

318 Commonwealth compliance with plans

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

319 Review of plans every 5 years

- (1) The Minister must cause a review of a plan made under section 316 to be carried out at least once in each period of 5 years after the plan is made.
- (2) The review must consider whether the plan is consistent with the Australian World Heritage management principles in force at the time.

Note: Section 323 explains what Australian World Heritage management principles are.

Subdivision E—Managing World Heritage properties in States and self-governing Territories

320 Application

This Subdivision applies in relation to a property that:

- (a) is:
 - (i) in a State; or
 - (ii) in a self-governing Territory; or

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- (iii) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*; and
- (b) is not entirely within one or more Commonwealth areas.

321 Co-operating to prepare and implement plans

- (1) This section applies in relation to a property that is included in the World Heritage List.
- (2) The Commonwealth must use its best endeavours to ensure a plan for managing the property in a way that is not inconsistent with Australia's obligations under the World Heritage Convention or the Australian World Heritage management principles is prepared and implemented in co-operation with the State or Territory.

Note: The Commonwealth and the State or Territory could make a bilateral agreement adopting the plan and providing for its implementation.

- (3) Subsection (2) does not apply in relation to so much of a property as is in the Great Barrier Reef Marine Park.

Note: A zoning plan must be prepared under the *Great Barrier Reef Marine Park Act 1975* for areas that are part of the Great Barrier Reef Marine Park. In preparing a zoning plan, regard must be had to the Australian World Heritage management principles.

322 Commonwealth responsibilities

- (1) This section applies in relation to a property that is a declared World Heritage property.
- (2) The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the property in a way that is not inconsistent with:
 - (a) the World Heritage Convention; and
 - (b) the Australian World Heritage management principles; and

- (c) if the property is on the World Heritage List and a plan for managing the property has been prepared as described in section 321—that plan.

Subdivision F—Australian World Heritage management principles

323 Australian World Heritage management principles

- (1) The regulations must prescribe principles for the management of natural heritage and cultural heritage. The principles prescribed are the *Australian World Heritage management principles*.
- (2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with Australia's obligations under the World Heritage Convention.
- (3) In this section:

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

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

Subdivision G—Assistance for protecting World Heritage properties

324 Commonwealth assistance for protecting declared World Heritage properties

- (1) The Commonwealth may give financial or other assistance for the protection or conservation of a declared World Heritage property to:
 - (a) a State or self-governing Territory in which the property occurs; or
 - (b) any other person.

Chapter 5 Conservation of biodiversity and heritage

Part 15 Protected areas

Division 1 Managing World Heritage properties

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- (2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

Division 1A—Managing National Heritage places

Subdivision A—Preliminary

324A Simplified outline of this Division

The following is a simplified outline of this Division:

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

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

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

The Commonwealth must try to prepare and implement plans for managing other National Heritage places, in co-operation with the States and self-governing Territories.

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

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

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

Subdivision B—The National Heritage List

324C The National Heritage List

- (1) The Minister must keep a written record of places and their heritage values in accordance with this Subdivision and Subdivisions BA, BB and BC. The record is called the *National Heritage List*.
- (2) A place may be included in the National Heritage List only if:
 - (a) the place is within the Australian jurisdiction; and
 - (b) the Minister is satisfied that the place has one or more National Heritage values (subject to the provisions in Subdivision BB about the emergency process).
- (3) A place that is included in the National Heritage List is called a *National Heritage place*.
- (4) The National Heritage List is not a legislative instrument.

324D Meaning of *National Heritage values*

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

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- (4) To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:
- (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places;
 - (d) other heritage values of places.

Subdivision BA—Inclusion of places in the National Heritage List: usual process

324E Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the usual process for the inclusion of places in the National Heritage List.

The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 324G).

The usual process involves the following steps for each assessment period:

- (a) the Minister may determine heritage themes (this step is optional) (see section 324H);
- (b) the Minister invites people to nominate places for inclusion in the National Heritage List, and gives the nominations to the Australian Heritage Council (see sections 324J and 324JA);
- (c) the Australian Heritage Council prepares, and gives to the Minister, a list of places (which will mostly be places that have been nominated) that it

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thinks should be assessed (see sections 324JB, 324JC and 324JD);

- (d) the Minister finalises the list of places that are to be assessed (see sections 324JE and 324JF);
- (e) the Australian Heritage Council invites people to make comments about the places in the finalised list (see section 324JG);
- (f) the Australian Heritage Council assesses the places in the finalised list, and gives the assessments to the Minister (see sections 324JH and 324JI);
- (g) the Minister decides whether a place that has been assessed should be included in the National Heritage List (see section 324JJ).

The steps mentioned in paragraphs (a) to (d) will generally be completed before the start of the assessment period.

324F Definitions

In this Subdivision:

assessment period has the meaning given by subsection 324G(1).

eligible for assessment consideration, in relation to an assessment period, has the meaning given by subsection 324JB(3).

finalised priority assessment list for an assessment period has the meaning given by subsection 324JE(4).

proposed priority assessment list for an assessment period has the meaning given by subsection 324JB(1).

324G Meaning of *assessment period*

- (1) For the purposes of this Subdivision, each of the following is an *assessment period*:
 - (a) the period of 12 months starting on the day determined in writing by the Minister for the purposes of this paragraph;
 - (b) each period of 12 months starting on an anniversary of the day so determined.
- (2) The Minister must make a determination under paragraph (1)(a) within 3 months after the commencement of this section. The day so determined must not be more than 12 months after that commencement.
- (3) A determination under paragraph (1)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the determination. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

324H Minister may determine heritage themes for an assessment period

- (1) Before the Minister invites nominations for an assessment period under section 324J, the Minister may determine one or more heritage themes that the Minister considers should be given priority in relation to the assessment period.
- (2) The Minister may request advice from the Australian Heritage Council for the purpose of making a determination under subsection (1), and may have regard to any advice the Council provides in response to the request.
- (3) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

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324J Minister to invite nominations for each assessment period

- (1) Before the start of each assessment period, the Minister must publish a notice inviting people to nominate places for inclusion in the National Heritage List.
- (2) A notice under subsection (1):
 - (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
 - (b) must invite people to nominate, to the Minister, places for inclusion in the National Heritage List; and
 - (c) must identify the assessment period to which the notice relates; and
 - (d) must specify a date (the *cut-off date*) by which nominations must be received, which must be at least 40 business days after the notice has been published as required by paragraph (a); and
 - (e) must specify, or refer to, the information requirements, and the manner and form requirements, that, under regulations referred to in paragraphs (3)(b) and (c), apply to making nominations; and
 - (f) may also include:
 - (i) information related to any heritage themes that the Minister has determined under section 324H should be given priority in relation to the assessment period; and
 - (ii) any other information that the Minister considers appropriate.
- (3) The regulations must provide for the following:
 - (a) how a notice under subsection (1) is to be published;
 - (b) the manner and form for making nominations;
 - (c) what information is to be included in a nomination.

