



**PRODUCTIVITY COMMISSION INQUIRY  
INTO THE CONSERVATION OF  
AUSTRALIA'S HISTORIC HERITAGE  
PLACES**

**Response by the Chairs of the State and  
Territory Heritage Councils  
of Australia to the Productivity  
Commission's Final report**

*13 November 2006*

The Productivity Commission Inquiry into the conservation of Australia's historic heritage commenced in early 2005. The Commission's final report was tabled in Parliament by the Federal Treasurer in September 2006.

The Chairs of the State and Territory Heritage Councils have invested substantial time in offering contributions to the Inquiry, and considering responses to the draft and final reports.

In response to the Productivity Commission's final report the Chairs of the State and Territory Heritage Councils<sup>1</sup>:

1. *welcome* the recognition that historic heritage places are important to provide a sense of identity and a connection with our past and to our nation;
2. *welcome* the Commission's recognition that heritage protection does not require a place to be preserved in its original condition or use, rather that it accommodates sensitive adaptation and change for contemporary use and enjoyment;
3. *acknowledge* the Commission's endorsement of the three tier system of government heritage management in Australia (the Australian, State and local government tiers);
4. *confirm* a number of the initiatives recommended by the Commission were already under way before the Inquiry commenced under the umbrella of the *Cooperative National Heritage Agenda for Australia*. These include; improved data collection, consistent criteria and thresholds for heritage listing, the decommissioning of the Register of the National Estate, and consistent policy on conservation and adaptation of heritage items;
5. *express* great disappointment that the Productivity Commission has failed to seriously address the need for additional financial incentives as a heritage management tool, despite acknowledging the increased conservation activity that initiatives generate and the benefits to the community the existing incentives provide;
6. *disagree* with the Productivity Commission's recommendation for an appeal system based on unreasonable cost in the absence of any balancing recommendation for financial incentives, as financial incentives are an integral part of any reform that seeks to place the emphasis on 'conservation by agreement';
7. *believe* that the Productivity Commission's recommendation in relation to town planning controls and heritage reflects a misunderstanding of a basic premise of planning (as it pertains to the protection of environmental values); and
8. *note* the prevalence in the Productivity Commission Inquiry Report of selective quotation of negative submissions to support the Commission's arguments, submissions that are at odds with the Chairs' collective real life experience in

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<sup>1</sup> This includes the Chairs of the Australian Capital Territory, Northern Territory, Queensland, New South Wales, Victorian, South Australian, Tasmanian and Western Australian Heritage Councils

heritage management in Australia. 418 submissions were made during the Productivity Commission Inquiry by 345 interested parties. The parties included government heritage officials, other government agencies, local governments, professional organisations, community groups, representatives of the development sector, and the general public including property owners. Only a small minority of the submissions supported the analysis and conclusions of the Commission.

In relation to specific findings and recommendations in the final report, the Chairs of the State and Territory Heritage Councils make the following additional responses. The findings and recommendations have been grouped together by subject.

## **RESPONSE TO THE SPECIFIC FINDINGS AND RECOMMENDATIONS OF THE INQUIRY**

### *Productivity Commission Finding 3.1*

*Little reliable statistical information is available on the conservation of Australia's historic heritage — the number, quality and composition of listed places; the nature, source and types of expenditures on historic heritage conservation; or the effectiveness and cost-effectiveness of those expenditures.*

### *Productivity Commission Recommendation 3.1*

*All levels of government should put in place measures for collecting, maintaining and disseminating relevant data series on the conservation of Australia's historic heritage places.*

### **Heritage Chairs Response (Finding 3.1; Recommendation 3.1)**

The Heritage Chairs agree in principle with this finding and recommendation. Work is underway, under the auspices of the *Cooperative National Heritage Agenda for Australia* (and approved by the Environmental Protection and Heritage Ministerial Council), to address this issue and put in place a framework to address the data deficiency. However, it must be recognised that producing nationally comparable data will take time to achieve due to differing levels of resources, variations in accounting systems, and varying interpretations as to what constitutes a heritage-related cost.

