

**A Critical Review of, and Commentary on,
the Commonwealth Productivity Commission's
"Inquiry into the Policy Framework and Incentives for
the Conservation of Australia's Historic Built Heritage Places"
(2005-2006)**



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Conclusion

"Once you do know what the question actually is, you'll know what the answer means..."
Douglas Adams, *Hitchhiker's Guide to the Galaxy* (1981)

While it is acknowledged that market-based mechanisms can and do have a role in achieving some heritage conservation outcomes in Australia, it is neither desirable nor simple to demolish the existing heritage system and replace it with market-based heritage. The gradual development of environmental economics shows both the possibilities for some market-based mechanisms to be developed in heritage conservation, and the challenges in applying or grafting these on to the existing conservation system, let alone replaced it all together. A change of the dimensions envisaged by the Draft Report requires much more community debate than the limited view available from a single economic reform agency.

The Draft Report is a lost opportunity to seriously explore the real issues that need to be addressed in heritage conservation. This is the first major inquiry into cultural heritage conservation since the Hope Commission of Inquiry in 1973. By comparison the Draft Report lacks any vision or cultural purpose, is limited in scope and depth, has a seemingly predetermined outcome, and lacks any real understanding of cultural heritage,

or of the historical causes and development of cultural heritage in Australia over at least the past 60 years.

The use of orthodox economic analyses and methods is clearly insufficient to accurately ascertain the real state of cultural heritage today, or to either develop solutions to real problems or to build upon the strengths of the existing system (which are not acknowledged). The Draft Report shows a marked failure to engage with cultural or environmental economics, and instead works from a premise that the heritage system is unstable because it is based on property expropriation, but can be made stable by privileging private property over the common good. It fails to recognise the fundamentally dynamic nature of the heritage system that continues to evolve.

There may well be value in reconsidering issues such as the nexus between cultural heritage and environmental planning, the criteria and thresholds for heritage listing, the consequences of listing for owners and the community, and the potential for using a range of market mechanisms. However the rushed nature of the inquiry, the lack of evidence for its conclusions and recommendations, the inherent presentist political and economic biases, the ideological agenda that drives it, the failure to cost its own recommendations (especially when it is so critical of the supposed costs of the present system) - all combine to reduce the Draft Report's credibility and value. In comparison to the Hope Report, the Draft Report is mean spirited and iconoclastic. The citizen is reduced to a mere 'consumer unit', and our Commonwealth to an empty cypher.

Unless the Draft Report is fundamentally revised and rewritten, the cultural poverty of its recommendations will for ever stand in stark contrast to the aspirations of the Hope Report. As a historian I cannot help but ponder the reception that any historian who wrote in the style of the Draft Report would receive: she or he would be immediately set-upon by the Dober-historians of our time, slaving over the lack of evidence, the restricted sources, the predetermined and biased framework, and the inevitably ideological conclusions. It seems incredible that this remains acceptable in the world of supposedly 'objective' orthodox economics.

I began this conclusion with the quotation: "*Once you do know what the question actually is, you'll know what the answer means.*". The actual question, it would seem, was '*provide a justification for and a means of making private property rights the key organising principle of the heritage system in Australia*'. It is to such a means that the Draft Report's answers are directed.



Introduction

The Draft Report demonstrates a very narrow and limited view of what constitutes cultural heritage. This is evident in the use of the term 'historic heritage', a term that can be criticised as part of an arbitrary division of our inheritances, that implies other types of heritage (usually natural and Indigenous) have no history. It is no longer in general use in State and Territory or local heritage systems. The deliberate exclusion of natural, indigenous, movable and intangible heritages (p. xvii) from the Inquiry's purview immediately suggests that not only is the understanding of contemporary heritage practice outdated and blinkered, but that a very particular aspect of cultural heritage is being targeted. It quickly becomes clear that this aspect is private property rights in relation to heritage places. The Draft Report's recommendations are clearly aimed at elevating private property rights above and beyond matters of cultural heritage significance.

But just as cultural heritage and cultural economics have their own histories, as discussed further in the submission, so does the concept of private property rights. An area in which these have been of great historical importance is personal and corporate heraldry, an area in which successive Commonwealth governments have neglected to provide for the recognition and secure transferability of heraldic property rights, despite ongoing community campaigns since the 1960s. Instead of leadership being provided in an area of cultural heritage that desperately needs it, the Commonwealth has chosen to unleash the Commission on another area of cultural heritage where the demands of a vocal minority have coincided with the ideological pursuits of a government that accords much privilege to certain types of private property rights.

The pattern becomes clear: the Inquiry focuses on establishing and enforcing the paramountcy of private property rights when it comes to landed property. Heritage places are one of those types of landed property, but a type that is to be subject to an experiment in creating new property relationships amenable to manipulation by the 'free market'. Money values will be attached to heritage values which can then be traded in the market place, freeing the landed property from the supposed restrictions heritage listing places on private property values.

It is also difficult to escape a sense of an Orwellian rewriting of recent history. The proposal to not just close the *Register of the National Estate*, but to erase it from the historical record by incrementally removing all of its listing, will in effect continue a long program of dismantling the perceived legacies of the 1970s.



The Terms of Reference are not actually addressed

Nowhere in the Draft Report are the terms of referenced actually specifically addressed. The title of the inquiry is "Inquiry into the Policy Framework and Incentives for the Conservation of Australia's Historic Built Heritage Places", and the six terms of reference provided by the Commonwealth Treasurer, dated 6 April 2005, are listed below, with a brief annotation as to how each reference appears to have has been addressed.

I. The main pressures on the conservation of historic heritage places.

The main pressure that seems to have been identified is the ongoing expropriation of private property rights by heritage listing.

II. The economic, social and environmental benefits and costs of the conservation of historic heritage places in Australia

The loss of private property rights through overlisting and regulation, without any form of compensation, is the main cost, and the recent establishment of the national heritage system, which always negotiates with private property owners, is the main benefit.

III. The current relative roles and contributions to the conservation of historic heritage places of the Commonwealth and the state and territory governments, heritage owners (private, corporate and government), community groups and any other relevant stakeholders

The role of the Commonwealth is exemplary,
The role of the States and Territories relies on prescriptive regulation,
Local government is the main source of overlisting, contradictory regulation and the consequent destruction of heritage properties,

Owners of heritage items have their private property expropriated at will without reason or compensation and are subject to a terrible burden of petty and expensive bureaucratic regulation,

The involvement of community groups, especially in listings, is confusing for the community and any special treatment they received should be abolished.

IV. The positive and/or negative impacts of regulatory, taxation and institutional arrangements on the conservation of historic heritage places, and other impediments and incentives that affect outcomes

Overlisting, especially of properties with marginal heritage values, encourages the destruction of properties that would otherwise remain intact,

The use of listing and regulation to manage heritage significance promotes resistance to heritage and the destruction of heritage properties.

The principal impediment to good heritage outcomes is the lack of market mechanisms that would reveal the true costs and benefits of heritage.

V. Emerging technological, economic, demographic, environmental and social trends that offer potential new approaches to the conservation of historic heritage places, and

This term of reference has not been addressed, or at least not specifically.

VI. Possible policy and programme approaches for managing the conservation of Australia's historic heritage places and competing objectives and interests.

abolish existing state, territory and local heritage systems,

convert the whole heritage system to a market-based system, using market mechanisms to 'manage' heritage values and outcomes,

make property management contracts (VCAs) the only real means of engaging with owners of heritage values.

Commentary:

Each term of reference should be specifically addressed in the Final Report in order to demonstrate compliance or otherwise with the Treasurer's commission.

Heritage has its own history...

It is worth repeating a little of the history of heritage in Australia, as the Commission appears to be uninformed of this history or its importance. The NSW Heritage Office website contains a brief history of heritage with a focus on that State, with the following extracts illustrating this history.

The federal division of powers in Australia has meant that heritage listings with statutory impacts developed mainly at the State rather than Commonwealth level. However, the first statutory heritage list in Australia was established by the Commonwealth when the Australian Heritage Commission was created. An Interim Commission was set up in 1973, with the formal establishment of the Commission occurring in 1976. The Commission in turn set up the Register of the National Estate (RNE), and the earliest listings date from March 1978. The RNE had limited statutory impacts, and then only upon the actions of federal agencies. In 1981 it published *The Heritage of Australia*, an illustrated inventory of RNE listings in each state and territory. By this means it attempted to exert a moral influence over state and local governments and planners in much the same way that the National Trust tried. The more important influence of this approach was reflected in the passing of heritage legislation in Victoria (1974), New South Wales (1977) and South Australia (1978).

The development of official listings in Australia is mainly derived from the

international context [especially the Athens Charter 1931, UNESCO Convention 1954, and the Venice Charter 1964], Other influences, however, can also be illustrated by the example of New South Wales.

The National Trust was founded in New South Wales in 1945. Initially, the Trust appraised individual buildings for their significance with the aim of compiling a register of significant places. A list, confined to the County of Cumberland, was begun in 1949, although this was not publicly available until 1962 when the 'A' list was published. [Trust] lists seem to have been derived from the system used by the English National Trust.

Amendments to the *Local Government Act* in 1945 introduced a new section dealing with Town and Country Planning Schemes. Local Councils gained the power to make planning schemes that would include, among other things 'the preservation of places or objects of historical or scientific interest or natural beauty or advantage', although, this did not necessarily refer to compiling lists of such places.

In 1951 a further amendment to the *Local Government Act* introduced the County of Cumberland Planning Scheme and established the County Council. The Council could have 'historic places' proclaimed by the Governor, and require that such places be acquired and managed by the local Council. In 1957 the first Cumberland County Register of Historic Buildings was published, with subsequent updates in later years until, by the early 1960s, a total of 37 places was listed. The County Council was the consent authority for any development affecting these listed historic places. The list itself, however, was simply a list of sites and their addresses - it contained no information about the site itself.

The NSW *Heritage Act* was passed in 1977. Although it was landmark legislation in heritage conservation in the State, the Act did not provide for making heritage lists as such. Rather, it established the Heritage Council and provided for the Council to make or recommend Permanent and Interim Conservation Orders (PCOs, ICOs) for 'buildings, works or relics'. PCOs and ICOs were generally made when a place was considered to be under threat - so the system was reactive rather than proactive. Nevertheless some orders were made on the basis of recognizing heritage values. Amendments to the Act in 1987 introduced a new section that required State agencies to compile their own Heritage and Conservation Registers on a proactive basis. These are commonly known as 'Section 170 Registers', and are the first example of a list of items specifically required to be prepared under the Heritage Act.

In 1979 the *Environmental Planning & Assessment Act* was passed. This provided for local Councils to make Local Environmental Plans (LEPs). LEPs replaced [the earlier] IDOs, although the IDOs remained in force until specifically repealed. The first LEP was gazetted in 1981. In 1985 a Ministerial Direction was issued requiring LEPs to contain provisions for the conservation of 'buildings, works or relics' listed in schedules of heritage items attached to LEPs. [Local] Heritage studies and heritage lists as we now know them date from this time.

In 1977 NSW received National Estate funding to prepare a State Historic Preservation Plan. Each state and territory also began similar projects modelled on such plans in use in the USA. Work on this project was reviewed in 1984. At that stage it was proposed that there be a State Conservation Plan that would include a State Register or Survey of Heritage Places. It was noted at the time that much greater research and documentation was needed to determine the cultural significance of places on the basis of thematic histories, and that a State Register of heritage

items was needed that covered the whole State, its entire human history, and all themes relating to human use of the environment.

