Act referral process.</p> <p>During the preparation of a management plan for a Commonwealth Heritage place an agency should seek to identify and involve the people and/or groups who have an association with the place.</p> <p>It is important to involve stakeholders in formal consultation processes to inform them about management decisions and policies for the place. Good consultation and liaison can help ensure that all important issues are considered in management and that protection and conservation of the heritage values are achieved.</p>
<p>6. Indigenous people are the primary source of information on the value of their heritage. The active participation of Indigenous people in identification, assessment and management is integral to the effective protection of Indigenous heritage values.</p>	<p>Principle 6 establishes that the best way to understand and to manage Indigenous heritage values is to involve the Traditional Owners and other relevant Indigenous people with rights and interests in the place.</p> <p>In developing a management plan for a Commonwealth Heritage place, the agency should seek to involve and facilitate consultation with Indigenous people, particularly for the management of places that have, or for the identification and assessment of places that potentially have, heritage values of significance to Indigenous people.</p> <p>Where relevant, management policies to ensure access for Indigenous people to maintain traditional practices, including caring for country, should be developed and implemented.</p> <p>Policies relating to accessing places or sites with Indigenous heritage values, including access for the general public, should be developed in consultation with relevant Indigenous people.</p> <p>An investigation of the Native Title status of a place is recommended. Further information can be obtained from the National Native Title Tribunal at:</p> <ul style="list-style-type: none"> • www.nntt.gov.au/Pages/Home-Page.aspx <p>or by telephoning 1800 640 501.</p> <p>The publication <i>Ask First: A guide to respecting Indigenous heritage places and values</i>, Australian Heritage Commission 2002 (see <i>Key Publications</i>) should also be consulted.</p>

Applying the Principles

Commonwealth Heritage Management Principle	How to manage a Commonwealth Heritage place in accordance with the Principles
7. The management of Commonwealth Heritage places should provide for regular monitoring, review and reporting on the conservation of Commonwealth Heritage values.	<p>Principle 7 is about ensuring that a system of regular review, reporting and accountability is in place through a regular revision of the management plan.</p> <p>In the day-to-day management of a place and in developing a management plan, appropriate monitoring procedures should be prepared for reporting on the condition of the Commonwealth Heritage place and the protection of its heritage values. This may involve establishing baseline information about:</p> <ul style="list-style-type: none">▶ the condition of those elements that represent heritage values;▶ the maintenance of the place; and▶ all actions that could impact on the place. <p>A heritage register or database established to record all actions and changes affecting the place may be the most effective means of compiling this information.</p>

When should the Commonwealth Heritage management principles be used?

Commonwealth agencies that own or lease a Commonwealth Heritage place are required to manage the place in accordance with the Commonwealth Heritage management principles.

These principles must also be used when preparing, implementing and reviewing heritage strategies, management plans and any other management arrangements. In the absence of a management plan, a Commonwealth agency must take all reasonable steps to ensure that its management of a Commonwealth Heritage place is not inconsistent with the Commonwealth Heritage management principles (section 341V (2)).

The information provided above has been prepared to assist Commonwealth agencies to understand their obligations under the EPBC Act. It should not be used as a substitute for a direct reference to the applicable legislation.



Mermaid Reef – Rowley Shoals (WA)

Included in the Commonwealth Heritage List in 2004.

Mermaid Reef is characterised by environmental conditions which are rare for shelf edge reefs and are known only from the Rowley Shoals in Western Australia (WA) and include clear, deep oceanic water and large tidal ranges. Mermaid Reef is particularly significant as a stepping stone in the spread of genetic material from the Indonesian archipelago to the reefs in the south.

© Department of the Environment and Energy, Photographer: Cathy Zwick





Australia's Commonwealth Heritage

3. Developing Management Plans

- ▲ What is a Management Plan?
- ▲ Does a Commonwealth agency have to prepare a Management Plan?
- ▲ What is required if a Management Plan has already been prepared?
- ▲ Where can I find the requirements for a Management Plan?
- ▲ What happens when a heritage place is on multiple lists?
- ▲ Who needs to be consulted or notified during the preparation of a Management Plan?
- ▲ How does a Commonwealth agency write a Management Plan?
- ▲ How should the Plan be structured?
- ▲ How is a Management Plan endorsed?

Photos (clockwise from left):
University House © ANU, Photographer: Stuart Hay
North Reef Lightstation © Commonwealth of Australia (GBRMPA) Photographer: P. Koloi
Warwick Post Office © Department of the Environment and Energy

Developing Management Plans

Introduction

Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) a Commonwealth agency must prepare a management plan of all Commonwealth Heritage places which it controls or owns.

This section provides guidance on how agencies can prepare a management plan consistently with their obligations under the EPBC Act.

What is a Management Plan?

A management plan is a tool intended to help managers to conserve and protect the Commonwealth Heritage values of a place included in the Commonwealth Heritage List. It is a written document identifying in detail the heritage values of a place and the conservation policies to be followed.

A management plan for a Commonwealth Heritage place under the EPBC Act is comparable to a conservation management plan which heritage practitioners are familiar with preparing. The term 'management plan' is used for consistency with other parts of the EPBC Act.

Under the EPBC Act, a heritage management plan for a Commonwealth Heritage place is a legislative instrument for the purposes of the *Legislation Act 2003* (**Legislation Act**). This means it must be made as a legislative instrument by the responsible agency for the agency to meet its obligations. It is the responsibility of Commonwealth agencies to register their plans as a legislative instrument. Please refer to the below guidance on making and registering a management plan.

Does a Commonwealth agency have to prepare a Management Plan?

Yes. Under section 341S(1) of the EPBC Act, a Commonwealth agency with control or ownership of a Commonwealth Heritage place is responsible for the making of a written heritage management plan to protect and manage the Commonwealth heritage values of that place.

Management plans must be prepared for Commonwealth Heritage places in accordance with the EPBC Act, regulation 10.03B and Schedule 7A of the Regulations. In addition the plan must not be inconsistent with the Commonwealth Heritage management principles as set out in regulation 10.03D and Schedule 7B. More detail about the requirements for management plans is set out below under 'How does a Commonwealth agency write a Management Plan?'

If a management plan has not yet been prepared for a Commonwealth Heritage place, then the EPBC Act requires the responsible agency to take all reasonable steps to ensure that the place is managed in accordance with the Commonwealth Heritage management principles.

Management plans must be completed in a timely manner for all Commonwealth Heritage places. It is recommended that agencies prioritise the preparation of management plans and allow for their preparation in all forward planning processes. Priority may be based on:

- ▶ anticipated future development proposals;
- ▶ divestment proposals; and
- ▶ the absence of a guiding heritage management document for a place.

Developing Management Plans

The agency must cause a review of its plan for managing a Commonwealth Heritage place to be carried out at least every five years (section 341X(1) of the EPBC Act). The EPBC Act sets out a number of requirements for the review of a Commonwealth Heritage plan, including a requirement that public comments on the plan must also be sought and an assessment undertaken of whether the plan is consistent with the Commonwealth Heritage management principles and if it is effective in protecting and conserving the Commonwealth Heritage values of the place (section 341X (2)).

Particular events that should trigger a review of a management plan are:

- ▶ any change to the official Commonwealth Heritage values of the place; and
- ▶ any major changes to the place.

What is required if a management plan exists but was prepared prior to the EPBC Act?

A management plan for a Commonwealth Heritage place must meet the requirements of the EPBC Act. The EPBC Act requires a management plan to meet the provisions under section 341S, including that plan being made and registered as a legislative instrument. In addition the agency may ask the Minister to endorse a plan under section 341T.

A management plan which was prepared prior to the introduction of the Commonwealth Heritage List (in 2004) is unlikely to provide adequate consideration of, or protection for, the official Commonwealth Heritage values, as it would pre-date the introduction of the Commonwealth Heritage List and not meet the statutory requirements. It may, however, be possible to amend an existing plan to provide for the management of the Commonwealth Heritage values of the place. The existing plan will need to undergo a review process to assess whether the plan meets the EPBC Act requirements. Areas which will require updating will also need to be identified. Commonwealth agencies commonly engage a heritage consultant to undertake this task.

Should the review of the management plan conclude that the plan is sufficient to protect the Commonwealth Heritage values and meets the statutory requirements it can be retained. However, the plan will need to go through the requirements set out in section 341S for the making of a new plan. If the existing plan is deemed insufficient to protect Commonwealth Heritage values it will be necessary for a new management plan to be developed or amendments made to the existing plan.

Where can I find the requirements for a Management Plan?

The requirements of a management plan for a Commonwealth Heritage place are contained in regulation 10.03B and Schedule 7A. The plan must also be consistent with the Commonwealth Heritage management principles which are contained in regulation 10.03D and Schedule 7B of the EPBC Regulations.

These requirements include :

- ▶ comments must be sought on the draft plan by notice published in accordance with the requirements of section 341S(3) and regulation 10.03C) via internet, newspaper (Australia wide) and also relevant state or Territory paper. The comments must be received within 20 business days of the last day on which the notice is published.
- ▶ the agency responsible for the Plan must ask the Minister for advice on the plan and must take the Minister's advice into account (section 341S(6)). The Minister must consult the Australian Heritage Council for the purposes of preparing the advice.

Developing Management Plans

- ▶ the plan must contain the mandatory content required by Schedule 7A of the EPBC Regulations (section 341S(4) (a) of the EPBC Act).
- ▶ the plan must not be inconsistent with the Commonwealth management principles set out in Schedule 7B of the EPBC obligations (section 341S(4)(b) of the EPBC Act).

These requirements are broadly consistent with the Australia ICOMOS *Burra Charter 2013* and the *Australian Natural Heritage Charter* (Australian Heritage Commission, 2002). These publications are among a number of best practice documents that provide guidance when developing a management plan. A number of other guideline documents have also been produced to support agencies in their task of preparing a management plan. These guides are outlined below.

The Department of the Environment and Energy has prepared a comprehensive guideline on management plan requirements. This guide, *Management Plans for Places on the Commonwealth Heritage List*. A guide for Commonwealth agencies can be found on the Department's website at the following address:

- www.environment.gov.au/heritage/publications/index.html

The publication *Ask First: A guide to respecting Indigenous heritage places and values* (Australian Heritage Commission, 2002) should also be used as a reference for consultation with Indigenous stakeholders on issues relating to the identification, management and use of places with Indigenous heritage values.

- www.environment.gov.au/heritage/ahc/publications/commission/books/ask-first.html

The *Burra Charter* is available from Australia ICOMOS or may be viewed on their website at:

- <http://australia.icomos.org/publications/burra-charter-practice-notes/>

Copies of the *Australian Natural Heritage Charter* and *Ask First: A guide to respecting Indigenous heritage places and values* are available from:

- www.environment.gov.au/about-us/publications/archive

or by contacting the Department of the Environment and Energy.

A detailed structure and content of a management plan (to meet the EPBC Regulations) for a Commonwealth Heritage place is also provided later in this section.

Developing Management Plans

What happens when a heritage place is on multiple lists?

The heritage values of a Commonwealth heritage place in the Commonwealth Heritage List might be protected under more than one provision of the EPBC Act. For example, a Commonwealth Heritage place might also be on the National Heritage List as a National Heritage place or the World Heritage List as a World Heritage Place. Where this is the case, the EPBC Act may prescribe additional management requirements and/or principles relating to those listings.

A plan for managing a Commonwealth Heritage place can be in the same document as other plans that the EPBC Act or another Commonwealth law requires or permits (section 341W). For example, a plan for managing the Commonwealth heritage values of a Commonwealth Heritage place can be in the same document that is also a plan for managing the national heritage values of a National Heritage place.

In these circumstances, the plans will need to be made separately by each of the relevant decision-makers under the EPBC Act and registered separately by the responsible agencies on the Federal Register of Legislation.

Restrictions on making a plan

To avoid duplication, agencies must not make a plan for managing a Commonwealth Heritage place that is in a Commonwealth reserve and covered by another plan under the EPBC Act (section 341U).

Who needs to be consulted or notified during the preparation of a Management Plan?

Agencies preparing management plans must seek and consider comments from the public or other interested parties about the matters to be addressed by the proposed plan. A minimum comment period of 20 days is required under the EPBC Act. This consultation requirement is set out in section 341S(6)(b) of the EPBC Act and regulation 10.03C.

Agencies must also ask the Commonwealth Minister for the Environment, for advice on a proposed plan or any amendments to an existing plan, or the revocation of an existing plan. The Minister consults with the Australian Heritage Council in the provision of this advice. Once the Minister's advice is provided to the responsible agency, the agency must take account of the Minister's advice.

