
1 Introduction

This chapter introduces the Commission’s review of the existing policy and regulatory framework, and incentives provided by governments, for the conservation of Australia’s historic heritage places. It provides a background to government involvement in the conservation of historic heritage places and outlines the scope of the inquiry. It also outlines the Commission’s approach to, and conduct of, the inquiry, and reactions to the Commission’s Draft Report.

The Australian Government, with the support of the State and Territory governments, has asked the Commission to review the existing policy and regulatory framework and incentives provided by governments for the conservation of Australia’s historic heritage places.

As stated in the background to the terms of reference for this inquiry:

The conservation of our built historic heritage is important. Places of historic significance reflect the diversity of our communities. They provide a sense of identity and a connection to our past and to our nation.

This importance is recognised in the community. There is extensive involvement of individuals, corporations and community groups. In addition, governments at all levels play a significant role in identifying, protecting, interpreting and presenting historic heritage places. Governments also provide incentives for the conservation of historic heritage places in private ownership.

1.1 Background

Private sector involvement in the conservation of historic heritage places is extensive and pre-dates formal government involvement.

Origins of community and government involvement

Widespread organised community involvement in the conservation of Australia’s historic heritage places dates from the formation of the National Trust of Australia

in Sydney in 1945¹. The Trust was formed in response to the destruction of old colonial buildings for site redevelopment along Macquarie Street and the clearing of bush for suburban development on the North Shore (sub. 40, p. 45). The subsequent formation of National Trusts in other States — in four cases backed by State legislation — led to the formation of the Australian Council of National Trusts in 1965. As the leading ‘not-for-profit’ heritage organisations, the Trusts have been strong advocates of statutory protection for heritage places and have also assembled a large volunteer workforce. They have expended considerable resources on identifying, owning, managing, interpreting and presenting historic heritage places. Their roles have changed considerably since they were first formed. In part, this has been in response to government involvement in heritage conservation. Many are currently re-examining their role in light of the pressures currently facing the conservation of historic heritage places and the recent changes to government involvement.

Formal Australian Government involvement in the conservation of historic heritage places dates from the mid-1970s when, following the Hope Committee of Inquiry into the National Estate (CoI 1974), the Australian Heritage Commission was formed (in 1976) to identify and list, in the newly established Register of the National Estate (RNE), important natural, indigenous and historic places throughout Australia. This listing recognised their heritage importance, but made no distinction as to the level or scale of significance. Reflecting, in part, the Constitutional division of powers, there were no legal restrictions imposed by the Australian Government on private owners in the way they managed, maintained or disposed of listed properties. However, restrictions were imposed on the actions of Australian Government Ministers. They could not make any decisions that would threaten or endanger the heritage values of any place or item listed on the RNE. Financial assistance for conservation was made available occasionally to some places listed on the Register. This approach to historic heritage conservation at the national level prevailed until the current three-tier framework was introduced in 2004.

State and Territory government involvement in the conservation of historic heritage places also dates from the mid-1970s, with the passage of separate legislation to identify and protect significant heritage places and the environment; commencing with Victoria and quickly progressing to New South Wales and South Australia. Arguably, it was political activism in the 1960s and 1970s — in the form of ‘green bans’ and the like, stopping bulldozers from demolishing old buildings in major cities — that finally led to governments adopting more formal arrangements, with mechanisms for the identification, protection and conservation of historic heritage

¹ For information on the early history of heritage protection, see the Professional Historians’ Association (NSW) submission (sub. DR306, pp. 10–12).

places. In establishing their individual statutory Heritage Registers, the States and Territories drew on the Australian Heritage Commission's listing of places in the RNE and on lists compiled by the National Trusts.

Australia ICOMOS — the Australian chapter of the International Council on Monuments and Sites — has also been important to the development of government involvement in the conservation of historic heritage places in Australia. In particular, it has developed and subsequently refined the Burra Charter, which sets out 'best practice' principles for cultural heritage professionals to use in the assessment of heritage values and of their conservation. The Charter forms the basis for criteria used for formal listing by governments in Australia and overseas. It is designed to assist 'case-by-case' enunciation of heritage values, and (deliberately and explicitly) takes no account of either the number and quality of like properties already listed or of the cost of conservation, when assessing whether a particular place is significant.

