



**TRANSCRIPT  
OF PROCEEDINGS**

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**PRODUCTIVITY COMMISSION**

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

**DR N. BYRON, Presiding Commissioner  
MR T. HINTON, Commissioner**

**TRANSCRIPT OF PROCEEDINGS**

**AT MELBOURNE ON TUESDAY, 14 FEBRUARY 2006, AT 11.25 AM**

**Continued from 10/2/06 in Adelaide**

**DR BYRON:** Good morning, ladies and gentlemen. Welcome to these public hearings of the Productivity Commission's inquiry into the conservation of Australia's historic heritage places. Thank you all very much for coming today. My name is Neil Byron and I've been appointed the presiding commissioner for this inquiry. My fellow commissioner is Tony Hinton.

This inquiry stems from terms of reference the commission received from the Australian treasurer with the endorsement of all state and territory governments. It covers the policy framework and the incentives in place to encourage the conservation of heritage places, including built heritage. We released a draft report in early December which contained a number of draft recommendations and findings. Submissions have been coming into the inquiry following the release of our draft report. We now have about 253 submissions. These are available on our web site except for those that have come in in the last couple of days.

The purpose of these hearings is to provide an opportunity for any interested parties to discuss their submissions with the commission and put their views on the commission's draft recommendations onto the public record. We've already completed hearings earlier this month in Sydney, Brisbane and Adelaide, and following these hearings here today we will be holding the last of our draft report hearings in Canberra at the end of the week. The final report will be submitted to the Australian government in April this year. Under the Productivity Commission Act, the government is required to table the report within 25 parliamentary sitting days of receipt.

The Productivity Commission always tries to conduct our public hearings in a very informal way, but we don't run these hearings as if they were public meetings with interjections from the floor et cetera, but we do always make opportunities for anyone in the room who wants to come forward and put something relevant onto the public record, to do so before the day's proceedings are over. Today's hearings will be officially transcribed and the transcripts will be put on the commission's web site as soon as they have been checked for accuracy. They will also be available publicly through libraries around the country and at the commission's library.

I should also mention that the Productivity Commission Act grants immunity from civil prosecution for damage due to the making of a statement, submission, getting information on a document so long as it is made in good faith. To comply with the Australian government Occupational Health and Safety Legislation, I have to inform everybody that in the very unlikely event of an incident, alarms will sound. We will go out through these doors, back towards the reception and then down through the fire escape. The other little item of housekeeping is that the toilets are out near the front reception and the elevators. I think that's all the housekeeping I need to do.

Without any further ado, I would like to call on our first participant this morning, Mr Gary Vines. Thank you very much for coming and thank you for your written document. If you would just like to take a seat there. If you would like to take us through the main points you want to make from your written submission in maybe 10 or 15 minutes and then Tony and I would like to follow up some of the points that you raised perhaps. Thank you.

**MR VINES:** Thank you very much for the opportunity to present at the hearing. I've previously made two written submissions. The first, which I think is number 104 in your list, looked at some very general options for improving heritage management, looking at the Victorian perspective, and was based on my own 17 or 18 years working in the heritage industry, both as a private consultant within government heritage departments and through community organisations like the National Trust and local historical museums.

The second report I submitted, written submission, number 198 I think it is, is actually a response to your commission's draft report. I think most of my comments today will be related to that one but what I'd like to do is just finish off with some other ideas which I guess are my personal views of what I would like to see come out of the commission like this, and I think the Victorian heritage industry in particular was looking forward to hearing from this commission.

It's my feeling that the draft report has come as something of a shock to the heritage industry, primarily because of its main recommendation of replacing the regulatory framework that's existed for 30 years and has been progressively developed in Victoria with one for voluntary agreements for heritage. Because of that it really reads as if it's ideologically driven and it has a very strong economic rationalist approach to it, perhaps where private profits are the main game.

The other problem I've had in trying to analyse your report is that it doesn't appear to be based on very hard factual evidence. All the evidence isn't provided or the submissions that have been presented to it have been selectively quoted or used. I think the inadequacy of data on the administration of heritage and its success and the costs is something that has been recognised fairly widely. Some of the argument seems to be based on hearsay - particular things like people burning down houses because of their perceived problems with heritage listing, or issues like demolition by neglect. I'm not arguing that those things don't exist but I think if they're being used as evidence for a radical change of the system, they really need to be documented fairly thoroughly so that we can see whether it's really happening and what the instance is.

But it's also recognised in this report that the existing systems of heritage - certainly when you're reading it from a Victorian perspective - is 90 per cent effective. 90 per cent of submitters to the report, or possibly even more - I haven't

read the last batch that have come through - argue for improvements to an existing regulatory framework through an additional or augmented incentive program. The report seems to be focusing on that 10 per cent that's a problem, and using that as a basis for changing the whole system. The argument there is that listing and regulating heritage places is seen as unfair, but this is actually a basic element of modern planning and environment law, not just in Victoria or Australia but worldwide.

I think the report fails to recognise the success of heritage listing in the last 30 years and particularly in Victoria or by say comparing the losses of the last decade, which have occurred certainly, with what went on in the 50s and 60s before we had the existing regulatory framework and in a period when it was really a voluntary system. The economic analysis, mostly in chapter 6 of the report, appears to be very theoretic without those hard figures so we can actually analyse what the cost benefit is. I think we first need to know those costs, what the additional cost is to a person maintaining a heritage property to be able to make a judgment. Unfortunately the report seems to have made that judgment without the figures.

In recommending a voluntary system with incentives for conservation, the costs of those incentives aren't included either. I did my own back-of-the-envelope calculations in one of the submissions I put in and came up with a figure of something like \$150 billion needed to maintain the present levels of heritage conservation without a regulatory system where you get a substantial opposition to it from private property owners, and those private owners would have to be compensated for their perceived financial loss. Now, that's probably way off the mark, but without the assessment, how do we know that?

I guess, what is it that we were hoping to find in the report? The conclusions of the draft report I think stem from asking the wrong questions, or having determined the answers before any questions were asked. So I'll propose some of the questions and some of the recommendations that people I know in the heritage industry would have liked to see. There's an alternative position I think provided in numerous submissions, particularly those from groups like the ANCT and Victorian heritage organisations that I've been involved with, and that's that the existing system has flaws but needs strengthening and proper resourcing rather than dismantling. It needs to be made more consistent and cost-effective, it needs more universal application with greater predictability and outcomes and, above all, it needs effective funding.

Since the commission seems to like the analysis I'll go along with it, and what we need is more carrots not fewer sticks. So the sort of recommendations we would look at is find out the facts. It's acknowledged, I think, by the commission report and submitters, that hard data on heritage is hard to come by. So what is our heritage? How many places are there? Where are they? What condition are they in? What has

not been identified, listed or protected? What's the cost or benefit of listing? How much does it cost to maintain a heritage house? How does that compare to any other sort of house? How do we measure the benefits? How much does the heritage bureaucracy cost to run? We need these sort of figures if we're going to come up with that balance.

So my recommendation there is develop an integrated approach to economic and statistical data collection, analysis and research at the Commonwealth level - and I guess that should pass down to other jurisdictions - in part restoring some of the functions of the Australian Heritage Commission that did that sort of work in the past, and prepare an annual state of the environment report that measures progress in heritage conservation. The second area is plug the gaps, make the process more consistent. So how do the different state systems compare? I think one of the things that isn't really clear in the report is that there are some very different systems occurring in the various states and Victoria.

I think the Victorian example has been suggested as a very good system that has been working effectively and has some good outcomes but other states perhaps don't come up to that level. So maybe we should be picking what is best in each jurisdiction or each government level and applying that to the right jurisdiction. There are other gaps in understanding what sort of heritage we have, what areas are being undervalued, so we should carry out those gap studies. Do we have a sufficient representation of Gothic churches on our lists and under protection, compared with, say, industrial sites.

Where does historic archaeology and cultural landscapes fit in? There's two aspects that I've noted in some of the submissions but don't seem to be discussed in the report at all. Although this was obviously confined to the built environment and historic heritage, a lot of people in the industry see an artificiality about separating Aboriginal cultural heritage from European cultural heritage. So my recommendation there is to promote those gap studies to show what heritage is under-represented, including the broader definitions of heritage places, archaeological sites, moveable objects and cultural landscapes in heritage management at all jurisdiction levels to determine appropriate changes to relevant Commonwealth state and local heritage planning and regulation systems to ensure regular and consistent approaches, and to support a dialogue between state and Commonwealth heritage bodies to work towards a more nationally consistent approach. Now, certainly those things are being dealt with in other venues.

My third area is more carrots: provide the money to do the job properly. Certainly that's been the whinge from the heritage industry for a long time. We just don't have the money that's necessary to do the work that's required under the legislation. Many poor rural shires can't afford to preserve their heritage. They certainly couldn't afford to provide compensation under a voluntary system, so we

would be simply saying to them that their heritage would be lost unless we put the cost back onto state or Commonwealth bodies anyway. So what is the right level of state funding? How should the Commonwealth help other submitters of suggested ideas like tax incentives, seeding funds, coordination of efforts and training, developing national contextual studies and guidelines, and also determining the best mechanisms and appropriate targets for funding, such as grants, loans, rate relief, voluntary assistance schemes, a national heritage fund or even lottery funds?

So my recommendation there is develop equitable and efficient funding schemes, including direct funding and a range of financial incentives and expand the National Heritage Trust to include cultural heritage. That's an argument that has gone on for a long time since it was first created. Why is it focusing solely on the flora and fauna and not other aspects of our heritage? Establish a heritage lottery fund. I think other submissions give examples of how the English heritage lottery fund has worked very effectively.

The next area are sharper sticks: make the process more consistent. I would argue that if there is a case of purposeful demolition by neglect or arson as a way of getting around heritage protection laws, then we should be prosecuting those people, not abandoning the legislation. Part of the problem I think is that the regulatory system does fail sometimes and that's perhaps because of lack of policing. So are the penalties appropriate or consistently applied? Are they a deterrent? Are owners sufficiently informed of what they have to do? Is there sufficient enforcement? Heritage Victoria has employed an enforcement officer in the last few years who has easily recouped her cost to the state government by undertaking those prosecutions where they should be done.

They're not people who have not understood what their requirements were; they're people who purposefully went out to try and get around the legislation that was required, and they should be prosecuted. So my recommendation there is ensure that the regulations are consistently and visibly applied so that midnight demolitions, demolition by neglect and spiteful arson is eliminated.

My last area is promotion. I think the success of heritage in Australia has been that it has started from a grassroots level and it has involved a fairly substantial public education campaign often by the public, so through the National Trust and the preservation organisations. There has been a complete turnaround in attitudes to heritage in the last 30 years. I think the surveys that have been conducted show that in the 1950s people didn't think that Australia had a heritage worth preserving, and today the vast majority of people believe that heritage is something that is worth keeping and important to all of us.

We can build on this and improve conservation through public education and participation. So what is the public perception of heritage, and is heritage properly

understood today? Can education lead to better outcomes? How do we deal with the confusion of lists - and this is something the commission report has brought up, that you ask people in the street and some people think the National Trust listing stops them from painting their front fence, or that if they're on the state heritage list they can't touch their property, they can't do anything. They can't put on their rear extension, or an office block can't refurbish the modern practices. So I think those areas of public confusion really need to be addressed.

My recommendation there then is to undertake public education to raise awareness of the value of our built heritage and help the public - and especially owners - understand how the system works and particularly how they can benefit from it. I think it's a sign of a mature culture and society that as a group it knows and keeps its heritage. Thank you very much again.

**DR BYRON:** Thank you very much, Gary, for all the time and effort that you put into both submissions and coming here today. I respect your expertise and competence as an archaeologist and so on, and Tony and I clearly are not heritage specialists, but we are specialists in public policy, and what we've been asked to look at is the public policy framework for heritage conservation in Australia. At the risk of sounding like an economic rationalist, which is a boogie word to scare young children I don't normally use, the approach that we've taken is to ask: what are the public benefits from heritage conservation and what are the costs to society of doing this? I would argue that if the benefits are large, in the order of millions, and the costs are in the order of hundreds or thousands, then clearly that conservation should happen, it's in the public interest to do so.

But there's a second question: what if all those costs of providing a service to the broader public and to future generations are borne by just one or two individuals, such as the property owner? Surely it's possible to negotiate a mutually beneficial outcome where if the public benefits are in the order of millions and the costs are in the order of thousands, or even tens of thousands, the public at large could compensate the individual or come to some mutually acceptable arrangement so that both sides are better off. Society gets the conservation that they want and value very highly, and the individual who owns the place is left no worse off. Now, does that sound unreasonable to you?

**MR VINES:** No, it doesn't. I think my real issue with that approach is that we don't have the figures to make that analysis and if we take it sort of down to the individual level, I've been to a lot of hearings, where within the Victorian state legislation, there is a provision for considering undue financial hardship in heritage and often people will come to a hearing and say, "This listing is costing me undue financial hardship," but what they're not doing is putting the figures on the table, opening their books up. I suspect that's because it's very difficult to prove that in a commercial situation where it might come down to a developer, say, making

25 per cent on his investment compared to 20 per cent.

**DR BYRON:** We've got a number of examples of where people can very clearly document - and they're not developers, they're pensioners who own the property et cetera - but the corollary to what I was saying is that if the benefits to society are very large and the costs to the owner are relatively small, surely they can negotiate something that makes everybody better off, a win-win.

**MR VINES:** Yes, but ultimately the success of that negotiation is based on money amount. If the issue is, say, with the pensioner who can make more money by selling their house to a developer because they can put four units on it and knock down the weatherboard house, then we need to know what that amount is, not just in that individual circumstance or the average but the total cost, and also the application of it. How many times is that going to occur? If what you're suggesting is going to work, we need to know what that cost is to the community as well because it may be in the tens or hundreds of millions of dollars to convince all of those individual people or it might just be a tiny little bit of cream on the top but we can't make that judgment. A lot of what you're suggesting should be done here is based on that final equation. You can't make that judgment unless we have - - -

**DR BYRON:** What we're suggesting is a process whereby every time somebody looks at a property and considers it for a statutory listing, that question is asked rather than being deliberately not asked in terms of - you know, as I understand the current system, there is no point in the process whereby somebody says, "How great do we think are the benefits of retaining this place compared to the likely cost and who is going to wear those costs and is there some way we can sort out a system whereby society benefits and the owner of the property is no worse or not substantially worse off than they were before?" Given that every place is unique by definition, there is no cookie cutter rule, there is no formula that says the benefit is always X times the cost of - you have to look at every one, which is why we're suggesting as a process, as part of looking at each proposed new addition to a heritage list, somebody should ask the question.

Now, if you're saying that it would cost \$150 billion to compensate private owners, I can rephrase that by saying it in this way: the system as it is at the moment is imposing \$150 billion of costs on private owners because that's how much you think would have to be offered to them to make them no worse off. I think even if it's a tenth, a hundredth, a thousandth of that amount, it's still a huge imposition on a relatively small number of individuals to provide a benefit for the rest of us. Another measure of a civilised society is how it treats its minorities and I would suggest owners of historic heritage sites are probably a minority in Australia. Most families will not be the owners of state or locally significant heritage places. So if you're telling me that you think that the cost to get people's willing compliance is so huge that states and local governments couldn't possibly afford that, I find that far more



disconcerting than anything that we've said before.

**MR VINES:** But that's not what I'm saying. What I'm saying is we don't have the figures to make that assessment. I've taken one extreme and say potentially this is what the cost is, so the result will be no conservation of those sort of places, but it might be that the cost isn't so great, so maybe your whole argument doesn't stand up because we aren't putting a huge cost on these individual owners, but we don't have those figures in here, so we can't make the judgment.