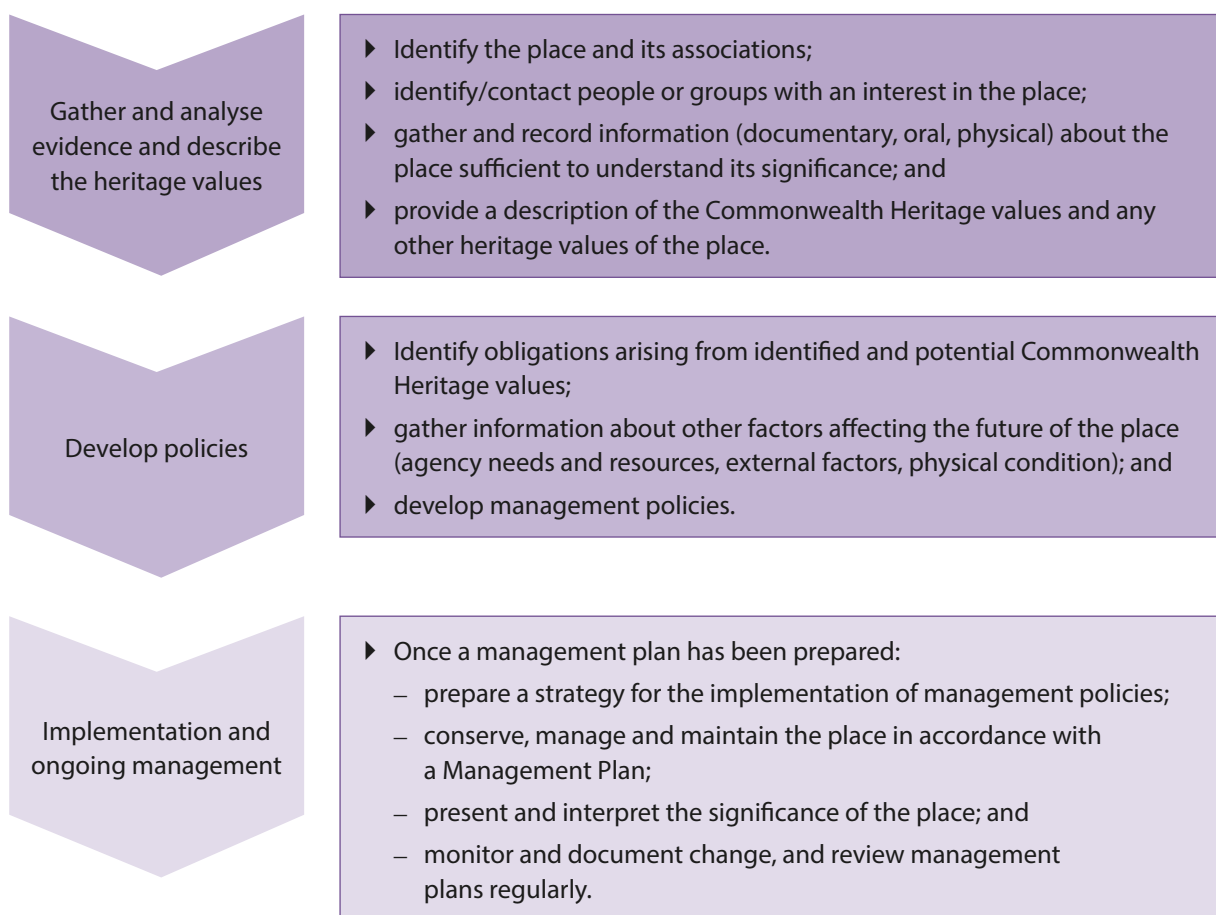
Agencies are also encouraged to consult with the Heritage Branch of the Department of the Environment and Energy throughout the development of the plan. Stakeholder consultation prior to a public exhibition of a plan is also encouraged.

Agencies must publish a notice on the internet and in the Government Gazette if they make, amend or revoke a plan. Details of the notification requirements are set out in section 341S(3) of the EPBC Act.

Developing Management Plans

How does a Commonwealth agency write a Management Plan?

The Burra Charter, the Australian Natural Heritage Charter and Ask First: A guide to respecting Indigenous heritage places and values provide a good starting point for developing a management plan for a place included on the Commonwealth Heritage List. The steps in the process of preparing and implementing a plan are outlined below:



This process facilitates a logical flow between the major steps in the process of preparing a management plan. Each step is given equal weight. The form of the resulting management plan will reflect the complexity of the individual place. It is expected therefore that plans will vary in look and content.

Developing Management Plans

How should the Plan be structured?

The structure and content of a management plan should be considered carefully. It must be compliant with the requirements as set out in the EPBC Regulations (see regulation 10.03B and Schedule 7A). A recommended form for a management plan is set out in the following table with cross references to the eleven Schedule 7A requirements. Agencies commonly engage a heritage consultant to complete this task.

Management Plan Requirements Relevant EPBC Regulation	Suggested Content for a Management Plan
Executive Summary	The principal findings of the management plan are to be summarised and should appear at the beginning of the report as an Executive Summary. This section should be concise and written in language that is easily understood by a wide audience.
Introduction Schedule 7A (a) and (b)	<p>The introduction should include:</p> <ul style="list-style-type: none">▶ a statement of the objective of the management plan;▶ a brief description of the area including address, real property description and co-ordinates for non-urban places;▶ location plans showing the state and local context of the place;▶ a site plan showing all significant features of the site, administrative boundaries and boundaries for the current heritage listings of the place (if different);▶ cadastral plans or appropriate topographic plans with Australian Map Grid (AMG) references;▶ details of current heritage listings for the place;▶ an outline of the methodology employed by the consultant/s in the preparation of the report;▶ who was involved in preparing the plan; and▶ acknowledgements.

Developing Management Plans

Management Plan Requirements Relevant EPBC Regulation	Suggested Content for a Management Plan
Historical background Schedule 7A (c)	<p>This section should include:</p> <ul style="list-style-type: none"> ▶ a concise history of the place and its component parts including some historical context; ▶ a history of its establishment up to the present day including its role, physical development and associations; ▶ a summary of economic and social influences associated with the development of the place; ▶ a summary of the defining historical events associated with the place; ▶ a summary of the geographic influences on the development of the place; ▶ a biography of the designer or builder (if appropriate); ▶ a summary of its current and former uses; ▶ an outline of the conservation of the place; ▶ a chronology of major events; ▶ an annotated list of other reports providing more detailed historical evidence about specific parts/aspects of the place; ▶ documentation of any unresolved questions about the development of the place or any conflicts arising from the documentary evidence; and ▶ recommendations relating to areas which require further research.
Place description Schedule 7A (c) and (e)	<p>This description forms the basis for understanding the place and its heritage values. The description must cover all of the elements of the place in detail and include:</p> <ul style="list-style-type: none"> ▶ a description of the current condition of the Commonwealth Heritage values of the place, including their integrity and authenticity; ▶ a framework against which to measure any change in condition of the place and its heritage values; ▶ plans and photographs (with sources, dates and captions) which are required to illustrate and/or support key aspects of the description. These should include floor plans for major building elements and any up to date current photographs illustrating key aspects of the place and its condition; ▶ an outline of the physical context of the place. If the place is a cultural landscape describe the topography, vegetation, ecosystems and landscape modifications; ▶ references to supporting information in other reports; ▶ an analysis and comparison of the place with other similar places to reveal its qualities, condition and intactness; ▶ discussions of any conflicts arising from physical evidence; and ▶ areas recommended for further research such as archaeological or other fabric investigations.

Developing Management Plans

Management Plan Requirements Relevant EPBC Regulation	Suggested Content for a Management Plan
Heritage significance Schedule 7A (d) and (f)	<p>This section must include a statement of the official Commonwealth Heritage values of the place. This statement can be found in the place report for the listed place. All place reports can be found in the Australian Heritage Database. See below for web address. The official statement of significance for the listed place should also be included in the description of the heritage significance of the place.</p> <p>Research should also be conducted to identify any other heritage values. This should include a search of the following:</p> <p>National</p> <ul style="list-style-type: none"> ▶ National and Commonwealth places can be identified in the Australian Heritage Database. See: <ul style="list-style-type: none"> • www.environment.gov.au/cgi-bin/ahdb/search.pl ▶ A check should also be made to confirm whether there are any matters of national environmental significance (NES) which need to be considered. Seven matters of NES are specifically referred to in the EPBC Act. <p>NES matters can be identified using the map, co-ordinate or local government search options from the following link:</p> <ul style="list-style-type: none"> • www.environment.gov.au/erin/ert/epbc/index.html <p>State, territory and local</p> <p>Conduct a search of the following:</p> <ul style="list-style-type: none"> ▶ State and Territory heritage lists. Links to all states and Territory statutory lists can be accessed from: <ul style="list-style-type: none"> • www.environment.gov.au/heritage/index.html; ▶ Indigenous heritage registers in your State or Territory. These are generally maintained by either a state Indigenous agency or a National Park or other conservation agency; ▶ protected species listings for flora and fauna; <p>Links to each state and territory list can be accessed from:</p> <ul style="list-style-type: none"> • www.environment.gov.au/biodiversity/threatened/index.html; and <ul style="list-style-type: none"> ▶ planning instruments with heritage provisions and controls such as Local Environment Plans (LEPs), Regional Environment Plans (REPs), Master plans, Development Control Plans (DCPs) and Heritage overlays.

Developing Management Plans

Management Plan Requirements Relevant EPBC Regulation	Suggested Content for a Management Plan
	<ul style="list-style-type: none"> ▶ Inclusion of a place on one or more of the above statutory lists will require that the administrative systems, processes and arrangements (relating to these other listings) are incorporated into a management plan for a Commonwealth Heritage place. It may also involve working with all levels of government to ensure that all heritage values are respected in any decisions made about the place. ▶ The preparation or review of a management plan may reveal new information about the heritage significance of a place. Any research which supports the potential for additional Commonwealth Heritage values should be documented and included in a preliminary statement against the relevant criterion. Alternatively, if you reveal a potential loss of Commonwealth Heritage values, you should document the circumstances surrounding the change and contact the Heritage Branch of the Department of the Environment and Energy.
Opportunities and constraints Schedule 7A (b) and (g)	<p>This section should:</p> <ul style="list-style-type: none"> ▶ discuss any obligations arising from the inclusion of the place on the Commonwealth Heritage List and/or other heritage registers; ▶ describe any existing management frameworks, including applicable Commonwealth, State and local statutory requirements and outline how heritage management matters will be incorporated into these existing arrangements, including incorporation into an agency's own management system; ▶ list owner/occupier needs and operational requirements; ▶ describe any proposals for change and any potential pressures these changes may have on the heritage values of a place; and ▶ outline a process for making decisions about matters which have the potential to impact on heritage values and for situations where expert advice should be sought.

Developing Management Plans

Management Plan Requirements Relevant EPBC Regulation	Suggested Content for a Management Plan
Conservation management policy Schedule 7A (h) and (k)	<p>This section sets out the policies to conserve and protect the identified heritage values. Each policy topic should include a summary of the major issues considered.</p> <p>In general, the policies may include but are not limited to the consideration of:</p> <p>Fabric and setting</p> <ul style="list-style-type: none"> ▶ the nature, extent, and degree of intactness of the fabric representing the heritage values, including contents; ▶ the condition of the fabric/landscape representing the heritage values, including contents, and the implications arising from this; ▶ the impacts of any changes on the setting and by surrounding development (if applicable); ▶ environmental pressures or hazards which may contribute to the deterioration of significant fabric; ▶ the nature, urgency and potential impact of any current or proposed maintenance works; and ▶ any recommended works or other actions arising, prioritised in terms of urgent works (to be actioned immediately), short term works (two years), medium works (five years), long term works (ten years) and desirable works. <p>Use</p> <ul style="list-style-type: none"> ▶ feasible and compatible uses of the place; ▶ visitor/tourism pressures, including consideration of the capacity of the place to absorb the current and potential number of visitors without adverse effects; ▶ management of visitors without adverse effects; ▶ management of visitors in order to manage their impacts, inclusive of wear and tear on significant fabric; and ▶ how the place will be adapted for new uses and how the new uses will be compatible with the heritage values. <p>Interpretation</p> <ul style="list-style-type: none"> ▶ interpretation and promotion of heritage values. This may include interpretation measures or programs that are currently being implemented; proposals for future interpretation actions or programs; and recommended actions to achieve an effective, long-term interpretation strategy.