Recent changes

The policy framework for historic heritage conservation has undergone significant changes over recent years. On 7 November 1997, the Council of Australian Governments agreed in principle to the Heads of Agreement on Commonwealth and States Roles and Responsibilities for the Environment. The Agreement was subsequently signed by all heads of governments and the President of the Australian Local Government Association. It provides for the Australian Government to have primary responsibility for environmental matters of national and world significance, and for the State and Territory governments to have primary responsibility for matters of State and local significance. With the exception of Tasmania, the States have since variously assigned to local governments matters of local environmental significance.

The Australian Government's implementation of key aspects of the 1997 Agreement was formalised with passage of the *Environment Protection and Biodiversity Conservation Act 1999*. After further consultation and legislative debate, historic heritage was formally included under that Act in 2003. The amending and accompanying legislation — *Australian Heritage Council Act 2003* and the *Australian Heritage Council (Consequential and Transitional Provisions) Act 2003* — replaced the statutorily-independent Australian Heritage Commission with an advisory Australian Heritage Council and established two new heritage registers: the National Heritage List, which lists natural, indigenous and historic places of 'outstanding' national and world heritage significance; and the Commonwealth Heritage List, which lists Australian Government owned or controlled places of 'significant' heritage importance. Statutory recognition of the

Government's pre-existing RNE was continued. The RNE currently lists over 13 000 sites, of which some 75 per cent are historic places (Australian Heritage Council, sub. 118, p. 7). Those places include sites of national, State and local significance.

State, Territory and local government involvement in historic heritage conservation has also evolved to reflect this new national framework. An outline of the resulting three-tier system and the contribution of the private sector is provided in chapter 3, while more detailed information on the State and Territory, and local government systems (including the latter's interaction with local planning schemes) is provided in chapters 4 and 5, respectively.

Despite general acceptance of the new three-tier system, participants raised many implementation and operational issues regarding the various government systems.

1.2 Scope of the inquiry

The Terms of Reference initially refer to 'historic *built* heritage places', but subsequently refer simply to 'historic heritage places'. They also refer to the amendments to the *Environment Protection and Biodiversity Conservation Act 1999*, which commenced operation in January 2004. As indicated above, those amendments relate to the placing of 'historic' heritage at the Australian Government level under the same legislative umbrella as natural and indigenous heritage. Separate legislation applies for movable cultural objects (*Protection of Movable Cultural Heritage Act 1986*) and shipwrecks (*Historic Shipwrecks Act 1976*).

It was clear from initial discussions with governments and a range of other interested parties, and from subsequent submissions, that this inquiry should not be limited to built heritage, rather it should encompass all historic heritage places. Accordingly, this inquiry focuses on the system for the conservation of historic heritage places and therefore covers:

- buildings and structures (such as bridges, cemeteries, churches, factories, houses, monuments and roads);
- physically-created places demonstrating ways of life, customs, land use or designs that are no longer practised (such as gardens and stock routes);
- physically-created landscapes with evidence related to particular activities (such as fishing areas, mining sites and sawpits); and

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- other places of historic significance (such as archaeological sites, Captain Cook's landing place at Botany Bay and the Leichhardt tree in Taroom).²

Also, some places may embody more than one type of heritage, such as historic huts in national parks.

Not under reference is the conservation of: natural heritage (e.g., the Great Barrier Reef); indigenous heritage (i.e., places of significance to Aboriginal peoples and Torres Strait Islanders); moveable cultural heritage (such as artefacts, paintings, sound and movie recordings, aircraft and steam engines); and intangible heritage that does not form an integral part of a place (e.g., folk history).

The conservation of historic heritage has many parallels with the conservation of natural heritage. Also, legislatively and operationally there are many links between the conservation of historic, natural and indigenous heritage. Participants, including the Australian Heritage Council (sub. 118, p. 3) and the Australian Council of National Trusts (sub. 40, p. 31), while acknowledging the scope of this inquiry, expressed the view that conservation of historic heritage places generally should not be viewed in isolation from heritage conservation more generally. The Commission considers there is merit in having a national framework for the conservation of historic heritage places that is compatible with the framework for natural heritage.

