

**Submission on
Conservation of Australia's Historic Heritage Places, Productivity Commission
Draft Report**

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The Draft Report raises important issues, and the final report has the potential to lead to major changes to policy and practice by all levels of government. It is unfortunate therefore that the Draft Report is such a disappointing document. The report reads as three separate components – the report text, findings and recommendations – with the linking logic which would lead from one to the other being difficult to discern. I would hope that in the final version there is a more explicit justification of the recommendations.

The need for education

The draft report highlights the need for education, in two different regards.

Firstly there is clearly a need for the various levels of government, and other agencies/bodies involved to make greater efforts to explain the processes and practices of heritage listings and their consequences. It is clear that there are many deficiencies in currently available material, and also that the various levels of government are not always on the same wavelength. (While I readily accept that there are genuine cases where property owners are taken by surprise by heritage matters, I also suspect that in the case of some developers there is an element of wilful ignorance).

Secondly there needs to be more public discussion on the importance and value of heritage, hopefully leading to a greater understanding and acceptance of the need for heritage conservation. (Material presented to stimulate the discussion will need to be carefully prepared to avoid being dictatorial propaganda and also to be more than monocultural. Existing heritage listings cover places from a range of cultures, but in general interpreted through a anglo-celtic paradigm. There are listings, for example, of items related to the Chinese in Australia, but what does the Chinese community itself regard as its important heritage? What is, or will be, important to the many more recent cultural and ethnic groups?)

Chapter 2 of the Draft report discusses the values of heritage and the case for heritage conservation, and this material could form the basis for developing educative resources.

Availability of data

The draft report emphasises the paucity of data on many issues relevant to the Inquiry, and the difficulty of compiling what ought to be straight forward statistics on matters, such as expenditure by government agencies on heritage. When it comes to the contentious issue of the cost imposition on private landholders much of the evidence is anecdotal.

Given the paucity of hard evidence, it would have been preferable to have extended the preliminary phase of the inquiry, by commissioning the necessary research. To proceed to recommendation on the existing flimsy basis, will result in outcomes with little credibility.

I do not doubt that landholders believe that heritage listing may have cost them, directly or indirectly, 'x' dollars, and undoubtedly there are cases where costs will have been incurred. Nevertheless has the Commission been able to obtain independent verification of some of the claims made?

There are passing references to the situation in overseas jurisdictions but little detailed analysis. In particular, has the model favoured by the Commission been adopted previously anywhere in the world?

The scope of historic places

The expansion of the scope of historic places to include more than just buildings and structures is welcomed.

The reference to physically – created landscapes appears to be restricted to spatially constrained areas (such as the examples given of fishing areas, mining sites and saw pits) rather than the wider cultural landscape. (There is a mention on p17 of the loss of cultural landscapes, but it is unclear whether cultural landscapes are included within the Commission's concept of historic landscapes). Cultural landscapes, where the spatial scale and intensity of human activity contribute to the sense of place, have been an important part of heritage conservation in Britain and Europe, but have been given less attention in Australia. The specific REP provisions for the Jamberoo Valley in NSW represent an attempt to conserve a cultural landscape, and I suspect that public concern of the nature of development in particular regions may lead to more interest in landscape conservation. Regions like the Jamberoo Valley (and examples in the UK of the National Parks such as the Lake and Peak districts) are places where a planning approach is required to a relatively large area, but all historic places occur in a spatial context, and a narrow, shrink wrapping, approach to defining sites of concern is likely to result in substantial loss in heritage values. In some cases cadastral property boundaries may define the curtilage of heritage properties, but in other cases a wider sphere of influence will need to be defined to capture the links between a property and its surrounds.

The hierarchical model

The report strongly endorses a hierarchical model of heritage significance, and the principle of subsidiary which flows from the model. While I can understand why this model gains the Commission's support, in my opinion the model has the potential to lead to a substantial loss of heritage values.

The model implies that the heritage value of each site or property can be assessed on an absolute scale in isolation. I would suggest that this narrowly reductionist approach will not capture the emergent properties that arise when the aggregate value of sites is considered.