Developing Management Plans

Management Plan Requirements Relevant EPBC Regulation	Suggested Content for a Management Plan
	<p>Management</p> <ul style="list-style-type: none"> ▶ best practice management and conservation processes, utilising <i>The Burra Charter</i>, <i>Natural Heritage Charter</i> or <i>Ask First</i> and other charters as appropriate; ▶ current ownership and management structure, and the measures that have been put in place to protect and manage the heritage values of the place, and the manner in which they work; ▶ how and under what circumstances heritage advice is to be sought; ▶ how records of intervention and maintenance are to be kept; ▶ how unforeseen discoveries or disturbance of heritage are to be managed; ▶ research, training and resources; ▶ how the condition of those elements representing Commonwealth Heritage values, and other values, are to be monitored and reported; ▶ the implications of the various heritage listings for the place, including legislative and regulatory measures and the manner in which they work; ▶ what research, induction and staff training will be applied by the managing agency; and ▶ what financial resources will be applied by the managing agency to improve the recognition of heritage and the management of heritage values, including maintenance and conservation works <p>Future developments</p> <ul style="list-style-type: none"> ▶ planning and management of any works proposed, including adaptive reuse; ▶ any current or potential development pressures (encroachment, adaptation, etc.) and the possible impact of these on the heritage values of the place; ▶ management for any divestment proposals that may affect the Commonwealth Heritage values, now and in the future; and ▶ how disposal of the place will occur and the measures taken to ensure on-going protection of heritage values. <p>Community involvement</p> <ul style="list-style-type: none"> ▶ community and stakeholder expectations for the place (if applicable) and how these will be met; and ▶ stakeholder and community consultation and liaison arrangements and procedures. <p>Review</p> <p>A management plan should be reviewed every five years in accordance with section 341X or if any of the following occur:</p> <ul style="list-style-type: none"> ▶ the Commonwealth Heritage values of the place change; or ▶ major changes are proposed.

Developing Management Plans

Management Plan Requirements Relevant EPBC Regulation	Suggested Content for a Management Plan
Policy implementation Schedule 7A (i) and (j)	The management plan should identify who will be responsible for implementing the conservation policies, a timeframe for the policy implementation, and the process involved. No new policies should be introduced in this section.
Appendices	Any information which may be critical to understanding the report or its preparation is to be included as an appendix. Photos and plans could be placed here.
Referencing	Referencing should be consistent and include the following information: author's name, title of document, publisher, place published, year of publication, page number/s. All figures, including illustrations, photographs and plans, should have captions and be sourced. The caption should be a description of the item and must be dated. The source of information, including all quotations, must be footnoted and referenced.

Making a management plan as a legislative instrument

Heritage management plans for Commonwealth Heritage listed places are legislative instruments for the Purposes of the Legislation Act. This means that once a plan is made by a responsible Commonwealth agency under section 341S, it must be registered as a legislative instrument on the Federal Register of Legislation (Register) as soon as practicable (section 4 of the Legislation Act). Otherwise, the responsible agency may not be compliant with its obligations under the EPBC Act.

It is the responsibility of the Commonwealth agency to prepare a management plan for the Commonwealth Heritage place it owns or controls (section 341S), to make the Plan, and to register it as a legislative instrument on the Register.

Drafting a legislative instrument

The Office of Parliamentary Counsel (OPC) Instruments Handbook provides recommendations for drafting legislative instruments and considerations that need to be taken into account. A copy of the OPC Instruments Handbook can be obtained from the OPC website.

- www.opc.gov.au

OPC also provides templates for different types of instruments (e.g., principal instruments, amending instruments, etc.) with instructions at the end of each document on recommended naming conventions, machinery provisions (the administrative provisions that set out the operation of the instrument), and other considerations to be taken into account. The templates are available on the OPC website. We have included a legislative instrument checklist in annexure 1 of this document.

Each new legislative instrument is required to be accompanied by an explanatory statement (ES). An ES must provide the reader with the details of the purpose and operation of an instrument and any other relevant information about how the instrument should be understood. We have included an ES drafting checklist which outlines the main requirements of an ES, in annexure 2 of this document.

Developing Management Plans

Briefing the rule-maker

A legislative instrument is 'made', in a legal sense, when the person or the body empowered to make the instrument signs, seals or otherwise endorses the instrument (section 4 of the Legislation Act).

The responsible agency will need to prepare a briefing package for the rule-maker, which includes, at a minimum, the following documentation:

- ▶ the legislative instrument for signing and dating;
- ▶ the explanatory statement for approval;
- ▶ the accompanying brief; and
- ▶ any other supporting material.

There are also certain requirements that the rule-maker must be satisfied of before he or she makes the instrument. This includes the requirement to consult and the requirement to assess regulatory impacts before making. We note that section 341S (6) (b) and regulation 10.03C set out consultation requirements when developing a management plan. These matters should be addressed in the brief and explanatory statement.

Lodgement and registration

Once the rule-maker makes the Plan, by signing or otherwise approving the instrument, the instrument and explanatory statement will need to be registered as soon as practicable after the instrument is made (section 15G of the Legislation Act). The Plan will not have legal effect until it has been published on the Register. Once the instrument has been made, the responsible agency will need to prepare the documents for lodgement on the Register. The Register is maintained by the Office of Parliamentary Counsel, who can provide guidance about the lodgement of instruments. Agencies may also wish to contact their legal or legislation areas, if applicable, for guidance.

Endorsement of Management Plans

Agencies may seek to have a management plan endorsed by the Commonwealth Minister for the Environment (section 341T). To be endorsed, the Minister must be satisfied that the plan provides for the conservation of the Commonwealth Heritage values and is not be inconsistent with the Commonwealth Heritage management principles. Endorsement is an optional additional step which may occur following a plan being made into a legislative instrument under section 341S.

Endorsement of a Commonwealth Heritage management plan does not relieve an agency from its referral obligations under the EPBC Act. This includes the obligation to refer an action that is likely to have, a significant impact on the environment in general, for actions by Commonwealth agencies or on Commonwealth land. The environment includes Commonwealth Heritage-listed places and any other heritage. For more information on endorsement contact the Heritage Branch (heritage@environment.gov.au).

The information provided above has been prepared to assist Commonwealth agencies to understand their obligations under the EPBC Act. It should not be used as a substitute for a direct reference to the applicable legislation, or as a substitute for legal advice.

Developing Management Plans

EPBC Act Quick Guide for Places on Commonwealth Land: management Plans

Section 316

Requirement for Minister to prepare management plans for World Heritage properties within Commonwealth areas

Section 324S

Requirement for Minister to prepare management plans for National Heritage places within Commonwealth areas

Section 341S(1)

A Commonwealth agency must make a written plan for the Commonwealth Heritage values of a Commonwealth heritage place

Section 341S(4)(b)

Management plans must not be inconsistent with the Commonwealth Heritage management principles

Section 341T

Endorsing management plans for Commonwealth Heritage places

Section 341Y

Commonwealth Heritage management principles

Section 341X(1)

Management plans to be reviewed every five years

Section 341X(2)

Content of a review of a management plan

Section 341V(1)

Compliance with plans by Commonwealth agencies

Section 341V(2)

Commonwealth agencies must take all reasonable steps to ensure consistency with the Commonwealth Heritage management principles if no plan is in place

Section 341W

Multiple plans in the same document

EPBC Regulations 2000

Regulation 10.03C

Publication requirements for notices inviting comments on Management Plans

Schedule 7A

Content requirements for Management Plans for a Commonwealth Heritage place

Schedule 7B

Commonwealth Heritage Management Principles

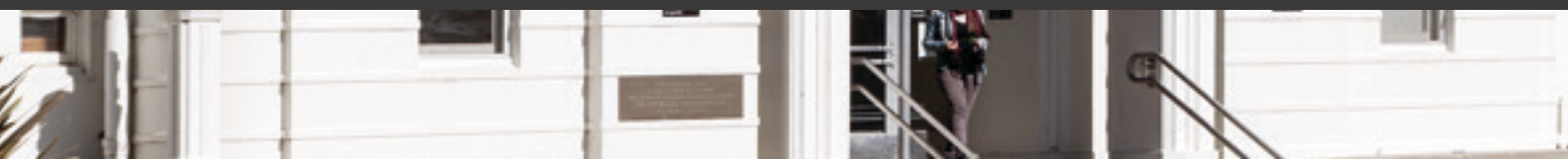


The ANU School of Art and Design (ACT)

Included in the Commonwealth Heritage List in 2009.

The building is significant as the former Canberra high school and as an example of inter-war art deco style architecture in Canberra as executed by the Commonwealth Government through the Federal Capital period (1911–1939).

© ANU, Photographer: Stuart Hay





Australia's Commonwealth Heritage

4. Making a Referral

- ▲ What is protected?
- ▲ What is an action?
- ▲ What is a referral?
- ▲ When do agencies have to refer actions to the Minister?
- ▲ What is a significant impact?
- ▲ How do I identify significant impacts?
- ▲ How do I make a referral?
- ▲ How long do referrals take?
- ▲ Are referrals confidential?
- ▲ Can I comment on a referral?
- ▲ What is an approval?
- ▲ Can agencies make changes to a heritage place?
- ▲ What happens if an action is not referred?

Photos (clockwise from left):
 ANU School of Music © ANU, Photographer: Stuart Hay
 Treasury Building © Department of Finance
 Hospital, Amberley Base RAAF Group © Department of the Environment and Energy

Making a Referral

What is protected?

Under the EPBC Act approval for an action is required where the action will or is likely to have a significant impact on matters of National Environmental Significance (NES).

The matters of NES are:

- ▶ listed threatened species and ecological communities;
- ▶ migratory species protected under international agreements;
- ▶ Ramsar wetlands of international importance;
- ▶ the Commonwealth marine environment;
- ▶ World Heritage properties;
- ▶ National Heritage places;
- ▶ nuclear actions (including uranium mines); and
- ▶ a water resource, in relation to coal seam gas development and large coal mining development.

The EPBC Act also protects other matters including:

- ▶ the environment, where actions proposed are on, or will affect Commonwealth land and the environment; and
- ▶ the environment, where Commonwealth agencies are proposing to take an action.

For further information refer to:

- www.environment.gov.au/epbc/protect/index.html

When do agencies have to refer actions to the Minister?

If an action will be undertaken by a Commonwealth agency or undertaken on Commonwealth land, the agency, owner, or lessee of the place must refer that action to the Minister for a decision if they consider that the action has, will have or is likely to have a significant impact on the environment on Commonwealth land, or if there is likely to be a significant impact on the environment in general for an action being undertaken by a Commonwealth agency. For the purposes of the EPBC Act the environment includes any heritage values, whether or not they are recognised in the Commonwealth Heritage List. A proposed action may also have a significant impact on a matter of NES, in which case, the action should also be referred.

Commonwealth agencies must undertake a self-assessment process to determine whether the action they are undertaking is likely to meet any of these criteria.

The Department's guideline—*EPBC Act Policy Statement 1.1—Significant Impact Guidelines—Matters of National and Environmental Significance* has further detail about these matters. You should also refer to *EPBC Act Policy Statement 1.2 Significant Impact Guidelines—Actions on, or impacting upon, Commonwealth land and actions by Commonwealth agencies*.

Making a Referral

As outlined in these guidelines approval is also required for:

- ▶ an action taken by any person on Commonwealth land that is likely to have a significant impact on the environment—(section 26(1) of the EPBC Act);
- ▶ an action taken by any person outside of Commonwealth land that is likely to have a significant impact on the environment on Commonwealth land—(section 26(2) of the EPBC Act) and
- ▶ an action taken by a Commonwealth agency anywhere in the world that is likely to have a significant impact on the environment—(section 28 of the EPBC Act).

See:

- www.environment.gov.au/epbc/publications/nes-guidelines.html
- www.environment.gov.au/epbc/publications/commonwealth-guidelines.html

What is a significant impact?

A significant impact is an impact which is important, notable or of consequence having regard to its context or intensity. Whether or not an action is likely to have a significant impact depends upon the sensitivity, value and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts. Commonwealth agencies should consider all of these factors when determining whether an action is likely to have a significant impact on matters of NES or the environment on Commonwealth land, or the environment in general if an action undertaken by a Commonwealth agency.

A place manager may find it useful to seek the advice of a heritage professional in determining significant impacts on heritage values. The Heritage Branch of the Department of the Environment and Energy can also provide informal advice about works proposals.