**DR BYRON:** In the Sydney public hearings, it was suggested to us by a couple of heritage conservation specialists that perhaps 90 per cent of people will happily or will accept - whether happily or otherwise - a heritage listing because the costs that are imposed on them are relatively minor. They're a few hundred dollars a year or something. In some cases the benefit they get from saying, "I live in a heritage listed property," is worth more than a few hundred dollars a year to them. So the point I think is right that in many cases, the amount that you would have to offer to such people is token; in fact a gold star and a pat on the back would probably satisfy those people who don't see themselves being severely restricted or having costs imposed on them. But there are other cases - and I don't know whether it's five, 10 or 15 or whatever per cent - where there are very real and substantial costs in the order of hundreds of thousands of dollars in private costs and those are the cases which I think go to the appeals process.

In many jurisdictions, and I'm waiting to check what it is here in Victoria, the only basis for appeal is on whether or not a place is significant, not on the basis of - which doesn't leave the opportunity for the owner to say, "Yes, I know this place is significant, but it's going to take a couple of hundred thousand dollars out of my life savings." So the corollary of that is that the basis for appeal might be broadened.

**MR VINES:** The situation in Victoria is that those costs are taken into account at a permit process, not in the initial identification and listing but later when you come up with an applicant who wants to do something. I think a difficulty of the logic of making the listing dependent on the costs is that we can't know the whole history of costs of that place. There have been examples where what you're suggesting has been done and that's where there's been a listing hearing, a registration hearing I think under the old Historic Buildings Register, and a determination of a permit hearing at the same time.

One example I remember from the 1980s is the Sunshine Harvester Works from H.V. McKay, a corrugated iron and timber factory complex where it was judged, "Well, we're going to put a huge cost on this owner," not just the owner but the whole community - this was the centre of a suburb which had become redundant if we prevent any use for it. So a decision was made at that point that we would list it and then at the same time issue the demolition permits. Now, apart from the

argument about whether that was an appropriate way or whether we lost opportunities at that stage for preservation, those two things still occurred separately. The registration was one argument based on its significance. The demolition permits was another argument based on costs, and that certainly occurs all the time. The difficulty with bringing them together is that you end up having one chance to decide if a place is significant and if the circumstances at that point mean that somebody has a development application and they're going to lose money, then it ceases to be significant. I think there's a contrary logic in the process that would result in the loss of more heritage.

**DR BYRON:** We're not trying to bundle them together; on the contrary, we're trying to unbundle them. As we've been repeatedly saying, we actually see a variety of lists, so as a result of a heritage survey or even a quick drive-by, you could have a list of a thousand places of possible heritage significance, candidates potentially, and then those are individually assessed, then you come up with, say, 500 that have been assessed as, say, locally significant. What we're suggesting is rather than just going straight from there to the statutory listing and all the consequences that relate to the subsequent management, another step in the chain that says, having assessed them as significant, according to the Burra charter - exactly the way it's done now - who is going to be responsible for looking after these places; the conservation management, good practice in looking after it; how much is it going to cost and who's going to pay for it? How are the costs of doing that going to be shared between the owner of the property and the society as a whole as the beneficiary?" So we're trying to inject that additional step in the process after the assessment of significance and then come up with another list.

Now, I don't know whether it would have 500 or 450 or, you know, X number of properties. But we're suggesting that it would be better to have a list of places where the conservation management outcomes were guaranteed and assured by contract rather than having a list, a much larger list, of places that we would have liked to have seen preserved but rather we're seeing them deteriorate before our eyes because we've never worked out who's going to do it and how it's going to be done, and who's going to pay for it.

So in order to get the conservation management outcomes what we're saying is you can't just create a list based on assessment of significance and then say, "Job's done," walk away from it. You've got to say, "How do we get from assessment of significance to good conservation management outcomes on the ground?" and that's why we're saying there's a step missing which involves very detailed discussions with the owner of the place and if there looks like being serious costs involved then, you know, a mechanism. Somebody has to sort out who's going to wear those costs and the absence of doing that is where you get all these perverse reactions, overreactions, the myth, hysteria and all the rest of it, that leads to the most perverted of outcomes where a place that has been assessed as significant is actually vandalised

because the owner, rightly or wrongly, is afraid of what the consequences might be.

**MR VINES:** Look, that's something that I argue strongly against. I don't believe that occurs or that it occurs to such an extent that it affects the quality of heritage conservation. There are examples but that's not what the general pattern of heritage conservation is. In fact it's the opposite, that by - - -

**DR BYRON:** No, sorry, I wasn't saying it was typical.

**MR VINES:** What I was arguing though - - -

**DR BYRON:** Even if it only happens in 2 or 3 per cent of cases I think it's still a problem that comes back to a flaw in the system and that, you know, I would rather not see those sorts of perverse outcomes with places of known significance unnecessarily, perversely damaged.

**MR VINES:** Look, I think that is a result of peculiar personalities, something that we can't actually manage through any sort of administrative or legislative process, that there are people who just have the view that no-one tells them what they can do with their place. If somebody comes up with a regulation then they'll find a way of getting around it or they'll go and burn the thing down - and I've heard that from people, you know - "You people aren't going to tell me what to look after." And they're the sort of spiteful owners that compensation wouldn't have any effect on as well, because they would say, "Well, you know, I have the right to decide what I do with my property and I'm not worried about your money. I'm not going to take that. I'm going to make this decision."

But I think the compulsory listing - well, not compulsory - but the regulated listing process has a beneficial effect in it creates a perception that heritage is valuable and the rest of the community considers it important, and so you get the opposite to what you're talking about, which people who have been told that their place is listed and it's of heritage value, they will appreciate it more and they will actually put more effort into conserving it rather than let it fall down. I think that outcome is far greater than the one of neglectful demolition.

**DR BYRON:** Well, the other case that concerned us was the demolition by neglect and here I'm not talking about bulldozers at midnight and I'm not talking about deliberately ripping the piece of roofing iron off the top so that the building will be damaged in the next rain storm; but simply where the owner of the property decides that the place is no longer fit for purpose; it's redundant technology; it has become too expensive to maintain. This could be anything from a shearing shed to a timber bridge to a pipe organ to a two-bedroom fibro cottage in the suburbs, where the owner simply says, "I no longer want to retain and maintain this property."

Now, it seems to me that the regulatory system is designed to prevent bulldozer type demolition where the basis for the threat, if you like, is that somebody wants to get their hands on the site for redevelopment. But in those demolition by neglect cases the site is of no particular redevelopment value; it's simply that nobody wants to maintain the asset any more. Regulations just don't seem to deal with that at all and when we asked ourselves the question of what sort of system might deal with those sorts of redundant properties, or where the owner no longer sees any point in retaining it, again the system of an agreement with a contractual payment to the owner to continue to manage it according to, you know, specified requirements would be at least one means of dealing with that. At the moment we don't seem to have many tools at all in the arsenal for dealing with that.

**MR VINES:** Look, that could occur without having to dismantle the existing regulations, that you can make an agreement and you can - well, there are some financial incentives through heritage bodies in Victoria for assisting that. But the other thing that you have is a card up your sleeve in saying, "Well, you know, you want a housing estate around this historic place that's on a list or an overlay or a register. Come to the negotiating table and we'll work out how we can facilitate your application, come up with an agreed outcome that allows both the development and the conservation," and those things are happening all the time.

At 4.30 today I'm going up to Epping to look at a ruined bluestone cottage in the middle of a new housing estate and the developers there are quite happy. It's actually not on a list yet but they're saying, "We'll work out a way that we can preserve this place," and maybe they will put a couple of hundred thousand dollars into it. But it will be something which contributes to their overall estate.

Now, those agreements can be made; the negotiating can occur. But without, I guess, the regulative incentive to say, "You know, you need to come to the table and discuss this with us because you're going to need a permit to do the work you want," then you don't have a way of getting them into that discussion in the first place unless you're just offering money, and that gets back to the whole argument of saying, "How much money are we going to have to offer to get any real benefit in that way?"

**DR BYRON:** You also said that more money is required to do the work that's required under the current regulation and I just wanted to explore that a little bit further with you. Is it possible that the process is actually more expensive than it needs to be? What I'm thinking of is that the process I can see was devised, say, for looking at a property like Como or Labassa or Raheen or something like that and yet we take exactly the same approach to the same standards when we're looking at Mr and Mrs Smith's 1947 two-bedroom fibro cottage.

Now, maybe we need to cut the cloth accordingly and if we're looking at a really big icon site then it does deserve the full Rolls-Royce assessment treatment.

But if we're looking at something that is of much more restricted significance then maybe there's a simplified sort of cut-down version that doesn't require too much consultancy or - - -

**MR VINES:** Yes. The recent Heritage Victoria submission I think had a section on talking about streamlining processes of permanent exemptions, so that we can judge the sort of things people would want to do with their property. You can actually put into the regulatory system exemptions to allow that work to occur without having to create a red tape around it and certainly there's plenty of opportunities for doing that. But I think that's really a case of very detailed analysis of how the existing regulations are being applied and that's why we're saying that we need to work on that - had 30 years of doing it and it's progressively getting better, but there's certainly more to be done.

The other costs I think though in administering the system are that you can get very good outcomes from very small amounts of money that's put in a seeding, because if you can convince somebody that the work is being done well and start off the process so that they can see a result, you then get an ongoing benefit from funding coming from other places where it's private individuals or you can convince corporations that there's an economic return perhaps being done. But, you know, I'd say the amount of money that's put into active conservation work is minuscule in Victoria and a very small increase of that will get some really good results.

**DR BYRON:** Tony, was there anything you wanted to ask?

**MR HINTON:** Gary, I add my thanks to Neil's for your participation here this morning and your written submission. Neil has picked up some of the questions I was going to raise with you. But I had a couple out of your submission itself and though it was a preamble, I make the comment that sometimes in taking a paragraph out of a written submission you could be accused of taking it out of context. So bear that in mind when I raise a question in my specific reference to text.

On page 7 you refer to much of the conservation occurring because of owners pursuing the conservation objective, irrespective of whether it's on the list. You say that those who oppose conservation are a tiny minority. When I saw that I thought, "Well, why isn't Gary supporting the view of successful operation of voluntary conservation agreements? If that is a correct depiction of the environment out there, why wouldn't a system based upon voluntary agreements work if you've got a community that fundamentally supports the conservation objective?"

**MR VINES:** I think because the perceptions of individuals are important. If you don't have a regulatory system that says, "Here we are getting most of the things working well. People are doing the right thing but every now and then there's one that wants to thwart that." If you don't have a system to call those aberrations, what

happens if the aberrations have a cumulative effect? So if every few years somebody who is not conservation-minded gets hold of a property and decides they'll demolish it, then you lose that place. So it doesn't matter how many other people you have who care about conservation, you won't preserve that each time, or you end up turning everything into a public fight where the general community is fighting against an individual to prevent something being demolished.

That was certainly the experience in the 50s and 60s. There were, even in the 50s and 60s, a lot of conservation-minded people. People bought their Toorak mansions because they wanted to live in a historic house. But every now and then, somebody who owned a house would get hard on their luck or they would be more concerned about the financial benefit from razing it than the cultural or social benefit from keeping it, and you would lose it. You only get one chance at demolishing a house and then it's gone. With conservation you're constantly doing it, trying to keep it. I think there's just a basic problem with the process. If you don't have a regulatory system, eventually everything will be eaten away.

**MR HINTON:** Well, following up on that, a sort of subset of that issue is that on page 6 you refer to evidence being around that suggests that the opportunity cost is not really representing an impediment to conservation. That puzzled me because we're certainly getting anecdotal evidence that the opportunity cost of redeveloping a site is more than infrequently arising with regard to proposals for development, that therefore is blocked by a conservation order.

**MR VINES:** If you look at an individual site you can find those examples. But I guess part of my argument is that we don't have unfettered use of a site to maximise our profits, regardless of any other consideration. There are a whole range of planning and legal constraints that prevent, say, one property being made into the most valuable thing it can, and heritage should be one of them. Now, there's an opportunity cost in any development but the other opportunity is that you can sell that place for whatever you bought it for, or whatever it's worth at that stage, buy a similar place that doesn't have the constraint of heritage controls that gives you the same opportunity cost.

That's taking the view of property slightly differently. I don't think if you've gone and purchased a historic house, or you've inherited it, that you necessarily should have free rein to make as much profit out of that piece of land as you can.

**MR HINTON:** Would you differentiate between an owner who has a property that when acquired was heritage listed, and a property owner who has a property that is subsequently listed? Is that an issue for you in terms of the construct?

**MR VINES:** No, I don't think so because, say, under the planning process if a bit of rural land on the fringe is rezoned for residential, one farmer gets a windfall because

he gets the bit in the new sort of managed residential development that has the 7 Eleven and the shopping strip and the service station because his bit of land just turns out to be in the right place. The neighbouring property owner gets a slightly less windfall because he gets all the low density residential stuff at the edge of it. Now, that owner doesn't have an argument to go and say, "Well, you know, I want an equivalent on my bit of land," because the planning process can only allow a single use on a single place, and it doesn't weigh up the use on one property against another. You don't get compensation for a planning constraint that reduces the potential income from your property, in the same way as you don't get a benefit allowance if you get one of those sort of windfalls.

I'd say we could move into that situation and say, "Where you've been identified in the heritage area, we'll have to compensate you for that. But if we do that then we have to consider all those areas where the planning system provides a benefit, a financial benefit."

**MR HINTON:** A betterment tax.

**MR VINES:** A betterment tax, yes. Now, that argument has occurred regularly and I think the view in Australia is that we don't go down that line.

**DR BYRON:** I just wanted to come back to the nature of the costs which may be imposed on a private owner of a property that's assessed as being significant and then statutory listed. I guess we haven't fleshed them out in as much detail as we might have but in brief we see them as coming in three broad categories: there's the redevelopment potential of the site which could be very, very large; there's the additional costs of more expensive, higher standard maintenance, more skilled labour with heritage skills and perhaps more expensive and harder-to-obtain materials. Presumably anybody who has an older property is probably cognisant of that.

It's the third class that's particularly concerning you now is the cost that comes purely as a result of listing where the owner of a listed property is required to submit development applications for things that his next-door neighbour wouldn't be required to have. The applications themselves are more expensive, they require consultants' reports and all these sorts of things. That seems to me when we're trying to get owners of heritage significant properties to do the right thing and to feel very positive about it, to be burdening them with additional costs through listing that they wouldn't have if they were still managing a place that wasn't listed. That seems to me to be a bit rigorous and unfortunate.

**MR VINES:** I'd say someone from a council planning position would be better able to discuss those sort of things but my feeling in sort of working with property owners is that it's not until they're getting - when they get to a fairly substantial application, say a major renovation of a property with family room and additional bedrooms and

that sort of thing, at that point, whatever costs there are associated with the heritage aspects of the property are probably minor compared to all the other regulatory things that are there. They still have to apply for a planning permit, they still have to demonstrate things like they're meeting requirements for overlooking and overshadowing; if they're putting in access for vehicles that they're meeting the traffic regulations - all of those sort of things.

So I think we probably need to again very carefully analyse to work out what are those costs that are purely coming from heritage, and it might be that it's only down the bottom end for minor things like repainting, repairing, new fences, replacing windows, where they can be effectively dealt with through providing the right sort of guidelines to owners, and say, "If you do this, this and this, this is the way you have to do it. You don't need to get a permit unless you're planning to do X, Y and Z."

**DR BYRON:** But some municipalities that we have spoken to have taken the approach that, "Yes, we realise that a statutory listing imposes some restrictions on you so as a small way of helping make that up to you, recognising that we're going to require you to put in more development applications for more things, we're going to waive the fee" - for example. As I say, we're looking at ways to try and make owners feel more positive or less apprehensive about the consequences of an involuntary listing. One thing that the listing municipality could do is say, "Well, at the very least, we're not going to make it even more expensive for you through our own regulatory supervision. We recognise that you are doing this for the greater public good and therefore the very least we can do is not charge you more fees."

You know, if somebody wants to put an extra bedroom on the back because they're expecting triplets, the last thing they want is to have an extra \$15,000 of consultancy fees - no offence to consultants.