Australia has many historic heritage places. They range from internationally recognised places, such as the World Heritage listed Royal Exhibition Building and surrounding Carlton Gardens in Melbourne, to less well known houses, hotels and other places of business. Some heritage places are important to the history of local communities (e.g., Old Government House in Bathurst), while others have State or national significance. Certain groups in the community, such as architects and engineers, also have particular views on what constitute historic heritage worthy of conservation.

As defined by the Chairs of the Heritage Councils of Australia and New Zealand, conservation for the purposes of this inquiry means:

... all the processes of looking after a heritage place so as to retain its cultural significance. It includes preservation, maintenance, restoration, reconstruction, adaptation and interpretation. These terms have specific heritage definitions, as described in the *Australia ICOMOS charter for the conservation of places of cultural significance, 1999 (Burra Charter)*. (sub. 139, p. 4)

Conservation does not require a place to be preserved in its original condition or use. Rather, it is the retention of its cultural significance that is important.

² For some, it may be a plaque naming a mountain, or a collection of mountains (for example, 'Mount Kosciuszko' or the 'Glasshouse Mountains').

A further definitional matter is the distinction between heritage zones and heritage lists. Essentially, zones comprise contiguous conservation areas of adjoining properties, while places (incorporated in heritage lists) comprise physically distinct individual places.

It is also recognised that there are three distinct stages of heritage conservation, namely:

- *recognition* — involving identification and listing (which also introduces regulatory controls);
- *management* — including the application of regulatory controls and, where warranted, the provision of incentives; and
- *celebration* — covering promotion, display and use of a historic heritage place.

In reviewing the existing policy framework and incentives for conserving historic heritage places, the Commission has not sought to examine the merits of conserving particular places, except where this has provided insight into how the existing arrangements operate or could be changed to deliver better conservation outcomes.

1.3 The Commission's approach

In accordance with the Terms of Reference and the broad policy guidelines set out in the *Productivity Commission Act 1998*, the Commission's overriding concern in assessing the existing policy framework and incentives for the conservation of Australia's historic heritage places is the wellbeing of the community as a whole, rather than just the interests of any particular group or industry. In undertaking its analysis and formulating its advice, the Commission uses processes that are open and public. Discussions with interested parties, submissions from participants, open public hearings and distributing a Draft Report for comment are important parts of that process.

The terms of reference also require the Commission to examine a number of matters, including:

- the main pressures on the conservation of historic heritage places;
- the economic, social and environmental benefits and costs of the conservation of historic heritage places;
- the current roles and contributions of governments, owners, community groups and other stakeholders;
- the impacts of regulatory, taxation and institutional arrangements, and of other impediments and incentives that affect conservation outcomes;

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- emerging technological, economic, demographic, environmental and social trends that offer potential new approaches to the conservation of historic heritage places; and
 - possible policy and program approaches for managing the conservation of historic heritage places and competing objectives and interests.

Chapter 2 discusses the value of heritage and reviews the current pressures and emerging trends in historic heritage conservation. The issues of estimating specific dollar values of historic heritage and the rationale for government involvement in its conservation are discussed in chapter 6.

The Commission's assessment of the strengths and weaknesses of the existing arrangements for the conservation of historic heritage places is given in chapter 7.

In formulating its recommendations, the Commission has sought to build on the many strengths of the existing arrangements. It has not been necessary to start afresh. The Commission's recommendations for improving the management of government-owned historic heritage places are given in chapter 8, while its recommendations for improving the incentives for privately-owned heritage conservation are given in chapter 9. The appropriate mechanisms for implementing these latter recommendations, along with implementation, funding and assistance issues for each level of government, are discussed in chapter 10. Chapter 11 considers specific issues relating to improving the operation and management of heritage zones (also known as heritage areas, precincts or overlays).

1.4 Conduct of the inquiry

The Commission advertised the commencement of the inquiry in the national press and invited public submissions. To help those preparing submissions, an issues paper, exploring some areas where the Commission sought input, was released in May 2005. A website (<http://www.pc.gov.au/inquiry/heritage/index.html>) was also established, on which inquiry-related circulars, submissions received and transcripts of the initial round of public hearings were placed.