The State Heritage Register was established in April 1999 under amendments to the *Heritage Act*. The Register lists items of particular importance to the people of NSW. It includes all places formerly protected by Permanent Conservation Orders and items identified as State significant in heritage and conservation registers prepared by State government instrumentalities. The establishment of the State Heritage Register reflected a fundamental change in attitude to heritage conservation. Prior to its establishment, items were often listed to provide emergency protection when they were threatened. In contrast, items added to the State Heritage Register are listed on the basis of their significance. By identifying items that are significant the government aims to provide protection and certainty before a threat arises.

The SHR is thus the first official heritage list established in New South Wales that expresses the ideas about heritage listing developed in the State Historic Preservation Plan of 1984. The Section 170 Registers were an earlier, but more restricted, beginning to such a comprehensive list. Similarly, the Cumberland County Register of Historic Buildings of 1957 reflected the concepts outlined in the UNESCO convention of 1954. The practice of heritage listing in New South Wales has developed from several International agreements and British and American models. These concepts provided successive State governments with the tools to respond to community pressures for heritage conservation such as the formation of the National Trust in New South Wales in 1945 and the Green Bans Movement of the 1970s.

The construction of lists has evolved from simply listing sites and addresses to requiring thorough research and documentation about why a place is significant, and therefore why it should be listed. This in turn has generated the need to rank levels of significance in terms of World, National, State, Regional, Local and Precinct significance, and so for comparative studies to be made of listed items. Heritage listings are now an integral part of the State's planning system.

The idea of lists being a proactive means for heritage conservation began in NSW with the County Register of 1957, and that development is still continuing with the State Heritage Register. Initially, some regional differentiation in the development of listings within New South Wales was evident. This is disappearing as LEP listings become more widespread and inclusive. The distribution of items on the State Heritage Register is currently focused on the Sydney region. However, the continuing development of the Register through thematic and other systematic analyses, and the transferral of State significant items from LEPs to the Register means that they will become more geographically widespread over time.

The need to properly research and document heritage places was first made explicit in the Athens Charter of 1932, and this has been incorporated in the official NSW heritage listing systems since the mid 1980s.

The importance of properly documented and sourced information and analysis for items in the State Heritage Inventory, which is essentially a database of all statutory-listed heritage items in New South Wales, and the State Heritage Register, which is the list of recognized State-significant heritage items, cannot be overstated.

(www.heritage.nsw.gov.au/docs/info_listinghistory.pdf)

...As does cultural economics

The field of 'cultural economics' as it is usually known also has its own history. Mason (2005) provides a brief history, noting that in the 1960s a subfield of economics

concerned with the arts emerged as a recognised area of research, with JK Galbraith and more particularly William Baumol the leading theorists. This research work applied the concepts of neoclassical economics to the spheres of art and culture. Artworks and cultural performances were viewed as a sort of commodity or sphere of economic activity, which had been considered as beyond economic or pragmatic concerns. Methodologies were developed to incorporate the arts and culture into economic discourses, often drawing upon 'environmental economics' as a source of methodologies. Several overview collections were published in the 1990s of this earlier work, which began to be organised with formation of the Association of Cultural Economics International (ACEI) in 1979. The ACEI, based in Boston USA, holds biannual conferences and publishes a research journal, the *Journal of Cultural Economics*, which had begun publication earlier in 1973, and which remains the main such journal today. Membership of the ACEI is typically drawn from North American and European universities, as well as from Japan and Korea. Australian representation in the ACEI is noticeable largely by its absence, apart from the notable exception of Professor David Throsby of Macquarie University's Department of Economics. The ACEI defines 'culture' as:

*"a class of economic activities and institutions that are associated with a society's efforts to realize its aesthetic needs, including, but not restricted to, (1) visual arts, including sculpture, paintings, photography, architecture; (2) performing arts, including drama, music, dance, films; (3) literary arts, including novels, poetry, essays, plays; (4) **historic preservation/restoration** [my emphasis]; and (5) arts education."*

(www.acei.neu.edu)

Arjo Klamer is professor of the Economics of Art and Culture at Erasmus University in Rotterdam, holds the world's only chair in the field of cultural economics, and is a leading figure in the ACEI. In a recent essay, he argued that

"...the mode of reasoning - where all goods need to have value as an instrument towards the goal of economic development - prevents us from acknowledging the special role that cultural goods play in the lives of people. ... Culturalists - archaeologists, art historians, historians, theologians - acknowledge the cultural values of things and understand scenarios in which cultural goods figure prominently regardless of their relationship to the economics of development. ... Most of my fellow economists ... see the price of everything and the value of nothing... While economists readily acknowledge imperfections in markets, they deny that this makes cultural goods necessarily exceptional ... The risk is, presumably, a chance that culturalists will influence politicians by impressing upon them the enormous value of a cultural good, justifying any amount of spending on it. Economists, therefore, have designed a research strategy aimed at the elimination of the role of culturalists. Their goal is to develop methods and approaches that "objectify" the valuation of cultural goods and thus render the subjective valuations of experts superfluous."

Klamer acknowledges David Throsby and Michael Hutter for their critical comments upon his essay. Hutter, of course, is the editor of the undergraduate text book *Economic Perspectives on Cultural Heritage*, published nearly a decade ago, and which appears from the Draft Report's reference list to be the principle reference work cited by the Commission's researchers.

Why have cultural economists not been a feature of heritage discourses in Australia? The answer possibly lies in the way that heritage is conceptualized in Australia as an aspect of environmental planning, rather than as a cultural or economic activity. This is illustrated in the Draft Report, which contains several findings and recommendations to break the nexus between heritage and environmental planning (see pp. 149, 152, 156 [Draft Recommendation 7.2], 162, 171, 172 [Draft Finding 7.8], 192-194, 204-206 [Draft Recommendations 9.7, 9.8]).

The Draft Report misconstrues the history of heritage in Australia by stating that current government involvement in heritage practice in Australia is 'arguably' the outcome of 'political activism of the 1960s and 1970s – in the form of 'green bans' and the like' (p. xviii), thus implying that current heritage practice has radical roots and is thus somehow alienated from the population at large. In fact current heritage practice in Australia has been informed by a great variety of pressure groups over the course of the twentieth century, from the research of antiquarians, the lobbying of built environment professionals and community groups such as the National Trust, to the activism of building unions, middle class women and local resident action groups (Davison, 1991). There also a long history of statutory heritage practice in environmental planning since 1945. While heritage practice is sometimes controversial, this is not necessarily a sign that it is operating unfairly, rather that the values with which it engages are strongly felt.

The failure of the Draft Report to demonstrate any understanding of the histories of either heritage conservation or cultural economics, or of the conflicted and contentious nature of work in both fields, is a major and fundamental flaw in the document. It leads the Commission to conclusions that are clearly biased in favour of economic values to the exclusion of the cultural, social and environmental values that are an integral element in any understand of heritage conservation in Australia.

An outcome of the Draft Report's recommendations would be to substantially relocate heritage from the planning domain to the cultural domain, an area in which the Commonwealth, despite its lack of any formal cultural policy (see Throsby: 2004), has been more than happy to engage those in perceives as its cultural opponents. This is evidenced, for example, in the Prime Minister's many criticisms over the years on the writing and teaching of history. The knowledge that the Commonwealth's financial powers in the cultural field are broad and accepted contrast with their limited constitutional powers in land use planning.

Such a move would, ironically, be a continuation of the development of the cultural idea of a 'national heritage' initiated with the Whitlam Government's *Register of the National Estate* in the 1970s. The recommendations to gradually remove all items listed on the Register clearly displaying the Commission's ignorance of or disregard for the historical patterns that it is itself a part of.

The inclusion of cultural and social values, as well as economic values, in understanding heritage conservation must be addressed in the Final Report if it is to have any credibility. The ahistorical approach taken by the Commission has lead it misunderstand the causes of the development of heritage in Australia; while the failure to engage with well-established schools of cultural, social and environmental economics in preparing the Draft Report has skewed its findings and recommendations to reflect a very one-dimensional view.

The Push for the Primacy of Private Property Rights: "...an assignment of private property rights over the externality may lead to a market-based solution" (p.111) "Where such restrictions are imposed on privately-owned historic heritage places, the potential for encroachment of private property rights clearly arises" (p. 121), "there is a question of principle. Is it correct for owners to have their property rights expropriated without compensation, through an arbitrary and capricious system? ... Heritage becomes theft. (Mr Alan Anderson, sub. 185, p. 2)" (p. 121) "regulation, intended to increase private conservation activities, may diminish private property rights." (Box 6.3, p. 123) "it is important to have in place a rigorous process for assessing the costs and benefits of limiting private property rights." (p. 123) "Where governments intervene to restrict private property rights there may be no

explicit mechanism for assessing the costs imposed on owners" (p. 131) "Broadly speaking, market-based solutions are mechanisms by which the true costs and benefits to those involved in an activity are elicited.... it can often be a simple allocation of property rights which establishes the possibility of negotiating a mutually advantageous outcome." (p. 131) "Equity...will be perceived differently by different stakeholders...a recognition of private property rights, is essential to secure co-operation from property owners" (p. 150) "Simply because governments may have the power to take or diminish private property rights via regulation without paying compensation, does not automatically imply that this is a desirable course of action. At the same time, government intervention cannot be ruled out simply because it may affect property rights." (p. 169).

In summary, the Commission's argument is that heritage listing is a restriction, an encroachment on private property rights, and that the regulation attached to listing further diminishes property rights. There is currently no mechanism to assess the costs and benefits of government restricting private property rights (through listing), but assigning property rights will allow market-based solutions to elicit the true costs and benefits of heritage. This will provide the incentives for property holders to co-operate with heritage listing.

It is notable that any idea of cultural value or heritage significance is absent from this equation.

Commentary:

The Draft Report privileges 'private property' as the most important cultural value in Australia. Historically 'private property rights' are one socially recognised right amongst many that has always worked in conjunction with, and constantly changed in form and content along with other socially recognised rights such as the rights of the Crown, religious rights, public rights and human rights.

Environmental economists Paul Martin and Miriam Verbeek have written on the notion of private property and what they believe are common myths in the property rights' debate. As their study was published by another Commonwealth agency two years before the Commission began its study, it is worth considering some of their key points as they relate to the primacy of private property rights evident throughout the Draft Report.

Martin & Verbeek's definition of 'private property' is a good starting point:

Private property: individuals have a right to undertake socially acceptable uses, and have a duty to refrain from socially unacceptable uses. Others (called 'non-owners') have a duty to refrain from preventing socially acceptable uses, and a right to expect that only socially acceptable uses will occur. (1)

This provides a rather different approach to the idea of property than that assumed by the Commission: reciprocal rather than exclusive. 'Restriction' and 'encroachment' give way to 'acceptability' and 'use'. Origins in Crown ownership and common law give Australian 'private property rights' a very different status to derivation from provisions of the United States constitution, a status that some property rights activists are trying to import into Australia.

Martin & Verbeek consider that the word 'property' has acquired an almost mystical political status, which is understandable given the dynamics of human behaviours over access to resources, but it adds little to dealing with problems of resource conservation and to balancing public and private interests. Attaching paramount importance to 'property rights' slogans will not achieve an equitable and principled sharing of resources.

They identify a common argument in favour of private property rights: they provide an incentive for conservation and the pursuit of innovations. The greater the profit expected, and the more likely the profit is to be realised, then the stronger the incentive. The Commission appears to have worked with this assumption when they state that privatising heritage values will provide incentives to property holders for heritage listings. However Martin & Verbeek identify several flaws in the assumption. One is that other forms of property holding have been demonstrably effective in conserving resources, notably common property which has many potential benefits in situations of social and resource interdependence. Another is that the holder of private property rights must be able to trade with them free of any conditions, otherwise they will destroy the resource (see 'vandalism' below). However, the creation of new forms of property, such as derivatives (the market for which is subject to a large number of conditions in order to create and maintain expectations of future profits that can be realised by transfer from one holder to another) suggest that this is simply untrue.