To make a decision as to whether or not to refer an action to the Minister, you should consider the following:

1. will the action be undertaken on, or impact, Commonwealth land and have the potential to have an impact on the environment on that land?
2. are there any matters of NES located in the area of the proposed action (noting that 'the area of the proposed action' is broader than the immediate location where the action is undertaken and considering whether there are any matters of NES adjacent to or downstream from the immediate location that may be potentially impacted)?
3. considering the proposed action at its broadest scope (that is, considering all states and components of the action, and all related activities and infrastructure), is there potential for impacts, including indirect impacts, on matters of NES? For wetlands of international importance as well as World Heritage and National Heritage places, you will need to consider the potential impact on the listed heritage values.
4. are there any proposed measures to avoid or reduce impacts on matters of NES or the environment on Commonwealth land (and if so, is the effectiveness of these measures certain enough to reduce the level of impact below the significant impact threshold)?
5. are any impacts of the proposed action on matters of NES or the environment on Commonwealth land likely to be significant impacts?

Making a Referral

How do I identify significant impacts?

Understand the Commonwealth and/or National Heritage values of your place

Management decisions and/or future actions have the potential to impact on heritage values if the values are not clearly understood. Therefore, it is important to understand the values for which the place has been included in the Commonwealth and or National Heritage List and how these values may be represented. The Commonwealth and National Heritage Lists can be searched on the Australian Heritage Database at:

- www.environment.gov.au/cgi-bin/ahdb/search.pl

Judgements may be needed to determine how the values are physically or intangibly represented in the place. The Heritage Branch of the Department of the Environment and Energy can assist you in understanding these values.

Act consistently with the Commonwealth and National Heritage management principles

Agencies and place managers, should understand and act consistently with the Commonwealth and, if applicable, National Heritage management principles.

Seek appropriate advice

It is advisable to consult an independent heritage professional in relation to proposed actions and referrals, particularly where there is not a recent (within the last five years) management plan in place. A heritage professional can assist in the preparation of a management plan and in the assessment of potential impacts on heritage values of proposed actions. A heritage professional should be engaged early. Informal advice can also be sought from the Department of the Environment and Energy. It is preferable that such advice be sought early in the design and development stage of a project.

Provide relevant information for relevant people

Decision-makers must be knowledgeable about the obligations and implications of Commonwealth and or National Heritage listing, and the referrals process. People (for example, maintenance staff) that work on a place on a regular basis must be trained to identify potential heritage issues and breaches of the EPBC Act. If there is a management plan for the place, all relevant staff and those involved in the management of the place must be trained in its use and implementation.

Establish appropriate decision making procedures

To comply with best practice management principles, an internal management system should be developed as part of, or following the preparation of, a management plan to ensure that proposed actions do not adversely impact on heritage values. This system should make certain that actions are not taken without appropriate prior assessment of potential impacts, and that alternatives to actions that may have a significant impact are identified and assessed. A pro forma, such as an 'action proposal form', should be prepared that walks proponents of an action through the decision-making process, emphasising the imperative to avoid adverse impacts on heritage values. It is desirable that this system be linked to existing maintenance and capital works processes. A clear way of documenting, reporting and monitoring change should be built into the management system.

Making a Referral

Ensure clear decision making for taking actions

It is beneficial for the Department to have a key contact person in the agency for each referral.

Determining a significant impact and making a referral

The agency taking the proposed action needs to undertake a 'self-assessment' to decide whether or not a proposed action is likely to have an adverse or significant impact on the environment on Commonwealth land or the environment in general, when an action by a Commonwealth agency, as well as any matters of NES. When dealing with a place that has Indigenous heritage values consultation with Traditional Owners and other relevant Indigenous people with rights and interests in the place should occur when making a decision on the significance of impacts.

An action is likely to have a significant impact on heritage values if there is a real chance or possibility that it will cause:

- ▶ one or more of the heritage values to be lost;
- ▶ one or more of the heritage values to be degraded or damaged; or
- ▶ one or more of the heritage values to be notably altered, modified, obscured or diminished.

It is also important to note that actions may indirectly impact or have subsequent effects on Commonwealth Heritage values.

The self-assessment should be objective and based on sufficient information. The assessment process should:

- ▶ consult the official heritage values to ensure the proposal is consistent with the values;
- ▶ consider potential impacts to additional, non-listed, heritage values;
- ▶ consult a management plan, if there is one, to ensure the proposal is consistent with the management recommendations and/or conservation policies;
- ▶ consult the Commonwealth and, if applicable, National Heritage management principles to be consistent with them;
- ▶ consider the action in the broadest context, including its related activities and infrastructure;
- ▶ look at all possible alternatives to the action or proposal;
- ▶ look at any possible subsequent effects the action may have on other matters of NES or in the future;
- ▶ if possible select an action that does not, or is not likely to, significantly impact on heritage values;
- ▶ undertake measures which mitigate the impact on Commonwealth Heritage values; and
- ▶ document the decision about taking the action and demonstrate how the action is not likely to have an adverse impact on heritage values or, refer actions that may have a significant impact.

The self-assessment should present a clear and concise conclusion on whether or not the proposal is likely to have a significant impact on the environment, including heritage values of a place. This information should be compiled as a record of change to the place, as supporting information for the proposed action or be included as part of a referral if one is to be lodged with the Department. The responsible agency should make the decision as to whether or not to refer an action to the Minister. If there is still uncertainty about whether or not the action is likely to have a significant impact then a referral should be made. The Minister is obliged to make a decision within 20 business days as to whether or not the proposal requires approval under the EPBC Act.

Making a Referral

How do I submit a referral?

You can submit the referral electronically or in paper form. The person making the referral will be required to provide information about the proposal, including the details of exactly what is proposed, where and when, and a description of the likely environmental impacts, particularly in relation to Commonwealth Heritage values or other matters of NES. Referral forms and further guidance on submitting a referral is available from the Department's website at:

- www.environment.gov.au/epbc/assessments/index.html

Please note there is a cost involved in making a referral. More information on cost recovery can be found at:

- www.environment.gov.au/epbc/cost-recovery

If you have any questions on the referral process, the Referral Gateway, in the Divisional Governance and Business Support Section of the Department of the Environment and Energy can be contacted through the Community Information Unit on:

- 1800 803 772 or by emailing epbc.referrals@environment.gov.au

How long do referrals take?

The EPBC Act requires a decision on whether or not the proposed action is a controlled action and requires further assessment to be made within 20 business days from the date the referral is received by the Department and the relevant fees are paid. If the Minister, or delegate, believes that not enough information has been provided to make an informed approvals decision, further information may be requested from the proponent. This 'stops the clock' in terms of the time in which the Minister must make a decision until sufficient information is received. Stopping the clock has cost recovery implications.

Are referrals confidential?

Referrals are not confidential. The Minister is required to invite public comment with respect to referrals through publication on the Department's website.

Can I comment on a referral?

Comments can be provided within 10 business days of being published on the Department's website and must be submitted in writing. Referrals open for public comment can be viewed at:

- <http://epbcnotices.environment.gov.au>

by selecting Invitations to Comment from the menu bar.

It is not possible to view comments from others using the database. Once the referral has been assessed by the Department it is possible to identify if public comments were received for the referral by selecting the Public Notifications relating to referrals.

Making a Referral

What is an approval?

After receiving a referral, the Commonwealth Minister for the Environment (or delegate) determines whether the action is likely to have a significant impact on the matter protected (e.g. on the Commonwealth or National Heritage values). If the Minister decides that significant impacts are likely, the action will require approval under the EPBC Act (it is made a 'controlled action').

If, after receiving a referral, the Minister decides an action is not likely to have a significant impact, then the action does not require approval under the EPBC Act (it is not a controlled action). In this case, there are no further requirements or obligations under the EPBC Act. The proposal may proceed in the form that it was referred, subject to any other approvals such as those required by a State or Territory government or local council. A second referral may be required where changes to the proposed project may have increased the likelihood of potential significant impacts to matters of NES or the environment on Commonwealth land.

Not every activity proposed for a Commonwealth Heritage place will necessarily have a significant impact.

It is important to provide all the information available to help decide whether or not significant impacts are likely and whether EPBC Act approval is required. This should include information about any measures being taken to avoid or reduce impacts.

In some cases the Minister may decide that approval is not required because it is proposed to take the action in a way that avoids impacts on the protected matter. In this case, the proponent may be able to proceed without further assessment and approval, on the condition that the action is taken in accordance with a particular manner that has been specified in the referral.

Can agencies make changes to a heritage place?

Listing is not designed to 'freeze the place in time'. Commonwealth Heritage listed places can continue to be used, maintained, sold or leased. All proposed uses of heritage places must be tested against the EPBC Act to ensure that the use does not have a significant impact on heritage values. Some common changes associated with heritage places include:

Adaptive re-use

Adaptive re-use can ensure the survival of heritage values for future generations. Managers planning a new use should ensure that the change of use and necessary physical changes do not have a significant impact on the heritage values.

Maintenance work

Routine maintenance can usually be carried out without the need for a referral. The preparation of a management plan will clarify what works (including maintenance works) can be carried out at a place listed in the Commonwealth Heritage List without going through the referral process.

Making a Referral

Items and areas on a listed place which could be removed or altered

Areas and items within the boundaries of the listing will usually embody heritage values, and therefore are also protected as part of that listing. Management plans should specify areas and items that do not embody heritage values and that could be removed or altered without adverse impacts on the heritage values.

It may be possible to alter or remove areas or items of movable heritage (e.g. machinery) within a listed place, provided the items or areas do not embody heritage values or are not essential to the understanding of the heritage values of the place.

Building in a listed place

Commonwealth Heritage listing does not preclude new development, provided it does not have a significant impact on the heritage values of the place. New development may enhance the heritage values of a place or item, especially where the heritage significance of a place derives from its continued use. New development must be carefully planned and assessed on an individual basis.

The sale, leasing or other disposal of a listed place or a place yet to be assessed for heritage values

Commonwealth Heritage listing does not prevent an agency from selling, leasing or otherwise disposing of the place. However a Commonwealth agency must take steps to ensure that the place's heritage values are provided with ongoing protection, once the place leaves Commonwealth ownership. The requirement and the process to be followed is set out in section 341ZE and requires early consultation with the Minister or the Minister's delegate.

The intent of the EPBC Act is to include in the contract of sale or lease, a covenant that travels with the title of the place, or to enter into a conservation agreement with similar conditions that protect the heritage values of the place in the context of its future ownership.

In some cases it is possible for covenants to be extinguished. Where this can occur, or where other protection methods are considered more effective, suitable alternative measures will be needed. Where a management plan exists for a place, a contract of sale or lease condition providing for its ongoing implementation by the new owner or lessee would assist in the ongoing protection of the place's heritage values.

Suitable alternative measures to covenants or conservation agreements can include the preparation of a management plan for implementation by the future owner(s) together with the nomination of the place to a State, Territory or local government heritage register or list. Such nominations take time to conclude and suitable arrangements in the sale or lease contract conditions may be needed to cater for this process.

Where a place owned or controlled by an agency has not been assessed for heritage values or included on the Commonwealth Heritage List and disposal or leasing is contemplated, as best practice, agencies should undertake a review of any heritage values of the site, as per the requirements of the Heritage Strategy. In such circumstances this would merely be a case of giving early priority to the identification and assessment program for the place as set out in the agency's heritage strategy. If potential CHL values are identified, agencies should contact the Department of the Environment and Energy to address ensuring such heritage values are protected into the future.

In most cases when the sale, lease or other disposal of a place is concerned, agencies will need to seek legal advice. Early informal consultation with the Heritage Branch of the Department of the Environment and Energy is also encouraged.

Making a Referral

Agencies may also lease the place to another party in whole or part provided this is not incompatible with the place's heritage values. The owner must also ensure that the lessee does not carry out actions that will have a significant impact on heritage values. Subdivision of a Commonwealth Heritage place is also possible, provided it does not result in significant impacts on the heritage values of the place. More information on sale of a place included in the Commonwealth Heritage List is included in the *Divestment* section of the toolkit.

What happens if an action is not referred?

The EPBC Act prohibits and provides significant penalties for actions that have a significant impact on a matter of NES or the environment on Commonwealth land, or the environment in general for actions by Commonwealth agencies, which have not received approval under the EPBC Act. Civil and criminal penalties can apply to both individuals and corporations, including potential individual liability for company directors.

If a member of the public believes that an action breaches the EPBC Act, they may contact the Department of the Environment and Energy or write to the Minister to report the action. When reporting information on a possible breach of the legislation, a person can choose to remain anonymous.

The Department of the Environment and Energy takes compliance with the EPBC Act seriously and investigates alleged breaches.

Minister's decision

Under sections 69 and 71 of the EPBC Act, a State; self-governing Territory; agency of a State or self-governing Territory; or Commonwealth agency that is aware of a proposed action, can make a referral if that Minister or agency has administrative responsibilities relating to the action. Under section 70 of the Act the Minister may also request a person to make a referral. If a referral is made by a state or territory Minister or government agency, the Minister will inform the person proposing to take the action and invite them to provide further information.