The values of historic connectivity and sense of belonging that are discussed in chapter 2 rarely reside in single properties taken in isolation – even with grand public buildings their value is enhanced by their relation to each other, and to other buildings and spaces which under the hierarchical model would not individually be accorded significance.

The overall national heritage – that which gives us a sense of what we are and how we go there, is made up, like a jigsaw, of many individual pieces, but collectively, when assembled the totality is more than the sum of the parts. I recognize that there are certain individual buildings which because of their historic connections, setting or architectural excellence can stand alone – like the Opera House, or the great cathedrals of Europe; but most heritage places are not of this nature. Indeed the

contribution of these 'special' places to the heritage estate is both quantitatively and qualitatively different from that of the majority of places which contribute to the national identity. It is the aggregate value of the numerous places, which under the hierarchical model would be regarded as being merely of local significance, which makes the greater contribution.

Even if the hierarchical model were accepted as appropriate its application would not be unchanging, and there would need to be mechanisms for sites to move up the hierarchy. This would arise for two reasons – changing perspectives on the value of particular architectural styles (examples of which are discussed in the Report), and because of changes in the importance of particular sites (if a particular type of property were to be regarded as being of local significance only because it is relatively numerous, but which, because of failure to conserve examples, becomes rare, then re-evaluation to more than local status is likely).

I have difficulty seeing how the example quoted, of the Old Government House at Bathurst, would, even under the favoured hierarchical model, be regarded as being of only local significance.

Related to the acceptance in the Report of the hierarchical model appears to be an underlying view that current listings are simply too numerous. If one looks at the number of listed buildings and historic monuments in the UK, then even allowing for the more limited time period for accumulating non-indigenous history the size of the RNE appears extremely modest. On p.xxv it is suggested that the Heritage Council expects the National List to grow to a few hundred – an argument which is not otherwise expanded, but if this is the outcome than again in my opinion conservation of the national heritage would have been ill served.

In the UK there are numerous listed buildings and historic monuments. The listing categories vary slightly between England and Wales on the one hand and Scotland on the other but the processes are essentially similar. The lists are national, and inclusion on lists does not require owners' approval. However, consideration of matters affecting listed properties is dealt with hierarchically. Proposals (except for very minor matters) for Grade I buildings are handled nationally, for Grade II buildings proposals are dealt with through the local government planning procedures.

Inclusion of sites on the National List is by passing the significance test – a place must be of outstanding heritage value to the Australian Community as a whole. It seems to me that, taken literally, this test could never be met, and to me the problem is not with 'outstanding' value, despite the debates this phrase could generate, but with the concept that the values must be outstanding to the "Australian community as a whole". This would be impossible to gauge or achieve. Whatever the component of heritage there will always be some who do not appreciate it – the test would be better as being of outstanding value to a significant proportion of the community and where it can be demonstrated that there is connection to events or processes which had a significant influence on the historical development of Australia.

Adaptive Re-use

The report refers to adaptive re-use as a major avenue to the retention of heritage buildings. Provided adaptive re-use is not mere facadism this is obviously an important message to get across. One advantage of re-use may be the saving of scarce material and embodied energy. This seems intuitively correct, but research to validate it is required. One issue which requires to be addressed is the marketability of re-used heritage buildings. There are non-statutory gradings of buildings which are used in the determination of rents. It is difficult in some cases for heritage

buildings to attract the higher bands of rents – and yet if the energy saving in reconstruction were taken into account these buildings should be more highly valued.

Draft Recommendation 7.3

This draft recommendation appears almost out of the blue at the end of a section of only 3 paragraphs, and is unrelated to any finding.

Of these paragraphs the third is an aside which has no bearing on the recommendation. The first paragraph claims that the statutory status of some National Trusts “may” diminish their effectiveness as independent advocates, but no evidence is adduced to convert the “may” into “does”. Indeed I would argue that there is plenty of evidence which demonstrates no reluctance on the part of the National Trusts to criticise state governments.