"Property rights are a political institution to regulate the balance between the interest of owners and society's need to restrict activities that diminish the common wealth." With this statement Martin & Verbeek begin their discussion of the pressures associated with property expectations (p. 5). Things that are subject to property rights are not themselves constant as societies seek increasingly sophisticated ways of managing and using natural and cultural environments, which poses challenges for the concept of property rights. Martin & Verbeek identify eight such challenges in relation to natural environments, and at least five of them can be adapted to the cultural environments of which heritage items are a part.

Firstly, the 'fractioning' of cultural values is necessary for market solutions to heritage problems, and the process of creating tradable fractions of cultural environments is likely to increase.

Secondly, there is a growing emphasis on custodianship, sometimes attached to land and sometimes to other cultural property. Payments to custodians for conservation allow for them to care for a heritage item.

Thirdly, reconsidering the duties of property holders that attach to property rights makes it important for property holders to present themselves as responsible citizens, which in turn makes it easier (for them) to resist restrictions on their use of a heritage item, and to argue for compensation when restrictions arise,

Fourthly, the development of international treaties such as the World Heritage Convention and of international standards impact upon the management of markets, and

Fifthly, with the decline of unconserved cultural environments (such as abandoned country localities or pastoral homesteads), debate about conserving or not-conserving them grows, reflecting questions of 'non-use values', which can be reflected in environmental planning law rather than property law.

Consider some of the implications of just the first of these points. The fractioning of 'heritage values' could allow a property holder to trade in such property-like things. Perhaps 'cultural tree quotas', 'sandstock brick futures', or 'wood smoke emission rights' will emerge as solutions to heritage management problems like the noxious classifications of many culturally-important plantings, the declining availability of traditionally-made building materials, or the polluting aspects of some traditional energy generation methods. The point is not the efficacy of these particular solutions, but to illustrate that there are many diverse possibilities.

Or consider the third point: the inculcation of a sense of heritage responsibility or custodianship among property holders who are then, through the demonstrated responsibility of their conservation management actions, able to be fairly and openly compensated for any conservation-based restrictions for the benefit of the community

placed on their property rights. Contrast this with the Commission's picture of the embittered, embattled property holders struggling under the tyranny of a heritage listing that causes them to vandalise and destroy heritage places to retain the exclusiveness of their property rights. Which is the most likely to achieve a positive outcome: clarifying responsibilities and sharing the costs of heritage conservation, or enshrining property rights that are already acknowledged as being outdated and inadequate for meeting the conservation challenges already evident?

The point of this discussion is that there are compelling arguments that privileging private property rights will not guarantee better heritage conservation outcomes. By reconsidering the notion of property and property rights, as is being done in the environmental economics field, heritage conservation invites the development of a number of market mechanisms that are diverse in their approach, and capable of being tailored to quite specific types of transactions.

The 'one size fits all' approach, claimed to be the present mode of managing heritage conservation through listing and regulation, and of which the Draft Report is so critical, ironically sums up the Commission's proposed new system of property management contracts (VCAs). It is also demonstrably limited in the types of heritage conservation outcomes that might be achieved when compared with just a few examples drawn from environmental economics. Unfortunately, the single-mindedness evident in the Draft Report's recommendations concerning property management contracts (VCAs) indicates that positive conservation outcomes are not the guiding principle, but simply a desirable effect that may flow from making private property rights the key organising principle of the heritage system in Australia.

Martin & Verbeek argue that, at the heart of debates about property rights is an argument about the extent of exclusiveness that is provided to the property holder, and its inherent problem in the question of compensation for actions by governments which impinge on the property holder's interests. Advocates of compensation (such as the Commission) argue that compensation is desirable and necessary as it provides incentives for private conservation, and is fair, otherwise individuals bear an unfair share of the costs of the community benefits of listing.

However, another way to look at compensation is to see it as a claim on the public purse, which while decreasing some private costs increases the public costs of change and innovation. Compensation comes from the pool of government revenue, where claims have to compete with others such as health, education and so on. This does not negate an appropriate role for compensation *per se*, but makes clear the nature of a transaction in which payments are transferred from the public to a private interest, and suggests that compensation should be just one tool among several for achieving conservation outcomes.

How could compensation payments inhibit change and innovation? There is always a risk that the rigid designations of property rights required to support the Commission's view that heritage is a restriction of the property holder's interests will overburden the concept of property. This will result in higher transaction costs, reduce the flexibility in the potential uses of the heritage item, and reduce the economic incentives for many property holders. Entrenching private property interests above others in heritage conservation will freeze a new *status quo*, and so create barriers to responding to changing circumstances. A more legalistic approach to such adjustments may result in further delays, and higher costs (including compensation) whenever administrative changes to heritage management and access to heritage resources is needed.

The example of land use zonings, in which there may be expectations by some property holders that their property rights could be extended through rezoning, has never been

considered a right but has always been considered an 'entrepreneurial opportunity' (although submission #123 quoted on p. 184 seems to suggest that there are expectations of property rights inherent in zonings). If such expectations were to be considered a property right, rezonings would have to be individually negotiated (higher transaction costs), would always have to increase the value of the property (reduce flexibility in potential uses) or compensate the property holder if it didn't (reduce incentives to achieve best outcome). It would also, of course, greatly limit the administrative and policy actions that could be taken in the public interest, as every rezoning would be a high financial cost to the community, forcing governments to greatly limit rezonings, effectively ossifying the planning system. The Commission's proposed property management contracts (VCAs) are just as likely to have a similar impact on the nascent heritage market if private property rights and their associated compensation are elevated above all other considerations.

Property holders often accept a moral obligation to the environment and the generations that will follow them. This is quite different from a legal responsibility. The concept of custodianship is gradually being reasserted in Western societies, often as a cultural response to resolving issues of sustainability - whether on behalf of present or future generations, or of a generalised humanity, or of the natural environment itself. One response is a view that the property holder has a moral obligation to conserve the cultural heritage of which they have custodianship for the time being, and that increasing restraints on property rights are simply the putting into practice of these obligations. Compensation, therefore, is simply a subsidy for doing what the property rights holder is already morally obliged to do.

Some middle ground, however, is being sought in the debates over rural environmental sustainability by linking a redefinition of property holder's rights with a clearer definition of their environmental responsibilities, which in turn sets some boundaries for compensating for a loss of property rights. Note that it is the clarifying of the environmental responsibilities, not of the property rights, that opens the space for discussions about compensation, or other forms of transactions. Custodial payments are a significant form of such transactions, which seek to balance the interests of the property holder and the community interest in sustainability. The custodial payments are to conserve particular values, and can be in a fee-for-service form, or leasing or licensing of a resource, or exchanging the non-use of culturally sensitive places or materials for the use of another place that is less sensitive.

Custodial obligations of property holders can also be exercised in other ways, such as through private conservation reserves, in which private owners (corporates, such as Earth Sanctuaries Ltd, or communals such as Bush Heritage Foundation) conserve a natural environment through the exclusion of others, or attaching caveats to land titles, or creating management trusts, or combinations of such approaches. An older and more familiar form in cultural heritage conservation is through the provision of special custodial status directly by the Crown, such as through the Charters and Acts that have established the state and territory-based National Trusts, whereby a special property holding status is granted to private organisations whose purpose is conservation. This has the advantage of removing the conflicts that can arise in publicly owned places, such as demands for multiple-uses in national parks.

The points made by Martin & Verkeken in this discussion show that compensation is a necessary corollary of private property rights. It is essentially a transfer of private costs to the public purse - not for any conservation benefit, but as a payment for reducing the exclusivity to some degree of a property right. While not disputing that some degree of compensation is a useful tool in the designing of a market-based heritage experiment, the primacy of private property rights envisaged by the Commission in such a system is likely to have a number of consequences not canvassed in the Draft Report. These could

include inhibiting change and innovation in conservation, raising transaction costs, and limiting the scope of public policy and administrative changes needed to respond to future developments. However, the concept of custodianship is leading, in environmental economics, to some renegotiation of the concepts of property rights through better specification of environmental responsibilities (rather than of property rights), which provides clear benchmarks for the use of custodial payments (again, a transfer of private costs to the public purse - but this time with a specific conservation benefit) of various forms through the agreed apportioning of the costs of conservation on privately-held properties. It is unfortunate that the Commission's rigid adherence to a dogmatic view of the paramountcy of private property rights, and to the use of a single instrument, the property management contract (VCA), has prevented it from exploring the many other possibilities inherent in a diverse and flexible mix of approaches that can use market-based mechanisms to achieve good conservation outcomes for both private and public interests, and that can be innovative and responsive to present and future challenges.

While the primacy of private property rights theories are probably too entrenched within the Draft Report, and within the Commission's thinking, to be changed or modified, the Final Report must demonstrate some understanding that there are other competing views on the role of private property rights in conservation, and give some satisfactory justifications as to why it has chosen its particular model to the exclusion of others.

The 'subjectivity' of heritage assessments: "The definition of the 'cultural significance' of a place can be highly subjective and is dependent on community values and expectations" (p. xx) "While the identification of heritage can be inherently subjective, classification of the degree of 'cultural significance' introduces an additional degree of subjectivity" (p. 10) "The benefits of imposing statutory protection on a particular place are not well assessed, primarily because the process for assessment is inevitably subjective: ... the criteria for listing are 'open-ended' and subjective ... [those] undertaking an assessment may have (legitimate) differences in opinion ... the threshold for listing, and therefore regulating, a heritage place is set relatively low" (pp164-165) "Currently ... whether there are other examples of that type of heritage place already listed is not considered" (p. 186)

Commentary:

The assertions in the Draft Report that assessments of cultural heritage are subjective is an attempt to denigrate the methods for making such assessments, and cast unwarranted slurs upon the people engaging in making heritage assessments. The ultimate aim seems to be to exclude, or at least minimise as much as possible, this non-measurable element from the proposed market-based heritage experiment.

The Draft Report paints a negative picture of the heritage assessment process through its own subjective language with phrases such as 'dependent upon community values', 'criteria are open-ended', 'differences of opinion', 'thresholds are set low' and 'other examples of type are not considered'. No evidence is provided to support these opinions. This is further reinforced by the adjectives used to qualify the word 'subjective': adjectives such as 'highly', 'inherently', 'additional' and 'inevitably'. The base-line degree of subjectivity is never identified. Any argument that economics is somehow an 'objective' science cannot be sustained, as behind all economic theories lie the values and assumptions of a society, or of a group within society, formulating the theories. Any claims that the Draft Report is representing a detached and objective assessment fools no-one except, perhaps, its authors. Historians are trained to recognise and acknowledge their own biases, and the degree of subjectivity in heritage assessments is neither more nor less than in economics.

The Draft Report contains enough evidence of the criteria and thresholds used in heritage assessments across Australia to show that these claims have no basis. To claim that no comparisons are made in the assessment process is simply wrong, and one wonders how the Draft Report could argue that a three-tiered system and principles of subsidiarity or federalism could actually function without the use of comparisons to determine levels of heritage significance and so of the appropriate level of listing? The Draft Report shows no understanding of how assessments are actually made. Generally, a heritage assessment is collaborative and continually subject to review, especially during a listing phase. Property holders, community members, heritage administrators, heritage councillors and government ministers will all typically hold some view on the assessed significance of a heritage item. These views are continually negotiated, not in a vacuum, but within an established framework of accepted criteria and thresholds until some degree of agreement is reached. The assessing process is a continual conversation that involves real people applying their training, expertise, experience and character to the assessment process. It is not the handing down of personal opinions by celebrity experts that are then accepted uncritically by recalcitrant overlords, as the Draft Report implies.