**MR VINES:** Look, I think there are plenty of opportunities for reducing those sort of costs and ideally I would like it to be cheaper for somebody with an historic house to go through that process than for someone without.

**DR BYRON:** Yes, that's exactly what I was getting at.

**MR VINES:** And that they can more easily get the expertise they needed - and there is, you know, a heritage adviser network in Victoria which really ought to be expanded so that the people who have those questions, have the right person to go to.

**DR BYRON:** There was only one last thing, coming back to your point about the inadequacy of data - and believe me, we would have liked to have been able to assemble much more - but it was frankly amazing to me how hard it was for us to assemble tables in terms of what's on the heritage list, what the composition - you



know, across Australia I mean, not just in Victoria - what categories are over, under-represented; even to get information on how much state governments, let alone local governments, are actually spending on heritage conservation.

I can't think of any way we could make a case that, you know, you're spending \$X million; this is obviously providing great public benefit and therefore it should be doubled or tripled or five times that - because A, we don't know what X is, and B, there's on way of knowing what that expenditure is actually achieving because we have no mechanism for monitoring the condition of various registered places. There was an appeal built in there to, "Let's put in place a system now for keeping tabs on this so that in five years' time if there's another inquiry about this one, we're not still whingeing about why haven't we got any data."

**MR VINES:** Well, I'd certainly agree with that except there's a risk there that you're actually increasing the costs of the bureaucracy in managing all of that information. I was a bit surprised that some of the government heritage submissions didn't more effectively cost the sorts of aspects of heritage; even, you know, their own budgets. But I think one of the problems is that when we start getting into those areas, people keep their income and expenses very close to themselves and don't want to reveal it and that's getting back to that problem we have at hearings where a developer isn't going to say how much profit they're going to make out of a place. They're not going to say what their total costs and final resale value is because that reveals their profits. So we're really in a position of not being able to get those figures out of a lot of private owners.

If the heritage bodies don't have those sort of costs, the only thing they are left in really being able to cost is their own staff time and, you know, the things that they individually fund, like the public heritage program in Victoria.

**DR BYRON:** Yes, but I mean, we can get a figure for the heritage program that makes, sort of, grant and loan funding available across Victoria. But there are all sorts of other sort of ad hoc heritage activities that it seems to be very hard to extract from the budget data to get a total figure of how much is being spent. Again, even more difficult is working out how good value for money this has been for the taxpayers in the jurisdiction - anyway. Is there anything else you wanted to say in the way of closing, Gary?

**MR VINES:** Perhaps just to close on that whole concept, is that there is a very difficult issue in trying to balance a public benefit which isn't a monetary one, and a view that heritage actually makes us all feel better when we can go through an environment which has places which connect to our past and provides an aesthetic that wouldn't be there if it wasn't for heritage - balancing those sort of benefits with very hard cost benefits of, you know, how much is Mrs X going to have to fork out to look after her dilapidated house, or how much is she going to miss out on because

she can't sell it to the developer.

I think there is a fundamental problem in trying to make that balance that doesn't come out through any sort of economic analysis. But if we do have the figures, then we can say, well, that's what our good feelings actually cost and I would certainly argue that we should be doing it that way.

**DR BYRON:** I guess our view is that a body like Victorian Heritage Council, for example, with a budget of X hundred million, or whatever it is - and their job is to try and make sure that they get the best heritage value for money they can on behalf of the Victorian taxpayer and they've got so much money in the kitty to spend and they have to answer all the difficult questions of whether we need more sandstone banks in country areas or more lighthouses or more maritime or archaeological sites. I know I couldn't make those decisions, but somebody whose job is to say, "How do we get the best total overall value for Victorian society, both current generations and future, given the amount of money we've got? How do we prioritise?" - and someone said it's more like triage because that means that you can't save everything if you've only got a billion dollars in the kitty. You know, maybe if it was 2 billion you still probably couldn't save everything.

So somebody has to have that process of saying, "Look, if we spend an extra hundred thousand on this, we can't do that, that and that. Which option is going to give us the best?" So you don't need to actually say, "The benefit of saving this lighthouse is \$X.2 million." You just say, "Is the benefit of saving that lighthouse more or less than the benefit of putting the same money into that shipwreck?"

**MR VINES:** Yes, well, certainly I'd agree the people with the power over the strategic funding should be making those decisions and I think in Victoria they are. I'm not party to what's on in Heritage Victoria or the other heritage managers, but I think they're always making those hard decisions - "Where are we going to put our limited budgets into preserving this vast array of heritage that we are responsible for?"

**DR BYRON:** Yes, thank you very much, Gary.

**MR VINES:** Thank you both again.

**AUDIENCE:** Mr Chairman, will there be a transcript available of this morning?

**DR BYRON:** My opening comments this morning: the transcripts will be available within a few days, as soon as they have been checked. The transcripts of all our other public hearings, except for last Friday's in Adelaide, will be up on our web site pretty soon. The transcripts of all the first round of hearings back in July, August, they are already on the web site too.

**DR BYRON:** Is Dr Clark here? You're most welcome to be accompanied by your colleagues. Thank you very much for coming, gentlemen, and thank you for the written submission which arrived yesterday. So we haven't had a great deal of time to digest it but thank you for all the effort you put into that. Would you like to take us through the main points that you wanted to make today by way of summary.

**MR HINTON:** But before you do, what I'd like you to do is to, each of you, identify yourself for the purposes of the transcript, so that the recorder can actually identify the voice with the speaker when it comes to transcription. Thank you.

**MR CLELAND:** I'll start off. I'm Barry Cleland, I'm the president of the Astronomical Society of Victoria.

**DR CLARK:** Barry Clark, I'm actually the director of the outdoor lighting section, lighting improvement section, of the society.

**MR ADCOCK:** I'm Barry Adcock. I will be president of the society in April.

**MR CLELAND:** Three Barrys.

**DR BYRON:** I was going to say, Barry, please go ahead.

**MR CLELAND:** I'll start off, very briefly. The Astronomical Society of Victoria has been involved with the Melbourne Observatory site since 1922, had a fairly heavy involvement quite often. We are by far the largest society of our type that's involving amateur astronomers in Australia and hence we feel a very strong responsibility to make sure the heritage of the site, buildings and equipment is protected and preserved in the future. Unfortunately this is not happening. Just briefly - I'll hand over to Barry now, but the concern we have is that the process of listing of the heritage sites is such that the heritage of the Melbourne Observatory site is not being recognised properly at the moment, and I'll hand over to Barry.

**DR CLARK:** Thank you. Yes, we realise that this is not about changing the listing of individual sites but we think the example of the Melbourne Observatory is so terrible in showing what's wrong with the current system and this attempt to fix it, that we think it's worth dealing with it in some detail. In a nutshell, the place was shut in 1944 as an observatory but parts of it kept going and it really was neglected in terms of the equipment that was there, but for some efforts by the Astronomical Society of Victoria and the Museum of Applied Science, which is now part of Museum Victoria.

We kept the place alive, effectively. There was a change to the law in the arrangements for management of the place in 1992 and 94, and we thought that the place would get a new lease of life under that new arrangement. But that has not

happened. The conservation management plan was altered and watered down in 1997 and even what's in there hasn't been followed all that well. Certainly a lot of money has been spent on doing up the buildings or some of them and they look very fine, but the real issue of the heritage at this place is what was in the buildings. It still exists in many cases and by not pursuing the line of how important this place is, not just to the state but nationally and internationally, this heritage has been degraded and will eventually be extinguished I think, and that would be a great shame.

Now, I realise there are problems in the Commonwealth interfering in state business effectively, but we think some of the information in the draft report obviously deals with exactly this problem and I think what we'd like to do is to go through any of these points that take your attention and explain just how important they are in heritage terms, illustrating how terribly wrong the current process has treated this particular place. So I wonder what particular issue you might think of some importance then.

**DR BYRON:** I'd like you to pick out what you think are the major deficiencies of the existing system that have impacted upon your objectives badly. You don't have to be complete in every deficiency and every detail. What we'd like to do is, you illustrate the system's treatment of you to support your view that the current system is not working well. Three particular aspects would be very useful for us.

**DR CLARK:** Okay. Well, look, it's not all bad and perhaps I'll start off by - - -

**DR BYRON:** Tell us the good news first.

**DR CLARK:** Yes, I think that is important. I might add that the Botanic Gardens, the Royal Botanic Gardens, is controlled by an act and the act requires only that its management and staff make a botanical success of the place, and they do that brilliantly. I don't think there's any doubt about that. What I've got here, and I'll pass this across, is a photograph of two of the original dome buildings. One of those buildings still has the original 1874 telescope in it and that's a heritage treasure on the world scale. I think there are only two like it anywhere in the world still operating. The other dome was effectively empty for 40 years. Well, this particular telescope was in parts in my bedroom and under the laundry troughs and everywhere else, and finally the transit of Venus that took place in 2004 was sufficient of a trigger for the gardens to give permission for the instrument to be re-installed in the place after it was done up and that's the result.

Now, this means that in that complex there of two buildings there are two priceless heritage treasures in Australian terms and perhaps in world terms. That instrument may be the only one left of the seven or so that were built and it's still in its original operating state. I think this goes way beyond state heritage and, sure, the place has got a listing on the Register of the National Estate but that looks as though

it's almost - well, it's heading towards being worthless and our aim I think would be to see the whole place listed on the National Heritage List . I think that's terribly important and then the Commonwealth at least might have some sort of oversight and some input into what happens in the place.

There is another instrument of that vintage, a little bit newer, that's in the museum still in its packing cases. The story of it is that it kept Melbourne on time for something like 70 years. It was a telescope specially arranged to time stars passing over the meridian and of course accurate time is very important in terms of safety on the railways, for the good order of commerce and so on, and for safety at sea. The Melbourne Observatory contributed to this and in so doing contributed greatly to the safety of maritime commerce and therefore the development of Australia, had a very important part to play.

Now, in 1948 the government was so keen to get rid of what was left of the place that it gave the transit telescope to the Astronomer Royal who happened to be visiting - in a great public display; how wonderful it was to give this instrument back to Greenwich. It went there; it was the same as what they had. They never even unpacked it and eventually sent it back, and it's now in storage at the museum. The room where that instrument was operating from 1885 onwards till 1947 or 1948 is still there; it's empty. It's used for various functions, social functions and the like, and the museum is certainly interested in seeing the instrument restored to its original house and restored in working order, so that it can be used as part of a working museum display, and we think that would be wonderful to do.

The original astrophotographic telescope is still in existence in Australia. It was actually given away to Sydney Observatory and it's now at Macquarie University in pieces. They're reassembling it purely for a static display. We would like to get that one back because its original building is there, it's still in place, and I've got a picture of the building. It would have to be the last one here - there it is there. The buildings are wonderful but without the stuff inside, they lose nearly all of their value as far as we're concerned.

At the moment the society has its own telescoping there and these are used for public demonstrations and it has been happening, in one way or another, ever since about 1949. So the place hasn't been lost entirely to the public but on the scale of usage is far short of what we think is possible. When you compare the Melbourne Observatory with Greenwich, after which it was modelled, Greenwich has half a million visitors a year. Okay, it's a couple of hundred years old but we've got something which is pretty good here, considering the age of the present civilisation in Australia, the present arrangement of government and people and so on.

In that picture also there's a picture of what's called the astrographic measuring bureau; it's just the outside of the room. In that room in 1898 or just afterwards, six

young women were employed to measure the photographs taken by the astrographic telescope as part of a worldwide scientific effort, perhaps the first ever worldwide cooperative arrangement between nations, a lot of nations, about 20 of them, I think, or over 20. The young women who did that work were employed only after about eight years I think of bitter argument in the colonial government, as it was at the time, about the propriety of employing females in the public service.

Now, these were the first ever that weren't just cooks or charwomen or whatever, and I think that marks an enormous leap forward in women's emancipation, if you like, or another way of looking at it, it's one of the earliest big changes in Australia in terms of equal opportunity. Again, that room is just vacant; it's empty inside. It's beautifully done up, but it's used for corporate functions and end-of-year presentations to the board and so on. We think it should be a museum to these young women and the progress of women's social conditions in Australia. Again, that's not just a state issue, it's a national issue.

**DR BYRON:** I'm sure there's much more you could tell us about the background history of the events but can we move on now to how the system of having it heritage listed has not met with your expectations.

**DR CLARK:** Okay. Can I mention very briefly the Great Melbourne Telescope just again to - I think the point I'm trying to make is that this is not a state issue, it's a national issue, and of greater interest to this particular inquiry, I'd submit. I'll pass these books over. That's a picture of the Great Melbourne Telescope which really was the largest steerable telescope in the world for 20-odd years. While it was a failure in many ways, it was one of the things that put Australia on the map scientifically. It's a national issue, not just a state issue.

**MR HINTON:** Sorry to interrupt you, but there is an issue here as to your understanding. We're looking at the system for the conservation of historic heritage places and the system in relation to both nationally significant, state significant and locally significant. We are not looking at judgments about whether or not something should or shouldn't be nationally significant but how those judgments are reached of what we're looking at, the system of reaching those judgments. So your treatment can help us understand how the system is or is not operating but it's certainly not focusing just on nationally significant, so your push to have national identification in itself is not a major issue for us and certainly outside our terms of reference. But to the extent that your case can give us a better understanding of how the system is or isn't working, then we're interested.

**DR CLARK:** Yes, thank you. I think I do appreciate that point. I was trying to come at the problem from the point of view of how it's been treated to date, how the places have been dealt with to date, and why we think the system, which is what we are here for to talk about, has just run off the rails pretty badly. Now, certainly

eminent historians did write up stories of the observatory and they have been taken note of in drawing up the heritage statements in both the Register of the National Estate and in the State Heritage List and also in fact in the National Trust, but it wasn't until 1973 that the place was even considered as a heritage treasure of any sort and that was only because the society raised the issue with the National Trust of Victoria - of Australia, the Victorian branch - because we heard that the buildings were going to be demolished. Now, that was the first instance where heritage listing took place, 73 and following, and it was some time after that before the state register had the place put on it.

Now, the state register has got quite a reasonable story about how important the place is, and the letter from Heritage Victoria that's in amongst the documents we submitted certainly states that it was an important place and justifiably on the list. But the statement about the place on the national register is nowhere near as complete as we think it should have been and because of that, the place has not been treated as importantly as it should have been by the state system and as a consequence, it's actually having Heritage continually degrading the place simply because it's not given due regard as to how important the place is. What I'm trying to get at is that the system has failed and there was no oversight by anybody to say, "Look at this system. This place here, it seems to be more important than the current system is dealing with it. What can we do about it?" There seems to be no mechanism for doing that at all. I think we've made that point in the written submission.

At the moment, if we go to the minister's office that is responsible for gardens and parks, they will just say, "Well, it's very important to have the Botanic Gardens. Lots of people walk through the place. They like looking at the old buildings as they go into the gardens. They can visit the visitors' centre which is on observatory land. What are you on about?" We think that the place is more than just some old buildings that you can look at on your way through to the gardens. The problem is now, how do we go about this in terms of - our problem is how do we go about getting this place better recognition. When we look through the processes that are available, we don't see anything that's of great help to us.

**MR HINTON:** Barry, who owns the actual physical structures that we're talking about?

**DR CLARK:** This is important, in that the observatory site was never part of the Botanic Gardens. It was excised from the Government House reserve at the suggestion of the governor himself before 1860, about 1857. In the early days in fact there were feuds between the Botanic Gardens and the observatory over trees and paths and all sorts of things. The site has always been owned by the state government. From somewhere in the 1880s or thereabouts, when they finally got the title sorted out, there was a permanent reservation on the land for observatory

purposes. That was changed in 1933 to a temporary reservation because there was some idea that the Shrine would be placed partly on the observatory land and the government astronomer at the time managed to head that off by saying, "Look, if you do that, you'll interfere with the timekeeping service," and that argument was accepted. But after the observatory shut, the land reservation was changed to the purposes of national herbariums and botanical herbariums and parkland. It's got no statement about astronomy in there.