324JA Minister to give nominations to Australian Heritage Council*Nominations in relation to first assessment period*

- (1) Within 30 business days after the cut-off date specified in the notice under subsection 324J(1) for the first assessment period, the Minister must give the Australian Heritage Council the nominations that the Minister:
 - (a) had received before the end of that cut-off date; and
 - (b) had not already requested the Australian Heritage Council, under section 324E (as in force before the commencement of this section), to assess; and
 - (c) had not already rejected under section 324E (as in force before the commencement of this section); and
 - (d) does not reject under subsection (4).
- (2) Subsection (1) does not apply to a nomination of a place if:
 - (a) the place is outside the Australian jurisdiction; or
 - (b) the Minister had, before the commencement of this section, included the place in the National Heritage List under section 324F (as in force before the commencement of this section).

Nominations in relation to later assessment periods

- (3) Within 30 business days after the cut-off date (the **current cut-off date**) specified in the notice under subsection 324J(1) for an assessment period (other than the first), the Minister must give the Australian Heritage Council the nominations that were received by the Minister in the period:
 - (a) starting immediately after the end of the cut-off date specified in the notice under subsection 324J(1) for the immediately preceding assessment period; and
 - (b) ending at the end of the current cut-off date;other than any such nominations that the Minister rejects under subsection (4).

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Minister may reject nominations

- (4) The Minister may, in writing, reject a nomination if the Minister considers that:
 - (a) the nomination is vexatious, frivolous or not made in good faith; or
 - (b) the Minister considers that regulations referred to in paragraph 324J(3)(b) or (c) have not been complied with in relation to the nomination.
- (5) If a nomination is rejected under paragraph (4)(b), the Minister must, if practicable, notify the person who made the nomination of the rejection of the nomination and the reason for the rejection.

Definition

- (6) In this section:

nomination means a nomination of a place for inclusion in the National Heritage List.

324JB Australian Heritage Council to prepare proposed priority assessment list

- (1) Within 40 business days after the Australian Heritage Council receives the nominations as required by subsection 324JA(1) in relation to an assessment period, the Council must prepare and give to the Minister a list (the ***proposed priority assessment list***) for the assessment period.
- (2) The proposed priority assessment list is to consist of such of the places that are eligible for assessment consideration in relation to the assessment period as the Australian Heritage Council considers it appropriate to include in the list, having regard to:
 - (a) any heritage themes determined by the Minister under section 324H in relation to the assessment period; and
 - (b) the Council's own views about what should be given priority in relation to the assessment period; and

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- (c) the Council's capacity to make assessments under this Division while still performing its other functions; and
 - (d) any other matters that the Council considers appropriate.
- (3) A place is ***eligible for assessment consideration*** in relation to the assessment period if:
 - (a) the place has been nominated by a nomination referred to in subsection (1); or
 - (b) the Council itself wishes to nominate the place for inclusion in the National Heritage List; or
 - (c) the place was eligible for assessment consideration, otherwise than because of this paragraph, in relation to the immediately preceding assessment period (if any) but was not included in the finalised priority assessment list for that assessment period; or
 - (d) each part of the place is either a place to which paragraph (a) applies, a place to which paragraph (b) applies or a place to which paragraph (c) applies.
- (4) Without limiting the generality of the Australian Heritage Council's discretion under subsection (2), the Council does not have to include in the proposed priority assessment list a place that has been nominated if the Council considers that it is unlikely that the place has any National Heritage values. For this purpose, the Council is not required to have regard to any information beyond the information that was included in the nomination.
- (5) The proposed priority assessment list is not a legislative instrument.

324JC Matters to be included in proposed priority assessment list

- (1) The proposed priority assessment list for an assessment period is to include, for each place in the list:
 - (a) a description of the place; and
 - (b) an assessment completion time; and
 - (c) any other information required by the regulations.

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- (2) The assessment completion time for a place must be either:
 - (a) a time that is at or before the end of the assessment period to which the list relates; or
 - (b) if the Australian Heritage Council considers it likely that making an assessment in relation to the place will take a period that is longer than 12 months—the end of that longer period (calculated from the start of the assessment period).

324JD Statement to be given to Minister with proposed priority assessment list

- (1) When the Australian Heritage Council gives the Minister the priority assessment list for an assessment period, the Council must also give the Minister a statement setting out such information as the Council considers appropriate relating to:
 - (a) for each place that is included in the list—why the Council included the place in the list; and
 - (b) for each place that is not included in the list but that was eligible for assessment consideration because of paragraph 324JB(3)(a) or (c)—why the Council did not include the place in the list.
- (2) The statement must also identify, as places nominated by the Australian Heritage Council:
 - (a) any places that are included in the list because the Council itself wishes to nominate them (see paragraph 324JB(3)(b)); and
 - (b) any places that are included in the list because of paragraph 324JB(3)(d) that consist of one or more places to which paragraph 324JB(3)(b) applies.

324JE The finalised priority assessment list

- (1) Within 20 business days after the Minister, under section 324JB, receives the proposed priority assessment list for an assessment period, the Minister may, in writing, make changes to the list as mentioned in subsection (2).

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- (2) The changes the Minister may make are as follows:
 - (a) including a place in the list (and also including the matters referred to in subsection 324JC(1));
 - (b) omitting a place from the list (and also omitting the matters referred to in subsection 324JC(1));
 - (c) changing the assessment completion time for a place in the list;
 - (d) any other changes of a kind permitted by the regulations.
- (3) In exercising the power to make changes, the Minister may have regard to any matters that the Minister considers appropriate.
- (4) At the end of the period of 20 business days referred to in subsection (1), the list, as changed (if at all) by the Minister, becomes the ***finalised priority assessment list*** for the assessment period.
- (5) The Minister must notify the Australian Heritage Council of all changes that the Minister makes to the list.
- (6) The finalised priority assessment list is not a legislative instrument.

324JF Publication of finalised priority assessment list

- (1) The Australian Heritage Council must publish the finalised priority assessment list for an assessment period on the internet.
- (2) The Australian Heritage Council must also publish the finalised priority assessment list in accordance with any requirements of the regulations.

324JG Australian Heritage Council to invite comments on places in finalised priority assessment list

- (1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must publish a notice inviting people to make comments on the place.

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- (2) The Australian Heritage Council may, under subsection (1), publish a single notice relating to all of the places on the finalised priority assessment list, or may publish a number of separate notices, each of which relates to one or more of the places.
- (3) A notice under subsection (1), in relation to a place or places:
 - (a) must be published in accordance with the regulations referred to in paragraph (4)(a); and
 - (b) must identify the place or places to which the notice relates; and
 - (c) must invite people to make comments, to the Australian Heritage Council, about:
 - (i) whether the place or places meet any of the National Heritage criteria; and
 - (ii) whether the place or places should be included in the National Heritage List; and
 - (d) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
 - (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (4)(b), apply to making comments; and
 - (f) may also invite people to comment on other matters that the Australian Heritage Council considers appropriate; and
 - (g) may also include any other information that the Australian Heritage Council considers appropriate.
- (4) The regulations must provide for the following:
 - (a) how a notice under subsection (1) is to be published;
 - (b) the manner and form for making comments.