As noted elsewhere in this submission, much of the Draft Report is highly subjective in its unevidenced findings and ideological recommendations. The language of orthodox economics permeates the document with such supposedly 'objective' terms as free rider and rent seeker used to supposedly 'describe' the behaviours of culturalists (people who, in this case, respectively cause listings but bear none of the costs, or owners who seek listing to obtain financial benefits from the government). The subjective nature of orthodox economics, despite its pretensions to objectivity, seem obvious, and it is enlightening to recall Klammer's words previously quoted:

Economists, therefore, have designed a research strategy aimed at the elimination of the role of culturalists. Their goal is to develop methods and approaches that "objectify" the valuation of cultural goods and thus render the subjective valuations of experts superfluous."

A quote which is well illustrated by an observation by Martin and Verbeek:

"Agencies with the responsibility for creating market instruments tend to be influenced by theoretical arguments about the need to create absolute certainty. This pushes the debate towards full property rights, rather than triggering a more complex and uncertain debate about relative incentives and costs of different forms of [property rights] attenuation."

The theoretical arguments are not, of course, objective but have a particular economic and political goal in mind.

The Final Report should contain some discussion of the economic assumptions underlying the report, and acknowledge the subjectivity of the Commission's findings and recommendations.

Justifying heritage vandalism and despoliation: "The EPHC also noted that there had been no comprehensive survey of places whose heritage value has been destroyed, either as a result of neglect or through modification or demolition." (p. 36) "sellers disguise or destroy heritage values to prevent listing or expend resources to remove the property from the list. Under these circumstances, the decline in property values, and consequent reduction in incentives to conserve, can be viewed as a government, rather than market, failure." (p. 116) "...coercive regulation may also lead to perverse outcomes where owners destroy the heritage value of a place to prevent its listing..." (p. 125) "...regulation that potentially limits private property rights can lead to benign neglect, strategic demolition or, at best, grudging compliance." (p. 143) "At the State Territory and local government levels there is an over-reliance on prescriptive regulation ... this had led to poor outcomes ... [such as] perverse effects (such as destruction to avoid maintenance costs)" (Draft Finding 7.5)

p. 164 "Here [with commercial or industrial buildings] listing represents a major burden for the owner, with particularly strong incentives to allow the progressive decay (or even destruction) of heritage characteristics" (p. 185) "The prospective private loss creates an incentive to circumvent the regulations (after taking into account the risks of being caught and penalised) or to destroy the heritage value of the property before regulation is applied" (p. 163) "property owners can suffer an erosion of property rights and loss of value. As a result, they are unlikely to actively conserve heritage values and may, in some cases, have an incentive to degrade or destroy the heritage place." (Draft Finding 7.6, p. 167) "property owners have insufficient incentive to conserve heritage places and may, in those circumstances, have strong incentives to destroy heritage values to avoid regulation." (p. 172) "One council reported that a dispute over a development application for a historic building ended when the building was destroyed by fire under suspicious circumstances." (p. 238)

Commentary: The use in the Draft Report of statements such as 'a major burden for the owner', 'strong incentives to allow decay or destruction', 'prospective private loss creates an incentive to destroy', 'incentive to degrade or destroy', and 'strong incentives to destroy' all suggest that the Commission not only considers such antisocial behaviours to be economically rational, but also socially acceptable with an implication of support for such tactics, regardless of the costs inflicted on neighbouring properties (such as asbestos contamination following a fire - see example below). And yet, absolutely no evidence is provided that this behaviour actually happens. As Martin & Verbeek observe, "...association is not the same as causation." (p7), and unless the Commission can provide some evidence that the rates of property destruction are significantly higher in heritage listed properties than non-listed properties, and that the reason for this difference is a heritage-induced incentive to vandalise and despoil, these claims are simply rhetorical hyperbole that reflect nothing more than commonly-held opinions that coincide with the theoretical assumptions behind the Commission's analyses.

Martin & Verbeek explore the economic imperatives supposedly influencing a private property holder to act in this way. It is based upon a misconception whereby the property holder feels that if their share of a property cannot be protected, or that what they conserve will be taken away in the future, their incentive to maximise short-term uses, discount the value of future uses, and to harm the resource, is high. These arguments, however, 'fly in the face of reality'. The Crown has always been able to resume any property interest at will (although increasingly subjected to some sort of legislated compensation during the 20th century), yet this does not seem to have prevented the development of private property holding, nor have prevented active markets from operating. As Martin & Verbeek state:

"Market instruments will provide an incentive (to trade or conserve) when the perceived degree of opportunity to win resources, factoring in the perceived risk of not being able to realise that opportunity, is greater than the total cost (including the transaction costs), bearing in mind other opportunities. Because political risk (the risk that government will prevent the entrepreneur from realising their profit) is sometimes perceived more highly than other risks, it may be desirable to reduce the possibility of government intervention, but this is far from a precondition to the operation of market instruments. This theoretical discussion has practical implications:..." (4)

Thus, the economic motivation for a private property holder destroying a heritage item in their custodianship is based upon a calculated risk, not irrational fear. The reality has always been that private property holding is subject to government intervention which, conversely, has fostered rather than prevented the operation of a private property market.

It is important to note that Martin & Verbeek conclude by referring to their 'theoretical discussion'. Unlike the Draft Report, their study explicitly acknowledges the distinctions between thinking and evidence, and makes its assumptions transparent. The practical implications are separately described as being a tendency by government agencies responsible for creating market instruments to be influenced by similarly theoretical arguments about the need for absolute certainty, thereby pushing their proposals towards full private property rights, as well as inhibiting innovation in managing resources where impacts upon others and future generations is a real concern.

The Final Report must include some clear, unambiguous statements that the deliberate destruction of heritage items is socially unacceptable, and that there are cultural and environmental costs to such destruction. The Commission should acknowledge that the reasons it attributes to property holders for engaging in such destructive behaviours are economically questionable, show whether it has actual evidence to support these attributions, and it should make some attempt to acknowledge the assumptions and biases that underlay its analyses.

So-called overlisting: *"there are strong incentives to 'overlist' properties and to under provide for their conservation" (p. xxix) ...an increase in the proportion of listed properties over 100 years of age ... may be indicative of a tendency over the past two decades to overlist this type of property" (p. 137) "Governments have come late to intervening in historic heritage conservation ... the foundation of official lists ... were usually lists developed by National Trusts ...[and] the heritage professionals' criteria for identifying heritage places (based on the Burra Charter) ...[which has] encouraged an uncontrolled growth over time" (p. 164) "...the assessment process does not prioritise places according to heritage significance or conservation need .. the community has an incentive to overlist as they do not bear the costs of conservation" (Draft Finding 7.6, p. 167-7) "...the management of heritage conservation under local planning schemes is not working well, primarily because ... [of] the application of heritage controls to places that have little, if any, heritage significance..." (Draft Finding 7.8, p. 172)*

Commentary: The so-called 'overlisting' argument appears to be mainly derived from Schuster (*Making a List and Checking It Twice*: 2002) [not cited in Draft Report References], and is a strong theme in submission #185 (10/12/2005). While #185 simply repeats the word as a rhetorical device (3 times in a 1.5 page submission), without bothering to define it in any way.

Schuster identified the following characteristics of heritage lists: they continue to grow because buildings that survive for long enough will eventually reach a threshold for listing; thematic surveys consciously seek buildings to add to lists; new types or categories of heritage are constantly invented, for example cultural landscapes; rent-seeking, in which private owners demand listing to access financial benefits irrespective of heritage merit, occurs frequently; low thresholds are used for listing; 'true-believing preservationists' try to make lists as long as possible because they can; and there is an inherent urge for the State to control things. He also claims that lists are often used by others for purposes for which they were not originally intended, and quotes Göring's directions in 1942 to the Luftwaffe to bomb every historic building and landmark in Britain marked in a *Baedeker* travel guide (hence 'Baedeker Raids').

But neither Schuster nor #185 ever seem to have asked: overlisting compared to what? If there is overlisting, are there also instances of underlisting, and some point of equilibrium which Goldilocks might call 'just right listing'? Is overlisting a matter of numbers, or a concentration of listings on particular types of heritage items? There are

some 1500 items on the NSW State Heritage Register (www.heritage.nsw.gov.au), which account for just 0.05% of the some 3 million parcels of land in the State - is that overlisting, underlisting, or 'just right listing'? There are just over 22,000 local heritage items in NSW (www.heritage.nsw.gov.au), or 0.73% of the State's land parcels - overlisting, underlisting, or 'just right' listing? Who knows? What are the criteria for overlisting? None are given. The general tenor of the Draft Report would indicate that overlisting is rampant ("*...uncontrolled growth...*"), and occurs whenever there is a listing of a private property to which the property holder expresses some concern or opposition, but again, who knows?

The Draft Report states (p. 69) that

"With the cost of conservation placed on owners ... there was little incentive for States and Territories to be selective and thus, the incentive was to list 'too much - that is, all heritage items were eligible for listing, irrespective of the number already conserved or the relative heritage value of individual places."

Overlisting, apparently, occurs whenever an owner has to bear the costs of conservation. It is not a matter of numbers or proportions - if all existing private property holders having custodianship of a heritage item take up a property management contract (VCA) in the proposed market-based heritage experiment, and the number of listings will stay the same, then presumably this could be described as 'just-right listing' instead of overlisting.

The quote also illustrates a failure to understand heritage terminology. A heritage item cannot be 'eligible for listing': in order to be an item, it must already be listed - the designation 'heritage item' refers to something listed on a list. If its not listed, its not a heritage item - although it may be a potential heritage item or nominated as a heritage item. The assessment process, with its considerations such as relative values, determines whether something actually becomes a heritage item.

Martin & Verbeek quote Environmental economist Berkes on the relationship between property and its abundance:

"[property] belief systems may be counter to other major aims such as sustainability and equity. These beliefs emerged under conditions of resource abundance, which may not prevail today. Until some shortage or conflict develops with the use of the resource, it is effectively valueless in trade and in no danger of direct overuse; it would be pointless to specify and police a system of rights with respect to allocation" (Berkes 1989, on: 2)

Applying this argument from environmental to cultural economics would suggest that, contrary to the overlisting hypothesis, the need for the Inquiry has arisen because the cultural resource of built heritage is becoming scarcer, not more abundant. One response to this scarcity is conflict with some private property holders who consider a heritage listing valueless, and so argue for a privatisation of heritage values to which they can attach a market mechanism, which as a consequence will require the creation of a market-based heritage experiment. As Martin & Verbeek argue, rights-holders have an interest in limiting other people's entitlements in order to increase the value of their rights. This pressure lies at the heart of arguments for preserving and extending property rights. The less heritage listings, the greater the price of heritage values will become, thus creating and maintaining a market.

The Draft Report seems to be consistent with two of Schuster's criteria: buildings reach thresholds (they are over 100 years old), and 'true-believer preservationists' (apparently National Trust members and Burra Charter-scribbling heritage professionals) control the heritage system. The Draft Report contains no evidence to show that 'true-believers' are randomly listing anything they can regardless of merit, or that they are in a position to even do so (assuming that such a group of people even exist), and demonstrates no awareness of the rates at which nominations are rejected (either administratively, or later

as a deliberate decision), or whether nomination rejections are based upon failures to reach criteria thresholds, or anything else, or that no Australian jurisdiction uses an age or 'oldness' criterion. Interestingly, the tone of the Draft Report suggests that the Commission has not identified any problem with 'rent-seekers' in Australia. 'Overlisting' appears to be a rhetorical device based upon no verifiable truth (or none demonstrated in the Draft Report) that functions, in effect, to affirm and reinforce the economic risk taking of the property holders identified in the Draft Report as the 'Second Group' (pp 183-4), at the expense of heritage significance, as illustrated in Submission #DR196 (31/1/06) where the submitter states "the threat of listing still hangs over our head like the proverbial sword of Damocles".