If you look up the web site of the Botanic Gardens today, even though they are managers of the land, there is no mention of the observatory. The last time I looked, there was no mention. So the place is just looked on as somewhere where they can store their tractors in the garage and that sort of thing. Certainly they run a paid tour service for people to look through the telescopes but it's actually running at a lower level than it did during the time that the museum ran the place, so I think that answers the question about who is the owner. However, when you look at the Botanic Gardens Act, it says quite clearly right at the top that the board of the Botanic Gardens is the manager of the site, not the owner, so the state government is the owner. It's quite clear.

**DR BYRON:** Can I just come back to what you're saying, that the recognition as heritage, starting with the National Trust in 1973, was successful in stopping demolition but there doesn't seem to be a process for taking forward the celebration, if I can use that word, the enjoyment, the extension, the education and all the rest of it, promoting the observatory site to the public; rather, it's sort of a rearguard action to stop it falling over or being knocked over, but not proactive in the sense of, "This is potentially something that could be really interesting." Is that what you're saying?

**DR CLARK:** Yes, I think this is so. Perhaps the best illustration of that is the fact that the director of the gardens thinks that they have spent enough effort and money on the place in terms of its heritage characteristics and there's certainly been, what, \$10 million or something spent on making the place look nice, fixing the dry rot and that sort of thing, but contrast that with the list of things that we wanted to do and get running under the NHII scheme - there's half a million dollars worth of work which I think is justified right now - and these all about things that move, if you like, the roof and the instruments and so on. They're not movable objects like steam engines that are excluded from the national listing but they are objects or machinery, if you like, that are an integral part of the place. Without them, it loses its value.

I think that's the difference between us saying, "Look, we need to spend half a million dollars now, the dome has got cracks in it" - it's hard to move around in one case, very hard to move around. The only money that's been spent on the domes, since the gardens took over, is about \$2400 when two of the domes were at the stage where they were hardly moving, and you can't run public tours, so it was actually going to cost revenue if they weren't fixed. But it's a trivial amount compared with



what we think is necessary, in the order of half a million.

**MR HINTON:** So you'd like to get a grant under the NHII but the problem there is that that requires support and co-contribution from the RBG. Is that right?

**DR CLARK:** Yes.

**MR HINTON:** That prerequisite is not being supported by the RBG, so it closes you off for that option?

**DR CLARK:** Yes. Two ways they shut the door: one, they said they wouldn't do the application themselves, even though we'd put all the effort into getting it to the stage where they just had to fill in some more details and send it off, and then when we said, "We will do it ourselves," we believe we can do this on behalf of the state government, and that seemed to be catered for quite readily in the application form, as the records show there, the telephone conversation between Barry Cleland and the director was again very negative. They simply wouldn't support us as the owner. That begs the question of exactly who is the owner. We thought at the time that we would go to the minister, who must represent the owner rather than the CEO of the board, but time just ran out for us. We fear that the longer these things are left to decay, the less chance there is of getting them back into working and usable order.

**MR HINTON:** But at the moment, their current condition is being maintained or is degradation occurring through the passage of time?

**DR CLARK:** Degradation through mishandling in one case. Just last year, as an OH and S action, they thought they'd cover up some of the moving parts in one of the domes, and in so doing, they did irreparable damage to the mechanism. I've been unable to find anybody in Australia who can actually repair it or make a replacement part. It's a big gear wheel. They didn't ask us, they just went ahead and did it. Had they asked, a very slight alteration in what they did would have kept it safe. So there's a disinterest there; that's fine, they're botanical people.

**MR HINTON:** The RBG.

**MR CLELAND:** That's right. They're very good at their job. They're pretty good at what their core business is, but that's it.

**MR HINTON:** What about your communications with the state bureaucracy that deals with heritage issues as such as opposed to the RBG? What's been their attitude?

**DR CLARK:** Yes, we have had some contact with Heritage Victoria and I think the problem is that what's in place is in place and it's a cabinet decision presumably to

change it. I think Heritage Victoria is also quite overloaded with the amount of work they've got to do. That's my impression of it. We certainly got a very nice letter of support when we wrote to them and said, "Will you support what we want to do?" I don't think we could ask for any more than that.

**MR HINTON:** But isn't there some scope for Heritage Victoria to influence RBG?

**DR CLARK:** I did in fact talk to a staff member of Heritage Victoria about that point and I think all we could come up with was perhaps the society should make an approach to the minister in charge of heritage, not the minister in charge of parks, and see if we could get some change in the arrangement. I guess there would be some people at least in the system who would oppose that, simply because it's very nice for the gardens to have this extra bit of land, to have a visitors' centre and a depot on it, but it's not helping the cause of heritage in Australia at all. What I'm hoping will come out of this inquiry is a change in the law that will strengthen the Commonwealth's hand in dealing with the Commonwealth's ownership of something that's intangible, it's of heritage value, but even though it's intangible, it's Commonwealth property and I think the Commonwealth ought to have a say in what is its property on behalf of the people of Australia it represents.

**MR HINTON:** That was coming back to my question about who owns this property. Now you're saying it's the Commonwealth who owns the property.

**DR CLARK:** Sorry, the state owns the land.

**MR HINTON:** The state owns the land.

**DR CLARK:** The Commonwealth owns the national heritage value of it. It might be an intangible, you could put a dollar value on it, but it's Commonwealth property in my view.

**MR HINTON:** On behalf of the people.

**DR CLARK:** On behalf of the people of Australia.

**MR HINTON:** I understand your point, sorry.

**DR CLARK:** Perhaps that has not been thought of; if we've contributed that, then I hope we've done some good.

**MR HINTON:** The history of Australia's federation is not without its tensions, as you probably well know. One of the recent initiatives in the conservation of historic heritage places has been to better delineate responsibilities of the three tiers of government. It had been hoped that those recent initiatives in fact have better

delineated those responsibilities and resolved the potential for tension, but tension still exists if the Commonwealth, the Australian government, identifies a site as being nationally significant and it's owned by the state government, then there's a potential for tension there. But in this case, it hasn't got that far and the Australian government hasn't identified it as being of national significance, so it rests as state owned and identified as state significance, I assume identified as state significance, therefore it hasn't really got into the relationship issue between the Australian government and the Victorian government yet.

**DR BYRON:** But the issue is more within different branches than the state government.

**DR CLARK:** We haven't tested that. I think if we put the case - look, it could go either way. They could say, "Forget about it, let's bulldoze a building and put up a big auditorium for botanical conventions," or something, and we would have lost, but I hope we can forestall that sort of thing happening. The question is: can the output of this inquiry do anything that would help in cases such as this, make a clearer process available for saying, "Look, this is not classified adequately, it needs to be looked at again," and if it does prove to be sufficiently valuable in heritage terms to go on the National Heritage List, then it ought to get some better degree of protection, some sort of oversight as to what happens in the place.

**MR HINTON:** Barry, the commission will not be reaching views on the status and significance of any particular site - - -

**DR CLARK:** Yes.

**MR HINTON:** - - - because certainly the commission has not been asked to do that and importantly, we have not for this inquiry got the expertise to pursue that. But we do make comment in the draft report and I presume we'll be making similar comments in the final report about the importance of state-owned or government-owned identified historic heritage places which carries with it the responsibility on that particular government to care for those places, properly maintain them with the conservation objective in mind. We'll be reaffirming that importance, once they're identified as Australian significant, if it's owned by the Australian government, state significant if it's owned by the state government, and for that matter, locally significant owned by the local government. That carries with it an obligation for the conservation objective.

**DR BYRON:** I realise that it's not necessarily any consolation to you, but in most states we've heard examples of where there is state-owned property on a state heritage register where there are interested parties in a non-governmental organisation, society, whatever, who feel that the state as owner and manager hasn't been doing enough to protect the conservation values that the state itself has

registered.

**DR CLARK:** Yes.

**DR BYRON:** So in that sense it's a very common class of problem. The details change but even at local government, you know, council puts something on the local heritage list and yet other people say that they then come along and either ignore it or don't put sufficient resources into protecting it properly. Now, I was also thinking while you were talking of the HMVS Cerberus which is - you know. There is a group of people rather like yourselves who feel passionately about the state government or the Commonwealth government or both should be putting a lot of money into restoring that to its potential and even though it's on both lists now it's not clear where the money is going to come from.

So, you know, there are lots of people around who feel that the system hasn't put sufficient resources into particular issues. Now, what can we say and do about that? The glib answer would be to recommend that the state and Commonwealth government put a lot more money into conservation in various places including, you know, particular things that are on the list that have not been getting well resourced in the past. But whether they are willing to allocate that much money is another question.

**MR HINTON:** All governments have responsibility to allocate scarce resources against competing demands and we know there's a lot of competing demands. It would be presumptuous of the commission to say, "You really should be putting your money into that site rather than those other sites." We're not going to go down that track. But certainly that's a day-to-day decision of all levels of government: local, state and the Australian government. That's how competing demands get prioritised. It could be that the Victorian government will take a view that this should have a priority and therefore the observatory and its associated buildings and equipment should be conserved rather than something else.

But that would be for that political process, that democratic process, to go through their budgets. Some way, some are arguing to us, that that prior issue then is: is the bucket large enough for the conservation of historic heritage? If it's not large enough, if some things don't get saved, then it isn't large enough in their minds.

**DR BYRON:** But I imagine the frustration for a group like yourselves, who are trying very hard to conserve what you see as very important heritage values and you feel that the owners and managers of the property are not giving it the requisite amount of attention or resources. I appreciate exactly where you're coming from and it's no consolation to be told that there are other people who feel similarly about, you know - - -

**DR CLARK:** I understand.

**DR BYRON:** Yes, that there are other heritage places which are also screaming out to have some serious resources put into them.

**MR HINTON:** We have the example of the bridge of Richmond in Tasmania, public sector ownership but it's deteriorating, but it's a very historic bridge.

**MR CLELAND:** It certainly is, yes.

**DR CLARK:** Well, I think if we've done nothing else we've provided an example which just shows that the current system is broken and it does need to be fixed, and we've given some details of where we think the process has failed. Now, I realise the solutions are going to be difficult to come by. But at least they give something solid to say, well, if we have the law changed here or if we have the process changed somewhere else, this sort of thing might be dealt with better in future.

**DR BYRON:** I don't know if you were here when I said to Mr Vines who was here before about, you know, the process in many ways seems to go through the survey, then the assessment of significance that leads to a place being inscribed on a register, and then sometimes it seems that that's the end of it, and what we're suggesting is that, having assessed it as being significant and worthy to be on the register, the next obvious question that has to be asked is: okay, who's going to do what? Who's going to look after this place? Where's the money going to come from? How are the costs going to be shared?

I guess to a certain extent, as a non-governmental organisation concerned about a property that's in government ownership, you're left sort of hanging on the edge of this sometimes in spite of your expertise and knowledge and energy, enthusiasm et cetera. You know, you're not always treated as an integral player in this debate about what's to happen to this place and who's going to do it and who's responsible for the ongoing conservation, and most of all: where's the funding going to come from to do this?

So if the process was extended past the identification and assessment of significance I don't know what the answers would have been, but at least those questions would have been asked and your organisation might have had a much more definite seat at the table as an interested player in the ongoing conservation and management of the assets. There would have been perhaps more serious discussion about, having listed it, where's the money going to come from to look after it and not only to look after it but to enjoy it, to celebrate it, to promote it, you know, to communicate it to the broader public, for whose benefit the place is being conserved.

**DR CLARK:** Yes.

**MR HINTON:** Your submission, which we received yesterday, is labelled as draft. Are you proposing to make that a formal submission and remove "draft" from it and whatever?

**DR CLARK:** Yes. I think it needs some tidying up. It had a bit of thinking aloud in one place.

**MR HINTON:** I understand.

**DR CLARK:** If I just rewrite parts of it and take out bits that might be seen as - - -

**MR HINTON:** It's useful for us to have, even though it was a draft in advance of this morning's discussion, so I appreciate that you've done it that way. But in terms of our processes and transparency, for it to go on our web site we need to have it converted from a draft to a final.

**DR CLARK:** Yes.

**MR HINTON:** Then, when you do that we'd be then pleased to incorporate it into our web site so that your submission can be seen by others and be tapped into by others with particular interest in the system here in Victoria in particular.

**DR CLARK:** Yes.

**MR HINTON:** So it's in your interests to convert it from a draft to a final, as well as our interests, but also with wider use and wider dissemination of that submission from you to us.

**DR CLARK:** Yes. We can see advantages from both sides in what you say and we will do it and get it in by the deadline of the 24th.

**MR HINTON:** That's what we're seeking to do, yes - when you can.

**DR CLARK:** We'll make every effort to do that.

**DR BYRON:** We appreciate that you are volunteers.

**DR CLARK:** We certainly appreciate the opportunity we've had to put this case.

**MR HINTON:** Thank you very much for your participation.

**DR CLARK:** Thank you.

**MR HINTON:** We realise that participation is not costless. There are opportunity costs involved. So thank you again.

**DR CLARK:** I've got some photos there that are of places mentioned and perhaps they might be of some use.

**MR HINTON:** We'll return your books but we're happy to take the photographs. Thank you.

**DR BYRON:** Thank you, ladies and gentlemen. We will now break for lunch and resume at 2.00 with Julianne Bell. Thank you.

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**DR BYRON:** Thank you, ladies and gentlemen. If we can resume the public hearing with the representative of the Protectors of Public Lands (Victoria) Inc. Thank you very much for the written submission. If you'd like to talk us through the main points that you wanted to raise today, we'd then like to discuss it with you. Thanks for coming.

**MS BELL:** Thank you. I'm Julianne, the secretary of the Protectors of Public Lands (Victoria). I apologise, I didn't realise I should have had my submission to you earlier. I just had a message requesting to speak. However, thank you for allowing us to make a submission to the Productivity Commission Conservation of Australia's Historic Heritage Places. I'd like to speak on how the draft report addresses the future protection and conservation of the Royal Exhibition Building in Carlton Gardens which are inscribed on the World Heritage List, as the Carlton Gardens, which are part of the precinct, are under the threat of irreversible damage from the use of staging the Melbourne Flower and Garden Show.

The second related issue is the protection and conservation of the City of Melbourne's heritage parks and gardens which are now threatened with damage when used for inappropriate commercial events such as rock concerts, rave parties, exhibitions and fireworks. The nub of the question is, I think, that Commonwealth heritage legislation is being ignored. The failure of the government, both local and state, to protect the Royal Exhibition Building in Carlton Gardens demonstrates this, how the legislation is being ignored. We're of the view that our international obligations are such that we cannot allow the situation to continue.

A number of community groups have written to UNESCO alerting the organisation to the damage being inflicted on a world heritage listed place. I have a copy but I could make a copy available to you. It is interesting that a number of the articles are being contravened by the City of Melbourne and the state government; they're the articles of the World Heritage Convention to which Australia is a party. So this is, we feel, a very serious matter, that articles 4, 6 and 11.4 are being contravened. I won't go through them because that would take too much time and perhaps I could forward that in a format that can be legible. Unfortunately the copy is not very readable.

As far as I can see from the draft report, the overview, World and National Heritage Lists are included together, and we are suggesting that there should be a separate category for exhibition. We realise that the Royal Exhibition Building in Carlton Gardens is the only World Heritage Listed building in Australia but we thought it needed a separate category. Other buildings may be well listed in the future; for instance, the Sydney Opera House I think is being nominated. Your draft report refers to new three-tier framework for government but only gives a national tier, not a fourth international tier, nor any guarantee that local and state governments will observe the Commonwealth legislation and international obligations. The draft



report - and if I could just read this out, two sections of the report - comments:

Nationally significant places are largely in public ownership. They are well recognised and maintained and their heritage values are under little threat from inappropriate use or development.