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324JH Australian Heritage Council to assess places on finalised priority assessment list and give assessments to Minister

- (1) In relation to each place included in the finalised priority assessment list for an assessment period, the Australian Heritage Council must (by the time required by section 324JI):
 - (a) make a written assessment whether the place meets any of the National Heritage criteria; and
 - (b) give to the Minister:
 - (i) the written assessment (or a copy of it); and
 - (ii) a copy of the comments referred to in paragraphs (2)(a) and (b) (whether or not they have all been taken into account under subsection (2)).
- (2) In making an assessment in relation to a place, the Australian Heritage Council, subject to subsections (3) and (4):
 - (a) must take into account the comments the Council receives in response to the notice under subsection 324JG(1) in relation to the place; and
 - (b) may take into account the comments the Council receives in response to the opportunity referred to in paragraph (5)(c); and
 - (c) may seek, and have regard to, information or advice from any source.
- (3) The Australian Heritage Council is not required to take a comment referred to in paragraph (2)(a) into account if:
 - (a) the Council does not receive the comment until after the cut-off date specified in the notice under subsection 324JG(1) in relation to the place; or
 - (b) the Council considers that regulations referred to in paragraph 324JG(4)(b) have not been complied with in relation to the comment.
- (4) In making an assessment, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets any of the National Heritage criteria.

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- (5) If, in making an assessment, the Australian Heritage Council considers that a place might have one or more National Heritage values, the Council must:
- (a) take all practicable steps:
 - (i) to identify each person who is an owner or occupier of all or part of the place; and
 - (ii) if the Council considers the place might have an indigenous heritage value—to identify each Indigenous person who has rights or interests in all or part of the place; and
 - (b) take all practicable steps to advise each person identified that the Council is assessing whether the place meets any of the National Heritage criteria; and
 - (c) give persons advised at least 20 business days to comment in writing whether the place should be included in the National Heritage List.
- (6) If the Australian Heritage Council is satisfied that there are likely to be at least 50 persons referred to in subparagraph (5)(a)(i), the Council may satisfy the requirements of subsection (5) in relation to those persons by including the information referred to in paragraphs (5)(b) and (c) in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
 - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
 - (c) displays in public buildings at or near the place.
- (7) If:
- (a) the Australian Heritage Council considers that the place might have an indigenous heritage value; and
 - (b) there are Indigenous persons who:
 - (i) have rights or interests in all or part of the place; and
 - (ii) are neither owners nor occupiers of all or part of the place; and
 - (c) the Australian Heritage Council is satisfied that there is a body, or there are bodies, that can appropriately represent

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those Indigenous persons in relation to those rights and interests;

the Australian Heritage Council may satisfy the requirements of subsection (5) in relation to those Indigenous persons by giving the information referred to in paragraphs (5)(b) and (c) to that body or those bodies.

324JL Time by which assessments to be provided to Minister

- (1) Subsection 324JH(1) must be complied with, in relation to a place included in the finalised priority assessment list for an assessment period, by the assessment completion time specified in the list for the place, or by that time as extended under this section.
- (2) The Australian Heritage Council may request the Minister to extend the assessment completion time (or that time as previously extended) if the Council considers that it needs more time to make the assessment.
- (3) The Minister may, in response to a request under subsection (2), extend the assessment completion time (or that time as previously extended) by such period (if any) as the Minister considers appropriate. However, the total length of all extensions of the assessment completion time must not be more than 5 years.
- (4) An extension under subsection (3) must be made in writing.
- (5) If the Minister grants an extension under this section, the Minister must publish particulars of the extension in a way that the Minister considers appropriate.

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

Minister to decide whether or not to include place

- (1) After receiving from the Australian Heritage Council an assessment under section 324JH whether a place (the *assessed*

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place) meets any of the National Heritage criteria, the Minister must:

- (a) by instrument published in the *Gazette*, include in the National Heritage List:
 - (i) the assessed place or a part of the assessed place; and
 - (ii) the National Heritage values of the assessed place, or that part of the assessed place, that are specified in the instrument; or
- (b) in writing, decide not to include the assessed place in the National Heritage List.

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

- (2) Subject to subsection (3), the Minister must comply with subsection (1) within 90 business days after the day on which the Minister receives the assessment.
- (3) The Minister may, in writing, extend or further extend the period for complying with subsection (1).
- (4) Particulars of an extension or further extension under subsection (3) must be published on the internet and in any other way required by the regulations.
- (5) For the purpose of deciding what action to take under subsection (1) in relation to the assessed place:
 - (a) the Minister must have regard to:
 - (i) the Australian Heritage Council's assessment whether the assessed place meets any of the National Heritage criteria; and
 - (ii) the comments (if any), a copy of which were given to the Minister under subsection 324JH(1) with the assessment; and
 - (b) the Minister may seek, and have regard to, information or advice from any source.

Additional requirements if Minister decides to include place

- (6) If the Minister includes the assessed place, or a part of the assessed place (the ***listed part of the assessed place***), in the National Heritage List, he or she must, within a reasonable time:
- (a) take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the assessed place; and
 - (ii) advise each person identified that the assessed place, or the listed part of the assessed place, has been included in the National Heritage List; and
 - (b) if the assessed place:
 - (i) was nominated; or
 - (ii) was included in a place that was nominated; or
 - (iii) includes a place that was nominated;by a person in response to a notice under subsection 324J(1)—advise the person that the assessed place, or the listed part of the assessed place, has been included in the National Heritage List; and
 - (c) publish a copy of the instrument referred to in paragraph (1)(a) on the internet; and
 - (d) publish a copy or summary of that instrument in accordance with any other requirements specified in the regulations.
- (7) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (6)(a)(i), the Minister may satisfy the requirements of paragraph (6)(a) in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the assessed place is located;
 - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the assessed place;
 - (c) displays in public buildings at or near the assessed place.

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Additional requirements if Minister decides not to include place

- (8) If the Minister decides not to include the assessed place in the National Heritage List, the Minister must, within 10 business days after making the decision:
- (a) publish the decision on the internet; and
 - (b) if the assessed place:
 - (i) was nominated; or
 - (ii) was included in a place that was nominated; or
 - (iii) includes a place that was nominated;by a person in response to a notice under subsection 324J(1)—advise the person of the decision, and of the reasons for the decision.

Note: Subsection (8) applies in a case where the Minister decides that none of the assessed place is to be included in the National Heritage List.

Subdivision BB—Inclusion of places in the National Heritage List: emergency process

324JK Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the emergency process for the inclusion of places in the National Heritage List.

The emergency process involves the following steps:

- (a) the Minister may include a place in the National Heritage List if it is under threat (see section 324JL);
- (b) the Minister asks the Australian Heritage Council to assess the place (see section 324JM);

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- (c) the Australian Heritage Council publishes notice of the listing and invites comments (see section 324JN);
- (d) the Australian Heritage Council assesses the place, and gives the assessment to the Minister (see sections 324JO and 324JP);
- (e) the Minister has 12 months from the listing of the place to decide whether it should continue to be listed, and the listing will lapse if the Minister does not make a decision within that period (see section 324JQ).