### *Productivity Commission Recommendation 7.1*

*The Australian Government should remove all historic heritage places from the Register of National Estate and transfer the information to a national heritage database. The database would need to be regularly updated and maintained, including the deletion of inappropriate entries.*

*Productivity Commission Recommendation 7.2*

*State and Territory governments should remove any references to the Register of the National Estate from their planning and heritage legislation and regulations, after ensuring that any places that meet the criteria have been recorded on the appropriate (State or local) heritage registers.*

**Heritage Chairs Response (Recommendation 7.1 & 7.2)**

**The Heritage Chairs have already agreed to adopt a new role for the *Register of the National Estate* as a non-statutory repository of heritage information (under the umbrella of the *Cooperative National Heritage Agenda for Australia*).**

*Productivity Commission Finding 4.2.*

*The commitment to identify, conserve and manage publicly-owned historic heritage places varies considerably across State and Territory governments.*

*Productivity Commission Finding 8.1*

*It is important that public heritage buildings have a viable use. While retention in traditional use may maintain important historic links to the community, where this is not possible a suitable alternative use should be found. If a functional use for a public heritage asset cannot be found, then disposal (with appropriate safeguards to protect cultural values) may be preferable to retaining it as a non-functioning asset with the associated risk of poor maintenance and dereliction.*

*Productivity Commission Finding 8.2*

*Separate reporting on governments' community service obligations in public heritage asset management would improve accountability and thereby facilitate better conservation outcomes.*

*Productivity Commission Finding 8.3*

*The current arrangements for, (i) agreed management plans and (ii) heritage protection on the sale of property, provide a sound basis for the conservation of Australian Government-owned heritage properties. However, identifying the assigned heritage responsibilities to non-heritage agencies as community service obligations with separate funding for the added expenditure of conservation would improve accountability and provide incentives for government agencies better to conserve their listed heritage places.*

*Productivity Commission Finding 8.4*

*State, Territory and local governments do not have a systematic framework for the management of, and expenditure on, the conservation of government-owned heritage places. Management of government-owned places could be improved through: the introduction of conservation management plans; the recognition of the assigned heritage responsibilities to non-heritage agencies as community service obligations with separate funding; and transparent reporting of expenditure on conservation.*

*Productivity Commission Recommendation 8.1*

*The Australian, State and Territory governments should ensure that their agencies are issued with heritage asset management guidelines as part of an integrated asset management framework. Such guidelines could also be adapted for use by local governments.*

*Productivity Commission Recommendation 8.2*

*The Australian Government should implement reporting systems that require, as appropriate: the assigned heritage responsibilities to non-heritage agencies to be recognised as community service obligations and be funded separately; and that the heritage-related expenditures and achievements associated with the conservation activities for historic heritage places to be reported publicly.*

*Productivity Commission Recommendation 8.3*

*State, Territory and local governments should:*

- produce adequate conservation management plans for all government-owned statutory-listed properties;*
- appropriately recognise assigned heritage responsibilities to non-heritage agencies as community service obligations and fund them separately; and*
- implement reporting systems that require government agencies and local governments with responsibility for historic heritage places to document and publicly report on the heritage-related expenditures and achievements associated with their conservation.*

**Heritage Chairs Response (Finding 4.2, 8.1, 8.2, 8.3, 8.4, & Recommendations 8.1, 8.2 & 8.3)**

The Chairs support the responsible care of government owned heritage assets. Some jurisdictions have sound management systems already in place that reflect the Productivity Commission’s recommendations. Other jurisdictions are working towards this goal.

However, the Chairs consider that heritage conservation should be regarded as an integral part of government agencies’ “corporate social responsibility” in managing the environmental impacts of their activities. It should not be regarded as a separate “optional extra” that is contingent on special funding from government.

The Chairs contend that separately allocated funding of heritage conservation works for non-government heritage agencies is unnecessary as the vast majority of costs associated with the management of a heritage place would be incurred in the management of non-heritage assets. Likewise, the identification of heritage related expenses would be very difficult to distinguish accurately from the costs associated with best-practice government asset management. The compliance costs associated with recording and reporting these expenses are expected to outweigh any benefit obtained from holding the information.