We would take issue with that and say that nothing could be further from the truth in Victoria and we would like to demonstrate that the Carlton Gardens are under threat from being dug up and bulldozed annually for the Melbourne International Flower and Garden Show. The draft report does go on to admit:

The majority of iconic historic heritage places are owner-managed by governments -

and does say:

It is necessary for them to ensure that individual government agencies with heritage places do not have incentive to neglect or unnecessarily dispose of their properties in order to avoid heritage conservation obligations and related costs.

So there is an admission incentives are lacking, and we say that the incentives for local and state governments to ignore iconic heritage buildings is commercial gain that can be derived from the hire of parks and gardens and the political kudos derived for councillors and state members of parliament in staging popular rock concerts, rave parties and exhibitions.

Just to quickly go through the background dispute over the Carlton Gardens which is instructional - it can be instructional - in that it shows the involvement of the Melbourne City Council and the state government, the negative involvement. We've made a comment here that there is complications because while it used to be under the Exhibition Trustees, the new museum was built in the Carlton Gardens and the Museum Act took over the management of the exhibition building. The City of Melbourne has responsibility for the Carlton Gardens, whereas the museum has responsibility for the exhibition building, hence the guardianship of the Royal Exhibition Building and Carlton Gardens which are one precinct and inscribed on the World Heritage Register are split as a dual function, so that is a complication.

Just very briefly, a planning permit was issued to give permission to the International Flower and Garden Show to stage the event in the Carlton Gardens. Six community and resident groups objected on the grounds of damage being done to the gardens over past years and I hope that the representative of the Carlton Residents Association can give evidence of the damage done to the Carlton Gardens over the past two years, actually longer, and we have photos of the damage to the

gardens.

Despite our objections, council issued a planning permit. Six organisations appealed to the Victorian Civil and Administrative Tribunal. Our appeals were aborted when the state planning minister stepped in and amended the planning scheme to permit events in parks without a planning permit and so our third party appeal rights were removed. This was extremely serious because there was no cognisance given of the fact that this was a place on the World Heritage Register. Similarly, there's no appreciation of the fact by the minister for sport and Commonwealth Games that the Carlton Gardens are part of a World Heritage Listed place because the marathon is being routed through the Carlton Gardens and nobody noticed that the two events would clash.

We have appealed, in the sense of written to federal heritage minister Campbell and the federal heritage council chair to invoke Commonwealth legislation to protect the exhibition building in the Carlton Gardens precinct and I think I did provide copies of that correspondence before. Our legal adviser maintains that heritage minister Campbell is required to issue a permit if there's a danger of a World Heritage listed place being damaged by an event scheduled for the precinct. We have not yet had a reply on that, nor any indication about that, our contention that a permit is required from the heritage minister. So that is the example that we give over the Royal Exhibition Building which many think to be the iconic public building of Victoria.

Associated with that and a more intractable problem is the damage inflicted on Melbourne's inner city heritage parks by major events. It has only really just escalated in the past three months or four months. The parks are under heritage overlays which is being ignored by the council. The City of Melbourne is now turning over parks for commercial private events and is allowing dance of rave parties, rock concerts, exhibition fireworks display. I just have a couple of examples here. The rave party Summadayze was in the King's Domain which is a heritage park next to the Alexandra Gardens, next to the Botanical Gardens, did \$6000 worth of damage and the Big Day Out, a rock concert with 39,000 patrons, wrecked Princes Park doing \$93,000 worth of damage and taking the park out of commission for months.

In the latter case, Planning Minister Hulls intervened, called in the application, amending the Melbourne Planning Scheme to allow the event to proceed and thus blocking any appeals by community organisations. The planning minister has ignored our concerns about the legality of the process and unfortunately, since we're just a community organisation, we don't have sufficient funds to test it at law.

So there are now clear demonstrations of both state and local government overriding heritage provisions to the Melbourne Planning Scheme and we come here

today with the hope that Productivity Commissioners may be able to recommend adoption of a mechanism to ensure that local and state governments firstly comply with Commonwealth heritage legislation and block permits for major events in the Carlton Gardens, and so halting their destruction and ensuring the protection of a World Heritage List precinct, and we hope that solutions can be found as to how we may require local and state governments to respect heritage overlay of parks and gardens, and so afford adequate protection.

Our legal adviser is, unfortunately, away and so we have not been able to come up with perhaps detailed recommendations. But we hope that you may consider our concerns and develop some remedies accordingly. We may of course, perhaps with your leave, be able to enlarge upon our submission by - I believe there's another date of 24 February.

**DR BYRON:** Thank you very much.

**MS BELL:** Good. Is there anything you would like to - - -

**DR BYRON:** Well, there are two things that I'd like to follow up. Tony might have others. But the first one is that I understand that the power of the Australian government to dictate to sovereign states is not unlimited. In fact the way it's normally done is, there are bilateral agreements between the state government and the Australian government. So I see at least those two angles. One is whether or how the Australian government can require or persuade state and local government to respect their heritage values. The second one is to get the state and local governments to respect the heritage values with or without "being heaved by the feds".

Now, with regard to that second point we've been given lots of examples as we go around the country, where the state government or a local government will list something as being heritage significant and then take some other course of action that is not consistent with that. The general explanation is that a state government or a local government has many other objectives and priorities apart from heritage conservation. If they see it as a way of raising a lot of money they may well do that, even if they know that there will be some threat or some damage to the heritage values.

When you said in your submission that the state and local governments have a failing to protect heritage places, are you suggesting that they don't know that heritage listed places are under threat, or they know but they have chosen to go ahead anyway? I'd just like to clarify that point.

**MS BELL:** Yes, I think it's the latter. They know perfectly well, particularly with the local government, the City of Melbourne, have chosen the option of exploiting -

it's for commercial gain that they are exploiting the parks and perhaps - thank you for that. This is one reason why we appealed to the heritage minister, in the hope that it could be raised in some sort of federal forum with the states or with Victoria.

**DR BYRON:** I mean, we've been given other examples elsewhere, where the Australian government is the owner or manager of properties which itself doesn't meet the heritage conservation objectives of some other taxpayers. So it may be difficult to find someone who's totally without sin.

**MR HINTON:** Except the commission.

**DR BYRON:** Thank you for that, Tony. Is there anything you'd like to follow up on?

**MR HINTON:** Julianne, thank you very much for your attendance today and your submission. In that regard you certainly do have more time to do a follow-up submission if you so wish. While we finish this week our public hearings, we are open to receive written submissions, further written submissions, to 24 February, as you rightly note. To the extent that we get submissions early it means we can take them into account in finalising the report. The later we receive them, the more difficult it is to take them into account.

**MS BELL:** Yes.

**MR HINTON:** But that's due process. My question - let me be a devil's advocate for a change and put to you the question of: could it be reasonably argued that the actual use of historic heritage sites, whether they be gardens or buildings, in fact is the very practice that can engender support from the community to fund those sites, to fund the maintenance of those sites using ratepayers' or taxpayers' money and to do otherwise, that is, close them off to sort of creative use or whatever, in fact could do a disservice to the heritage conservation objective? Did you have any reaction to that?

**MS BELL:** I don't think these are creative uses that they're using them for. They regard them as a convenient paddock or open space in the centre of the city and it does have attractions. But the point is that rave parties and dance parties and concerts, the public is very well aware that they're damaging the parks, and we have to look at the user. The parks are shut off to the public. Princes Park will be off for three months. It is a disservice to the regular park users which are many and varied, and I think that people are - it may be popular with politicians and councillors and a certain segment of the population, but it's definitely very unpopular with the local residents and people who are users of the park.

Just take Princes Park, for example, the area damaged is a sports oval used by

the University of Melbourne, used by university colleges, used by Princes Hill High School and the rest of the park affected is being used for passive recreation, kite flying, dog walking, running and so on. So to serve up for a small segment of the population, a money-making proposition - the gate takings of that one-day event was \$5 million and that goes into the pockets of a private promoter. So I think there is a great resentment that the parks are being used for commercial uses. Nobody would have any objection to the parks being used for public events like the Commonwealth Games or certainly where there is no profit-making to be had, so I think, if it answers your question, the public are fully aware that they are the losers in this.

**MR HINTON:** I'm far from a supporter of rave parties but I do know that there is a segment out there in the population and community who in fact love them, and the fact that they do generate a commercial return of some substance suggests to me that there is a demand for that activity and I would have thought that the processes of negotiation could mean that that income stream can in fact not only reward the community, that is the owner of the parkland, but also can ensure that restoration of any damage is at the cost of the actual recipient of the income stream. So I would have thought that there is a process here that can meet everyone's sort of objectives here, so it really took me to the devil's advocate question: maybe the communities in that area are residents objecting to that disruption to that suburb - - -

**MS BELL:** Not at all.

**MR HINTON:** - - - rather than heritage side itself.

**MS BELL:** No, not at all. I think the point at issue is it has to be an appropriate venue. The park is not an appropriate venue. It only occurred because the showgrounds were being rebuilt and redeveloped. That was ideal, because it has the stages; it's the proper venue for that to occur. It was just unfortunate that it had to be put in Princes Park. I might say there was a list of municipalities that rejected that; Moonee Valley racecourse, Albert Park - there were a couple of others - who said, "We will not have it in a park, we will not have it on the racecourse," even, because of residential amenity and because of the damage done. So we argue, that's fine, these events are terrific for some people, but the answer is a proper venue for them.

With the flower and garden show, the argument is it should be in a proper venue. Gardening Australia had a very successful flower and garden show at Caulfield Racecourse; parking available, the train just across the road, plenty of space and as far as we know, no damage done to the racecourse. It was in the huge central arena. So I think that's the answer, but when commercial motives come into play, it's cheap, it's free virtually for these promoters to use public parks - and your point is excellent, the municipalities should demand proper returns for the use of the park. That's not being done as I gather.

**DR BYRON:** I'd assumed that the councils were renting the property to - no?

**MS BELL:** It's a minimal fee.

**DR BYRON:** Okay.

**MS BELL:** It has become more obvious since - just the gate-takings were \$5 million for private takings. Perhaps Anne from Carlton Residents might - did you bring your photos?

**MR HINTON:** I think we did back in July-August last year in our first round of public hearings - - -

**MS BELL:** You did.

**MR HINTON:** We heard quite considerably from that organisation with extensive documentation and depictions and pictures of what was actually occurring with regard to the gardens.

**MS BELL:** Good.

**MR HINTON:** We appreciated that.

**DR BYRON:** I'd just like to pick up on the removal of the scope for third party objections from the planning minister. I find it interesting that the planning minister would be moved to do that. It suggests to me that they were actually quite happy for these events to go ahead, and they didn't want third party objections. Is that your interpretation?

**MS BELL:** Yes. It was initiated by the council who requested on this spurious excuse that they had so many events - requests for events - to process, which is absolute rubbish because they were birthday parties and weddings and things they have in parks, and therefore it was a lot of work for them to process applications for use of parks for events. They applied to Minister Hulls to amend the planning scheme so that planning permits for events in parks would not be needed. So the minister complied with that. It will have a ripple effect because it's for the whole of Victoria.

Now, it hasn't arisen in the past because we have not had these major events, such as the rave parties and exhibitions and so on, and rock concerts, application for being in central city parks. So it hasn't really arisen before. The events in parks have been small-scale weddings, concerts - like the Botanic Gardens where they have Shakespeare in the Park and so on. So it has only really arisen lately but the minister had painted himself in much publicity of being a fan of Iggy Pop or whoever he is,

therefore got some good publicity with the young folk. So I can only ascribe it to that, but it was regarded as an absolute disgrace.

**DR BYRON:** Can I just then come back to - changing the subject. You quote from the draft report about our assessment of nationally significant places. Perhaps we should have said something like they are generally well maintained and the heritage values are under relatively little threat, but I guess you're suggesting that we've given too glowing an endorsement of the way the national system works.

**MS BELL:** I think so, particularly as the one iconic example in the whole of Australia is being dug up - the gardens, part of the precinct - and being destroyed virtually which is an example that doesn't look good for all governments. So, yes, I think it could be modified.

**DR BYRON:** We'll reconsider those issues that you've raised. As I say, there are examples in other states, you know, if the Australian government in Canberra tried to tell the South Australian government what they could do with the lights, one square mile and so on, in the parkland around Adelaide, I imagine there would be all hell to pay about that too. So there is an issue about how far or what powers the Australian government has to override state and local government, even if a place is on National or even, in this case, World Heritage List. But thank you very much for bringing that to our attention again.

**MS BELL:** Thank you.

**DR BYRON:** We'll look into it.

**MS BELL:** Thank you.

**DR BYRON:** Thank you.

**DR BYRON:** Is Mr Jim Sawyer here? Thank you very much for coming, Mr Sawyer. Whenever you're settled and comfortable there, if you'd like to take us through the main points of your submission.

**MR SAWYER:** I think you've got a copy in front of you. I sent a copy through last Friday.

**DR BYRON:** The system seems to have broken down.

**MR HINTON:** In your own name, Mr Sawyer, or in the name of any - - -

**MR SAWYER:** No, in my own name.

**MR HINTON:** By email?

**MR SAWYER:** By fax.

**MR HINTON:** By fax. The team in Canberra where I assume it was directed - - -

**MR SAWYER:** That's where it would have gone.

**MR HINTON:** - - - are shaking their head at us, for the transcript. So that particular communication system hasn't worked well and that's a little unusual, so we apologise for that.

**DR BYRON:** That's the first breakdown we've had in that system.

**MR HINTON:** In the whole inquiry in fact.

**MR SAWYER:** Well, I can assure you it went, but I've got some other copies here too I might be able to pass on to you, which might be helpful.

**DR BYRON:** Thank you. We'll try and follow as best we can.

**MR SAWYER:** They're not final.

**MR HINTON:** We can photocopy something if you like.

**MR SAWYER:** They're not final, but I think that I've got enough copies here to help.

**MR HINTON:** Thank you.

**DR BYRON:** I do apologise for that. In fact it's the first time in eight years that a



submission hasn't arrived before me, so - - -

**MR SAWYER:** Well, let's put it down to Telecom or something like that. We don't need to explain ourselves.

**DR BYRON:** It's just out in the ether somewhere.

**MR SAWYER:** Yes.

**DR BYRON:** So thank you very much for coming and take it away.

**MR SAWYER:** Carry on. By way of introduction my name is Jim Sawyer as in Tom. I'm a farmer with other farming interests including wineries and beef production. I'm the principal of two properties in the Shire of Indigo which is North-East Victoria and I've been served recently notices of proposed heritage listing. This prompted quite a few questions because we did inquire with the local shire, because they had indicated that there was questions and answers that they could answer, and when it came to specifics they were unable to do so. The general impression was that, "All will be revealed, given time."

I don't mean that unkindly. It was just a question that I think we've all been trying, as private people and others, to try and work through the thinking of, where this conservation of Australia's heritage takes place in our quality of life and in our future economics of a family. The questions that I asked was that, "Has notice been prompted by a possible listing of federal government and historical heritage places?" and it obviously now has, and I must admit that these 350-odd pages have been read cursorily but found that the time to do a full appraisal of that would probably take some weeks.

I would initially, however, like to compliment those in the conservation of Australia's heritage places because I'm quite comforted by the fact that you've covered a lot of areas fairly and generously to all, whereas until I'd been able to get this off my machine I suppose I felt fairly remote. It was prompted initially by the fact that we were not aware that for three or four years this has been going on, and neither were all my neighbours.

We all felt further alienated by the fact that we were served notices of proposed heritage listing on both my properties, alienated because these to our impressions were Big Brother, if you like, and I don't think that I would be unusual in that respect, to endorse what my neighbours had been saying to me, neighbours being in a radius of probably 20, 30 miles. I'm also disgusted with people like Susan Panopoulos and Tony Plowman at state and federal level, and they knew no more about it than I did, and I presume, like all good politicians, they should know much more about it than I do.

But they were equally concerned that people had come onto my place or places and taken photographs of both properties and could tell me how many sash windows I had, how many bedrooms I had, and could tell me the colour of my roof - which was actually quite wrong - and this was an intrusion on privacy. When I raised this with the local council two weeks ago, the local council said, "Oh, this has been going on for a long time, you know. Don't you worry about that." My name is not Peter Ross Edwards or anyone else, but nevertheless there has been a lot of thought gone into this and so on.