324JL Minister may include place in National Heritage List if under threat

- (1) If the Minister believes that:
 - (a) a place has or may have one or more National Heritage values; and
 - (b) any of those values is under threat of a significant adverse impact; and
 - (c) that threat is both likely and imminent;the Minister may, by instrument published in the *Gazette*, include in the National Heritage List the place and the National Heritage values the Minister believes the place has or may have.
- (2) If:
 - (a) the place is included in the National Heritage List under subsection (1); and
 - (b) before that inclusion of the place, the place was being considered for inclusion in the List under the process set out in Subdivision BA;that process ceases to apply to the place when it is included in the List under subsection (1).

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Note: Subsection (2) does not prevent the process in Subdivision BA again starting to apply to the place if (for example) the place ceases to be listed because of subsection 324JQ(1) or (4) and a person subsequently nominates the place under that Subdivision.

- (3) If the place is included in the National Heritage List under subsection (1), the Minister must:
 - (a) within 10 business days after the inclusion of the place, publish a copy of the instrument under subsection (1):
 - (i) on the internet; and
 - (ii) in accordance with any other requirements specified in the regulations; and
 - (b) take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the place; and
 - (ii) advise each person identified that the place has been included in the National Heritage List.
- (4) If the Minister is satisfied that there are likely to be at least 50 persons referred to in subparagraph (3)(b)(i), the Minister may satisfy the requirements of paragraph (3)(b) in relation to those persons by including the advice referred to in that paragraph in one or more of the following:
 - (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
 - (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
 - (c) displays in public buildings at or near the place.

324JM Minister to ask Australian Heritage Council for assessment

- (1) If the Minister includes a place in the National Heritage List under section 324JL, the Minister must, in writing, request the Australian Heritage Council to give the Minister an assessment of whether the place meets any of the National Heritage criteria.
- (2) The request must specify the assessment completion time for the assessment.

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Note: When specifying an assessment completion time, the 12-month period referred to in subsection 324JQ(1) should be considered.

324JN Publication of listing of place and inviting comments

- (1) If the Australian Heritage Council receives a request under subsection 324JM(1) in relation to a place that has been included in the National Heritage List, the Council must publish a notice inviting people to comment on the listing of the place.
- (2) A notice under subsection (1) in relation to a place:
 - (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
 - (b) must contain the following:
 - (i) a description of the place;
 - (ii) a statement that the place has been included in the National Heritage List, and that specifies the National Heritage values that have been included in the List in relation to the place;
 - (iii) the date on which the place was so included; and
 - (c) must invite people to make comments, to the Australian Heritage Council, about:
 - (i) whether the place meets any of the National Heritage criteria; and
 - (ii) whether the place should continue to be included in the National Heritage List; and
 - (d) must specify the date (the *cut-off date*) by which comments must be received, which must be at least 30 business days after the notice has been published as required by paragraph (a); and
 - (e) must specify, or refer to, the manner and form requirements that, under regulations referred to in paragraph (3)(b), apply to making comments.
- (3) The regulations may provide for either or both of the following:
 - (a) how a notice under subsection (1) is to be published;
 - (b) the manner and form for making comments.

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324JO Australian Heritage Council to assess place and give assessment to Minister

- (1) Section 324JH applies in relation to a request under subsection 324JM(1) as if:
 - (a) a reference in section 324JH to a place included in the finalised priority assessment list for an assessment period were a reference to the place to which the request relates; and
 - (b) a reference in section 324JH to the notice under subsection 324JG(1) in relation to the place were a reference to the notice under subsection 324JN(1) in relation to the place; and
 - (c) a reference in section 324JH to regulations referred to in paragraph 324JG(4)(b) were a reference to regulations referred to in paragraph 324JN(3)(b); and
 - (d) a reference in section 324JH to whether the place should be included in the National Heritage List were a reference to whether the place should continue to be included in the National Heritage List.
- (2) A reference in another provision of this Act to section 324JH, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

324JP Time by which assessments to be provided to Minister

- (1) Section 324JI applies in relation to a request under subsection 324JM(1) as if:
 - (a) a reference in section 324JI to a place included in the finalised priority assessment list for an assessment period were a reference to the place to which the request relates; and
 - (b) a reference in section 324JI to the assessment completion time specified in the list for the place were a reference to the assessment completion time specified in the request.
- (2) A reference in another provision of this Act to section 324JI, or to a provision of that section, includes a reference to that section or provision as it applies because of this section.

324JQ Decision about place remaining in the National Heritage List

Minister to decide whether place should remain listed

- (1) Within 12 months after the inclusion of a place in the National Heritage List under section 324JL, the Minister must, by instrument published in the *Gazette*, subject to subsections (2) and (3):
 - (a) do one of the following:
 - (i) state that the place remains in the National Heritage List with its boundary unaltered;
 - (ii) alter the boundary of the place described in the National Heritage List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List);
 - (iii) remove from the National Heritage List the place and its National Heritage values; and
 - (b) if the place is not removed from the National Heritage List under subparagraph (a)(iii)—do all or any of the following:
 - (i) state that specified National Heritage values included in the List under section 324JL for the place remain in the List for the place;
 - (ii) include in the List for the place specified National Heritage values of the place that were not included in the List under section 324JL for the place;
 - (iii) remove from the List for the place specified National Heritage values that were included in the List under section 324JL for the place.
- (2) The Minister must not take action under subsection (1) unless the Minister has received an assessment from the Australian Heritage Council under section 324JH in relation to the place.
- (3) The Minister must not take action under subsection (1) that results in the place remaining in the National Heritage List (whether or not with the same or a different boundary) unless the Minister is satisfied that the place has one or more National Heritage values.

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Listing lapses automatically if action not taken within 12 months of listing

- (4) If the Minister does not take action under subsection (1) within the period referred to in that subsection, the place, and its listed National Heritage values, are automatically removed from the National Heritage List, by force of this subsection, at the end of that period.

Note: This subsection applies even if the Minister is prevented from taking action under subsection (1) because of subsection (2).

Matters to be considered

- (5) For the purpose of deciding what action to take under subsection (1) in relation to the place:
- (a) the Minister must have regard to:
 - (i) the Australian Heritage Council's assessment whether the place meets any of the National Heritage criteria; and
 - (ii) the comments (if any), a copy of which were given to the Minister under subsection 324JH(1) with the assessment; and
 - (b) the Minister may seek, and have regard to, information or advice from any source.

Disapplying section 324L

- (6) Section 324L does not apply to:
- (a) an alteration of the boundary of the place, under subparagraph (1)(a)(ii) of this section, that has the effect of removing part of the place from the National Heritage List; or
 - (b) the removal of the place and its National Heritage values under subparagraph (1)(a)(iii) of this section; or
 - (c) the removal of a National Heritage value of the place under subparagraph (1)(b)(iii) of this section.

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Minister to publish copy or summary of subsection (1) notice

- (7) The Minister must publish a copy or summary of the instrument referred to in subsection (1). The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way that the Minister considers appropriate.

Additional requirements if place etc. is removed under subsection (1)

- (8) If, under subsection (1), the Minister removes from the National Heritage List the place or a National Heritage value of the place, or alters the boundary of the place described in the List, the Minister must, within 10 business days after the removal or alteration:
- (a) publish a copy of the instrument referred to in subsection (1) on the internet; and
 - (b) advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal or alteration.