In reality, overlisting and the hanging sword are similarly devoid of any objective truth – only the risk-taking they illustrate is real. Martin & Verbeek's work suggests that the overlisting argument is not about removing conservation costs from private property holders, but is in fact an attempt to prevent further listings, and decrease existing listings, for the purposes of increasing the financial benefits to property holders of privatised heritage values - a necessary construct in creating market instruments for the proposed market-based heritage experiment.

In this context, the claims in the Draft Report that nationally 'iconic' buildings will always remain in public ownership (pp xxxvii, 25, 46, 50, 67) become questionable. If the market value of their heritage values attracts a high enough price, why would government resist transferring them to the private property market? The wholesaling of locally iconic post offices, and the sale of iconic GPO buildings such as the Sydney GPO in Martin Place demonstrate the reality that 'iconic' status in the Commission's proposed heritage system will be just another marketing device. The ultimate outcome of accepting overlisting as a fact (when it has never been demonstrated to exist) may well see the privatising of national heritage places such as Sydney Opera House. A cynic might regard overlisting arguments as simply a means towards the end of inflating the price of the heritage values associated with nationally 'iconic' listed places in preparation for their sale - a truly perverse outcome in which heritage would become the new iconoclasm.

Unless the Commission can give some useful definition of the term 'overlist', provide some actual evidence that it is occurring, and uses it within a meaningful context, it is a counterproductive piece of rhetoric that should not be used in the Final Report.

management first, significance second -: "Negotiating conservation agreements and subsequent listings ...[will] ensure that only those places that are cost-effective to conserve are listed (p.181), The principle of purchasing public-good heritage characteristics from private owners ... provides a mechanism for choosing which heritage places to list, protect and conserve" (p.186) "Statutory listing [would] become, in effect, a list of agreements..." (p. 187) "Privately-owned properties should be included on a ... statutory heritage list only after a negotiated conservation agreement has been entered into and should remain only listed while an agreement is in force." (Draft Recommendation 8.1, p. 187) "Negotiated outcomes would allow community representatives to better incorporate conservation costs into decisions of which places should be awarded heritage status" (p. 190) "any additions of non-government owned properties to their statutory heritage conservation lists occur only after a conservation agreement with the owner has been entered into, and that the property remain on the list only while an agreement is in force." (Draft Recommendation 9.2, p. 194) "A key step for each jurisdiction is identifying places worthy of consideration for heritage conservation agreements. Currently this is done in response to submissions from the public or through surveys, or similar assessments made by those responsible for heritage matters in each jurisdiction — a process that

would continue." (p. 195) "Basic to any system should be an agreed statement of the place's heritage values. This would delineate the nature and extent of the cultural values provided" (p. 197) "properties would only be included on a statutory list once an agreement has been reached, and would remain on the list only so long as an agreement was in place. The list or register would, in effect, become a list of agreements, recognising the contribution of owners and the wider community towards conservation, providing information to the community on the use of public money,..." (p. 198) "Similarly, the approaches government could take in setting up an agreement can vary, ranging from pro-active seeking to protect individual places identified as being potentially of interest, to calling for tenders for the provision and protection of types of places where a potentially wide choice is available." (p. 199) "While there is potentially an infinite variety of agreements that could be devised, in practice, standardised contracts, or standardised contract elements, are likely to be developed reflecting the trade-off between the desire for precise assistance targeting and the benefits of reduced contracting costs and administrative simplicity." (p. 199) "If agreement cannot be reached, the government has a number of options. In the first instance, depending on the nature of the heritage characteristics being sought, and the availability of other properties offering similar characteristics, government may negotiate with alternative owners, including by tender." (p. 200) "the option for the renegotiation of conservation agreements should be available. This would, for example, involve the negotiation of agreements covering differing time periods, depending on the nature of the heritage characteristics being conserved, with the option to renegotiate, or roll over the agreement at the end of the designated life of the agreement. Failure to reach a new agreement would result in the removal of the property from the relevant heritage register and its reversion to a status with no heritage-related use restrictions, and the cessation of all financial support to the owner." (p. 201) "a conservation agreement is a contract between the owner and the government." (p. 204) "As the heritage attributes of properties are managed via conservation agreements, heritage matters would not generally enter into planning decisions for other properties, that is, properties not covered by either a conservation agreement or included on an existing statutory list. This would involve repeal of any general provisions in planning legislation requiring local councils to consider heritage matters when making planning decisions." (p. 204)

Commentary:

In developing its model for property management contracts (VCAs), the Commission has given the issue of property management a higher priority than that of heritage significance. Of course, this is consistent with the general approach of making private property values of primary importance (see 'Primacy of Private Property Rights' above), but the consequences of this approach do not seem to have been thought through.

There is a general assumption, alluded to in section 9.3 (p. 195) that State/Territory heritage agencies (rather dismissively referred to as "...those responsible for heritage matters in each jurisdiction...") will continue to function as they do now, although greater attention will be needed to making comparisons with what is already listed and using themes to categorize what is already listed. Whether this means those listed before the commencement of the Commission's market-based heritage experiment, or after a few/some/most private property holders have been excluded from the system because they don't want to enter into management contracts (VCAs), remains a moot point. It would seem that 'those responsible' will be identifying gaps in their matrices of 'protected heritage values' (p. 196), and then somehow seeking out the properties that might have such values attached to them, and then initiating some negotiation process with the property holders. This appears to suggest that heritage values (not heritage significance) will determine which property holders are to be targeted for the offer of a property management contract (VCA), or to submit tenders for such contracts.

However, this is belied by statements in the Draft Report (as quoted above) such as *'only those places that are cost-effective to conserve [will be] listed', 'principle of purchasing ... provides a mechanism for choosing which heritage places to list', 'incorporate conservation costs into decisions of which places should be awarded heritage status', 'the property [will] remain on the list only while an agreement is in force', 'properties would only be included on a statutory list once an agreement has been reached', 'negotiate with alternative owners, including by tender', 'Failure to reach a new agreement would result in the removal of the property from the relevant heritage register and its reversion to a status with no heritage-related use restrictions', and perhaps most clearly, 'The list or register would, in effect, become a list of agreements'.*

Thus the organising principle of the Commission's proposed market-based heritage experiment would not be heritage significance, but pricing mechanisms for the purchase of heritage values. A heritage register or list would actually have no cultural value. It would be simply a filing system for property management contracts (VCAs), which is illustrated by the ease with which properties (not heritage places) can be removed from a register or list - simply by a property holder withdrawing from their contractual arrangements. Having had the file removed from the property contracts filing cabinet, the property would no longer be considered to have any heritage values (with one consequence being to increase the price of the heritage values of properties remaining under contract). Very simple and neat.

It can be imagined that the actual operations of such a system would no longer require states and territories to maintain any heritage administrative agencies. The comparison and thematic functions could be contracted to a private consultancy, while the negotiation of property management contracts will require legal expertise, and so could probably be delegated to an agency such as the Crown Solicitor's Office, or elsewhere with the jurisdiction of a state or territory Attorney General. The approval roles of state and territory agencies will presumably be rendered superfluous by the contract system, and so could be abolished. It follows that there will be no real need to retain state and territory heritage legislation either. Instead, the Commonwealth could delegate various heritage identification functions to the states and territories in a similar way to which it now delegates authority under the *Historic Shipwrecks Act 1976 (NSW Heritage Office Annual Report 2004-05: 77)*, which they in turn could also contract to a private provider.

Martin & Verbeek, in considering the misapplication of American property ownership concepts to Australia, consider that there is little evidence to support views articulated by property rights advocates that *"better specified property rights ... rectify problems of balancing individual and collective interests and ensuring equity"*. Making heritage listings dependent upon pricing and upon financial compensation is likely to require some sort of legal proceedings, especially in case of disputes, and as Martin & Verbeek succinctly note: *"It seems likely that it will provide more work for lawyers."* (Martin: 7).

The Commission's proposal that compulsory resumptions (another legalist mechanism) could be used as a lever in such negotiations seems to be made in the absence of any evidence showing how much governments actually use this mechanism, or the purposes for the few occasions on which they do use it. The role of this proposal is really that of a red herring, providing the illusion of a useful tool that has rarely, if ever, been used for a heritage conservation purpose. Given the primacy of private property values infused throughout the Draft Report, it is difficult to imagine any situation in which it would be politically acceptable to use property resumption - which simply supports the view that this is a diversion, with the real purpose of (falsely) assuring culturalists that the proposed market-based heritage experiment will continue to have some public-good characteristics.

Chapter 9 of the Final Report needs to provide much greater clarification of the residual roles (if any) that State and Territory heritage agencies will be expected to play in the Commission's proposed market-based heritage experiment, and provide some clear statements as to the relative roles of property management and heritage identification.

The failure to innovate:

Term of reference #5 reads:

"Emerging technological, economic, demographic, environmental and social trends that offer potential new approaches to the conservation of historic heritage places".

This term of reference has not been addressed at all.

Commentary

Martin & Verbeek offers several insights into the relationship between increasing private property rights and the suppression of innovation (see also "Primacy of Private Property Rights" above):

"...attempts to embed un-attenuated [private property] rights may inhibit innovation in recognising and managing collective responsibility[ies] ... to restrict innovation by creating further constraints will not be to our advantage" (pp. 4-5) "Compensation will increase the public costs of change and innovation (p. 6)

There were many opportunities for the Draft Report to have addressed potential new approaches, but the few paragraphs in section 2.3 hardly acknowledge the possibilities

A number of submissions were quoted (pp. 23-24) regarding the opportunities offered through virtual recording of heritage places, and of using digital recording, the internet and GPS opportunities to make heritage places available to a wider public, but the Draft Report concludes that 'virtual reality' is not likely to be an acceptable substitute for conservation - although possibilities to use such technologies as part of a suite of conservation tools seems not to have been considered.

The 'Fourth Group' identified in the Draft Report refers to redundant heritage-listed buildings in declining rural areas. There are clear opportunities to use some of the lessons from environmental economics for custodianship payments to property holders, which could be linked with the concept of fractioning found in the work of Martin & Verbeek's and a concept of 'ruins values'. These concepts could also be applied to sites of mining and industrial heritage, especially when it is considered that the site remediation requirements now in practice mean that there will be very little 20th century mining and industrial heritage for the future, so that the small stock of colonial sites may be all that we have in the future.

It is a major failure of the Draft Report that this term of reference has been so ignored. It seems that the possibilities for the strengthening of private property rights to restrict innovative new approaches to heritage conservation may have been recognised by the Commission. If this is the case, then the choice taken to pursue the primacy of private property rights over heritage significance would suggest that the market-based heritage experiment will be restrictive and discouraging of new approaches to conservation - hardly a desirable outcome.

The Final Report needs to demonstrate that some serious consideration has been given to responding to Term of Reference #5, or provide some explanation of why this has not been the case.