**In relation to the recommendations for all properties to have conservation management plans, the Chairs maintain that whilst these documents are an important tool they are not necessary in every instance.**

**The same principles apply to Local Government heritage asset management.**

*Productivity Commission Finding 7.2*

*There are no compelling reasons to retain the statutory status of the National Trusts, given the nature and extent of direct government involvement in historic heritage conservation. Statutory status for the National Trusts lacks accountability and is inconsistent with best-practice government structures. It also erodes the independence for a non-government organisation.*

*Productivity Commission Recommendation 7.3*

*Those State and Territory governments that have specific legislation governing the operations of the National Trust should repeal such legislation.*

**Heritage Chairs Response (Finding 7.2 & Recommendation 7.3)**

**The Chairs note that public confusion over the respective roles of State Government heritage agencies and National Trusts is common to a number of jurisdictions. New governing legislation for the Trusts may reduce the extent of this problem in some jurisdictions.**

*Productivity Commission Finding 4.3*

*The level of assistance provided to non-government owners of historic heritage places varies considerably across State and Territory governments. The level of expenditure on government-owned heritage places is difficult to calculate since no jurisdiction requires explicit budgetary recognition of such expenditure.*

*Productivity Commission Finding 6.1*

*While under some circumstances (particularly where neighbourhood amenity is to be preserved) heritage listing can have a positive impact on property values, the constraints on development potential associated with listing can have a significant negative impact on the prices of individual properties (or parts of a heritage conservation area). The potential for owner's detriment to arise from development controls can differ significantly between properties.*

*Productivity Commission Finding 6.2*

*Current methods of identifying historic heritage places for statutory listing focus on the benefits expected to accrue to the community. Typically, there is little, if any, consideration of the costs imposed either, on the owner or the community more generally.*

*Productivity Commission Finding 7.1*

*The three-tier legislative framework is an appropriate model for government involvement in heritage conservation. It delineates the responsibility of each level of government for historic heritage conservation and aligns the scale of heritage significance with the appropriate level of government decision making.*

*Productivity Commission Finding 9.1*

*Negotiated conservation agreements are central to the heritage conservation system in some comparable overseas jurisdictions. Rather than being seen as a burden, negotiated conservation agreements are regarded as being superior than non-negotiated statutory listing in some jurisdictions.*

*Productivity Commission Finding 9.2*

*Negotiated conservation agreements should be targeted and used where the imposition of heritage controls would impose unreasonable costs on the non-government owner of the heritage property.*

*Productivity Commission Recommendation 9.1*

*Australian, State and Territory governments should enable non-government owners to appeal the statutory listing of their property on the additional basis that it imposes 'unreasonable costs'. This appeal should be available for non-government owners of all newly listed properties. In addition, it should also be available for those owners of properties that were acquired before the property was statutorily listed.*

*The following factors establish a prima facie case of unreasonable costs:*

- the zoning of the land permits higher value land use than that allowed under heritage restrictions; or*
- maintenance, repair or restoration costs required to continue a property's heritage significance impose an unjustifiable hardship on the owner.*

**Heritage Chairs Response (Finding 4.3, 6.1, 6.2, 7.1, 9.1 & 9.2, Recommendation 9.1)**

**Listing should be considered on the basis of heritage significance and does not in itself impose costs on owners. Australian and international studies have consistently shown that in the vast majority of cases heritage listing has no significant adverse impact on property values, with forgone development opportunity being the exception.**

**Any financial implications for the owner of a heritage place should be tested when and if the site is proposed for redevelopment, not at the time of listing. Valuation of the site in terms of the theoretical 'highest and best' use without encumbrances, will in many cases, significantly overestimate the real opportunity costs involved at the time of listing.**

**The Commission has overstated the prevalence overseas of negotiated conservation agreements as a preferred heritage protection tool, and failed to explain the necessity for substantive incentives as a 'carrot' in negotiated agreements. The Commission has argued against tax-based incentives such as those prevalent in overseas jurisdictions, particularly in the USA, thereby negating the Commission's own solution.**

*Productivity Commission Finding 5.1*

*There is a high level of discretion for decision making on heritage matters at the local government level, derived in part from limited State government guidance. This has resulted in inconsistent outcomes within many local governments.*

*Productivity Commission Finding 5.2*

*While statements of significance are recommended in State guidance material, no State requires in statute its local governments to provide an explicit statement of significance for each property in their local heritage lists. The absence of such statements seriously impairs subsequent decision-making about listed places.*

*Productivity Commission Finding 5.3*

*There is no scope for independent merit review of a local government's decision to designate a place as having heritage significance in its local planning scheme.*

*Productivity Commission Recommendation 10.1*

*In relation to State, Territory and local listing, State and Territory governments should:*