Note: For the obligation to identify owners or occupiers, see subsection 324JL(3).

Requirements if place is removed under subsection (4)

- (9) If, under subsection (4), the place, and its listed National Heritage values, are removed from the National Heritage List, the Minister must, within 10 business days after the removal:
- (a) publish notice of the removal on the internet; and
 - (b) advise each person identified by the Minister as an owner or occupier of all or part of the place of the removal.

Note: For the obligation to identify owners or occupiers, see subsection 324JL(3).

Alternative methods of notifying owners and occupiers

- (10) If the Minister is satisfied that there are likely to be at least 50 persons referred to in paragraph (8)(b) or (9)(b), the Minister may

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satisfy the requirements of that paragraph in relation to those persons by including the advice referred to in that paragraph in one or more of the following:

- (a) advertisements in a newspaper, or newspapers, circulating in the area in which the place is located;
- (b) letters addressed to “The owner or occupier” and left at all the premises that are wholly or partly within the place;
- (c) displays in public buildings at or near the place.

Subdivision BC—Other provisions relating to the National Heritage List

324JR Co-ordination with Scientific Committee—Council undertaking assessment

- (1) This section applies if:
 - (a) the Australian Heritage Council undertakes an assessment of a place under Subdivision BA or Subdivision BB; and
 - (b) before giving the assessment to the Minister, the Council becomes aware that:
 - (i) the Scientific Committee is undertaking, or has undertaken, an assessment under Division 1 of Part 13; and
 - (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).
- (2) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.
- (3) Before the Australian Heritage Council gives an assessment of the place to the Minister under Subdivision BA or Subdivision BB, the Council must comply with subsection (4) or (6).
- (4) If the Scientific Committee has not yet given the Minister an assessment that deals with that matter, the Australian Heritage Council must:

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- (a) give the Scientific Committee a copy of the assessment of the place that the Council proposes to give to the Minister; and
 - (b) invite the Scientific Committee to give the Council its comments in relation to that matter; and
 - (c) take into account, in finalising the assessment of the place that the Council gives the Minister, any comments that the Scientific Committee makes in relation to that matter in response to that invitation within 14 days, or such longer period as is specified in the invitation, after being given the invitation.
- (5) If the Australian Heritage Council gives the Scientific Committee a copy of a proposed assessment of a place under paragraph (4)(a), the Council must also give the Scientific Committee a copy of the assessment of that place that the Council gives the Minister.
- (6) If:
 - (a) the Scientific Committee has already given the Minister an assessment that deals with that matter; and
 - (b) the Australian Heritage Council has been given a copy of that assessment;the Australian Heritage Council must take that assessment into account in finalising the assessment of the place that the Council gives the Minister.
- (7) If, under section 194S or 194T, the Scientific Committee gives the Australian Heritage Council a proposed assessment, or an assessment, that deals with a particular matter because the Council is undertaking an assessment that deals with that matter, a member of the Council may discuss that matter with a member of the Scientific Committee.
- (8) Subsection (2), paragraph (4)(a) and subsections (5) and (7) have effect despite section 324R.

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324JS Co-ordination with Scientific Committee—Council given assessment to Minister

- (1) This section applies if:
 - (a) the Australian Heritage Council has given to the Minister an assessment of a place under Subdivision BA or Subdivision BB; and
 - (b) the Council is aware that:
 - (i) the Scientific Committee is undertaking an assessment under Division 1 of Part 13; and
 - (ii) there is a matter that is relevant to both the assessment referred to in paragraph (a) and the assessment referred to in subparagraph (i).
- (2) The Australian Heritage Council must, within 7 days after becoming aware as referred to in paragraph (1)(b):
 - (a) ensure the Scientific Committee is aware of the existence of the paragraph (1)(a) assessment dealing with the matter; and
 - (b) give the Scientific Committee a copy of the assessment.
- (3) A member of the Australian Heritage Council may discuss the matter with a member of the Scientific Committee.
- (4) Subsections (2) and (3) have effect despite section 324R.

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

- (1) This section is about compliance with a provision of Subdivision BA or BB that requires or permits an act to be done in relation to the place identified by express or implied reference to an earlier provision of that Subdivision.
- (2) It is sufficient compliance with the provision if the act is done in relation to a place whose boundary overlaps the boundary of the place identified by reference to the earlier provision.
- (3) This section does not affect the validity of the act so far as that depends on something other than the act being done in relation to the place.

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

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

Note: A place or part of a place may also be removed from the National Heritage List under subsection 324JQ(1).

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

- (3) The Minister may remove all or part of a place, or a National Heritage value of a place, only by an instrument including a statement of the reasons for the removal.

Note 1: The Minister must first obtain and consider the advice of the Australian Heritage Council (see section 324M).

Note 2: For requirements relating to the instrument under the *Legislation Act 2003*, see subsections (5) and (6) of this section.

- (4) The instrument must deal with only one of the following kinds of removal:
- (a) removal (***removal for loss of value***) of a place, part or National Heritage value because of paragraph (1)(a) or (2)(a);
 - (b) removal of a place, part or National Heritage value because of paragraph (1)(b) or (2)(b).

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

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- (5) If the instrument deals only with removal for loss of value:
 - (a) it is a legislative instrument; and
 - (b) it takes effect on the first day it is no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 of the *Legislation Act 2003*.
- (6) If subsection (5) does not apply to the instrument, it is a notifiable instrument.

Note: Notifiable instruments must be registered under the *Legislation Act 2003*, but they are not subject to parliamentary scrutiny or sunseting under that Act.

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

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

The Minister must publish the notice within 20 business days of giving the request.
- (2) The Australian Heritage Council must give the advice to the Minister within the period specified by the Minister.
- (3) The Minister must consider the advice, if he or she receives it by the end of that period, and the comments (if any) received in accordance with the notice.

- (4) In preparing the advice, the Australian Heritage Council must not consider any matter that does not relate to the National Heritage values of the place concerned.
- (5) The Minister must:
 - (a) decide whether to remove from the National Heritage List the place or part concerned, or the National Heritage value or values of the place concerned; and
 - (b) if the Minister decides to remove the place or part, or the National Heritage value or values of the place—ensure that an instrument removing the place, part or National Heritage value or values is made under subsection 324L(3);within 60 business days after the earlier of the advice being received by the Minister and the specified period for giving advice to the Minister ending.

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

- (1) The regulations may make provision for, or in relation to, the specification in the National Heritage List of additional National Heritage values in relation to National Heritage places.
- (2) Without limiting the generality of subsection (1), regulations may make provision as mentioned in that subsection by specifying modifications of provisions of this Act. However, regulations must not:
 - (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
 - (b) widen, or have the effect of widening, the scope of any offence.

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324P National Heritage List must be publicly available

The Minister must ensure that:

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

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

324Q Certain information may be kept confidential

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

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

- (1) A member of the Australian Heritage Council has a duty not to disclose the following to a person other than the Minister, an employee in the Department whose duties relate to the Council or another member of the Council:
 - (a) an assessment under section 324JH whether a place meets any of the National Heritage criteria, any information relating

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to the assessment or any information about the nomination (if any) that led to the making of the assessment;

- (b) advice under section 324M concerning a place or any information relating to the advice.