The Commonwealth Minister for the Environment can request a person to make a referral. If that person fails to comply with the Minister's request, the Minister can determine that the EPBC Act has effect as if a referral had been made. Following a determination, the Minister will then proceed to make a decision on whether the action is a controlled action. The making of this decision will be undertaken in accordance with the existing processes relating to whether approval is required under the EPBC Act.

Federal Court order

Without the benefit of an approval under the EPBC Act, the Minister, or an interested person or incorporated organisation, may apply to the Federal Court for an injunction to prevent the action from proceeding if that action may constitute an offence or other contravention of the EPBC Act.

Remediation

Where a person contravenes the EPBC Act the person may be required to meet the costs of remedying the damage to the environment or the matter of NES, and prevent future damage.

The information provided above is intended to provide indicative advice and does not replace, nor should it be used in place of, advice provided by the Referrals section of the Department of the Environment and Energy.

Making a Referral

EPBC Act Quick Guide: Environmental Approvals

Section 12

World Heritage properties

Section 15B(1)

National Heritage places

Section 15B(4)

Provides specific protection for Indigenous heritage values of a National Heritage List place

Section 15B(5)

Provides specific protection for obligations under article 8 of the *Biodiversity Convention*

Protection of the environment from actions involving Commonwealth land

Section 26

For approval of activities on Commonwealth land

Section 27

What is Commonwealth land?

Section 28

Protection of the environment from Commonwealth actions

Section 67

What is a controlled action?

Section 72

Form and content of referrals

Section 341ZC

A Commonwealth agency must not take any action that has, will have, or is likely to have an adverse impact on National or Commonwealth Heritage values



The former Patent Office, Barton (ACT)

Included in the Commonwealth Heritage List in 2004.

The former Patent Office was relocated from Melbourne to Canberra in 1932, and is one of the few public buildings of its era in the Federal Capital. The building demonstrates the influences of the Dutch School, Art Deco and the classically based Federal Capital Style (influenced by Frank Lloyd Wright) used for monumental public buildings. The building associated with Sir Robert Garran, GCMG, QC, Australia's first Commonwealth Public Servant, and is part of the building named in his honour in 1983.

© Department of the Environment and Energy, Photographer: Marella Umback



Calperum Station and Taylorville Station (SA)

Included in the Commonwealth Heritage List in 2004.

The Calperum Station wetlands are included in the Riverland Ramsar Site, a wetland complex of international importance stretching from Renmark to the SA border. Calperum and Taylorville support a great number of endangered and rare animal species, as well as rare aspects of the Aboriginal occupation of the area.

© Department of the Environment and Energy, Photographer: John Baker



Australia's Commonwealth Heritage

5. Divestment

- ▲ Divestment overview
- ▲ Explanation of terms
- ▲ Commonwealth agency obligations under the EPBC Act
- ▲ Ongoing heritage protection
- ▲ When are agencies required to notify the Minister?
- ▲ After divestment
- ▲ Removal from the Commonwealth Heritage List

Photos (clockwise from left):
Marine Biological Station (former) © Sydney Harbour Federation Trust
Third Quarantine Cemetery, North Head Artillery Barracks © Sydney Harbour Federation Trust
Kingston and Arthur's Vale Historic Area, Norfolk Island © Commonwealth of Australia, Photographer: Robin Nisbet

Divestment

Introduction

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is the Australian government's central piece of environmental legislation. The EPBC Act created the Commonwealth Heritage List to protect heritage values on Commonwealth land including when a place is divested (leased or sold).

This section provides an overview on obligations for agencies and matters to consider in relation to divestment of a place with identified or potential Commonwealth Heritage values under the EPBC Act.

Divestment Overview

Divestment is when a Commonwealth agency executes a contract of sale or lease for a place or part of a place on Commonwealth land that has Commonwealth Heritage value. This includes both places included in the Commonwealth Heritage List and places not included in the Commonwealth Heritage List that have identified Commonwealth Heritage value. Commonwealth agencies are required to follow section 341ZE when divesting Commonwealth Heritage listed places. Section 341ZE does not apply to places not listed in the Commonwealth Heritage List, however, to ensure heritage values are protected after divestment, Commonwealth agencies are required to follow best practice procedures for any place with identified Commonwealth Heritage value. Commonwealth Heritage values for all Commonwealth controlled places are protected under the EPBC Act whether the place is included in the Commonwealth Heritage List or not under the EPBC Act referral process (see *Making a Referral*). The process for divestment differs depending on the status of the heritage place being divested. Different scenarios are discussed below.

Seek appropriate advice

In order to meet requirements of the EPBC Act, it is advisable to consult with a heritage professional early in the divestment process. The Department of the Environment and Energy (the Department) can provide guidance on appropriate processes for divestment.

Explanation of terms

A Commonwealth agency is an entity of the Commonwealth as referred to in section 3 of the EPBC Act. A private entity is a non-Commonwealth agency. Commonwealth land is described under section 525 of the EPBC Act as any part of a "Commonwealth area" including external Territories. Any land controlled (leased or owned) by the Commonwealth or a Commonwealth agency is considered Commonwealth land.

Commonwealth agency obligations under the EPBC Act

Prior to divestment

Commonwealth agencies must develop a heritage strategy for all places under their control (owned or leased) that proposes how the agency's properties will be managed (section 341ZA). This applies to all places the agency owns or controls which have heritage value, even if places are not in the Commonwealth Heritage List.

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 (section 341Z).

Commonwealth agencies must develop a heritage management plan for each place under their control (owned or leased) that is included in the Commonwealth Heritage List (section 341S). Divestment of Commonwealth land should be commenced after the approval of a Heritage Strategy for the agency's properties and, for a listed place, an approved Heritage Management Plan. These documents provide details on the Commonwealth Heritage values of each place and streamline the divestment process by ensuring heritage protection is in place following divestment.

Places included in the Commonwealth Heritage List

Section 341ZE of the EPBC Act outlines the divestment process Commonwealth agencies must comply with when divesting a Commonwealth Heritage place. Under section 341ZE Commonwealth agencies must ensure the contract of sale includes ongoing heritage protection.

Places with identified Commonwealth Heritage values but not Listed

This relates to places with identified Commonwealth Heritage values that are not included in the Commonwealth Heritage List and to places included in the Commonwealth Heritage List. If the divestment may result in a significant impact to the heritage values of the place, the agency should first consult the Department to discuss their EPBC Act obligation to refer any action that may impact the environment (which includes Commonwealth Heritage values) (section 26 and 28).

When a Commonwealth agency intends to divest a place with heritage value that is not included in the Commonwealth Heritage List, the agency must undertake all statutory processes referred to above, develop an approved Heritage Strategy and Heritage Management Plan and undertake a self-assessment to determine level of significance. Even if the agency is confident that the divestment will not result in a significant impact on heritage values, it is recommended that they notify the Department of their intentions via a letter or email to the Heritage Branch (heritage@environment.gov.au). Notifying and providing the Department with supporting documentation will ensure best practice heritage management and heritage value protection. Detailed information on impacts to Commonwealth Heritage values and referrals under the EPBC Act can be viewed in the section titled *Making a Referral* of this toolkit.

Divestment

Ongoing heritage protection

Heritage covenant

A heritage covenant is an agreement included in a contract of sale which binds the successors to ongoing heritage protection of a place. A covenant is effective after a place is no longer under Commonwealth jurisdiction and no longer included in the Commonwealth Heritage List.

The divestment process under section 341ZE provides for protection of Commonwealth Heritage values after divestment in the form of a heritage covenant in the contract of sale. If an agency is satisfied that a covenant is unnecessary and inclusion of a covenant would not provide additional heritage protection the agency must provide details in the contract of sale of the alternate ongoing heritage protection measures. For example the agency may nominate a place into a Local or State Heritage List.

There are four 'scenarios' where Commonwealth agencies may not be required to include a covenant in the contract (section 341ZE).

1. if the Commonwealth agency is satisfied that such a covenant is unnecessary or unreasonable to protect the values, having regard to other means of protecting those values;
2. if a covenant is impracticable, for example where the inclusion of the covenant may prevent divestment;
3. if a covenant would not bind the successors in title of the buyer or lessee; or
4. if a covenant could be insufficient to ensure ongoing protection of the Commonwealth Heritage values of the place.

The Department reviews the covenant or heritage protection to ensure it is not inconsistent with the requirements of the EPBC Act and sufficient heritage protection continues after divestment. Heritage protection requirements may continue on a Commonwealth Heritage Place once divested through a covenant or alternate measures, separate and additional to the terms of a contract of sale.

When are agencies required to notify the Minister?

Commonwealth agencies are required to notify the Minister at least 40 business days prior to executing the contract of sale. The notification must inform the Minister of the details of the heritage protection included in the contract of sale, whether this is by covenant or other heritage protection, and if a covenant is not being proposed, why this is the case.

Agencies must notify the Minister on confirmation of divestment, including details on when the Commonwealth agency ceded control of the place. The Commonwealth agency must also notify the Minister of any lease-back arrangements of the divested place and the intended duration of the lease.

After Divestment

A listed place will remain in the Commonwealth Heritage List with statutory controls in place as long as the place is owned or leased by a Commonwealth agency.

After divestment, if the successor is a private entity and the place continues to be leased by a Commonwealth agency, the place remains a Commonwealth area (section 525: 'an area of land held under lease by the Commonwealth or a Commonwealth agency is a Commonwealth area') and if listed, remains on the Commonwealth Heritage List.

If a listed place is owned by a private entity after divestment and a Commonwealth agency ceases to lease that place, the place falls outside of the definition of a Commonwealth area (see section 525). A place that ceases to be a Commonwealth area will be removed from the Commonwealth Heritage List (section 341L). Once the place is removed from the Commonwealth Heritage List the successor is not bound by the statutory requirements of the EPBC Act, however the heritage values of the place will remain protected through the covenant or heritage protection included in the contract of sale. External Territories are an exception, under section 525(1)(c)(i) as all land within an external Territory (except Norfolk Island) is a Commonwealth area (on Norfolk Island only land owned or leased by the Commonwealth is a Commonwealth area). Any place included in the Commonwealth Heritage List within an external Territory (except Norfolk Island) remains listed even if divested and controlled by a non-Commonwealth entity.

Advice can be obtained from the Department regarding the sale and subsequent leasing of a smaller portion of a Commonwealth Heritage listed building by a Commonwealth agency concerning whether it should remain in the Commonwealth Heritage List.

Provided it continues to have, or contribute to, the recognised Commonwealth Heritage values, a place remains listed in the Commonwealth Heritage List for the duration it is owned or leased by a Commonwealth agency (section 341L). In this case the agency is bound by the statutory requirements of the EPBC Act and is required to refer to the Department any action that may have an adverse impact on heritage values of the place (section 26 and 28). Detailed information on impacts to heritage values and referral under the EPBC Act can be viewed in the section titled *Making a Referral* of this toolkit.

Removal from the Commonwealth Heritage List

The Minister must remove the place or part of the place as soon as practicable after becoming aware that the place or part of the place is no longer in a Commonwealth area, or no longer has its listed values. In these cases, a place can only be removed from the Commonwealth Heritage List by instrument published in the Gazette with a statement of reasons for the removal. These documents are also published on the Department's website.

If the Commonwealth ceases all control of one part within a larger Commonwealth listed place, then the Minister must also consider whether to remove the remaining Commonwealth Heritage claims for the Commonwealth controlled place. In these cases, the Minister must seek advice from the Australian Heritage Council and call for public comments, before making a decision whether to de-list or amend the listing of the remaining Commonwealth controlled-place.

The information provided above is intended to provide indicative advice and does not replace, nor should it be used in place of advice provided by the Department of the Environment and Energy.



Sydney Airport Air Traffic Control Tower (NSW)

Included in the Commonwealth Heritage List in 2016.

Sydney 5 ATC Tower stands as the first (and to date the only) control tower in Australia consciously designed as a landmark, and displaying such distinctive and flamboyant architectural qualities.

© Lovell Chen, Heritage Consultants



Australia's Commonwealth Heritage

6. Finding Assistance

- ▲ Commonwealth environment and heritage advice
- ▲ State and Territory heritage agency advice
- ▲ Locating and engaging a heritage consultant
- ▲ General heritage information
- ▲ Cultural tourism
- ▲ Heritage trails
- ▲ Historic gardens and cultural landscapes
- ▲ Interiors
- ▲ Interpretation
- ▲ Maritime heritage

Photos (clockwise from left):
Parafield Air Traffic Control tower © Lovell Chen, Heritage Consultants
Flying Fish Cove and the Malay Kampong, Christmas Island © Department of Infrastructure and Regional Development, Photographer: Peta Jeffery
Lighthouse on North Reef Island © Commonwealth of Australia (GBRMPA)

Finding Assistance

Introduction

Numerous government and non-government organisations have an interest in the protection of natural, historic and Indigenous heritage places owned or controlled by the Australian Government. They provide information and advice on a range of heritage management issues.