- mandate that statements of significance be prepared at the time that a statutory listing decision is being considered and that these statements should be prepared by the listing authority;*
- require that listing authorities directly notify owners of any intention to add their place to the statutory list;*
- require that listing authorities make available a preliminary statement of significance to the owner and the public prior to public consultation;*
- require that listing authorities follow timely public consultation procedures following a decision to consider a place for statutory listing;*
- require that listing authorities, when proceeding with a listing, provide a comprehensive final statement of significance to the owner of the property and make it publicly available;*
- implement an additional appeal grounds in relation to listing, based on unreasonable costs; and*
- ensure that listing authorities have the authority to negotiate and enter into heritage conservation agreements.*

## **Heritage Chairs Response (Finding 5.1, 5.2, 5.3, Recommendation 10.1)**

The Heritage Chairs agree with the intent of the recommendation with the exception of appeals based on “unreasonable cost”. The consideration of cost and feasibility is already part of the system in most jurisdictions, but is dealt with as part of development assessment, not as a listing consideration.

Statements of significance, and consultation with owners and the public, are already an integral part of the listing process in most jurisdictions.

The *Cooperative National Heritage Agenda for Australia* includes improved policy guidance on managing change to heritage places. All jurisdictions are working to improve the level of information available to owners of heritage places.

### *Productivity Commission Recommendation 11.1*

*State governments should ensure that all local planning instruments include the following information for each heritage zone or area:*

- *statement of significance applying to the whole area;*
- *outline of what type of use and development is permitted;*
- *outline of what type of use and development is prohibited; and*
- *development standards (or codes) that trigger automatic approval upon proposed developments meeting them.*

## **Heritage Chairs Response (Recommendation 11.1)**

The Heritage Chairs agree with this aim of improving clarity and certainty in the system. Most jurisdictions either have such processes in place or are working towards these.

### *Productivity Commission Recommendation 11.2*

*Upon adoption of recommendation 11.1, State and Territory governments should remove the requirement for a Heritage Impact Statement for properties not individually listed within a heritage zone.*

## **Heritage Chairs Response (Recommendation 11.2)**

**The Heritage Chairs disagree with this recommendation. In some instances a development adjacent to a heritage item can have a major impact on the heritage value of a place. If heritage is a community value then the community plays a role in its conservation.**

### *Productivity Commission Finding 4.1*

*The listing of properties on a State or Territory Heritage Register results in the relevant Heritage Council becoming the de facto planning authority. This differs significantly from the approach to non-heritage places where the local council is generally the planning authority. This can result in the need for dual approvals for any proposed development.*

### *Productivity Commission Recommendation 11.3*

*State governments should ensure that State planning policies do not contain local heritage exceptions which could be used to undermine the objectives of the State planning policy.*

## **Heritage Chairs Response (Finding 4.1, Recommendation 11.3)**

**Where local government policies are at odds with the overarching policy of the State planning strategy this can create contradictions that result in confusion to those proposing and/or managing development.**

**The Heritage Chairs agree that heritage conservation should never be used simply as a pretext to circumvent other planning policies. Equally, heritage conservation should be supported explicitly in State planning policies as an objective in its own right, and other policies should not be framed in such a way as to undermine a State's own heritage legislation and local heritage planning.**

*Productivity Commission Recommendation 11.4*

*State Heritage Acts should not contain powers to proclaim heritage zones or areas. Heritage zones and areas should only be imposed under the State's planning laws and regulations.*

**Heritage Chairs Response (Recommendation 11.4)**

The Heritage Chairs disagree with this recommendation (with the exception of South Australia where heritage zones and areas are created through the Development Act and not the Heritage Places Act 1993). Many of Australia's most significant heritage items comprise precincts or large areas and the level of heritage protection should be commensurate with the level of significance (i.e. national, state or local significance). The expertise provided by the national and State Heritage agencies is vital in assisting local government to manage places of high levels of significance. The Productivity Commission implies that heritage management is not already integrated with the planning system, which is incorrect. There are good models around Australia to support the Chairs' view.

*Productivity Commission Recommendation 11.5*

*State and Territory governments should modify their planning legislation and regulations to remove any requirement to take heritage considerations into account in relation to any individual property not already listed as locally significant, other than those requirements relating to heritage zones.*

**Heritage Chairs Response (Recommendation 11.5)**

The Heritage Chairs disagree with this recommendation. In some instances a development adjacent to a heritage item can have a major impact on the heritage value of a place. If heritage is a community value then the community plays a role in its conservation.

**The recommendation also makes an unrealistic assumption that heritage assessment and listing has now reached an “end-point”, when in fact there are inevitably gaps in existing listings that need to be remedied and changes in community values over time.**