(2) However:

- (a) the duty not to disclose a thing described in paragraph (1)(a) in relation to a place does not exist after:
 - (i) publication in the *Gazette* of an instrument under paragraph 324JJ(1)(a) or subsection 324JQ(1) in relation to the place; or
 - (ii) the Minister decides under paragraph 324JJ(1)(b) not to include the place in the National Heritage List; and
- (b) the duty not to disclose a thing described in paragraph (1)(b) in relation to a place does not exist after:
 - (i) registration under the *Legislation Act 2003* of a legislative instrument under section 324L relating to the place; or
 - (ii) the Minister decides under section 324M not to remove the place or a part of the place, or one or more of the place's National Heritage values, from the National Heritage List.

(2A) This section does not prevent the Australian Heritage Council from informing a person, or having discussions with a person, about the consequences that result or may result from:

- (a) a place being, or not being, included in the National Heritage List; or
- (b) National Heritage values of a place being, or not being, included in the List; or
- (c) a place or part of a place, or one or more National Heritage values of a place, being removed from the List.

(2B) Subsection (1) does not apply to a disclosure of particular information if:

- (a) the Chair of the Australian Heritage Council requests the Minister to give permission to disclose that information to a

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- particular person (or persons within a particular group of persons); and
- (b) the Minister gives that permission; and
 - (c) the disclosure is made to that person (or a person within that group).
- (3) After a member of the Australian Heritage Council has ceased under subsection (2) to have a duty not to disclose:
- (a) an assessment under section 324JH whether a place meets the National Heritage criteria; or
 - (b) advice under section 324M concerning a place;
- the member must give a copy of the assessment or advice to anyone who asks for it.
- (4) If:
- (a) a member of the Australian Heritage Council proposes to give a person under subsection (3) a copy of an assessment or advice relating to a place; and
 - (b) the member is aware that, under section 324Q, it would be sufficient compliance with this Act if the copy included only a general description of the place, its location or its National Heritage values;
- the member must take reasonable steps to ensure that the copy given to the person does not include a more detailed description than is necessary for sufficient compliance with this Act under that section.

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

324S Management plans for National Heritage places in Commonwealth areas

- (1) The Minister must make a written plan to protect and manage the National Heritage values of each National Heritage place that is entirely within one or more Commonwealth areas. The Minister

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must do so as soon as practicable after the first time the place satisfies both of the following paragraphs:

- (a) the place is included in the National Heritage List;
- (b) the place is entirely within one or more Commonwealth areas.

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

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

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- (7) A plan, an amendment of a plan, or a revocation and replacement of a plan, is a legislative instrument.

324T Restriction on ability to make plans

Despite section 324S, the Minister must not make a plan for managing so much of a National Heritage place as is in a Commonwealth reserve and covered by another plan under this Act.

324U Compliance with plans by the Commonwealth and Commonwealth agencies

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

324V Multiple plans in the same document

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

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

324W Review of plans at least every 5 years

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

Subdivision D—Management of National Heritage places in States and self-governing Territories**324X Plans and Commonwealth responsibilities**

- (1) This section applies to a National Heritage place that is not entirely within one or more Commonwealth areas and is:
 - (a) in a State; or
 - (b) in a self-governing Territory; or
 - (c) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*.

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- (2) The Commonwealth must use its best endeavours to ensure a plan for managing the place, that is not inconsistent with the National Heritage management principles, is prepared and implemented in co-operation with the State or Territory.
- (2A) Subsection (2) does not apply in relation to so much of a place as is in the Great Barrier Reef Marine Park.
- Note: A zoning plan must be prepared under the *Great Barrier Reef Marine Park Act 1975* for areas that are part of the Great Barrier Reef Marine Park. In preparing a zoning plan, regard must be had to the National Heritage management principles.
- (3) The Commonwealth, and each Commonwealth agency, must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the place in a way that is not inconsistent with:
- (a) the National Heritage management principles; or
 - (b) the plan for managing the place, if one has been prepared under subsection (2).

Subdivision E—The National Heritage management principles

324Y National Heritage management principles

- (1) The regulations must prescribe principles for managing National Heritage places. The principles prescribed are the ***National Heritage management principles***.
- (2) The regulations may prescribe obligations to implement or give effect to the National Heritage management principles if the obligations relate to:
- (a) a constitutional corporation, the Commonwealth or a Commonwealth agency; or
 - (b) trade or commerce:
 - (i) between Australia and another country; or
 - (ii) between 2 States; or
 - (iii) between a State and Territory; or
 - (iv) between 2 Territories; or

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- (c) either or both of the following:
 - (i) a Commonwealth area;
 - (ii) a Territory; or
 - (d) the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place; or
 - (e) the National Heritage values of a National Heritage place in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.
- (3) A person must comply with the regulations to the extent that they impose obligations on the person.
- (4) Paragraph (2)(e) applies only to a prescribed obligation that is appropriate and adapted to give effect to Australia's obligations under Article 8 of the Biodiversity Convention.

Subdivision F—Obligations of Commonwealth agencies**324Z Obligation to assist the Minister and the Australian Heritage Council**

- (1) A Commonwealth agency that owns or controls a place that has, or might have, one or more National Heritage values must take all reasonable steps to assist the Minister and the Australian Heritage Council in the identification, assessment and monitoring of the place's National Heritage values.
- (2) A Commonwealth agency that owns or controls all or part of a National Heritage place must take all reasonable steps to assist the Minister to make a plan under section 324S for the place.

324ZA Protecting National Heritage values of places sold or leased

- (1) This section applies if a Commonwealth agency executes a contract for the sale or lease to someone else of a Commonwealth area in the Australian jurisdiction that is or includes all or part of a National Heritage place. It does not matter whether the agency executes the contract for the Commonwealth or on its own behalf.

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- (1A) The Commonwealth agency must give the Minister at least 40 business days' notice before executing the contract.
- (2) The Commonwealth agency must ensure that the contract includes a covenant the effect of which is to protect the National Heritage values of the place, unless the agency is satisfied that:
 - (a) having regard to other means of protecting those values, including such a covenant in the contract is unnecessary to protect them or is unreasonable; or
 - (b) including such a covenant in the contract is impracticable.
- (3) The Commonwealth agency must inform the Minister before executing the contract if:
 - (a) such a covenant:
 - (i) would not, or could not be made to, bind the successors in title of the buyer or lessee; or
 - (ii) could be insufficient to ensure the ongoing protection of the National Heritage values of the place; or
 - (b) the agency is satisfied as described in subsection (2).