This section provides a thematic list of key resources and contacts which may be of assistance in managing a Commonwealth Heritage place.

Commonwealth environment and heritage advice

The Heritage Branch of the Department of the Environment and Energy can provide advice to agencies responsible for managing natural, historic and Indigenous Commonwealth Heritage places. Heritage Branch can also provide guidance on best practice Indigenous engagement under the EPBC Act and set out the Department's expectations on how Indigenous engagement should occur. For assistance please contact the Heritage Branch on (02) 6274 1111 or email your enquiry to:

- heritage@environment.gov.au

State and Territory heritage advice

State and Territory agencies are able to provide advice on a range of heritage issues relevant to their particular State or Territory. Many of these agencies also prepare publications about matters related to heritage and conservation, these are often available for download from their websites or purchase through the agency.

Links to State and Territory heritage agency websites can be accessed through the Department's web page:

- www.environment.gov.au/heritage/organisations

Locating and engaging a heritage consultant

Depending on the nature of the heritage values for a particular place, it may be necessary to engage a team of consultants. Heritage consultants may be historians, architects, archaeologists, landscape architects, environmental managers, engineers, planners, etc. Ensure that the consultant that you engage has appropriate qualifications and experience in the field for which you are seeking advice. For management plans, ensure that they have appropriate qualifications and experience in applying *The Burra Charter*; the *Australian Natural Heritage Charter*; and *Ask First: A Guide to Respecting Indigenous Heritage Places and Values and/or Significance—A Guide to Assessing the Significance of Cultural Heritage Objects and Collections* in a management planning context. Experience with Commonwealth legislation is also desirable but may not be possible. In this case it becomes important to ensure that they understand and can address any obligations under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Heritage Branch of the Department of the Environment and Energy can provide advice to the consultant in this case.

The Heritage Branch does not maintain a register of heritage consultants, however, State and Territory agencies may be able to provide information about heritage consultants located within their area. Some of these agencies may also provide information about specialist trades and services. Below is a list of contacts for more information.

Finding Assistance

State/Territory	Agency Name	Contact Details
ACT	The Heritage Unit	13 22 81 heritage@act.gov.au
NSW	The Department of Planning (Heritage Branch)	(02) 9873 8500 13 15 55 heritagemailbox@environment.nsw.gov.au
NT	The Department of Natural Resources, Environment and the Arts	(08) 8924 4142 heritage@nt.gov.au
WA	The Heritage Council of Western Australia	(08) 6552 4000 1800 524 000 info@dplh.wa.gov.au
SA	Department for Environment and Heritage	(08) 8226 2127 DEWNRHeritage@sa.gov.au
QLD	Cultural Heritage Unit of the Environment Protection Agency	(07) 3227 6834 heritage@ehp.qld.gov.au
TAS	Heritage Tasmania	(03) 6233 2037 1800 850 332 enquiries@heritage.tas.gov.au
VIC	Heritage Victoria	(03) 9938 6894 heritage.victoria@delwp.vic.gov.au

Professional organisations

Website links for professional organisations providing registers of consultants in a range of disciplines including archaeologists, architects, engineers, historians, interpretation consultants and landscape architects are listed below. Inclusion in any register does not imply endorsement of the suitability of any particular consultant/ supplier for any particular task.

If expertise in cultural heritage management, cultural tourism, objects or collections management and conservation services is required, State and Territory heritage agencies may be able to assist.

- ▶ The Australian Association of Consulting Archaeologists Inc. maintains a list of consulting archaeologists which is available from its website. Areas of expertise include historical, Indigenous Australian, contact period and maritime archaeology. Visit:
 - www.aacai.com.au
- ▶ The Royal Australian Institute of Architects maintains the Australian Directory of Architectural Practices which is an extensive database of architectural practices Australia-wide. Database searches can be undertaken by name, location, suburb, areas of expertise (including heritage and conservation) and project types. Visit:
 - www.architecture.com.au

Finding Assistance

- ▶ Engineers Australia includes a register of engineers across the range of disciplines. The search facility does not allow a search for engineers who may have developed specific expertise related to heritage buildings and structures. Visit:
 - www.engineersaustralia.org.au
- ▶ The Australian Council of Professional Historians Associations Inc. maintains a register of consulting historians for most states and territories. Visit:
 - www.historians.org.au
- ▶ Interpretation Australia Association has a register of consultants and suppliers. The register is based on information supplied by the consultant or supplier listed. Inclusion in the register does not imply endorsement by IAA of the accuracy of information or of the suitability of any particular consultant/supplier for any particular task. Visit:
 - www.interpretationaustralia.asn.au
- ▶ The Australian Institute of Landscape Architects website includes Directories of Landscape Architecture Practices providing an outline of the services offered and areas of expertise of each practice.
- ▶ This information is provided and updated by the individual practices. Visit:
 - www.aila.org.au
- ▶ State contacts for the Oral History Association of Australia can be accessed from:
 - www.oralhistoryaustralia.org.au

General heritage information

The Heritage section of the website for the Department of the Environment and Energy contains a number of links to government and non-government heritage and environment agencies. These agencies have a range of resources about heritage. Searches for heritage listed places as well as information regarding legislation can be conducted from this page:

- www.heritage.gov.au

Cultural Tourism

- ▶ *Successful Tourism at Heritage Places: A guide for tourism operators, heritage managers and communities* (Australian Heritage Commission: 2001) provides practical information to promote the ethical use of heritage in tourism experiences. Download from:
 - www.environment.gov.au/heritage/ahc/publications/commission/books/successful-tourism.html
- ▶ *Steps to Sustainable Tourism* (Department of the Environment and Heritage: 2004) was developed for tourism operators, heritage and environmental managers, community groups and others with an interest in tourism. The guide outlines a series of strategic steps to achieve sustainable tourism objectives. Download from:
 - www.environment.gov.au/heritage/publications/strategy/sustainable-tourism.html
- ▶ *Protecting Local Heritage Places: A guide for communities* (Australian Heritage Commission: 2000) is an award winning document designed specifically for communities to identify and manage heritage places. Download from:
 - www.environment.gov.au/heritage/ahc/publications/protecting-local-heritage-places-guide-communities

Finding Assistance

- ▶ The Ecotourism Association of Australia is a non-profit organisation which promotes the ecotourism sector. The website provides access to general information, and specific links for individuals and industry. Information about the Eco-certification Program can be accessed from the following website and application forms can be downloaded from the site. Visit:
 - www.ecotourism.org.au
- ▶ The ICOMOS International Cultural Tourism Charter (*Managing Tourism at Places of Heritage Significance*, 1999) recognises that a primary objective for managing heritage is to communicate its significance and need for its conservation to its host community and to visitors. Reasonable and well managed physical, intellectual and/or emotive access to heritage and cultural development is both a right and a privilege.
- ▶ It brings with it a duty of respect for the heritage values, interests and equity of the present-day host community, Indigenous custodians or owners of historic property and for the landscapes and cultures from which that heritage evolved. Download from:
 - www.icomos.org/charters/tourism_e.pdf
- ▶ Refer to state and territory heritage agency websites for information relative to specific areas:
 - www.environment.gov.au/heritage/organisations

Please note some of the above reference material may contain information that is no longer current.

Heritage trails

- ▶ The Queensland Heritage Trails Network links together 43 heritage places offering a range of different experiences. Journeys along the Queensland Heritage Trails Network can start from any part of Queensland, with tourist trails following sealed roads. The Heritage Trails Network was funded through the Queensland and Australian Governments in partnership with local government authorities and local communities.
 - www.aicomos.com/wp-content/uploads/Alliances-Linkages-and-Challenges-the-Queensland-Heritage-Trails-Network.pdf
- ▶ The NSW Heritage Office publication Guidelines for Heritage Trails (1995) outlines the steps to develop a heritage trail, selection of route and interpretative mediums. Download from:
 - www.environment.nsw.gov.au/resources/heritagebranch/maritime/HeritageTrails.pdf

Historic gardens and cultural landscapes

- ▶ The Australian Garden History Society promotes interest in, research, restoration and visitation to historic gardens. Such groups provide opportunities to seek specialist advice where appropriate. The Society has branches in most states and territories. Visit:
 - www.gardenhistorysociety.org.au
- ▶ The Caroline Simpson Research Library of the Historic Houses Trust (NSW) maintains a database of plants known to be available in the colony of NSW up until the 1860s, compiled from Botanic Gardens records, nursery catalogues, manuscripts and plant lists of colonists. Visit:
 - collection.hht.net.au/firsthht/welcome.jsp

Finding Assistance

- ▶ Heritage Victoria has developed information sheets regarding historic gardens and landscape assessments. The publication contains information regarding remnant bushland, views and vistas, landscape features and maintenance. Download from:
 - www.heritage.vic.gov.au
- ▶ The World Heritage Operational Guidelines were amended in 1992 to include cultural landscapes and this addition has been instrumental in focusing on the interaction of people and nature over time. A number of the Australian State and Territory heritage agencies, both government and non-government, are engaging in discussion about the nature of cultural landscapes and how they can best be protected. Refer to individual organisation websites at:
 - www.environment.gov.au/heritage/organisations
- ▶ The Natchitoches Declaration on Heritage Landscapes was adopted at the US/ICOMOS 7th International Symposium on 27 March 2004. Download from:
 - www.usicomos.org/about/publications/previous-publications/natchitoches-declaration-on-heritage-landscapes/
- ▶ The International Union for Conservation of Nature (IUCN) provides public, private and non-governmental organisations with the knowledge and tools that enable human progress, economic development and nature conservation to take place together. Find out more at:
 - www.iucn.org

Interiors

The Caroline Simpson Library & Research Collection (Historic Houses Trust, NSW) is open to anyone with an interest in the history of house and garden design and interior furnishing in NSW. The Research Collection includes material across a wide range of formats: architectural pattern books; architectural fragments; wall coverings; floor coverings; manufacturers' trade catalogues and sample books; garden ornament; fittings (including curtain and blind hardware, door and window furniture); soft furnishings and trimmings; personal papers and manuscripts; pictures; photographs; books and periodicals. The scope of the collection is broad, covering houses and gardens of all kinds and ranging from the 19th century to the present day. The Museum Collections database includes wall coverings, floor coverings and garden ornaments.

Online library catalogue:

- collection.hht.net.au/firsthht/welcome.jsp

Interpretation

The NSW Heritage Office publication *Interpreting Heritage Places and Items Guidelines* (2005) promotes best practice in heritage interpretation. The guidelines have been developed to consider all forms of natural and cultural heritage (Indigenous and non-Indigenous).

This publication is available for free download from:

- www.heritage.nsw.gov.au/docs

Interpretation Australia Association offers a number of publications for sale through their website at:

- www.interpretationaustralia.asn.au

Maritime heritage

The Australian National Maritime Museum promotes interest and research in Australia's maritime history. The Museum maintains a research library and a number of collections available at:

- www.anmm.gov.au

The Department of the Environment and Energy maintains the Australian Shipwrecks database which can be searched online at:

- www.environment.gov.au/heritage/historic-shipwrecks/australian-national-shipwreck-database

The Department also maintains a list of contacts of state offices with maritime associations which can be accessed at:

- www.environment.gov.au/heritage/historic-shipwrecks/contacts

Heritage Victoria has prepared a list of useful tips on the protection of shipwreck sites and relics available at:

- www.dtpi.vic.gov.au/heritage/historical-archaeology-and-heritage-inventory

The information provided above has been provided to assist Commonwealth agencies to understand their obligations under the EPBC Act. It should not be used as a substitute for a direct reference to the legislation.



The RG Menzies Building (Menzies Library) (ACT)

Included in the Commonwealth Heritage List in 2005.

The building is significant as the first ANU Library and for its architectural characteristics combining elements of the brutalist and organic styles of architecture.

© ANU, Photographer: Stuart Hay





Australia's Commonwealth Heritage

7. Key Publications

- ▲ The Burra Charter
- ▲ Australian Natural Heritage Charter
- ▲ Protecting Natural Heritage: Using the Australian Natural Heritage Charter
- ▲ Ask First: A Guide to Respecting Indigenous Heritage Places and Values

Photos (clockwise from left):
Macquarie Lighthouse, Old South Head Road, Vaucluse, NSW © Sydney Harbour Federation Trust
Kingston Pier, Kingston and Arthur's Vale Historic Area, Norfolk Island © Commonwealth of Australia, Photographer: Robin Nisbet
Essendon Air Traffic Control tower © Lovell Chen, Heritage Consultants

Key Publications

Introduction

The key publications listed below are regarded as guidelines for best practice heritage management. It is recommended that Commonwealth place managers refer to these key publications when preparing plans and policies for any heritage place.