But to everyone I've spoken in my district to, not by directly confronted them but just mentioning it was heritage listing, I found that they had carte blanche notices served on them and the words that they used and which I endorsed was, "This is outrageous." That was also the adjective that Susan Panopoulos happened to - Sophie Panopoulos happened to raise as well.

So my outrage, if you like, was tempered by the fact that either I'm wrong or I'm following the natural course of my neighbours, which seems to be quite general. But from your report it's quite clear that you as a team of people doing their best for our country and putting in a fair report, need somebody to be a more PR conscious operator, because the only way this will eventually work, how well it works, is going to work with the cooperation of people who have these properties and people around it, and have a sympathetic approach, not this unfortunate approach.

As an aside, I might add - and I doubted to myself whether I should raise this, but I have been under some health threats in the last couple of years with robberies and people intruding on my place and my way of life, quite alienate to a country town, which threatened my existence, and anyone that intruded on my place with a camera is now seen to be even more outrageous to my quality of life, and I'm just unsure where I'm going. At the moment if a mouse moves on my place in my house there's an electronic pick-up which goes straight to Melbourne and the police. That's how much of a concern it is.

So I presume it's the architects in question and I presume they're the ones mentioned in your report in Canberra, is that right, that four years ago did a study of properties? Then who registered my property as - - -

**DR BYRON:** Indigo Shire.

**MR SAWYER:** Themselves?

**DR BYRON:** It has got absolutely nothing whatsoever to do with this process.

**MR SAWYER:** Well, that's very - - -

**DR BYRON:** We're investigating their process.

**MR SAWYER:** Well, you would think that small shire like Indigo - I used the expression in front of them the other day as "the 12 apostles". They were standing up - and I don't mean that in a derogatory way because we all mean it, we all smile about it, there's nothing vicious about it. They were all saying, "Go away and when the facts are known we'll let you know." However, the opportunity to address your Productivity Commission is something that I couldn't give up, despite the fact that I found the time eventually to read 351 pages which, as I've said before - loudly and again - I feel very comforted. But of course it raises more questions than answers and I'm sure your report does the same and whoever reads it in Canberra presumably will be asking the same question too.

So the question that I had to ask initially was, has this notice been prompted by possible listing by the federal government? Well, it hasn't, has it? So it's the Indigo Shire Council that's done it. Now, the Indigo Shire Council is one of the smallest shires in Victoria - I won't define which one is the smallest and which one is the largest but it's not a large shire. It comprises of Beechworth, it comprises historical significance. It comprises at the other end Rutherglen which is where my vineyard is - and I'll take orders if you like before I leave, it's Mount Prior. Thank you very much.

So I believe that the Indigo Shire had been hiding behind, if you like, this proposal by Australia's conservation to endorse a framework that takes place to the satisfaction of their own planning requirements. As late as two weeks ago when I addressed the council on this - however, despite the fact that I speak for many people in my area - there were only six people at the meeting and I don't think that's unusual when you've got to get out of bed when it's 45 degrees, or get into a shower. So I was disappointed about that but certainly a balloon has gone up around the place.

The impact on the framework of my future life is considerable. I believe that the Indigo Shire has got plenty of anomalies in terms of development that's been made, 50 acres, 100 acres and so on, and less, and they're hiding possibly - possibly - under this facade of your very good Productivity Commission report. The implications of this are that - and it's also been addressed firmly by your report - there are strong indications that the capital value of both my properties will be considerably reduced. I have had one person that would like to buy my old established homestead, 1860 bed and breakfast et cetera, currently leased, I might add. Of course they're unsure so they've just said, "Forget it, we'll let you know."

Where there's an objection there are other places that you can look at that are much more conducive to making a prompt decision rather than an overhang over it, being "unsure whether I should put my money into that if, if and if happens". It then

raised the question of, "All right, the Indigo Shire we now find are the ones that made this list," and in my particular shire there's something like over 600, one of the smallest shires. These implications are that this will have a profound effect on the capital values. Why? For the one reason that I've mentioned - the main one - is that there's unsureness. It will stifle - I use word "stifle" objectively - development, for the reasons I've given.

Another indication of this was of equally deep concern with - having been in Melbourne three weeks ago, I was impressed by an address that was given by a large insurance company, in fact one of the largest in Australia, where they were wanting business, and I happened to be fortunate enough to look at their balance sheet and do all these things that people do at an annual general meeting. I might add I don't normally go to these annual general meetings as a farmer. So they wanted business and so I asked my accountant to front up to the branch office. The first question that they asked was, "Is your property" - and remember we've had 20,000 acres of bushfires around us as late as 10 days ago, we've had 12 acres go up in Barnawartha 48 hours ago, we've had these horrifying fires in Yea, and my own properties are now uninsured. Why - because the first question asked was, "Is your property in the proposed heritage listing?" and my accountant, being the honest accountant that most accountants are, said, "Yes." They said, "Go away, we don't want to know you," or words to that effect.

Equally so when I raised this with the shire president after this particular meeting, in an informal manner. He was the first to remind me, of course, "You won't be able to get insurance anyway because you've been declined or cancelled." That's the question that they ask, "Has your property ever been declined insurance or cancelled?" and the answer would have to be, "Yes, it has." I was reminded by a counsellor of the National Trust only last night, "You may be able to get insurance from - we know of another company perhaps." Yes, I don't know about them either, neither does anyone else in my area. If that person is still in business then I would be interested to see what their rates are.

But to all intents and purposes we are running a couple of million dollars worth of business and probably \$5 million of capital value which is uninsured - uninsured against anything. This is of deep concern. Coincidentally - and I choose my words and emphasise "coincidentally", but it was too coincidental not to overlook - my bank manager came out to see me about the same time as that meeting that I had with the state - with the Shire of Indigo Council. They were wanting to review my bank bills. I'm sure this would not happen to you and your credit would be much better than mine. However, I felt distinctly under some surprise that they should ask that because they did a bank valuation on my farm in 1989 and the valuation of my winery alone - I had equity two-thirds of what I was borrowing from the Bank in this particular case. I presume this is confidential in camera?

**DR BYRON:** No, it's not, sorry. You missed the opening comments this morning. We'll check that part of the transcript but there is a transcript which will be public so I should advise you to be circumspect in what you say.

**MR SAWYER:** I had to ask myself - this is coincidental or not. They're well aware, as anyone else presumably, that the equity has to be preserved, particularly in wineries, the way the current market is. I presume the head office has turned around and said, "You'd better review everything," so they were reviewing mine as well. But it is coincidental that one week where it's declined insurance and the next we're under some threat - no matter how veiled, I'm not sure - as to whether bank bills will be renewed. So it seems opportune that this should happen at the very time that we have a public hearing.

This also has a direct influence, of course, on capital values and I refer to your page 183 and 184 of your report which happens to endorse this very fact that there is a quite understood implication in all that the government is doing on capital values. I read as follows:

There is suggestions that some property values can suffer where development or subdivisional opportunities are blocked by heritage.

I hope my bank manager doesn't read that.

The fourth group are residential buildings in declining areas - this is a particular problem in some rural locations - where farm amalgamations and declining populations can result in redundant heritage buildings that are unlikely to be occupied or are difficult to occupy. Whilst there are no capital value implications, a requirement to maintain a property which is of little use value represents a burden on the owner. If they are not maintained they will decay and our heritage values irretrievably lost.

Page 183 and 184, there are random statements made. "These buildings are likely to be orphans," is another statement that is made. I think that's a pretty good adjective. There are some buildings on heritage properties that are old and decrepit. I have a stable that has been heritage proposed which is a lovely brick place that I've endeavoured to maintain. I might add I was vice-president of the National Trust, North-East Victoria, for some number of years. So I'm sympathetic to these things and I've endeavoured to maintain things like stables and the house which happens to be also proposed. It's a mud homestead of some significance.

So it's not as if I'm leading it from the term of just capital - capital "C" - it's a

small "c". But after all, most farmers of my age - the average farmer's age is 60 years of age, if not 59. I'm well and truly past use-by date theoretically from that score by something like 13 years. It would appear that my future is wrapped up in the immediate requirement, as I've been doing, to endeavour to capitalise on some of my assets so that my family and I can get our affairs more in equitable order around risk, such as drought, fire, which I've explained, and all the other exigencies of farming, let alone living.

So then we came to the question of - in the overall planning scheme - lead time. When are people going to make a decision on this. If I read correctly - or hear from council - this has been going on for something like three or four years, if not four, then the lead time to my intention is well and truly past. It would appear that the decisions by the authority - whoever they are - and the effect on regional development - and you may be aware my shire abuts Wodonga Shire which happens to have a 14 per cent growth rate which happens to be the highest growth rate in Victoria of any regional area, including Bendigo. Then if we're not to take some definitive steps of marketing that asset then that's prejudicing my future capital values. I think I have laboured the capital values well enough but they do keep impinging on my argument.

I was chairman for Victoria of the Albury-Wodonga Development Corporation, so I'm quite conscious of the fact that development is very necessary in country towns and in that area. I believe our shire could well and truly be hung, drawn and quartered - not that I would do that, of course, I'm too much of a gentleman. But they are talking about a new overlay, a planning overlay. "We'll be looking at it about December." I said, "Well, you'd better look at it a bit earlier," and they said, "Why?" and I said, "I'm told I'm going to be revalued in November." I said, "Do you realise that conceivably capital values - that the property has got are rateable - are going to be reduced?" "Oh, we hadn't thought about that." So somebody, somehow, the mayor of Indigo Shire, started to become a friend; not that he was ever an enemy. You never have enemies in a country town, do you?

But nevertheless they hadn't thought of that one. So that was a little bit emotive on my part but it was very fortunate that I was able to pull that out of the bottom drawer at the time. I felt - and I've felt for some time - that the planning schemes of regional authorities, such as councils, are influenced principally by the planning and environment officer - in our case in Indigo Valley - a new one. The old one I think might have either - well, he left anyway, let's put it that way, recently. So there's another person in that position now with no background of the whole area, I presume, and there's a learning process that will have to go through there.

I've covered the difficulties of a regional government being fully able to handle development potentials. I also feel that there's the possibility that in terms of regional development obligations that the councils may hide behind the electoral

sensitivities. By that I mean that there is money spent - as we know recently in Geelong and also it's been endorsed in Wodonga, as late as last week in the newspapers, that people are coming in, in the case of developers in the case of Wodonga - I can't speak for Geelong - and they're subsidising people to become members of council. Usually the way of doing that is to put money where it means - and it's in advertising and to cover expenses of selected clients. This is also of deep concern when we're looking at regional governments being, from your report, the prime mover of handling what is a national problem.

So the election sensitivities is something that hasn't been addressed and I think - David Smith, you'd remember Costa, was it, in Geelong? You know, this is getting pretty serious. I don't want to go into that intrusion too much but it's on and it has never happened in our district before, but it's happening. In fact, I know it's happening because I had lunch with six of them at my homestead at Mount Prior which, as I mentioned, is a bed and breakfast. As I mention bed and breakfast, the homestead is leased. What happens if the planning regulations are changed? Does that void the lease? I think it does. It hasn't been addressed and it should be. So there are financial obligations that I have to a lessee; equally so there are obligations, I hope, under the terms of the lease where somebody lives up to the obligations that they have when they've signed the lease. I certainly feel that that hasn't been touched on with your report. So I've covered the financial authorities and the bank requiring revised valuations to check for security, prompted by conservation notices served.

My final comment is that the need for prompt knowledge to all affected in the listings, rather than being served notices of facts by local authorities, who are generally unable to answer questions - and I mean genuinely they don't know but they think they do and they can't support anything that you've given us here. I wonder if they've read it. In fact, I know one shire councillor hasn't in my immediate shire. I was hoping that she might have been able to give me some answers and save me reading 354 pages. However, she was here a couple of weeks ago, I gather. You had a regional meeting with councils?

**MR HINTON:** The Victorian government had heritage officers.

**DR BYRON:** Yes, the heritage officers from the 78 municipalities had a meeting organised by Heritage Victoria.

**MR SAWYER:** Were you there or anyone representing the government, the federal government?

**DR BYRON:** They asked us to come and explain to them what was in our proposal which was critical of them, so we talked to them in January.

**MR HINTON:** This was after the release of our draft report.

**MR SAWYER:** What was the attitude with council? It's my turn now.

**DR BYRON:** Well, just on that, we were invited to a meeting that they had organised that they have every 18 months anyway, because they were very upset with what was in our draft report which is a good cue to go back to explain - I think you're under quite a few misunderstandings about the process - you clearly are - of what's going on.

**MR SAWYER:** That was my opening gambit. I want to know where you're coming from.

**DR BYRON:** Okay. The system for heritage in Australia as it works at the moment is what they call a three-tier system where the national government says that they will take responsibility to place it as national and international heritage significance. The state governments have a state heritage agency and a state heritage council and they look after places that are considered at state government, and then each state government - all states - has required, encouraged, pushed - whatever - their local governments to do heritage surveys and to develop their own local list of locally significant heritage places. Now, that's the system as it has been going on.

**MR SAWYER:** A question - may I?

**DR BYRON:** Hang on just a sec. We as an independent commission of inquiry were asked by the federal treasurer to review that system and to see whether it works, whether it could be made more effective, more equitable, more cost-effective, better bang for the buck, and what, if anything the Commonwealth and state governments might do to do this heritage conservation system better. Now, the notice that you got from Indigo Shire is exactly the same as notices that tens of thousands of other people have been getting from their local shires and town councils, city councils all around Australia. We have been highly critical of the way that process has been done.

**MR SAWYER:** Hence the PR comment that I made.

**DR BYRON:** Well, there are a number of things in the process in terms of who decides, on what basis, what is heritage and then when the decision is made to list it, at the moment without the consent of the property owner, we're suggesting that frequently gives rise to all sorts of serious impositions on the owner which in turn can be very unhelpful or destructive to getting good results on the ground.

**MR SAWYER:** That's my comment.

**DR BYRON:** And mine, yes.



**MR SAWYER:** My case rests on that too, thank you.

**DR BYRON:** Exactly. So what we're suggesting is rather than just have state government or local government officials, bureaucrats, heritage advisers drive past a place and say, "Yes, that looks like it's interesting. Let's go and do a heritage assessment of significance and then if we decide that this place is of heritage significance we" - the bureaucrats - "come and tell you that your place is listed." Okay.

Now, we're suggesting that that process has some serious flaws in it and that's why we've suggested that rather than say, "We have decided that you have to maintain your place for the public good in a certain way," that our suggestion was mutually agreed, negotiated heritage conservation agreements where the local government officials, employees of the council say, "We think that your place is of heritage importance to that area," and the owners of the property sit down and work through what should be conserved, how it can be done, what is still okay, what is not okay, what would need to be discussed or negotiated further.

"If this is going to impose some conditions on your or reduce the capital value of the property or make insurance more expensive or impossible to get then there would be some quid pro quo and the listing body would share a fair amount of the expense," rather than just saying, "You'll have to do this for the public good and it's all at your own expense." Now, I'm summarising 342 pages down to a couple of paragraphs. But that's the gist of the argument. We put that out for public debate. This morning we had somebody in here - you might like to check the transcript later - who said the only people who are critics of this involuntary statutory listing are property developers and other vandals who just want to bulldoze heritage places. Now, it seems to me that you're a critic of the system and yet you're not one of these anti-heritage philistines who just wants to go around destroying places.

**MR SAWYER:** Thank you.

**DR BYRON:** So in that sense - I mean, you're an example of the people who are on the receiving end of this step. As I say, we suggested that rather than people who think your place is of heritage significance, telling you what you have to do, they should sit with you and discuss what you might do together in some sort of partnership arrangement with them sharing a fair amount of the bills.