The information must include written reasons why paragraph (a) applies or why the agency is satisfied as described in subsection (2).
- (4) If the Minister is informed of a matter in paragraph (3)(a) or that the Commonwealth agency is satisfied that it is unreasonable or impracticable to include such a covenant in the contract, the Minister must:
 - (a) take all reasonable measures to enter into a conservation agreement with the prospective buyer or lessee for the protection and conservation of the National Heritage values of the place; or
 - (b) advise the agency about measures to ensure the ongoing protection of the National Heritage values of the place.
- (5) If the Minister is informed that the Commonwealth agency is satisfied that it is unnecessary to include such a covenant in the contract, the Minister may advise the agency about measures to

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ensure the ongoing protection of the National Heritage values of the place.

- (6) If the Minister advises the Commonwealth agency under this section about measures to ensure the ongoing protection of the National Heritage values of the place, the agency must take all reasonable steps to ensure that the measures are taken.

Subdivision G—Assistance for protecting National Heritage places

324ZB Commonwealth assistance for protecting National Heritage places

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

Subdivision H—Reviewing and reporting on the National Heritage List

324ZC Reviewing and reporting on the National Heritage List

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

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

Division 2—Managing wetlands of international importance

Subdivision A—Simplified outline of this Division

325 Simplified outline of this Division

The following is a simplified outline of this Division:

The Commonwealth may designate a wetland for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention only after seeking the agreement of relevant States, self-governing Territories and land-holders.

The Minister must make plans for managing wetlands listed under the Ramsar Convention that are entirely in Commonwealth areas. The Commonwealth and Commonwealth agencies must not contravene such plans.

The Commonwealth must try to prepare and implement management plans for other wetlands listed under the Ramsar Convention, in co-operation with the relevant States and self-governing Territories.

The Commonwealth and Commonwealth agencies have duties relating to declared Ramsar wetlands in States and Territories.

The Commonwealth can provide assistance for the protection or conservation of declared Ramsar wetlands.

Note: Section 16 prohibits an action that has a significant impact on an internationally important wetland, unless the person taking the action has the approval of the Minister administering that section or certain other requirements are met.

Section 326

Subdivision B—Seeking agreement on Ramsar designation

326 Commonwealth must seek agreement before designation

- (1) The Commonwealth may designate for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention a wetland containing an area owned or occupied by another person only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the other person on:
 - (a) the proposed designation of the wetland (so far as it relates to the area); and
 - (b) management arrangements for the wetland (so far as they relate to the area).
- (2) The Commonwealth may designate a wetland in a State or self-governing Territory for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention only if the Minister is satisfied that the Commonwealth has used its best endeavours to reach agreement with the State or Territory on:
 - (a) the proposed submission of the wetland; and
 - (b) management arrangements for the wetland.
- (3) A failure to comply with this section does not affect the designation of a wetland for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention or the status of a wetland as a declared Ramsar wetland.

Subdivision C—Notice of designation of wetland

327 Minister must give notice of designation of wetland etc.

- (1) The Minister must give notice in the *Gazette* and in the way (if any) prescribed by the regulations of any of the following events as soon as practicable after the event occurs:
 - (a) the Commonwealth designates a wetland for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention;

- (b) the Commonwealth extends the boundaries of a wetland it has included in the List;
 - (c) the Commonwealth restricts the boundaries of a wetland it has included in the List;
 - (d) the Commonwealth deletes from the List a wetland it previously included in the List.
- (2) The notice must specify the area included in, or excluded or deleted from, the List as a result of the event.
- (3) A failure to comply with this section does not affect the status of an area as a declared Ramsar wetland.

Subdivision D—Plans for listed wetlands in Commonwealth areas

328 Making plans

Minister must make plan

- (1) The Minister must make a written plan for managing a wetland that is included in the List of Wetlands of International Importance kept under the Ramsar Convention and is entirely within one or more Commonwealth areas. The Minister must do so as soon as practicable after the wetland:
- (a) is included in the List; or
 - (b) becomes entirely within one or more Commonwealth areas.

Amending and replacing plan

- (2) The Minister may make a written plan amending, or revoking and replacing, a plan made under subsection (1) or this subsection.

Requirements for plan

- (3) A plan must not be inconsistent with:
- (a) Australia's obligations under the Ramsar Convention; or
 - (b) the Australian Ramsar management principles.

Section 329

Note: Section 335 explains what Australian Ramsar management principles are.

Ensuring plans reflect current management principles

- (4) If the Australian Ramsar management principles change so that a plan (the **earlier plan**) is inconsistent with them, the Minister must make another plan:
- (a) amending the earlier plan so it is not inconsistent with them; or
 - (b) revoking and replacing the earlier plan.

Plan may be in same document as another plan

- (5) To avoid doubt, a plan under this section for a wetland may be in the same document as:
- (a) a plan under this section for another wetland; or
 - (b) a plan that this Act or another law of the Commonwealth requires or permits to be prepared.

Commonwealth reserves

- (6) Despite subsections (1) and (2), the Minister may not make a plan for so much of a wetland as is in a Commonwealth reserve.

Note: A management plan must be prepared under Division 4 for a Commonwealth reserve, taking account of Australia's obligations under the Ramsar Convention.

329 Notice of plans

The Minister must give notice of the making of a plan under section 328, in accordance with the regulations.

330 Commonwealth compliance with plans

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

the Commonwealth agency (as appropriate), would contravene such a plan.

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

331 Review of plans every 5 years

- (1) The Minister must cause a review of a plan made under section 328 to be carried out at least once in each period of 5 years after the plan is made.
- (2) The review must consider whether the plan is consistent with the Australian Ramsar management principles in force at the time.

Note: Section 335 explains what Australian Ramsar management principles are.

Subdivision E—Management of wetlands in States and self-governing Territories

332 Application

This Subdivision applies in relation to a wetland that:

- (a) is:
- (i) in a State; or
 - (ii) in a self-governing Territory; or
 - (iii) on, over or under the seabed vested in a State by the *Coastal Waters (State Title) Act 1980* or in the Northern Territory by the *Coastal Waters (Northern Territory Title) Act 1980*; and
- (b) is not entirely within one or more Commonwealth areas.

Section 333

333 Co-operating to prepare and implement plans

- (1) This section applies in relation to a wetland that is included in the List of Wetlands of International Importance kept under the Ramsar Convention.
- (2) The Commonwealth must use its best endeavours to ensure a plan for managing the wetland in a way that is not inconsistent with Australia's obligations under the Ramsar Convention or the Australian Ramsar management principles is prepared and implemented in co-operation with the State or Territory.

Note: The Commonwealth and the State or Territory could make a bilateral agreement adopting the plan and providing for its implementation.

334 Commonwealth responsibilities

- (1) This section applies in relation to a wetland that is a declared Ramsar wetland.
- (2) The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure it exercises its powers and performs its functions in relation to the wetland in a way that is not inconsistent with:
 - (a) the Ramsar Convention; and
 - (b) the Australian Ramsar management principles; and
 - (c) if the wetland is included in the List of Wetlands of International Importance kept under the Ramsar Convention and a plan for managing the property has been prepared as described in section 333—that plan.

Subdivision F—Australian Ramsar management principles

335 Australian Ramsar management principles

- (1) The regulations must prescribe principles for the management of wetlands included in the List of Wetlands of International Importance kept under the Ramsar Convention. The principles prescribed are the *Australian Ramsar management principles*.