The conservation philosophies presented in these guidelines have been developed to achieve sustainable and appropriate heritage outcomes.

The Burra Charter

The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance (2013) is widely recognised as the standard for heritage conservation best practice in Australia. It defines basic principles and procedures for the conservation of important places. While it is not a Commonwealth statutory document, *The Burra Charter* is a key reference for those who provide advice, make decisions about, or undertake works to places of cultural significance, including owners, managers and custodians.

ICOMOS, the International Council on Monuments and Sites, is primarily concerned with the philosophy, terminology, methodology and techniques of conservation. It is a non-government professional organisation formed in 1965. It is closely linked to UNESCO with national committees in some 100 countries with the headquarters in France.

Australia ICOMOS was formed in 1976. *The Burra Charter* was adopted by Australia ICOMOS on 19 August 1979 at Burra, South Australia. Revisions were adopted in 1981, 1988, 1999 and 2013. It is important to use the most recent form of *The Burra Charter*. The *Burra Charter* provides guidance for the conservation and management of places of cultural significance, and is based on the knowledge and experience of Australia ICOMOS members.

The *Burra Charter* is available to download from:

- www.icomos.org

The Illustrated Burra Charter is available for sale from Australia ICOMOS located at Deakin University in Melbourne. Email austicomos@deakin.edu.au

Australian Natural Heritage Charter

The *Australian Natural Heritage Charter: for the conservation of places of natural heritage significance* was first adopted in December 1996 and was revised and updated in 2002. The Charter was published by the former Australian Heritage Commission and was developed and reviewed by a national steering committee made up of representatives of the Australian Committee for IUCN (World Conservation Union), the Australian Heritage Commission, Environment Australia, the Australian Local Government Association, the University of Sydney, the University of NSW, the Environment Institute of Australia, the Indigenous community and environmental consultants.

The Charter was specifically developed to provide ethical and practical approaches to assist in the conservation of heritage values. It offers a framework for making sound decisions for managing and restoring natural heritage places based on the ecological processes which occur in natural systems.

It also provides a process that can be used to support and implement local, state and territory, national and international policies, agreements, strategies and plans. It does not replace statutory obligations.

Key Publications

The Charter relates closely to the general structure and logic of the *Burra Charter*. The similarity of these documents enables them to be used together for places that have both natural and cultural values.

Available to download from:

- 155.187.2.69/heritage/ahc/publications/commission/books/pubs/australian-natural-heritage-charter.pdf

Protecting Natural Heritage: Using the Australian Natural Heritage Charter

Protecting Natural Heritage: Using the Australian Natural Heritage Charter was developed by the former Australian Heritage Commission in 2003. Protecting Natural Heritage includes a list of conservation definitions from the *Australian Natural Heritage Charter* which define terms which appear in italics in the Articles; a step-by-step guide to planning the conservation of natural heritage places; case studies showing how these steps have been applied, and interpretation and definition of Articles in the Charter. Drawing on the Charter, it gives you the tools needed to make sound decisions for managing and restoring natural heritage places.

Available to download from:

- content.webarchive.nla.gov.au/gov/wayback/20170224230055/
- www.environment.gov.au/system/files/resources/49b1a278-314c-459b-be83-e27e2b405569/files/protecting-natural-heritage.pdf

Ask First: A Guide to Respecting Indigenous Heritage Places and Values

Ask First: A guide to respecting Indigenous heritage places and values was developed by the former Australian Heritage Commission in 2002. It contains a set of consultation guidelines to help developers, researchers, cultural heritage professionals and other land users deal with issues relating to the identification, management and use of Indigenous heritage places and values.

Ask First: A guide to respecting Indigenous heritage places and values complements the *Australian Natural Heritage Charter* and *The Burra Charter*. However, unlike those documents, it focuses on allowing the relevant Indigenous people to determine the significance of places in accordance with their culture before moving to achieving agreements between parties on how places and heritage values should be managed.

The document builds on earlier work undertaken in the 1990s by the then Department of Communication and the Arts, and was developed with regard to protocols for Indigenous heritage management developed by Indigenous communities and organisations, and with input from industry, heritage practitioners, Commonwealth and State governments and an Indigenous Focus Group.

Available to download from:

- webarchive.nla.gov.au/gov/20171114035941/
- www.environment.gov.au/heritage/ahc/publications/ask-first-guide-respecting-indigenous-heritage-places-and-values

Heritage publications are constantly updated. Therefore, please be aware when using any of the referenced that they may contain some information which is no longer current.



Cockatoo Island (NSW)

Included in the Commonwealth Heritage List in 2004.

Cockatoo Island is a prominent island in Sydney Harbour with a varied past. The Island has a long and extensive history in the development of Australia, especially in regards to the convict system in Sydney, and the history of maritime activity and shipbuilding in Australia.

© Sydney Harbour Federation Trust



Australia's Commonwealth Heritage

8. Other Resources

- ▲ Significance (objects and collections)
- ▲ Adaptive Re-use
- ▲ Steps to Sustainable Tourism
- ▲ International Charters
- ▲ Legislation
- ▲ Department of the Environment and Energy guidelines
- ▲ Glossary
- ▲ Contact us
- ▲ Annexure 1
- ▲ Annexure 2

Photos (clockwise from left):
 Mt Stromlo Observatory © ANU, Photographer: Stuart Hay
 Prison Barracks Precinct, Cockatoo Island © Sydney Harbour Federation Trust
 Macquarie Lighthouse (NSW) © Sydney Harbour Federation Trust

Other Resources

Introduction

Throughout Australia there are many government and non-government organisations with an interest in heritage conservation. These organisations often provide information and advice on a range of matters such as significance, adaptive re-use, sustainable tourism and international charters. This section contains a list of useful reference and web links that may be of assistance.

Significance

Significance—A Guide to Assessing the Significance of Cultural Heritage Objects and Collections was published by the Heritage Collections Council in 2001. It has been designed to assist all those who care for collections to identify and preserve items of movable cultural heritage. The guide can be used to assess the significance of objects in a collection—providing a sound basis on which to make collection management decisions relating to conservation, preservation and access.

Available to download from:

- <https://www.arts.gov.au/sites/g/files/net1761/f/significance-2.0.pdf>

Adaptive Re-use

Adaptive Reuse: Preserving our past, building our future was published by the Australian Government in 2004, the Year of the Built Environment, and contains examples from across Australia. Adaptive re-use of heritage places may provide an opportunity to conserve these places. In the pursuit of sustainable development, communities have much to gain from adaptively re-using historic buildings. Bypassing the wasteful process of demolition and reconstruction alone sells the environmental benefits of adaptive re-use. Environmental benefits, combined with energy savings and the social advantage of recycling a valued heritage place make adaptive re-use of historic buildings an essential component of sustainable development.

Available to download from:

- <http://www.environment.gov.au/system/files/resources/3845f27a-ad2c-4d40-8827-18c643c7adcd/files/adaptive-reuse.pdf>

Steps to Sustainable Tourism

Steps to Sustainable Tourism was published by the then Department of Environment and Heritage in 2004 as a tool for use when managing and developing regions, places and tourism products. The document is designed for tourism operators, heritage and environment managers, community groups and others with an interest in places, regions and associated tourism products. The underlying principle of this guide is the need to recognise and protect the values of important natural and cultural places in order to enhance tourism product development and the management of places in the long term.

Achieving sustainable tourism requires motivation, determination and a systematic approach. *Steps to Sustainable Tourism* offers a tool or process to assist in this task which has been developed and tested in partnership with both tourism and heritage interests. The process, set out in 10 steps, integrates the needs of tourism, the environment and heritage when developing a tourist destination, a tourism product or managing a place.

Other Resources

The Department developed the steps approach based on established strategic planning principles, and specialist experience and advice from people working in environment, heritage and tourism planning. The approach advocated is designed to be flexible and can be adapted as it is applied to many and varied situations.

Available to download from:

- <http://www.environment.gov.au/system/files/resources/9c8f5084-3565-4f26-8801-77da3458f497/files/steps.pdf>

International Charters

International Charter for the Conservation and Restoration of Monuments and Sites—The Venice Charter 1964

This charter was developed by the International Congress of Architects and Technicians of Historic Monuments and adopted by ICOMOS in 1965. The charter recognises the common need to protect historic monuments and places. Containing 16 articles, the charter made a significant contribution to best practice heritage management. It continues to be used as a framework when developing new charters.

Available to download from:

- https://www.icomos.org/charters/venice_e.pdf

ICOMOS Ename Charter for the Interpretation of Cultural Heritage Sites

The aim of this Charter is to define the basic objectives and principles of site interpretation in relation to authenticity, intellectual integrity, social responsibility, and respect for cultural significance and its context. It recognises that the interpretation of cultural heritage sites can be contentious and should acknowledge conflicting perspectives.

Although the objectives and principles of this Charter may equally apply to off-site interpretation, its main focus is interpretation at, or in the immediate vicinity of, cultural heritage sites.

The Charter seeks to encourage a wide public appreciation of cultural heritage sites as places and sources of learning and reflection about the past, as well as valuable resources for sustainable community development and inter-cultural and inter-generational dialogue.

Available to download from:

- <http://www.enamecenter.org/EEC2013/index-E.html>

Historic Gardens, The Florence Charter 1981

The ICOMOS-IFLA International Committee for Historic Gardens drafted the Florence Charter and it was adopted by ICOMOS on 15 December 1982 as an addendum to the Venice Charter.

Available to download from:

- https://www.icomos.org/charters/gardens_e.pdf

Other Resources

Charter for the Conservation of Historic Towns and Urban Areas—The Washington Charter 1987

This charter was developed to complement the Venice Charter to define the principles, objectives, and methods necessary for the conservation of historic towns and urban areas. It contains the steps necessary for the protection, conservation and restoration of such towns and areas as well as their development and harmonious adaptation to contemporary life.

Available to download from:

- <http://www.icomos.org/en/what-we-do/focus/179-articles-en-francais/ressources/charters-and-standards/159-charter-for-the-conservation-of-historic-towns-and-urban-areas>

Charter for the Protection and Management of the Archaeological Heritage 1990

This Charter was prepared in recognition of the fact that the protection of archaeological heritage cannot be based upon the application of archaeological techniques alone and requires a wider basis of professional and scientific knowledge and skills. The Charter recognises that some elements of archaeological heritage may be related to buildings and structures; and others will constitute part of the living traditions of Indigenous peoples, and for such sites and monuments the participation of local cultural groups is essential for their protection and preservation.

The protection of archaeological heritage must be based upon effective collaboration between professionals from many disciplines and it also requires the co-operation of government authorities, academic researchers, private or public enterprise, and the general public. This Charter therefore lays down principles relating to the different aspects of archaeological heritage management. Because of its wide-ranging nature, the charter should be supplemented at state and national levels by further principles and guidelines.

Available to download from:

- <http://www.icomos.org/charters/charters.pdf>

Charter on the Protection and Management of Underwater Cultural Heritage 1996

This Charter is a supplement to the *Charter for the Protection and Management of the Archaeological Heritage* and is intended to encourage the protection and management of underwater cultural heritage in inland and inshore waters, in shallow seas and in the deep oceans. It includes submerged sites and structures, wreck-sites and wreckage and their archaeological and natural context.

Available to download from:

- <http://www.icomos.org/en/faq-doccen/179-articles-en-francais/ressources/charters-and-standards/161-chart-er-on-the-protection-and-management-of-underwater-cultural-heritage>

International Cultural Tourism Charter (Managing Tourism at Places of Heritage Significance, 1999)

This Charter recognises that a primary objective for managing heritage is to communicate its significance and need for its conservation to its host community and to visitors. Reasonable and well managed physical, intellectual and/or emotive access to heritage and cultural development is both a right and a privilege. It brings with it a duty of respect for the heritage values, interests and equity of the present-day host community, Indigenous custodians or owners of historic property and for the landscapes and cultures from which that heritage evolved.

Available to download from:

- https://www.icomos.org/charters/tourism_e.pdf

Other Resources

Principles for the Preservation of Historic Timber Structures 1999

The aim of this document is to define basic and universally applicable principles and practices for the protection and preservation of historic timber structures with due respect to their cultural significance. Historic timber structures refer here to all types of buildings or constructions wholly or partially in timber that have cultural significance or that are parts of a historic area.