Abandoning our heirs: *"Historic heritage places may ... also ... have [value] as a bequest to future generations." (p. 14) "Public good characteristics may be particularly relevant for ... bequest values associated with historic heritage conservation." (p. 113) "...bequest values are likely to be of greatest relevance for iconic historic heritage places, and can be captured for the community through government ownership of the*

property. For less iconic properties, particularly those which represent a category of heritage which is not unique, the ... bequest values are probably less significant." (p. 113) "In the event that the preferences of future generations coincide with the preferences of current generations, this argument can be viewed as an extension of the externalities argument outlined above. The benefits from the listing would not only be those accruing to the current generation, but also to all future generations. However, it is much more difficult to sustain the argument that governments should intervene to anticipate the preferences of future generations. Governments may be no more successful in divining future preferences than markets. Indeed, they may face less incentives to cater for future preferences. Markets encourage owners to invest in attributes which may be considered valuable to future purchasers and users of a place, whether the purchasers and users are in the current generation or the next." (p. 117) "While iconic heritage items might fairly be said to have substantial .. bequest values, the same would be more difficult to argue for lesser known historic places." (p. 130) "Opportunity costs also arise when a place is conserved so that ... it can be passed on to future generations (the bequest value)" (p. 141) "

Commentary:

The Draft Report articulates several views on what it calls 'bequest values': governments cannot anticipate the preferences of future generations, they are more important for 'iconic' properties, a market in bequestable attributes will encourage their conservation, and an opportunity-cost study will be unlikely to price them higher than an alternative use.

Another way to think about bequest values, however, is within the context of sustainability. Definitions of sustainability usually begin with the Bruntland Commission's definition:

"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their needs". (World Commission...: 43)

This definition attempts to take account of both environmental and economic considerations, and can be usefully applied to cultural environment as well. De la Torre & Mason argue that sustainability holds the promise of helping culturalists transcend their disciplinary boxes, and develop a holistic way of looking at heritage values and their roles in society. The idea of 'cultural capital' is one way to do this, as it models culture in a way that can bring together economic, social and cultural phenomena. A holistic look at nature and culture must be a principle of sustainable development - we cannot get more of one by wanting less of the other. They pose several questions: is this about sustaining culture, or sustaining development by using culture?, is development sustainable if responds to existing cultures without unduly changing them?, and are 'cultural industries' necessarily a more sustainable type of investment?

Klamer states that when goods became available for exchange, they become commodities. However, this is just the phase in which a price may be realised, and it is just one phase in the life of the good. Consuming the good constitutes another phase - and this may be lingering, for example visiting a museum, which an economist would consider as consumption of the museum services. However, the visit may have a much longer impact: conversations about the experience later, remembrances of the visit, thinking of what was learnt - the cultural valuation of the visit (its consumption) is entirely different to the economic valuation, and indicates the importance of valuations beyond the commodity phase. The economic valuation is presumed to remain the same, but when other valuations are also taken into account, this 'certainty' becomes questionable. The economic perspective is useful, but it is limiting when we want to consider the functioning of cultural goods - such as bequest values, which carry important social and cultural values.

If we then consider the ideas of sustainability and of the life of a good in relation to bequest values, the views expressed by the Commission appear limiting in their scope and imagination. Bequest values are not about anticipating future consumer preferences, but about ensuring that the opportunities for future generations are not compromised by short-term gains in the present. The whole life cycle of a cultural resource is of much greater cultural value than the temporary valuations of price made at essentially random points in that life cycle. Opportunity-cost issues are only of importance if the good is considered solely within an economic context. This requires isolating the place from its social, cultural and environmental contexts in order to create an essentially artificial situation in which the opportunity-cost measurement must inevitably show that any alternative use will pay better. As for the supposed relationship of bequest values to 'icons', apart from the fact that no evidence to support this assertion is provided in the Draft Report, one only has to consider the intensely felt values often articulated by people visiting the grave of an ancestor - this is not proportional to the grandeur or absence of the grave furnishings, or the abandonment or otherwise of the cemetery, or the national 'iconic' or solely family status of the interred: rather, it is the quality of cultural values such as remembrances, evocations, inspirations, sacredness and so on that reinforce the 'heritableness' of the place that matter - and these values are beyond a simple economic valuation or price mechanism.

The Final Report needs to consider the cultural and social values wrapped up in bequest values, and the connections between sustainability and bequest values, or at the very least acknowledge that an isolated economic valuation of bequest values is insufficient to accurately measure and understand bequest values.

A bleak view of human nature

In reading the Draft Report the reader is left with an impression of the Commission's view of human nature (see, for example, 'Vandalism' above), and of the sort of people demanding the creation of a market-based heritage experiment, and it is a depressing and bleak view. The words of the 17th century philosopher, Thomas Hobbes, readily come to mind:

"... the life of man, solitary, poor, nasty, brutish, and short.",
(*Leviathan* (1651), Pt 1, Ch. 13)

or of Margaret Thatcher's famous dictum:

"... there's no such thing as society. There are individual men and women and there are families ... and people must look after themselves first."
(*Woman's Own*, 31 October 1987)

Commentary:

De la Torre & Mason note that economists hold the individual, the consumer, to be sovereign and the measure of things, which is in marked contrast to the discourse of conservation, which emphasises the collective values and nature of heritage (pp. 2-3).

The cultural economist Arjo Klamer defines a 'cultural good' as a good that *"...has cultural value in that it is a source of inspiration or symbol of distinction"* (p. 1). Immediately, we see an alternative view of human nature: it is capable of inspiration, and of distinguishing symbols that matter - and inspiration and symbolism works on both individual and collective levels. Cultural disputes about, for example, the return of the Elgin or Parthenon marbles to Greece, or the repatriation of Aboriginal skeletal materials to Australia, are cultural disputes, but they do seem to affect the thinking or designing of economic strategies. Cultural needs, like the need for identity and aesthetics, tend to be perceived as low in the [economist's] hierarchy of needs. But, people in the most deprived of conditions, such as African slaves in America, have found resources and energy to make music, maintain sacred places, cherish icons, fashion all sorts of arts - cultural activities do matter. As Klamer rhetorically asks:

"...what would life be without music, rituals, ceremonies, icons - without sources of inspiration?" (p. 2).

Klamer goes on to argue that there are relationships between cultural identity and development, and between cultural goods and cultural identity, and that cultural goods are relevant to any argument about sustainable development. He also argues that cultural expression has significance beyond social and economic impacts, as evident in the cultural disputes identified above, or in his example of the symbolism in the destruction and rebuilding of the Mostar Bridge in Bosnia, or the destruction of the Bamiyan Buddhas in Afghanistan. One of the functions of Klamer's arguments for the concept of 'cultural capital' is to expose the very limited view of human nature that most economists work with.

Economists (Klamer argues), and those imbued with an economic way of thinking, tend to see the price of everything, but the value of nothing (in contrast to culturalists, who tend to see the value of everything but the price of nothing). For them, a cultural good is like any other good, with its value captured in its price. This makes all talk about historical, aesthetic, spiritual or other values superfluous. The price says it all. Cultural goods are not exceptional.

Economists have focused on the values of potential consumers, with an implicit view that this is democratic (after all, the consumer is sovereign, they might argue). Several valuation methods have been proposed (as outlined in the Draft Report, Chapter 6 *passim*), which all have in common an objective of rendering the valuation of cultural goods 'objective' and 'democratic', and sidelining culturalists. However, reality continues to intrude on these neat models and methods. Disputes over matters such as the Bamiyan Buddhas or repatriating Aboriginal relics involve a great deal more than 'objective' economic valuations.

A cultural economic perspective stresses the role of values and allows for a combination of economic and other values. This will show that cultural goods may be exceptional, that these values are subject to change, and that realising those values through market mechanisms may actually alter those values. Values are not given, and neither does the economist provide a neat process of calculation (despite the neat imagery of graphs and tables, for example Boxes 6.2 and 6.3 in the Draft Report). The disputes in preparing them reflect the deliberations and negotiations involved, and the evolution of values during such processes. These intricacies, whereby individuals and groups each negotiate and make decisions, are ignored by economists by focussing on the moment of exchange. Everything that matters is the number that determines the trade as being an equal trade - all valuations, re-evaluations, negotiations, dealings are at that moment congealed into a single value: price. This standard economic approach is quite hopeless when trying to understand what is going on in a cultural dispute.

Throsby has argued that economists need to take culturalist's perspectives seriously, but in Klamer's view he makes the standard mistake of treating values as static, whereas they are dynamic and always changing. When economists speak of valuing a good, they mean the pricing of a good, a focus on the moment of exchange. Social values, however, operate in the context of interpersonal relationships between individuals and within groups and communities. Relationships are constantly (re)negotiated, and examining and re-examining social values is a consuming process. Little time, in comparison, is spent evaluating economic values. Negotiations about heritage, identity, justice, responsibilities and so on will far outweigh those about economic values.

Cultural values are distinct from social values, in that they can evoke qualities above and beyond the social and economic. A cultural valuation includes the attribution of special

meanings, such as sacredness or reverence. Klammer paraphrases the great philosopher Immanuel Kant:

"According to Kant, the quintessential cultural value of a good is its ability to evoke an experience of the sublime. It has a quality that causes awe and 'stirs the soul'. Kant purports that this quality is disinterested; it does not serve a social or economic goal" (p. 8) (see also Schonfeld's Kant's Thing in itself, or the Tao of Königsberg (2003) at www.cas.ucf.edu/philosophy/fpr/journals/volume3/issue1/schonfeld5.pdf)

Thus, argues Klammer:

" 'cultural capital' is the power to inspire or be inspired, absent social and economic influence. It is inbred, acquired and developed ability to experience the sublime or sacred character of a good, to see its beauty, or to recognize its place in cultural history. Cultural capital, then, lends us the ability to realize a meaningful life over and beyond its economic and social dimensions. It is one thing to have good social relationships, yet quite another to be in awe of sight or sound when strolling through a museum, attending a religious ceremony, or struggling across a mountain ridge." (p. 8)

The ephemeral character of notions such as social capital, values, and cultural capital make them virtually impossible to pin down. Values are expressed only in what we do. We do not own them, we can only try and work with them, argues Klammer. An inadequate measurement system prevents us establishing more explicit roles for social and cultural capital. Economic values and capital dominate contemporary public discourse because they are relatively easy to measure, giving them the appearance of objectivity. Measurements of social capital are being developed, but measurements of cultural capital are still distance away.

Despite the problems of measurement identified by Klammer, it is important to note the positive view of human nature, in which people have both individual and collective identities, and they can be inspired, stirred, and awe-struck, as well as argumentative and disputatious. Their values constantly change as they interact with other people, and a great deal more of people's time is spent on thinking about and re-evaluating their social relationships and cultural needs than on the economic values of their transactions. The bleak view of human nature that seems to underlay the Draft Report may well support the arguments and recommendations of the Commission, but it is arguable just how much that actually reflects the character and experiences of most people who engage with the heritage system.

The Final Report needs to acknowledge that people are more than just economic functions, that they have complex social and cultural lives that interact with environmental and economic factors, that its Final Recommendations will have substantial impacts on cultural and social values as well as economic values, and that more research should be devoted to the interplay of cultural, social, economic and environmental values before the current heritage system is dismantled.

The end of 'Place'? *...the approaches government could take in setting up an agreement can vary, ...calling for tenders for the provision and protection of types of places where a potentially wide choice is available." (p. 199) "...In the first instance, depending on the nature of the heritage characteristics being sought, and the availability of other properties offering similar characteristics, government may negotiate with alternative owners, including by tender." (p. 200)*

Commentary:

Understanding the concept of 'place' is critical in any understanding of the heritage system in Australia (and most other places). The *Burra Charter* definition reads:

Place means site, area, land, landscape, building or other work, group of buildings or other works, and may include components, contents, spaces and views.