- (2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with Australia's obligations under the Ramsar Convention.

Subdivision G—Assistance for protecting wetlands

336 Commonwealth assistance for protecting declared Ramsar wetlands

- (1) The Commonwealth may give financial or other assistance for the protection or conservation of a declared Ramsar wetland to:
 - (a) a State or self-governing Territory in which the wetland occurs; or
 - (b) any other person.
- (2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

Division 3—Managing Biosphere reserves

337 Definition of *Biosphere reserve*

A ***Biosphere reserve*** is an area designated for inclusion in the World Network of Biosphere Reserves by the International Co-ordinating Council of the Man and the Biosphere program of the United Nations Educational, Scientific and Cultural Organization.

338 Planning for management of Biosphere reserves

- (1) The Minister may make and implement a written plan for managing a Biosphere reserve, or a part of a Biosphere reserve, entirely within one or more Commonwealth areas. The plan must not be inconsistent with the Australian Biosphere reserve management principles.
- (2) The Commonwealth may co-operate with a State or self-governing Territory to prepare and implement a plan for managing a Biosphere reserve in the State or Territory. The plan must not be inconsistent with the Australian Biosphere reserve management principles.

339 Commonwealth activities in Biosphere reserves

The Commonwealth and each Commonwealth agency must take all reasonable steps to ensure that it exercises its powers and performs its functions in relation to a Biosphere reserve in a way that is not inconsistent with:

- (a) the Australian Biosphere reserve management principles; or
- (b) a plan prepared as described in section 338 for managing the Biosphere reserve.

340 Australian Biosphere reserve management principles

- (1) The regulations must prescribe principles for the management of Biosphere reserves. The principles prescribed are the ***Australian Biosphere reserve management principles***.
- (2) Before the Governor-General makes regulations prescribing principles, the Minister must be satisfied that the principles to be prescribed are consistent with the Statutory Framework of the World Network of Biosphere Reserves established under the Man and the Biosphere program of the United Nations Educational, Scientific and Cultural Organization.

341 Commonwealth assistance for protecting Biosphere reserves

- (1) The Commonwealth may give financial or other assistance for the protection or conservation of a Biosphere reserve to:
 - (a) a State or self-governing Territory in which the reserve or part of the reserve occurs; or
 - (b) any other person.
- (2) The giving of assistance may be made subject to such conditions as the Minister thinks fit.

Section 341A

Division 3A—Managing Commonwealth Heritage places

Subdivision A—Preliminary

341A Simplified outline of this Division

The following is a simplified outline of this Division:

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

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

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

Commonwealth agencies also have other obligations.

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

341B Extension to places etc. outside the Australian jurisdiction

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

Subdivision B—The Commonwealth Heritage List

341C The Commonwealth Heritage List

- (1) The Minister must keep a written record of places and their heritage values in accordance with this Subdivision and Subdivisions BA, BB and BC. The record is called the ***Commonwealth Heritage List***.
- (2) A place may be included in the Commonwealth Heritage List only if:
 - (a) the place either:
 - (i) is entirely within a Commonwealth area; or
 - (ii) is outside the Australian jurisdiction and is owned or leased by the Commonwealth or a Commonwealth Authority; and
 - (b) the Minister is satisfied that the place has one or more Commonwealth Heritage values (subject to the provisions in Subdivision BB about the emergency process).
- (3) A place that is included in the Commonwealth Heritage List is called a ***Commonwealth Heritage place***.
- (4) The Commonwealth Heritage List is not a legislative instrument.

341D Meaning of *Commonwealth Heritage values*

- (1) A place has a ***Commonwealth Heritage value*** if and only if the place meets one of the criteria (the ***Commonwealth Heritage criteria***) prescribed by the regulations for the purposes of this section. The ***Commonwealth Heritage value*** of the place is the place's heritage value that causes the place to meet the criterion.
- (2) The ***Commonwealth Heritage values*** of a Commonwealth Heritage place are the Commonwealth Heritage values of the place included in the Commonwealth Heritage List for the place.
- (3) The regulations must prescribe criteria for the following:
 - (a) natural heritage values of places;

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- (b) indigenous heritage values of places;
- (c) historic heritage values of places.

The regulations may prescribe criteria for other heritage values of places.

- (4) To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places;
 - (d) other heritage values of places.

Subdivision BA—Inclusion of places in the Commonwealth Heritage List: usual process

341E Simplified outline

The following is a simplified outline of this Subdivision:

This Subdivision sets out the usual process for the inclusion of places in the Commonwealth Heritage List.

The usual process involves an annual cycle that revolves around 12-month periods known as assessment periods. The Minister determines the start of the first assessment period (see section 341G).

The usual process involves the following steps for each assessment period:

- (a) the Minister invites people to nominate places for inclusion in the Commonwealth Heritage List, and gives the nominations to the Australian Heritage Council (see sections 341H and 341J);
- (b) the Australian Heritage Council prepares, and gives to the Minister, a list of places (which will

Section 341F

mostly be places that have been nominated) that it thinks should be assessed (see sections 341JA, 341JB and 341JC);

- (c) the Minister finalises the list of places that are to be assessed (see sections 341JD and 341JE);
- (d) the Australian Heritage Council invites people to make comments about the places in the finalised list (see section 341JF);
- (e) the Australian Heritage Council assesses the places in the finalised list, and gives the assessments to the Minister (see sections 341JG and 341JH);
- (f) the Minister decides whether a place that has been assessed should be included in the Commonwealth Heritage List (see section 341JI).

The steps mentioned in paragraphs (a) to (c) will generally be completed before the start of the assessment period.

341F Definitions

In this Subdivision:

assessment period has the meaning given by subsection 341G(1).

eligible for assessment consideration, in relation to an assessment period, has the meaning given by subsection 341JA(3).

finalised priority assessment list for an assessment period has the meaning given by subsection 341JD(4).

proposed priority assessment list for an assessment period has the meaning given by subsection 341JA(1).

Section 341G

341G Meaning of *assessment period*

- (1) For the purposes of this Subdivision, each of the following is an *assessment period*:
 - (a) the period of 12 months starting on the day determined in writing by the Minister for the purposes of this paragraph;
 - (b) each period of 12 months starting on an anniversary of the day so determined.
- (2) The Minister must make a determination under paragraph (1)(a) within 3 months after the commencement of this section. The day so determined must not be more than 12 months after that commencement.
- (3) A determination under paragraph (1)(a) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the determination. See regulations made for the purposes of paragraph 54(2)(b) of that Act.

341H Minister to invite nominations for each assessment period

- (1) Before the start of each assessment period, the Minister must publish a notice inviting people to nominate places for inclusion in the Commonwealth Heritage List.

Note: For which places can be included in the Commonwealth Heritage List, see subsection 341C(2).

- (2) A notice under subsection (1):
 - (a) must be published in accordance with the regulations referred to in paragraph (3)(a); and
 - (b) must invite people to nominate, to the Minister, places for inclusion in the Commonwealth Heritage List; and
 - (c) must identify the assessment period to which the notice relates; and
 - (d) must specify a date (the *cut-off date*) by which nominations must be received, which must be at least 40 business days