**MR SAWYER:** "Them" being state government?

**DR BYRON:** State government, local government, federal government - depending on, you know, if you owned the Royal Exhibition Building over there in Carlton we might expect money not only from Canberra but possibly from Paris as well. We

might not get it but - - -

**MR SAWYER:** Let's use the Statue of Liberty, that's a good example.

**DR BYRON:** But if your place is assessed as being of local significance, of heritage value to that community and that area, then under our proposal the community in that area - via the council - in some shape or form would help ease the burden of looking after it, given that they're the public beneficiary of the long-term conservation and maintenance of this place. Conversely, if the local society isn't willing to put their hand in their pocket and pay some part of the costs, then obviously they don't value it that highly after all.

**MR SAWYER:** Well, it's a question of rateable property, isn't it? I've got various press articles here which shows the mayor of Indigo Valley saying, "We're going to be in \$2 and half million deficit this year and we want to build \$2 million worth of new electoral and state offices." So the bottom line is that the regional government is not going to come behind us, and the numbers that were talked - a fortnight ago. How many? 170 regional planning people must have come to that conclusion too. There's not enough bikkies in the barrel, let alone enough barrels to store my wine. But I can't see that working. Also I can only see alienation continuing, and under the guise of your report - commendable because I've read it - is that you only get there when you have community support. At the moment you admit, as I have been promoting to you, that this has been done in a very, very, very bad way.

I mean, we've read one of my constituents - one of my neighbours, another winemaker, I might add - wrote to the local member Ken Jasper and - I've got the correspondence here that I'm prepared to table, which might be helpful - it's not particularly satisfactory. There appears to be a lack of understanding of these types of processes which is quite understandable, they say. All of this is not helpful. May I continue?

**DR BYRON:** Please.

**MR SAWYER:** Thank you. I didn't want to override what you maybe wanted to conclude with. But what we need in lead time is now. In your submission you mention that we'll require legislative, institutional and operational changes. I would think the minimum lead time that that could take place, having some understanding of what's happening at my place at the moment with the Murray Darling Basin Commission and the Murray River, which I happen to live on - that's taken to date four years. I can't see this being under three or four years and that's being generous. In the meantime I'm in limbo status quo. There is a great need for me to emphasise, one, that local government are ineffective, when they do a broad brush approach in my district, as they've done in other districts. Can you tell me how many processes have been heritage listed? I believe it's something like 10,000 or something. Would

that be unusual?

**DR BYRON:** There's probably 100,000 properties in Victoria at the local level. Relax. It may well be more but we're not sure of that, but somewhere around the 100,000 mark is the current estimate.

**MR SAWYER:** Well, it looks like I'll be dead by then. Somebody has used a broad brush approach on this, haven't they?

**DR BYRON:** Again there's an interesting contradiction between what the heritage expert professionals tell us is that each place is carefully assessed according to set criteria and the assessment of significance is made on a very rigorous, transparent, objective basis. Then we also get other examples of where local governments do a quick drive-by, or they come in to take photos of individual properties, and say, "Yes, we've assessed this is of significance," but it's not obvious - now, I don't know how much or how little work Indigo has done but presumably this proposed heritage listing is a multi-stage process where first they identify the possibles and they will go through and examine each of those and decide whether they do meet the criteria for listing. Under the way the system works at the moment, if you meet those criteria to be assessed that the property is of historical and cultural significance, then it goes on to a list. Now, our criticism of that is that that list has very severe financial consequences starting immediately.

**MR SAWYER:** Well, look at me.

**DR BYRON:** As I say, you're a good example of our case.

**MR HINTON:** Could I just take you a bit further on what happens with us. We will finish our public hearings in Canberra on Friday. Coincidentally, the Australian Local Government Association will be appearing before us. So I suspect I know what they will be saying if New South Wales is any guide. They appeared before us in Sydney where they said the system was working wonderfully well, but I won't pre-empt what happens in Canberra. But we will produce a final report on time in early April to the Australian government. But our remit was - while it's through the treasurer and it's therefore through the Australian government, our inquiry was supported and endorsed by the state and territory governments as well, knowing full well that the system we're looking at involves all three tiers of government. Therefore our final report will be of direct interest, not only to the Australian government, but also state governments and particularly local governments, given our line of analysis and conclusions in our draft report.

The Australian government has 25 parliamentary sitting days to table the report - and that releases it. They then, I would expect - I can't speak for them but I would expect - that the Australian government will put in hand consultation arrangements

with the state and territory governments to see what sort of reactions governments should have to our recommendations. That will lead to - whatever is agreed - processes by which changes will be implemented. So your assessment that the time that's going to be involved in delivering on this report is going to be some time. I'm not going to put a deadline to it but processes involving states and territories and the Australian government, by their very nature, involve cumbersome processes so it does add to the time. It's not going to be an immediate input into how the shire of Indigo handles your particular properties.

Now, I wanted to come back to something you did say earlier about the possibility - and I read between the lines - that you were thinking that the heritage listing by Indigo, if it proceeds, could have implications for the planning regulations regarding your property.

**MR SAWYER:** That's why I asked about - - -

**MR HINTON:** That may be the case but the important thing is though that most heritage places, for example, bed and breakfasts, generally speaking the process of heritage listing does in fact encourage ongoing use because it's the ongoing use which is a very important ingredient to ensuring that conservation actually takes place. Locking up a building doesn't maintain it, doesn't conserve it, doesn't preserve it. So I can't speak for planning processes but I would be very surprised that an operating bed and breakfast subsequently listed for heritage would lead to - I would be very surprised if that led to the loss of the right to practise and pursue that service of bed and breakfast. I can't give you a categorical assurance but it would be very unusual given the experiences of the operations of state governments and local governments across Australia in that regard.

**MR SAWYER:** Thank you, Tony. Well, the implication of that is that the current tenant of my bed and breakfast may not renew the lease. They might go somewhere else. I still make my point.

**MR HINTON:** There may be implications for how you could go about maintaining the building; that is there may be constraints on development applications to put in extra bathrooms or whatever, then the heritage characteristics could constrain what you can do with the building, depending upon the approach taken by that particular local government, but I can't speak for that, of course.

**MR SAWYER:** My difficulty is I spent between 10 and 15 thousand on improving that property in the last three months - with white ants, with eight inches of rain at the end of last year which meant regrading all the roads and that sort of thing, and making good other damage, slate roofs and all that sort of thing that goes on with an 1860s building - to make my tenant happy. At the moment they're not very happy because there's a downturn in the economy and that's going to get tighter, not easier.

So equally so if I'm to be personal in my case, the Mount Prior property, just using this alone, let alone my own farming operation, comprises of five titles. I believe it's quite possible that the shire would not consider that for subdivision until this is all over and so on and the waters calm down. If the lead time is supposed to be four years or three years - well, we have to admit it's going to be a long time - whatever "long" is.

**MR HINTON:** Yes.

**MR SAWYER:** As I say, the use-by date comes up and it could be quite possible that the development, the plans that I have for the area, could be thrown into chaos and the interest and liquidity to keep a vineyard running in the same difficulties that the bed and breakfasts are finding, you know, and the wine industry. In fact, my task is to keep staff on for the next three years until I believe it will come good. So on a very personal basis I believe that the shires, regional government, is going to stifle the development of the area. I think they're going to protect this too because it just so happens that my farming operation - and I use these physical examples of what I'm on about and here today - happens to almost abut the Wodonga Shire, the City of Wodonga. Eight K's or six K's down the road for me is \$100 million of Woolworths development, 700 trucks a day, if not a thousand at Easter and December, seven days a week.

The implications of that planning scheme for Wodonga is fine, they're going right ahead, and yet right on the boundary of that is the Indigo Shire and they're saying, "Well, we're thinking of doing an overlay," but that overlay has got nothing to do when we have to look at all this because they don't know what they're talking about. They've never been possibly to a National Trust meeting. I've never seen them there; not that I've been for nine years but certainly in the nine years before that I was there doing my bit. But I just feel that the total insensitivity of these going out and you've accepted the fact of my point. Thank you for being generous. The anxiety that we have by locals is just nothing short of outrageous, the way they've gone about it. I could use several adjectives of activities that other people have used with me. But it doesn't alter the fact that here am I today with lead time getting closer to 80 by the time the whole thing is done. All we need is a locust plague and we'll be right.

**DR BYRON:** A complete trifecta. One suggestion I could make is to - a fairly succinct statement of the way the Victorian heritage system works is in the submission that we've got on our web site, I think, from the Heritage Council of Victoria. It's not 40-odd pages, probably only seven or eight pages or something like that, but it's a very, very clear description of what the state government does and how it does it; what local governments in Victoria do and how they do it, and the process that's supposed to be followed, and what rights of appeal and so on individual property owners have, because you're by no means the only person who has reacted

with shock and more.

**MR SAWYER:** Indignity.

**DR BYRON:** Yes, to getting something like this in the post.

**MR SAWYER:** It will become a political football in the end.

**DR BYRON:** Well, it already is in a few other places.

**MR SAWYER:** Well, I saw Stateline last weekend, as you no doubt did, where it was talked about on television.

**DR BYRON:** Which station?

**MR SAWYER:** Stateline. I don't look at Stateline as a rule but I happened to have the television on and there was - - -

**MR HINTON:** I've seen the one in South Australia which I appeared on, yes.

**MR SAWYER:** Yes, that was you.

**MR HINTON:** Yes.

**MR SAWYER:** That was the face.

**MR HINTON:** Yes, that's right.

**MR SAWYER:** You know, that was just, I presume, a snippet which was probably quite unfair.

**MR HINTON:** We had public hearings on that day in Adelaide, that is last Friday.

**MR SAWYER:** Yes.

**MR HINTON:** So the ABC television Stateline program took the opportunity of those public hearings to actually film part of the hearings but also to interview some of the people appearing before us. So yes, it is an issue in Adelaide in particular at the moment. It is splitting the community.

**DR BYRON:** But again there were a number of people who came to those hearings who thought that - who had a similar reaction to you when they found out that their property was proposed for heritage listing and they started to realise what the implications of that might be to the same sort of list as you've had. So that's one of

the reasons why we propose that the system has to be changed. Now, a lot of people who are in the existing system think it's terrific exactly as it is.

**MR SAWYER:** It will be interesting to see the outcome, won't it?

**DR BYRON:** I'm sorry, we're not in a position to, in any way, involve ourselves in the situation between you and your municipal government. It doesn't surprise me at all that none of your local councillors even know that our investigation is going on, let alone have read the report. Councillors all over Australia are doing their own thing, as they do. But what we're suggesting is a system that might change that in the future, but certainly not in the next couple of years.

**MR SAWYER:** Well, you could have a favouring council that could favour development at any cost and you could have another council that could resist development or ensure that heritage is preserved at any cost.

**MR HINTON:** We have examples of both. I suspect we might also have examples where the same area has been in both categories at different times over the period as well, yes.

**DR BYRON:** There's a very good case in Queensland where one municipality has got 7700 places on their local government heritage list and another city of the same size has got 0.00 and yet the interesting thing is that when you drive around the two cities the number of heritage buildings and the condition they're in is almost the same.

**MR SAWYER:** So that endorses my - - -

**DR BYRON:** There's at least a number of different ways of skinning this cat. So yes, we're holding hearings like this to get feedback from all sides of the argument and then our job is to give the Australian government our own independent assessment of how we think the system could be improved. But thank you. Look, I realise that you've come a long way. You've spent a lot of time and money of your own to get here and tell us your story. It's a very interesting story and we certainly do appreciate it.

**MR SAWYER:** Thank you. In conclusion I'd like to thank you for your report and your sympathetic hearing.

**DR BYRON:** Thank you very much.

**MR HINTON:** Thank you very much.

**DR BYRON:** Next is the phone hook-up with Perth. We will resume in about 10

minutes with the phone link up to Margaret Carmody in Perth, since she was the only person from Perth who wanted to talk to us. Thanks, ladies and gentlemen.

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**DR BYRON:** Setting the scene a little, that Tony Hinton is here with me.

**MR HINTON:** Hello, Margaret.

**MS CARMODY:** Hello, Mr Hinton. How are you?

**DR BYRON:** You're on a speaker phone.

**MS CARMODY:** Am I?

**DR BYRON:** Yes, and there's about half a dozen other people in the room and a couple of our commission inquiry staff, and if it's all right with you we'd like to record the transcript as part of the public hearings process.

**MS CARMODY:** Fine, fine.

**DR BYRON:** I thought I'd better tell you that we're recording.

**MS CARMODY:** No, that's all right.

**DR BYRON:** Yes, the reason that we - I'm sure the staff explained the reason we're not in Perth is that it seems that you were the only person in WA who wanted to talk to us at this stage. So it was a bit hard to justify all of us coming all that way to meet with one person. So if you don't mind just giving us your comments, reactions on the draft report.

**MS CARMODY:** Certainly. I'll just get the draft report book. It's just in another room. I wasn't expecting to hear from you till about quarter to 2.

**DR BYRON:** Thanks.

**MS CARMODY:** That's all. I'll just get the book.

**DR BYRON:** Yes, thanks, Margaret.

**MS CARMODY:** Dr Byron?

**DR BYRON:** Yes, we just realised that in setting up this somebody miscalculated and didn't allow for daylight saving.

**MS CARMODY:** That's all right.

**DR BYRON:** That's why we're an hour earlier.

**MS CARMODY:** That's all right. I was only thinking - you know, I've been thinking through this for a while now. The only reason why I was able to ask if I could speak was that I got the conservation of heritage places, I got the draft report.

**DR BYRON:** Yes.

**MS CARMODY:** The only reason why I got the draft report was because my submission has been lost in the post. It never reached you people and I rang up and asked, "Why haven't I been acknowledged?" This was weeks and weeks after I sent it, and you never received it. So when the draft report came I saw that you were having hearings and I wondered if people knew about this second lot of hearings, for me to be the only one, you know, to comment.

**DR BYRON:** Well, they were advertised in the - - -

**MR HINTON:** And a circular was distributed to interested parties in every state including WA, so everyone who participated in the first round and everyone who made a submission for the first time also were formally sent a copy of the circular that listed all the public hearings for the second time around, including the general timing that we had in mind with regard to further submissions and public hearings.

**DR BYRON:** So we have advertised extensively including in the west.

**MS CARMODY:** Well, I'm terribly disappointed then, I am, because it's - - -

**DR BYRON:** Likewise.

**MS CARMODY:** Yes, I bet.

**DR BYRON:** At least we have your reaction.

**MS CARMODY:** Look, thanks for giving me the time. Thank you very much. I felt with the draft report - and I haven't ploughed through the middle section with the assessing the government policies because I don't - not so much that but just how governments run themselves, each state runs themselves.

**DR BYRON:** Yes.

**MS CARMODY:** But what I felt was that in order to try and simplify it and make it workable, you're making it inadvertently too complex. For instance, in having a - what do you call it, those memorandum of understandings?

**DR BYRON:** The conservation management agreement?

**MS CARMODY:** Yes. By having that first up, places won't get heritage listed, I don't feel, I really don't feel. Like, I was at - "Oh, too hard, \$10,000," going through all of this. They did do it to a certain extent over here. You know, they had to put the houses on the state register. But I just felt - like, for instance, you seem to pay a lot of attention to the three tiers of government. Over here the first tier of government, the local government, to my way of thinking - I'm just jumping a bit here, excuse me, about this conservation order. Are you meaning for that conservation notice to be put on the first tier, the local government houses, or not?

**DR BYRON:** We were talking about each tier of government, if it lists a property, rather than just list it and say, "Well, that's that," they would assess its significance and then enter into discussions and negotiation arrangement with the owner of that property, whoever it is, about how that property will be looked after in future, who will do or not do what things, and if there are costs attached, how those costs are going to be shared between the listing body acting on behalf of society and the private owner.