The Commission commenced informal discussions with interested parties soon after the inquiry was announced. All capital cities, except Darwin, were visited, as well as a range of cities, towns and historic places in rural and regional Australia. The Commission spoke to about 90 organisations and individuals, representing a range of interests, including: Australian, State and Territory government departments and agencies; local governments and local government associations; National Trusts; museums; historical societies; professional organisations with an interest in heritage

and its conservation; tourism organisations; and property owners and representatives of property owners.

The Commission received 192 submissions prior to release of the Draft Report and a further 224 submissions in response to its findings and recommendations in the Draft Report (i.e., 416 submissions in total). During July and August 2005, public hearings were held in all capital cities (Darwin hearings were conducted via video link). A second round of public hearings, to discuss the findings and recommendations in the Draft Report, was held during January and February 2006 in most capital cities (Perth hearings were held via video link). Lists of visits undertaken, submissions received and those who appeared at the public hearings are provided in appendix A.

In September–October 2005, the Commission undertook a survey of all local councils to better understand their role in the conservation of historic heritage places. Details of the survey and its results are given in appendix B.

Appendix C provides the methodology for, and results of, a hedonic pricing study of two local government areas (i.e., Ku-ring-gai and Parramatta), which was undertaken by the Commission to better understand the effect of heritage listing on property values.

Appendix D provides details of State and Territory planning regulations and of the heritage listing assessment processes undertaken by local governments.

Examples of heritage conservation agreements, negotiated both overseas and in Australia, are in appendix E, while examples of government asset management guidelines are in appendix F.

1.5 Response to the Draft Report

The Commission's key recommendation in the Draft Report was that, for non-government-owned (private) property assessed as being a place with significant historic heritage, statutory listing should be only with the agreement of the owner on the basis of a negotiated conservation agreement (NCA) and that the listing would remain while the agreement was in force.

The main purpose of this recommendation was to encourage governments, especially some local governments, to consider explicitly the cost consequences of their decision to apply proscriptive regulation to protect the heritage values of a place, at the same time as they are considering recognition of them and the benefits they contribute to their community, and only then formally include the place on

their statutory list. In particular, NCAs were also seen as a cost-effective way of ensuring the on-going conservation of redundant structures (such as woolsheds and churches in the countryside, and industrial plant in cities). Proscriptive regulation tends to be ineffective in such circumstances and some significant heritage items are currently disappearing through ‘demolition by neglect’.

There was a very strong reaction to the Draft Report. Responses covered the following matters.

- Much of the debate centred on the Commission’s key recommendation, with participants’ views being very polarised, either for or against it.
- There was significant misinterpretation and misunderstanding by many heritage industry participants of the intent of this and other associated recommendations. For instance, many incorrectly believed that the Commission was advocating the removal of all regulatory controls, thus leaving heritage to the ‘vagaries’ of the market, and that NCAs would have to be renegotiated at each change of ownership.
- Key Australian/State government and Heritage Council stakeholders argued strongly against what they saw as a ‘voluntary listing system’ which would ‘dismantle 30 years of heritage policy evolution’. Accordingly, they dismissed the NCA-based proposal as being unworkable and akin to ‘throwing the baby out with the bathwater’. This reaction was due mainly to the belief that all places identified as having ‘heritage significance’ should be protected irrespective of cost considerations and, therefore, that identification and listing of heritage significant properties should remain totally separate from management and incentive considerations. However, they had no objection to NCAs being applied after listing (where heritage officials could negotiate from a position of strength).
- Many heritage industry participants were also critical of the Commission not paying sufficient attention to what they saw as the main problem, the lack of government funding.
- In stark contrast, many private property owners, some local councils and a range of other interested parties saw considerable benefit in achieving a better balance between public and private provision of heritage services, and in cost sharing arrangements.
- Given the Draft Report’s emphasis on solving problems at the ‘local significance’ level, a large number of new responses were received from local government entities. Most emphasised resource constraints in implementing the proposed system and that it would result in a significant loss of built heritage.
- In addition, some participants considered the Draft Report focussed overly on built heritage and were critical of the absence of discussion about the

implications of the recommendations for other historic heritage places, such as archaeological sites and cultural landscapes.

While there were polarised views on the key recommendation, there was widespread support for a number of the other draft findings and recommendations, particularly in the areas of rectifying data inadequacies, the lack of adequate statements of heritage significance, and the implementation of conservation/management plans and reporting systems at the Australian and State/Territory government levels.