(www.icomos.org/australia/burra.html)

This is the definition of 'place' that is generally accepted for heritage purposes across Australia. The Burra Charter provides an understanding of the connection between 'place' and 'cultural significance':

Cultural significance is embodied in the place itself, its fabric, setting, use, associations, meanings, records, related places and related objects. Places may have a range of values for different individuals or groups.

This critical connection is evident in all earlier versions of the Charter back to the first version adopted in 1979, and is also evident in the earlier international conservation charters, tracing a genealogy back to Article 7 of the Venice Charter of 1964 (7. *A monument is inseparable from the history to which it bears witness and from the setting in which it occurs...*), and before that to Resolution 6 of the Athens Charter of 1931 (6. *Historical sites are to be given strict custodial protection*). The 'monument' or 'historical site' are the equivalent of the 'place', and are central to understanding nearly a century of the evolution of heritage conservation.

Unfortunately the Draft Report evidences a complete lack of understanding of this history of the role of place in conservation, which simply reflects the primacy of orthodox economics in the Commission's thinking and the concurrent lack of consideration that understandings of cultural and environmental economics could have brought to their deliberations. This, in turn, leads the Commission to focus on 'values' rather than 'place', and to ways of attaching private property rights to the 'externalities' these values represent, which can then be traded in the market place. As transferring the place to another location is unlikely (although there are examples of this, but with high transaction costs), it is the values which are required to be transferrable. The effect is to disconnect heritage values from heritage places, and to give heritage values a primacy over heritage places - simply because they are more amenable to the Commission's proposed market-based heritage experiment.

De la Torre & Mason, in a paper on 'Economics and Heritage Conservation', argue that decision makers are turning to 'economic considerations'. Culturalists argue that conservation is not an end in itself, but a means to an end or ends, such as cultural confidence, cultural diversity or a strong sense of place - the sort of ends usually considered to be social values. However, more and more economic measures of the value of heritage are being used, and economic rationales to justify conservation required. One economic concept that is crucial to understand in the cultural field is that of 'opportunity cost' (that is, the theoretical value of a foregone alternative, or the theoretical benefit that would have been derived from an alternative use of a resource). In many cases, say de la Torre & Mason, it is safe to say that alternative investments of the resources invested in heritage conservation could bring a higher economic return. Attempts to quantify the economic benefits of investment in culture or conservation will usually be destroyed by 'opportunity cost' scenarios, unless it can be shown that other (non-economic) benefits can justify the investment in culture and conservation. This illustrates the point that standard economic analyses do not fully measure the values of heritage, either to individual property holders or to the community, and need to be supplemented by other kinds of information. If one agrees to translate all heritage values into terms of price, and argue for conservation on the grounds that it is economically rational, the 'opportunity cost' card will generally provide opportunities that pay better. Thus we arrive at a conceptual problem when cultural values are measured solely in terms of price: meanings, memories, beauty, spirituality, and other values that are fundamental to understanding heritage conservation are lost in the discussion of transactions and prices and markets. De la Torre & Mason conclude by asking:

"Do we preserve 'things'? Or do we preserve timeless, universal values? What kind of values, and whose? This is particularly urgent [to address] vis-à-vis the ascendancy of economic language and business logic in all parts of society" (p. 5)

The Draft Report indicates that it is values, especially economic values, that are to be conserved and enhanced, and that separating 'place' and 'values' is central to this approach.

Another aspect to the Commission's place/values dichotomy can be found in Martin & Verbeek when they quote Environmental economist Berkes on the relationship between property and its abundance:

"[property] belief systems may be counter to other major aims such as sustainability and equity. These beliefs emerged under conditions of resource abundance, which may not prevail today." (Berkes 1989, on: 2)

Applying this argument from environmental to cultural economics would suggest that the need for the Inquiry has arisen because the cultural resource of built heritage is becoming scarcer, not more abundant. There is a plausibility in such an argument - colonial-era buildings continue to be demolished, and there are no more to replace them - they cannot reproduce like a natural resource, and are a finite and always decreasing cultural resource. The same logic can be validly applied to all historical phases or themes, perhaps with the exception of the present day.

The Commission's proposed approach is reminiscent of the 19th century acclimatisers, who moved (when they could catch them) unusual or interesting species to reserves (especially islands) to breed them and maintain them as a sort of zoo, divorced from connections to natural habitat, or any understanding of the role of habitat places in a species survival. Individual animals were reduced to curiosities, while habitat destruction (in the form of land settlement) continued safe in the knowledge that curiosity species had been 'rescued'.

There is an analogy with the Commission's proposed heritage methodology: select any place that has the desired values at that time, such as an aesthetic quality (catch the specimen), then make a property management contract (VCA) with current property holder (isolate it on a reserve), until such time as the property holder decides to withdraw from the contract (the specimen dies or fails to reproduce). Someone (who??) then seeks out another property with same values (if these values are still desirable for conservation) (capture another specimen, if it's still interesting enough to deal with) and enters into a contract with that property holder (and isolate it on a reserve). If no other property with similar values can be found (the species has become extinct), or a property holder is unwilling to enter into a contract (the species survives, but no specimens can be caught), then community just has to accept it (too bad). The property rights (unrestricted use of the reserve for specimen management) are of greater importance than conservation values (the continuation of the species), and could be supported by some sort of 'opportunity cost' study that will show that the price of the place's 'aesthetic' values is not as great as the returns that could be obtained by redevelopment (the zoo-going public now want to see a different species, for which they will pay a higher price at the gates). It is just a simple market transaction.

The analogy with acclimatisation is not perfect, and illustrates the need for caution in uncritically transferring conservation arguments from the natural to the cultural heritage field, as de la Torre & Mason state (p.3):

"Notions of 'public good', 'externalities' and 'market failure' all apply to resources and issues of the natural environment. We should exercise caution, though, in our borrowing from the environmental field, and analyze [sic] carefully whether or not they are suitable."

Although environmental economics uses the same standard methods as orthodox economics, much can be learnt from it, especially in comparison to the sort of narrow

orthodoxy that seems to prevail in the Commission's thinking and the Draft Report. A recommendation in the Final Report to facilitate or establish a dedicated research institution for cultural heritage, similar to Land & Water Australia, would be a useful and innovative recommendation.

There is no understanding of the role of place, or of the cultural significance of a place in the Commission's recommendations. 'Heritage values' cannot be simply transferred or relocated to another place, or found replicated in another place - even though this might be a desirable characteristic in the Commission's idealised market based heritage experiment. The effect is to reduce heritage items to mere curiosities whose value is reflected in a market price at the time of any transfer, which presumably involves some speculation that the price will increase as the resource becomes scarcer, or if it doesn't, then the right to destroy and rebuilt on the property.

The Final Report needs to make some explicit statements about the role of 'place' in the Commission's proposed market-based heritage experiment.



Some observations on the structure of the document

Lack of Definitions

There are many undefined words and terms used in the Draft Report that presumably have particular meanings that are not always clear either from the context or previous usage. These include:

- Private Property Rights (also synonyms: Private Property, Private Owner)
- heritage conservation
- heritage significance
- heritage values
- Heritage item
- Overlist
- Icon, Iconic

The Final Report should include a glossary that defines all words and terms that have particular meanings within the context of the Inquiry.

Lack of supporting evidence

Examples have been noted throughout this submission of statements and claims being made without any supporting evidence contained in the Draft Report. Some of these are:

- government involvement in heritage is aimed at increasing the amount and quality of heritage retained (p. xxvii)
- introducing conservation agreements at the State and Territory level is unlikely to impact on currently listed properties (p. xxxvi)
- Draft Finding states that the assistance available to private owners falls well short of the additional costs of obligations imposed on owners as a result of listing (p. xli)
- there are no problems with the used-car market because it operates under market-initiated solutions (p.114)
- sellers disguise and destroy heritage values to prevent or overturn listings (p. 116)
- the overwhelming majority of heritage places existed before heritage listing developed and so were conserved through private initiative (p. 117)
- financial incentives offered to private owners leads them to understate their willingness to undertake conservation works in order to receive government subsidies (p. 120)

there is a tendency over the last two decades to overlist properties that are over 100 years old (p. 137)
Any owner of an old building anticipates high maintenance costs (p. 140)
regulation that limits private property rights leads to neglect or demolition (p. 143)
society seeks a comprehensive and representative portfolio of places to be kept in posterity (p. 149)
national 'icons' in public ownership would almost certainly be preserved in the absence of government intervention (p. 151)
Draft Finding 7.2 states that negotiated conservation agreements are desirable as they facilitate conservation (p. 154)
The Register of the National Estate is causing some confusion in the community (p. 155)
The National Trust's legislation establishment creates confusion as to the role of the Trust (p. 156)
conservation management plans at the State level are often voluntary, restricted to places with a high public profile, and vary considerably in depth and content (p. 158)
the process for heritage assessment is invariably subjective (p. 164)
Draft Finding 7.8 states that heritage controls are applied to places that have little if any heritage significance in order to achieve other planning objectives (p. 172)
whether there are many examples of a type of heritage place already listed is not considered during the heritage assessment process (p. 186)

The Final Report should either include supporting evidence for such statements, or clearly distinguish its opinions and arguments from evidence.

References in the Draft Report to claims of financial loss by a few private owners seem to have been accepted uncritically and at face value, and then quoted partially or completely within the body of the Draft Report as actual evidence of the claimed losses. In one case, such claims by one submitter are repeated four times; while another submitter's claims that listing causes destruction are repeated twice - in both cases, there is no evidence that these claims have either been verified, or that the claims are regarded as opinions.

The Final Report should clearly annotate such quotations to make it clear that these are the claims of submitters that have not been independently verified by the Commission or, if that have been, then this should be stated.

failure to integrate sections prepared by different authors

The author of this submission is experienced in reviewing multi-authored conservation management plans (CMPs) (the type of document recommended for all publicly-owned heritage items in Draft Recommendation 7.5, p. 159, also Draft Finding 7.3, p. 158). The Draft Report bears a number of similarities to the problems often identified in such reviews. One of these is the failure to properly integrate the work of different writers of different sections of a document, a failure that is also evident in the Draft Report.

There is a particularly distinct change of style between Chapters 7 and 8 (a simple illustration being the use of the word 'designation' to refer to the attainment of heritage status in chapters 5-7, but of 'award' in chapter 9, although other differences are also evident). This reflects a similar change often evident in CMPs, as this is the point at which the investigation and assessment sections finish and the policy sections begin - the same functional change that occurs in the Draft Report at this point. The usual interpretation of this change in CMP reviews is that the policy section has been written without an awareness of the investigation and assessment sections, sometimes even in advance of those sections. While it is not suggested that this has happened in the Draft Report, it would not be unreasonable for an experienced reviewer to reach such a preliminary conclusion and seek clarification. Coupled with the referencing issues

discussed below, it could be suggested that a far more extensive report was prepared, and has since been bowdlerised so that the Draft Report conveys a single message of the primacy of private property rights in the future market-based heritage experiment.

It is critical that the Commission can demonstrate that the Draft Report was not prepared using a 'cart before the horse' method, with conclusions developed before research and analyses were undertaken; and guarantee that its recommendations have not been derived from, or provided by, sources beyond the inquiry.

The Final Report must contain a detailed and transparent explanation of the methodologies used in the preparation of the report.

A Question of Selective Referencing?

An analysis of the references in the Draft Report (pp. 279-281) seems to support a suspicion that the report has been expurgated. Of a total of 35 references cited, 20 (57%) are from government sources, and 15 (43%) are from private sources - which seem reasonably balanced. However, of the 20 government sources, 15 (75%) are from the period 1999-2005; while of the 15 private sources, 13 (86%) predate 1998. One explanation for this apparent imbalance is that the published reference list is an abbreviated version of a more comprehensive list, citing only the major works consulted.