Now, we also thought that some of those agreements could be greatly simplified if we're just talking about a private residence that was of significance at the local level, not some state or national icon place. The agreement about who would or would not do certain things over the next 10, 20, 50 or however many years as agreed upon could be relatively short and simple and the list of offsets or inducements or sweeteners, whatever you want to call it, that the council would offer to the property owner, there would be a sort of a standard menu which might include grants or rate rebates or assistance with materials, that sort of thing. I mean, when you talk about a conservation management plan costing \$10,000, that might be something that you prepare for Government House or the State Library, but we weren't thinking of that for Mr and Mrs Smith's house?

**MS CARMODY:** Well, actually in fact that does apply to my house. It's on the state register. It's only a beach house but I've been told it would cost about \$10,000 for an agreement, you know. But, first of all, that's at a local government thing. Given my history of what's happened with the house here, I was on the interim list. The local council employed an officer from the Heritage Council - well, I don't think he was an officer, he was an independent. But he puts the houses - the little house where I am now - on a draft list. Now, they were taken off, somebody took them off. It wasn't councillors, we feel it could have been somebody within the council offices. So therefore a house that's on the state register would not have even been put on the local register because it was too controversial.

My view is, don't have anything to do with the local government. In fact, I think local government - they're fine, I think they should announce, "We're going to have a look around and see what we think is valuable, what's not valuable, we're employing such-and-such," they're going to check it out for us, and then publicise it,

let the public know, and then publicise the houses and before they do this list, say to people, "This is not to put any sort of land rights thing over your property or anything like that, erosion of property rights," none of that sort of stuff. Really what it does is it educates the public. They say, "Hang on, this house does have merit," or, "Yes, the little streetscape is perfect because nobody has developed it since the 1950s," sort of thing. That sort of thing, I think it's far more valuable to give more power to the state government, not take it away. Don't go giving it to local council because my house was put up for rezoning to parks and recreation.

Only one councillor knew. That councillor now is the mayor of City of Stirling. Only one councillor knew, and this was the first hearing we attended. He was at the hearing; no other councillors knew. I questioned different ones. I said it at a public meeting and it appears that no other councillors knew, and particularly our local councillors, one was on the planning committee. So that's how that ball started rolling. Then we put up for a building application because we thought it will get City of Stirling off our back; no sort of heritage at that stage. They knocked the building application back, and at the same time they knocked the building application back they put our house up once again for a rezoning to recreation, even though the minister had knocked back the first attempt.

This time, once again, by the council officers there was no mention of our house having been put up the year before and it being rejected by Minister Lewis - Richard Lewis. So when you want to give power to the local government, I think, back off, back off. It's too corrupt. Oops, I shouldn't say that. It's too open to corruption. I don't know how to say it. I just think it's open - well, I'm very - - -

**DR BYRON:** Could you just explain to me, did you read our draft report as implying that there should be more power for local government?

**MS CARMODY:** Yes. And I'm saying, no, there shouldn't be, because I don't think you've been clear enough in it.

**DR BYRON:** Obviously not.

**MS CARMODY:** Yes, that's how I read it: far more power to local government.

**MR HINTON:** That certainly is not our intent, Margaret. We're seeking to certain set in place systems for local governments, through their relevant state governments, that constrain them or give them clearer guidance on how they go about doing their historic heritage listing processes. In fact, rather than giving more power to local government, we're seeking to set in train, systems that better prescribe what they could or could not do through the powers that be; that is their home state government.

**MS CARMODY:** Right. Well, in fact it reads the opposite; it does read the opposite, because what's happening over here is that local government has no power, there's no money given to them to look after local houses on the local list, none of that, and it's more or less as an interest thing to get the public educated into thinking, "Well, yes, this has value," or, "No, that doesn't have value." Now, if you start giving them power - well, not power, you're saying there's no power. But in actual fact by giving them incentives in this sort of thing, you're taking that process, I feel, away from the Heritage Council. I think, as you say, this problem was a difference between people not wanting their houses and Heritage Councils - there's no restraint. They can say, "Yes, we'll have that, we'll have that, we'll have that." Now, it doesn't stem from local government inventories, I tell you.

**DR BYRON:** But what we're saying is under this three-tier system that was agreed some years ago that's supposed to be in place, local government is supposed to be responsible for both identifying and listing and then helping with the ongoing conservation and management of places which are of local significance, and the state governments have already agreed that they would buy out of that and only deal with places that are of statewide significance. So there's supposed to be a very clear demarcation between what's the subject area for local governments to take action and what's the subject area for state governments to take action. Now, it seems to me in your particular case you're the meat in the sandwich between the two of them.

**MS CARMODY:** No, I'm not. I'm very happy with the state government. As far as I'm concerned I don't want to deal with - I mean, I do, I've had a meeting with them not that long ago with a couple of directors and they see that we can sort of talk. But as far as I'm concerned I just deal with the state. I'm on the state register. The City of Stirling took me off the list - I think it might have been a council officer. I was taken off the list at the draft stage. Now, because of the issues that I was having with the metropolitan region scheme and debating it in parliament and all sorts of things, I tried to get the three houses put on as precinct applied to the state register. The City of Stirling were put on notice not to bulldoze one of the houses which they were in the process of buying. They hadn't bought it and they bulldozed the house. They hadn't paid any money and the house was bulldozed and the title deeds were dissolved. That was the Department of Planning and Infrastructure - or DOLA at the time. You know, it's hit and miss over here, it really is.

**MR HINTON:** Margaret, do you have a copy of our report there?

**MS CARMODY:** Yes.

**MR HINTON:** If you go to the listing of the recommendations on page (xlv), you'll see recommendation 9.8. This may be the source of your reading our report to think we've said "more power to local governments". There's two issues here: one is a comma that shouldn't be there - - -

**MS CARMODY:** Hang on, where is it? (xlv), is that it - just (xlv)? Yes. (xli) - no, I haven't got it. Yes, here we go. Right. Yes, I've got marks all through this page.

**MR HINTON:** Right at the bottom of that page, draft recommendation 9.8 - - -

**MS CARMODY:** Yes.

**MR HINTON:** - - - the reading of that recommendation may be the source of our miscommunication between you and us in the sense that there's a comma on the second line after "heritage" that shouldn't be there, because when you read that it looks like we're saying, "Heritage should be a matter for local government planning schemes," when in fact we're not.

**MS CARMODY:** I've got two asterisks here and I've got here, "No, open to abuse."

**MR HINTON:** Yes, okay. Well, what we're really saying is that heritage zones should be the responsibility of the state government's local government planning schemes as opposed to what - one could read that incorrectly because we've got a typo. It could be read as us saying that, "Heritage should be the responsibility of local government planning schemes." That, I think, is the misspeak there and we apologise for that. You haven't been the only person that's been caught up by our typographical error there.

**MS CARMODY:** But what is a heritage zone then? Is that a precinct?

**MR HINTON:** Heritage zone or precinct or similar areas for heritage conservation, we're saying that they should be captured by the planning scheme and each planning scheme is by local government area but it's done by the state government.

**MS CARMODY:** No, I disagree.

**MR HINTON:** Which part do you disagree with, what I'm saying or what is exist - - -

**MS CARMODY:** That they should be matters for local government planning schemes, I totally disagree. We have to have an independent body. We have to have it because back to what I was about to say, Heritage Council put the City of Stirling on notice not to bulldoze the house; they did this twice. It never got through to full council, never got through, probably it wasn't ever discussed, and the bulldozers came in and bulldozed one of the houses. You know, it's really Rafferty's rules over here.

**MR HINTON:** Okay.

**MS CARMODY:** Anyway, that's that one.

**MR HINTON:** We know that the operations of local governments varies dramatically from state to state, depending upon how much each state constrains their local government.

**MS CARMODY:** Look, even within each state the City of Stirling, I think it's the second-largest shire with population in Australia and I'm pleased to say it is changing. You know, a few things have happened: a bit of corruption has been exposed, people have resigned, retired. You know, it's changing because people en masse have really got up in arms. It's been huge in the press for the last few years about City of Stirling and it is changing, I'm pleased to say.

**DR BYRON:** Can I attempt to clarify again, because I'm still a bit confused, Margaret, that even though the place is on the state register and the State Heritage Council told the council that, council went ahead and approved demolition?

**MS CARMODY:** No, it was up for the final - the house was - because we were putting it up as a precinct. It was up before the final recommendation before full Heritage Council. The City of Stirling were put on notice not to demolish before Heritage Council had made their final recommendation and because it was going to go to full Heritage Council the City of Stirling bulldozed the house, bulldozed it twice. They were put on notice twice not to bulldoze and they ignored the Heritage Council and bulldozed the house. So therefore, when they had their meeting a week or 10 days later - that's how quickly they did that.

**MR HINTON:** Who owned the building?

**MS CARMODY:** No-one. The owners, they hadn't been paid at that stage. The City of Stirling had agreed to buy them. Their - what do you call it? Their title deeds had been dissolved at DOLA, Department of Land Administration. I tell you, it was - I think there has been a bit of a fall - I don't know.

**DR BYRON:** It sounds most unusual.

**MS CARMODY:** Well, it's true, it's true.

**DR BYRON:** Yes, I'm sure. I believe you, but it certainly seems not normal practice.

**MS CARMODY:** No, it isn't, and that's what I mean, you know. Leave the local councils as people to say, "We really like this area. We really like that area." Let them then recommend to Heritage Council. Heritage Council must be independent

of these people and then they can say, "Well, rightio," and let Heritage Council approach the people and then have your interim agreement if you want, you know, your - what did you call it?

**DR BYRON:** Conservation agreement.

**MS CARMODY:** Yes.

**DR BYRON:** But what you're saying is that the State Heritage Council then involves itself in all these matters which are only of local significance and that seems to fly directly in the face of the three-tier system that has supposedly been set up.

**MS CARMODY:** Yes. Well, I think given that there's no statutory requirements for local, I think local is local - it's just interest, okay? I don't think money should be given over to local conservation, I really don't. If the council wants to do that because they think, "Oh, yes, this is a charming little cottage," or whatever, leave it up to the councils but don't - there's not enough money going to state registered houses as it is without filtering it off into these little houses or buildings or whatever, because what's happened is that councils are there to alert the public, "This is worth saving or that's worth saving. Shall we put it forward to Heritage Council?"

**MR HINTON:** But the Heritage Council doesn't really have that local knowledge that might take account of what is locally significant.

**MS CARMODY:** Yes, but look at my house. Look at my house. I was put off the list, off the draft list, and it was only through me in desperation thinking, "I'm not going to let these people get my home and my property when it's such a rare and valuable property," and it was only because I started painting the house because I thought, "I'm not going to live in this dump" - - -

**MR HINTON:** But the fact it mightn't be listed, how does that mean they can take your home?

**MS CARMODY:** Because under a recreation reservation it just makes it a little bit more easier. You know, it's recreation. I've got a recreation reservation over my property and the Planning Commission have assured me that they don't and the government in the debate, the Liberal Government at the time, they assured me in the debate in parliament that they have never, ever resumed people's homes or - well, see, that's such an unusual thing, to put a recreation zoning over somebody's home. I mean, I think I must have been the first one to ever have it done to. You see, it was sort of - yes.

**MR HINTON:** You're a rather special category, aren't you, Margaret?



**MS CARMODY:** I think so, but I just feel that given that it was only through me in desperation. I liked heritage, I like it for other people. I never, ever considered it for myself. But because I had my back to the wall I was running with open arms to the Heritage Council when everybody else in Australia thinks, "Oh, heritage, you know, we'll lose money," and all this sort of stuff. But I knew that this house, this property, is so valuable that I couldn't possibly lose, and also my mother was reasonably well off and, you know, we really didn't have that sort of - I would hate to be one of these smaller homes. I mean, you can't get much smaller than mine but I'd hate to be one of these people whose house is put on the register when people are really relying on that sort of money to, you know, get them through their - it's superannuation, so to speak

**MR HINTON:** Now, is there anything else you want to take up with us regarding our draft report?

**MS CARMODY:** Yes. Well, really it's a recommendation and that's what I feel, give more power to the Heritage Council. I really do feel that. I feel there has to be sweeteners that when we rezone precincts or - you know, and they're like a little time warp. You've got one of those over there in - I'm sure you've got many but over there in Melbourne there's an old picture theatre there and it was done up and all the houses around it are ancient. It's quite a way out of Melbourne, like in the western suburbs somewhere; I'm not quite sure. But I used to go to the pictures there years ago.

Now, I think make the streetscape extremely attractive. Throw the money at the environmental aspect around the houses as well as the buildings, if you really must. But we've got that aspect because people when they see that houses have got this lovely environment they will be less inclined to throw up their arms for development or, you know, R20, R30, 40 zonings. See, that all ties in. It's pressure, it's always pressure.

I mean, look at Mr Creasey and this house down here. That wasn't far from where I went to boarding school. I would be appalled if some great, ugly, big house - not ugly but it's just a great big mansion of a house, was built on this low-slung house which is on top of a cliff and you really can't see it from the road. It's just got this rather nice sort of - it's like at the bottom of - not at the bottom of the hill but it's going towards the bottom of the hill but on top of the cliff, if you know what I mean. It's sort of a strange situation, but the street runs down to it. Now, I think there has to be another way of enticing Mr Creasey to let that house be heritage listed rather than trying to fight it.

Whether we have some great big stone plaque somewhere and we have these people's names really in great big print as - I don't know, but it's just sort of an incentive to say, "Look, you have done this. We're extremely grateful," and really

get the government behind these sorts of things. Get the government behind the Heritage Council, not the other way around, you know, like you people with the draft report.

**DR BYRON:** So we're in agreement on having more carrots and fewer sticks in the process when it comes to dealing with privately owned heritage and offering incentives to the owners of the important places.

**MS CARMODY:** Marvellous. Well, really I was just coming from my own story.

**DR BYRON:** Yes. That has been extremely helpful, thanks, Margaret.

**MS CARMODY:** Has it though?

**DR BYRON:** Yes. Well, it has clarified again the issues about the relationships between heritage listing and local planning controls.

**MS CARMODY:** Yes.

**DR BYRON:** Which is something that has been pretty hard to untangle because it varies so much from state to state, sometimes even between local governments within Australia. So thanks for giving us your take on that.

**MS CARMODY:** There's one last thing I want to say, it's on page 187, and this is another thing which I really do find is open to corruption, particularly in my case:

Privately owned properties should be included on a national, state, territory or local government statutory heritage list only after a negotiated conservation agreement has been entered into and should remain listed only while an agreement is in force.

You've also said somewhere else that if that property is sold then, in effect, the agreement can come off.

**DR BYRON:** No.

**MS CARMODY:** Haven't you?

**DR BYRON:** No. The agreements are there for the duration of the agreement, no matter how many times the property is sold.

**MS CARMODY:** That needs to be made clearer then.

**DR BYRON:** Yes. We've obviously not explained that very well either.

**MR HINTON:** But you're not the only one who has interpreted it that way, so we clearly have to be quite precise without ambiguity to indicate that conservation agreements can have longevity, and once longevity is established it carries over from owner to owner to owner.

**MS CARMODY:** All right then.

**DR BYRON:** Yes, okay.

**MS CARMODY:** All right. Look, everything else that I see - but really they were my two main concerns.

**DR BYRON:** I'm glad we could clarify that last one anyway.

**MS CARMODY:** Yes, thank you.

**DR BYRON:** Okay.

**MS CARMODY:** Thank you very much, doctor. See you then, Mr Hinton.

**MR HINTON:** And thank you very much for taking the call an hour earlier than you had really scheduled. We apologise for that mix up.

**MS CARMODY:** That's all right, thanks.

**DR BYRON:** Thank you, bye-bye.

**MS CARMODY:** Bye for now.

**DR BYRON:** Right. I said this morning that there would be an opportunity for anyone who wanted to come forward and put something on the transcript, say their piece. Otherwise we'll resume tomorrow morning at 11.30 with Nicholas Stephens from the City of Port Phillip. Thank you very much, ladies and gentlemen.

AT 4.08 PM THE INQUIRY WAS ADJOURNED UNTIL  
WEDNESDAY, 15 FEBRUARY 2006

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