Available to download from:

- https://www.icomos.org/images/DOCUMENTS/Charters/wood_e.pdf

Charter on the Built Vernacular Heritage 1999

This Charter recognises that vernacular buildings occupy a central place in the affection and pride of all peoples and have been accepted as a characteristic and attractive product of society. Vernacular building appears informal, but nevertheless orderly; it is utilitarian and at the same time possesses interest and beauty. It is a focus of contemporary life and at the same time a record of the history of society.

Vernacular building is the traditional and natural way by which communities house themselves. It is a continuing process including necessary changes and continuous adaptation as a response to social and environmental constraints.

Available to download from:

- https://www.icomos.org/images/DOCUMENTS/Charters/vernacular_e.pdf

Principles for the Analysis, Conservation and Structural Restoration of Architectural Heritage 2003

Structures of architectural heritage, by their very nature and history (material and assembly), present a number of challenges in diagnosis and restoration that limit the application of modern legal codes and building standards. These recommendations are intended to be useful to all those involved in conservation and restoration projects, but cannot in any way replace specific knowledge acquired from cultural and scientific texts.

The recommendations presented in the complete document are in two sections: Principles, where the basic concepts of conservation are presented; and Guidelines, where the rules and methodology that a designer should follow are discussed. Only the Principles have the status of an approved/ratified ICOMOS document.

Available to download from:

- https://www.icomos.org/images/DOCUMENTS/Charters/structures_e.pdf (Principles and Guidelines)

Legislation

A full copy of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) can be found at:

- <https://www.legislation.gov.au/Details/C2007C00083>

A full copy of the EPBC Regulations can be found at:

- <https://www.legislation.gov.au/Details/F2007C00136>

A list of heritage laws can be found at:

- www.environment.gov.au/heritage/laws/index.html

Other Resources

Department of the Environment and Energy Guidelines

An online copy of the *Environment Protection and Biodiversity Conservation Act 1999* can be found at:

- <https://www.legislation.gov.au/Series/C2004A00485>

The *Environment Protection and Biodiversity Conservation Regulations 2000* can be found at:

- <https://www.legislation.gov.au/Series/F2000B00190>

Working Together: Managing Commonwealth Heritage Places is the Department's guideline for preparing heritage strategies, heritage management plans for places on the Commonwealth Heritage List and other required documents under the EPBC Act is, it can be found at:

- <http://www.environment.gov.au/heritage/about/commonwealth-heritage>

The Department's guideline *Significant Impact Guidelines 1.1—Matters of National Environmental Significance*.

- http://www.environment.gov.au/system/files/resources/42f84df4-720b-4dcf-b262-48679a3aba58/files/nes-guidelines_1.pdf

The Department's guideline *Significant Impact Guidelines 1.2—Actions on, or impacting upon, Commonwealth land and Actions by Commonwealth Agencies*.

- http://www.environment.gov.au/system/files/resources/a0af2153-29dc-453c-8f04-3de35bca5264/files/commonwealth-guidelines_1.pdf

Additional Resources

- <http://www.environment.gov.au/about-us/environmental-information-data/databases-applications>

Other Resources

Glossary

Key Terms	Definition
Commonwealth Heritage place	A place that is included in the Commonwealth Heritage List.
Commonwealth Heritage List	A heritage list of places which meet the Commonwealth Heritage criteria. This list is maintained by the Commonwealth Government and consists of heritage places which are located on Commonwealth land.
Commonwealth Heritage criteria	A set of nine criteria for the assessment of places for entry on the Commonwealth Heritage list. See EPBC Act section 341D (1) and EPBC Regulations 10.03A.
Commonwealth Heritage values	<p>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.</p> <p>A place has Commonwealth Heritage value if and only if the place meets one of the Commonwealth Heritage criteria. The Commonwealth Heritage value of the place is the place's heritage value that causes the place to meet the criterion.</p>
Heritage management plan	<p>A heritage management plan is a written plan to protect and manage the Commonwealth Heritage values of a Commonwealth Heritage place an agency owns or controls.</p> <p>A plan must address the matters prescribed by the Regulations (Schedules 7A and 7B), and not be inconsistent with the Commonwealth Heritage management principles.</p>
Heritage Strategy	<p>If a Commonwealth agency owns or controls one or more places, the agency must prepare a written heritage strategy for managing the places to protect and conserve their Commonwealth Heritage values.</p> <p>A heritage strategy made by a Commonwealth agency must address the matters set out in Schedule 7C of the Regulations.</p>
Conservation	<p>Conservation means all the processes of looking after a place so as to retain its cultural significance (<i>Burra Charter</i>).</p> <p>Conservation means all the processes and actions of looking after a place so as to retain its natural significance and always includes protection, maintenance and monitoring (<i>Australian Natural Heritage Charter</i>).</p>
Significance	<p>Cultural significance means aesthetic, historic, scientific, social or spiritual value for past, present or future generations (<i>Burra Charter</i>).</p> <p>Natural significance means the importance of ecosystems, biodiversity and geodiversity for their existence value or for present or future generations, in terms of their scientific, social, aesthetic and life-support value.</p>
Statement of significance	The statement of significance is a concise description of the heritage values of the place. It is a summary statement written for a general audience and does not involve citation of sources used.

Other Resources

Key Terms	Definition
Commonwealth area	<p>Section 525, defines what a Commonwealth area is in the context of the Act.</p> <p>(1) Each of the following, and any part of it, is a Commonwealth area:</p> <ul style="list-style-type: none"> (a) land owned by the Commonwealth or a Commonwealth agency and airspace over the land; (b) an area of land held under lease by the Commonwealth or a Commonwealth agency and airspace over the land; (c) land in: <ul style="list-style-type: none"> (i) an external Territory; or (ii) the Jervis Bay Territory; and airspace over the land; (d) the coastal sea of Australia or an external Territory; (e) the continental shelf, and the waters and airspace over the continental shelf; (f) the waters of the exclusive economic zone, the seabed under those waters and the airspace above those waters; (g) any other area of land, sea or seabed that is included in a Commonwealth reserve. <p>Territory Land in ACT is not a Commonwealth area</p> <p>(2) Despite paragraph(1)(a), an area of land that is Territory Land, within the meaning of the Australian Capital Territory(Planning and Land Management) Act 1988 is not a Commonwealth area merely because of that paragraph, unless it is held under lease by the Commonwealth or a Commonwealth agency.</p> <p>Coastal waters of States and NT are not Commonwealth areas</p> <p>(3) Despite paragraphs(1)(d),(e) and(f), none of the following areas(or parts of them) are Commonwealth areas:</p> <ul style="list-style-type: none"> (a) the seabed vested in a State under section 4 of the Coastal Waters(State Title) Act 1980; and (b) the seabed vested in the Northern Territory under section 4 of the Coastal Waters(Northern Territory Title) Act 1980; and (c) the subsoil under the seabed described in paragraph(a) or(b); and (d) any water and airspace over seabed described in paragraph(a) or(b).

Other Resources

Key Terms	Definition
Commonwealth agency	<p>Section 528 defines what a Commonwealth Agency means:</p> <ul style="list-style-type: none"> (a) a Minister; or (b) a body corporate established for a public purpose by a law of the Commonwealth; or (c) a body corporate established by a Minister otherwise than under a law of the Commonwealth; or (d) a company in which the whole of the shares or stock, or shares or stock carrying more than one-half of the voting power, is or are owned by or on behalf of the Commonwealth; or (e) a body corporate that is a subsidiary of: <ul style="list-style-type: none"> (i) a body or company referred to in paragraph(b),(c) or(d); or (ii) a body corporate that, because of a previous application or previous applications of this paragraph, is taken to be a Commonwealth agency for the purposes of this definition; or (f) a person holding, or performing the duties of: <ul style="list-style-type: none"> (i) an office established by or under a law of the Commonwealth(except a judicial office or office of member of a tribunal); or (ii) an appointment made under a law of the Commonwealth(except an appointment to a judicial office or office of member of a tribunal); or (g) a person holding, or performing the duties of, an appointment made by the Governor-General, or by a Minister, otherwise than under a law of the Commonwealth; <p>but does not include:</p> <ul style="list-style-type: none"> (h) a person holding an office established by or under any of the following Acts, or holding an appointment made under any of them: <ul style="list-style-type: none"> (i) the Northern Territory(Self-Government) Act 1978; (ii) the Norfolk Island Act 1979; (iii) the Australian Capital Territory(Self-Government) Act 1988; or (i) any of the following: <ul style="list-style-type: none"> (i) an Aboriginal Land Trust, or an Aboriginal Land Council, established under the Aboriginal Land Rights(Northern Territory) Act 1976; (ii) a corporation registered under the Corporations(Aboriginal and Torres Strait Islander) Act 2006; (iii) the Wreck Bay Aboriginal Community Council established by the Aboriginal Land Grant(Jervis Bay Territory) Act 1986; or (j) a company prescribed by the regulations for the purposes of this paragraph.

Other Resources

Key Terms	Definition
Environment	<p>Section 528, defines environment to include:</p> <ul style="list-style-type: none"> (a) ecosystems and their constituent parts, including people and communities; and (b) natural and physical resources; and (c) the qualities and characteristics of locations, places and areas; and (d) heritage values of places; and (e) the social, economic and cultural aspects of a thing mentioned in paragraph(a),(b),(c) or(d).
Place	<p>Section 528, defines place to include:</p> <ul style="list-style-type: none"> (a) a location, area or region or a number of locations, areas or regions; 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).
Control	<p>Section 528 also defines control:</p> <p>a Commonwealth agency controls a place only if the agency has rights(whether arising under a law, lease, licence or otherwise) to:</p> <ul style="list-style-type: none"> (a) occupy or use the place; and (b) take actions in relation to the place that could potentially have an impact on heritage values that the place may have.

Other Resources

Contact Us

The Heritage Branch of the Department of the Environment and Energy administers, promotes and distributes this guide. It monitors and collates the views of users and updates the guide when required.

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The information provided above has been prepared to assist Commonwealth agencies to understand their obligations under the EPBC Act. It should not be used as a substitute for a direct reference to the applicable legislation.

Other Resources

Annexure 1

Checklist for the making of a Commonwealth heritage management plan into a Legislative instrument

The rule-maker has the authority to make the instrument under section 341S of the EPBC Act and the relevant agency delegation/s.	
All consultation and notice requirements applicable under the EPBC Act and Regulations have been complied with, including the requirement to seek comments from the Minister, and to seek comments from the public, and indigenous.	
The Plan is not inconsistent with the Commonwealth heritage management principles set out in Schedule 7B of the EPBC Regulations.	
The Plan deals with the matters set out in Schedule 7A of the EPBC Regulations.	
The instrument states the correct enabling provision/s for the instrument, i.e. section 341S of the EPBC Act.	
The instrument states the commencement date of the Plan.	
The instrument uses appropriate wording to reflect the effect of the instrument, i.e. whether the instrument makes a Plan for the first time, amends an existing Plan, or revokes or replaces an existing Plan (section 341S(3)).	
The first page of the instrument is the decision-making page, and contains the information necessary to make the instrument.	
If the instrument is an amending instrument, the instrument refers to the correct principal instrument and provisions being amended.	
OPC requirement – the Plan is available in Word or RFT form.	
OPC requirement - the instrument uses gender-neutral language.	
OPC requirement - if there are images – ensure there are text alternatives for the images.	

Annexure 2

Checklist for an Explanatory Statement

ES clearly identifies the enabling provisions for the instrument.	
ES clearly explains (in plain English) the purpose and operation of the instrument.	
ES summarises the likely impact and effect of the environment management plan instrument (if any).	
If consultation occurred – I note that there is a consultation requirement for heritage management plans set out in section 341 S(6) (b) of the EBPC Act. ES lists any specific provisions of the Act that require consultation (if any) or consultation requirements under the Legislation Act, explains the consultation process (e.g., how it was done, who with) and what the outcome was.	
If consultation did not occur – ES explains why consultation was not required/appropriate.	
If a Regulatory Impact Statement (RIS) has been completed – ES includes the RIS.	
If a RIS was not completed – ES explains why there is no RIS. If the Office of Best Practice Regulation was consulted, ES includes the reference number.	
If the instrument incorporates external documents by reference - the ES states the manner of incorporation (that is, whether documents are incorporated as in force from time to time or as in force at the time the instrument commences). If the document is incorporated from time to time, ES also provides the provision in the enabling legislation that allows the document to be incorporated in that manner.	
If the instrument incorporates external documents by reference – ES describes the document and explains where they are available.	
If there are images – ensure there are text alternatives for the images.	
If there are multiple provisions in the instrument – ES provides detailed provision-by-provision description of the instrument.	