If the reference list in the Draft Report is abridged or abbreviated in some way, the full list should be included in the Final Report.

There appears to be an awareness of the work of the Economic Culturalist Schuster (see 'Overlisting' above), despite not being cited in the Draft Report at all, nor cited in any of the sources referenced in the Draft Report. Is it possible that more recent work in cultural economics, and the conclusions that may have been drawn from it, have been removed, leaving only traces such as Shusters, and an apparent imbalance in the range of cited references?

An alternative explanation is that the Commission's researchers have relied upon dated intellectual analyses in the Cultural Economics field, which they have then applied to very recent statistical, research and regulatory studies by government agencies. As observed in the 'History' section of this submission, and evidenced in its references, the work in Cultural Economics has significantly evolved since 1998. The most cited private work was McLeod's *Planning Law in Australia* (1997: 11 citations), followed by Throsby's *Seven Questions in the Economics of Cultural Heritage* (1997: 5 citations), then four other citations concerning Cultural Economics (1996, 1997), then three citations concerning economic valuation methods (1993, 1994). The range of citations could suggest that the Commission's researchers were familiar with standard economic analyses (for which they needed little further research), but unfamiliar with the field of cultural economics and even less so with environmental planning law (for which they needed more research).

The apparent failure to access and use the more up-to-date approaches to Cultural Economic analyses has lead the Commission to analyse current government research with dated analytic tools and so paradoxically reach conclusions that are already out-of-date. This appears to confirm the primacy of standard economic approaches to analysing cultural heritage in the Commission's work. It is essential that the Final Report can demonstrate that the work in Cultural Economics since 1999 is taken into account, especially with regard to the role and measurement of social and cultural values in heritage.

The recommendations in the Final Report must be able to reflect the more recent scholarship in Cultural Economics.



Conclusions

The Draft Report engages one-sidedly in the dichotomy between 'culturalists' and 'economists' as discussed by Arjo Klamer (p. 3):

"Culturalists – archaeologists, art historians, historians, theologians - ... are Wilde's romantics, seeing the value of everything and the price of nothing. Most of my fellow economists ... are Wilde's cynics, who see the price of everything and the value of nothing".

The conclusions in this submission are as follows:

Each term of reference should be specifically addressed in the Final Report in order to demonstrate compliance or otherwise with the Treasurer's commission.

The inclusion of cultural and social values, as well as economic values, in understanding heritage conservation must be addressed in the Final Report if it is to have any credibility. The ahistorical approach taken by the Commission has led it to misunderstand the causes of the development of heritage in Australia; while the failure to engage with well-established schools of cultural, social and environmental economics in preparing the Draft Report has skewed its findings and recommendations to reflect a very one-dimensional view.

While the primacy of private property rights theories are probably too entrenched within the Draft Report, and within the Commission's thinking, to be changed or modified, the Final Report must demonstrate some understanding that there are other competing views on the role of private property rights in conservation, and give some satisfactory justifications as to why it has chosen its particular economic model to the exclusion of others.

The Final Report should contain some discussion of the assumptions underlying the report, and acknowledge the subjectivity of the Commission's findings and recommendations.

The Final Report must include some clear, unambiguous statements that the deliberate destruction of heritage items is socially unacceptable, and that there are cultural and environmental costs to such destruction. The Commission should acknowledge that the reasons it attributes to property holders for engaging in such destructive behaviours are economically questionable, show whether it has actual evidence to support these attributions, and it should make some attempt to acknowledge the assumptions and biases that underlay its analyses.

Unless the Commission can give some useful definition of the term 'overlist', provide some actual evidence that it is occurring, and uses it within a meaningful context, it is a counterproductive piece of rhetoric that should not be used in the Final Report.

Chapter 9 of the Final Report needs to provide much greater clarification of the residual roles (if any) that State and Territory heritage agencies will be expected to play in the Commission's proposed market-based heritage experiment, and provide some clear statements as to the relative roles of property management and heritage identification.

The Final Report needs to demonstrate that some serious consideration has been given to responding to Term of Reference #5, or provide some explanation of why this has not been the case.

The Final Report needs to consider the cultural and social values wrapped up in bequest values, and the connections between sustainability and bequest values, or at the very least acknowledge that an isolated economic valuation of bequest values is insufficient to accurately measure and understand bequest values.

The Final Report needs to acknowledge that people are more than just economic functions, that they have complex social and cultural lives that interact with environmental and economic factors, that its Final Recommendations will have substantial impacts on cultural and social values as well as economic values, and that more research should be devoted to the interplay of cultural, social, economic and environmental values before the current heritage system is dismantled.

The Final Report needs to make some explicit statements about the role of 'place' in the Commission's proposed market-based heritage experiment.

The Final Report should include a glossary that defines all words and terms that have particular meanings within the context of the Inquiry.

The Final Report should either include supporting evidence for its unsupported statements, or clearly distinguish opinions and arguments from evidence.

The Final Report should clearly annotate quotations to make it clear that these are the claims of submitters that have not been independently verified by the Commission or, if that have been, then this should be stated.

The Final Report must contain a detailed and transparent explanation of the methodologies used in the preparation of the report.

If the reference list in the Draft Report is abridged or abbreviated in some way, the full list should be included in the Final Report.

The recommendations in the Final Report must be able to reflect the more recent scholarship in Cultural Economics.

The field of cultural economics needs much greater attention in Australia: perhaps the Commission could make a useful recommendation to establish a national cultural heritage research institute like 'Land & Water Australia' to facilitate such research and policy development. Meanwhile, the Commission needs to give equal attention to environmental and cultural economics in its research, analyses, deliberations and recommendations. This is something now widely accepted in the area known as triple-bottom line reporting which attempts to capture an expanded spectrum of values and criteria for measuring organisational (and societal) success - economic, environmental and social. For some a commitment to Corporate Social Responsibility brings with it a need to institute triple bottom line reporting.

"The challenge here is to temper the clamorous demands of the immediate present with a compelling rationale for the claims of both past and future. Presentist bias is ingrained in today's social and political institutions. Individuals are too impotent, corporations too profit-bent, governments too dependent on instant pay-offs to care for cultural resources beyond the next election, let alone beyond our own lifetimes... [However] We are now beginning to realize that resource stewardship of nature and

culture and of both together cannot be only an occasional one-off activity; it must be embedded in everyday behaviour towards land, goods, the places we live in as well as those we visit and dream about. Not heritage professionals alone but all of us need and deserve a fulfilling environment enriched by past memories and future hopes."
(Lowenthal, 2003, 9-10)



Glossary

Commonwealth (Government) - the term 'Australian' or 'National' government is used in the Draft Report in accordance with the badging chosen by the federal authorities. This submission uses the proper name of 'Commonwealth' government to reflect both the historical and official name of the nation, and the communal nature of governance and resource sovereignty as intended by the official designation.

Culturalist - this term is used in this submission to cover a variety of people who work in or with the existing heritage system, and identify their employment and/or recreational interests with heritage. It is taken from the work of the cultural economists, but is used, not to identify them with that field of endeavour, but because, as de la Torre & Mason note, the heritage field has no unified body of theory to draw on, and no profession or vocation devoted to 'heritage' - it exists in and across many different fields - history, archaeology, town planning, architecture, landscape architecture, museology, maritime archaeology, and others.

Economics - is a social science that studies the production, distribution, trade and consumption of goods and services. Economics is said to be normative when it recommends one choice over another, or when a subjective value judgement is made. Conversely, economics is said to be positive when it tries objectively to predict and explain consequences of choices, given a set of assumptions and/or a set of observations. The choice of which assumptions to make in building a model as well as which observations to highlight is, however, normative.

Environmental economics - is a subfield of economics concerned with environmental issues (other usages of the term are not uncommon). In using standard methods of neo-classical economics, it is distinguished from green economics or ecological economics which include the nonstandard approaches to environmental problems, environmental science/environmental studies, or ecology. Quoting from the National Bureau of Economic Research Environmental Economics program:

[...] Environmental Economics [...] undertakes theoretical or empirical studies of the economic effects of national or local environmental policies around the world [...]. Particular issues include the costs and benefits of alternative environmental policies to deal with air pollution, water quality, toxic substances, solid waste, and global warming.

A related field (or possibly alternative approach to the same field) is ecological economics, which takes as its premise that economics is itself a strict subfield of ecology.

Heritage significance - the term traditionally used in state, territory and local jurisdictions to indicate the importance or cultural value to a community of a heritage place or item, as distinct from the contested term 'heritage values' used by the Commonwealth authorities, which is not connected to a place or item, and which implies a certain primacy of economic values over other values.

Orthodox economics - in this submission refers to the theory of the market, which is usually considered to have four main branches: (Neo) Classical, Keynesian, Monetarist and Marxian economics. In (Neo) Classical economics the market is wonderful.

Governments should leave it alone except to deal with any obstacles to its free working (like trade unions). If they do this, the country (i.e. the middle classes) will prosper and there will be full employment. Monetarist economics argue that the free market will not deliver full employment, but that it will keep workers on their toes. It is more important to keep inflation down so that our (middle class) savings are not eroded, and to keep endless growth going by persuading people to consume more and more. The notion of disinterested 'objective' economic sciences is a myth. Behind every set of theories lie the values and assumptions of a society, or of a group within society. This is nowhere more true than within economic theory.

(Neo) Classical and Monetarist economics share, as mainstream orthodox theories, certain key assumptions: -

1. The primacy of the human individual over the team or group.
2. The sanctity of private property.
3. A utilitarian concept of economic value.
4. The notion of rational man - choosing according to economic advantage.
5. The State as ringholder and keeper of the rules.

Consequently, they look to governments or other centres of authority to enact new laws that would tip the playing field of economic interaction in the direction of their particular utopias.

Property Management Contracts - labelled 'voluntary conservation agreements' in the Draft Report, this term is used in this submission as it more accurately denominates the nature of these proposed documents, indicates that they may be other areas where they could be used to control socially undesirable activities by private property holders, and clearly shows the very limited (if any) role that heritage significance plays in their imposition.

Private Property Holders - labelled 'private property owners', or 'private owners' in the Draft Report, this term is used in this submission as it more accurately describes the status of such persons who, even as freeholders, still hold their property (as the term 'freeholder' indicates) as a tenure from the Crown (see the National Trust submissions quoted in the Draft Report, Box 7.3 p. 170). Land holding, or 'ownership', is not devoid of obligations or restrictions, and always subject to a resumption of ownership by the Crown.



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(Land & Water Australia is a statutory research and development corporation within the Australian Government Agriculture, Fisheries and Forestry portfolio. It was established as the Land and Water Resources Research and Development Corporation in 1990 under the Primary Industries & Energy Research & Development (PIERD) Act 1989. Land & Water Australia's mission is to provide national leadership in generating knowledge, informing debate and inspiring innovation and action in sustainable natural resource management. - www.lwa.gov.au/about.asp)

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Disclaimer

This submission has been prepared entirely by Bruce Baskerville. I am a qualified public historian and member of the Professional Historians' Association (NSW), and have been involved in the community historical society movement for over 30 years. I have worked over the 10 years in the heritage field, initially as a consulting historian and heritage practitioner with two private heritage consultancies in Sydney before working for the NSW Heritage Office. The preparation of this submission has been undertaken in my personal capacity, and all of the views, interpretations and opinions expressed are mine alone. No agreement with, or authorisation or approval for, such views, interpretations and opinions by my employer is expressed or implied in any way.