It is also worth pointing out that the UK National Trusts similarly have statutory status – and indeed their legislation is much more powerful, at least in relation to the greater protection it provides to National Trust property. I am unaware that there has been any great argument that the existence of the statutes has comprised the independence of the UK Trusts. For the sake of consistency, if nothing else, I presume that the Productivity Commission would also argue for the repeal of legislation affecting the RSPCA?

Paragraph 2 of the section refers to a need to develop “appropriate transparency and auditing frameworks” – is there an accusation here of impropriety by the National Trusts under existing accounting practices? If so – where is the evidence?

I am unaware of the details of all states legislation but the proposed change, as I understand it, would have extremely adverse consequences in NSW.

Because of its legislated status the National Trust in NSW is able to participate in the State Government’s insurance arrangements. It does not get a special deal, - merely that available to government departments with the economies of scale that result. I would suspect that if the National Trust were required to make insurance arrangements independently then premiums could rise substantially. [In relation to insurance I am surprised that the cost of insurance of heritage properties appears not to have been raised more generally as a constraint to ownership of heritage properties].

Legislation also increases the transparency of the organisations, as it brings them within the scope of Freedom of Information legislation. Absent the legislation, then, as fully private bodies, there would be no avenue for the service of FOI notices.

An important part of the work of the National Trusts is listing – across natural, cultural (including cultural landscape) and historic heritage. The Commission obviously feels that these listings are a source of confusion, but in my experience, although there are examples of confusion, most people are well aware of the difference between the National Trust and state and local government. Trust listings are important because they are made independently of government, and so are not influenced by the political pressures which may determine government listings. They also encompass a greater diversity of items than is often the case with government listings and encompass greater interactions between natural, cultural and built heritage. Importantly Trust listings provide the underpinning and justification for much of the advocacy carried out by the Trusts. Credibility of argument is enhanced if it can be demonstrated that the items under discussion have been listed previously and the Trusts have a history of recognition of the particular sites in question.

Role of local government

The hierarchical model gives a very major role to local government. While I have indicated concern with the model I recognise that, regardless of the approach adopted, local government will play a very substantial role, not least because the majority of planning decisions will be made at the local level.

Nevertheless there is substantial concern about local government decision-making in regard to development approval (as discussed in the recent NSW ICAC paper). At least in NSW local government's approach to heritage matters has been variable (and unpredictable) between councils and within a council over time. The unpredictability is clearly a cause of difficulty to property owners. One of the problems is that the composition of the elected council may change at each election and there are some councils in NSW which fluctuate from being extremely pro-development to much less so, and although council officers may remain the same, policies and practices may alter every few years.

The State Government

The Commission might like to contemplate the recently introduced part 3A of the NSW Environmental Planning and Assessment Act, which in certain circumstances makes consideration of heritage in the approval process essentially optional. It also creates an extremely unlevel playing field in that if the Minister decides to treat a development under Part 3A one set of rules apply, where as another, perhaps essentially similar development which is not called in will face a more onerous assessment regime (including of heritage matters).

The Commission is critical (p.98) of decisions of the Courts (although I note that the various decisions cited were not appealed). The Courts are constrained by the legislation which they administer. If there is concern about the role of the Courts then the remedy is in the hands of state governments to introduce amended legislation to limit and direct the scope of outcomes from appeals.

Owner's consent

In an ideal world listing with the full co-operation and consent of owners would be the desirable course of action. However, to increase owners' co-operation is likely to require greater resources for grants and other forms of assistance. Unless more money can be made available the future of many heritage properties may be doubtful. The decline in availability of Commonwealth funding is regrettable, and I fail to see how re-instating funding would be a breach of the much vaunted principle of subsidiary.

The draft report grudgingly concedes that there may be limited circumstances when listing without consent might occur. There is a clearly a difference of opinion between the Commission and some of the submissions in terms of the weight attached to the perceived property rights. I agree with the ACNT and other submissions which argued that property rights in reality were narrower than some claims. The occasions when listing without consent would be appropriate would I suggest be more frequent than the Commission would accept, however desirable agreement might be.