



Submission – Conservation of Australia’s Historic Places



Submission to the Productivity Commission Inquiry

Conservation of Australia’s Historic Heritage Places

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1. Introduction

This submission provides feedback to the Productivity Commission Inquiry into the Conservation of Australia’s Historic Heritage Places. It focuses on providing input on the implementation of Australia’s new national heritage system, which operates under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (the **EPBC Act**). This effectiveness of the new national heritage system is one of the many issues raised in the Issues Paper put out by the Commission in May 2005. The submission has attempted to address a number of the questions raised in that discussion paper.

These comments are provided by the EPBC Unit Project. This is a joint project by the Tasmanian Conservation Trust (‘TCT’), the Australian Council of National Trusts (‘ACNT’) and WWF-Australia (‘WWF’). The goals of the EPBC Unit are to:

- Promote knowledge and understanding of the EPBC Act in the community; and
- Facilitate community involvement in the processes available under the EPBC Act and Regulations.

The EPBC Unit Project has a Heritage Outreach Officer working within it. The role of this officer is to deliver information about the new national heritage system to key heritage stakeholders in both urban and regional areas across Australia. The objective is to build the capacity of heritage volunteers and professionals to engage with the new national heritage system effectively. This includes both community-based heritage groups, as well as professional heritage practitioners working in consultancies and State and local government.

To achieve this, heritage outreach activities involve a significant component of face-to-face work (eg: presentations and workshops), as well as the provision of a telephonic advisory service to help members of the public with queries relating to the new system. For example, between February and June 2005 the Heritage Outreach Officer conducted and/or participated in 27 workshops in which comprehensive information about the new national heritage system was delivered.

Most of the of the comments provided in this submission are based on feedback from participants in these on-ground workshop sessions.

2. The historic heritage policy framework

There are many reasons to conserve Australia’s historic heritage places. Most of these relate to the social, aesthetic and spiritual values that these places provide to both current and future generations. As stated by the Senate Committee in 1998, the “*fundamental reasons for conserving these ‘things we want to keep’ [heritage] are spiritual and emotional: a sense of belonging and cultural identity, a sense of tradition, a sense of humanity, a wonder at nature and oneness with nature*”.

Unfortunately, these places are not always indestructible. In the face of economic development and social change, valuation models used to aid decision-making often don’t adequately



quantify and integrate these somewhat intangible values. This is despite advances in triple bottom line approaches.

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Exacerbating this is the fact that many historic heritage places are expensive to conserve and manage. And in many cases, the money required for this ongoing maintenance outstrips economic gains through increased market value, or income through activities undertaken on the site.

There are exceptions to this. In some cases, historic heritage property owners (be they private, community-based or government) may be able to recoup costs through activities on site or capital gain on investment. But this win can be effectively considered a loss if the historic heritage values of the place are compromised in the process, given that the rationale for conserving these places is the conservation of those values.

In addition, there can often be a mismatch between the party bearing the costs of historic heritage conservation, and those to whom the benefits of it accrue. Owners or operators of historic heritage places have to shoulder economic costs that they may or may not be able to recoup. In many cases (but not all) it is the broader community that benefits socially or spiritually from the conservation of the cultural resource.

It is on the basis of this market failure that there is a need for governmental intervention in the conservation of historic heritage places. The effectiveness of the new national heritage system in achieving this is examined in the next section of this submission.

3. The new national heritage system

3.1 Strengths of the new national heritage system

The new national heritage system has now been operational since 1 January 2004. In a number of respects it is a significant improvement on the way the system worked prior to its introduction.

3.1.1 Delineating governmental roles

The new national heritage system has more clearly delineated the role of the Australian Government in the conservation of historic heritage places. It has focused the Australian Government’s attention on places of outstanding heritage to the nation (National Heritage) and places that are of significant heritage value to the nation, and that are also owned or managed by the Commonwealth (Commonwealth Heritage). This is as opposed to places that have State or local historic heritage value.

A set of nine criteria for each of these 2 new heritage lists of national jurisdiction sets up the framework for determining what these places are or should be, with assessments against these criteria conducted by an independent heritage advisory body, the Australian Heritage Council. There are numerous criteria for both the lists that relate to the historic heritage values of places. The threshold for listing on the National Heritage List in particular is extremely high, with places needing to be of ‘outstanding’ heritage value to the nation.



3.1.2 Greater public involvement

The new national heritage system has also greatly increased the scope for public involvement in the conservation of historic heritage of outstanding national value. Members of the public are able to nominate historic heritage places to either of the two new heritage lists. They are also able to comment on the heritage values of these places at least once during the heritage assessment of the place against the list criteria.

3.1.3 Transparency of decision making

The transparency of the decision-making processes relating to decisions about heritage places has been enhanced under the new system. All listed places have publicly available ‘Statements of values’ that outline their core National or Commonwealth heritage values against the list criteria. In addition, a decision not to inscribe a place onto either of the lists is accompanied by a ‘Statement of Reasons’ for the decision. These documents are also publicly available.

3.1.4. Legal protection for heritage values

Under the new national heritage system, the recognised heritage values of National and Commonwealth Heritage places are protected under the EPBC Act. This is different to the old system, whereby the heritage values of places on the Register of the National Estate (the only prior heritage list of national jurisdiction) were afforded very little in the way of legal protection.

The EPBC Act establishes a referral / approvals process for ‘actions’ that are ‘likely’ to have a ‘significant impact’ on the National Heritage values of a National Heritage place. In terms of Commonwealth Heritage places, ‘actions’ that are ‘likely’ to have a ‘significant impact’ on the environment on Commonwealth land (including the heritage values of that land) must be referred to the Australian Government for a determination as to whether they need assessment and approval.

In addition, the EPBC Act requires Commonwealth agencies to refer actions that are likely to have a significant impact on the environment anywhere (including the heritage values of the environment), to see if they require Ministerial approval.

In light of the protection of the conservation of the historic heritage values of listed places, this framework has the potential to protect recognised historic heritage values from the detrimental effects of activities on-site. It also has the potential to regulate off-site activities where they are still likely to have a significant impact on listed heritage values of the place. In other words, in at least some cases the system recognises the importance of conserving the broader context or landscape of the place, where this is important to maintaining the integrity of those values.

The new referral and approvals process of actions under the EPBC Act also allows for public comments, most frequently both at the referral stage, as well during the assessment process if the proposal is called a controlled action.

3.2 Opportunities to strengthen the new national heritage system

However, in the minds of the Australian Community, in a number of other respects the new national heritage system appears to be falling short of initial expectations.

3.2.1 Community confusion persists

The new national heritage system does not seem to have removed or reduced community confusion over heritage laws and processes. In fact, at this stage, its introduction may even have initially exacerbated confusion in some respects, given that there are now three heritage lists that cover all jurisdictions, as opposed to the previous one (the Register of the National Estate). This is because the Register has been maintained under the new system, in addition to the two new heritage lists.

This comment is drawn from experiences at workshops, where many are confused about the different lists and what significance places on them have. For example, most people do not understand that places on the Register of the National Estate do not have much in the way of substantive legal protection. Because of this they do not understand why re-nominating places to either the Commonwealth or National heritage lists (if they are likely to meet the criteria / thresholds) is worthwhile.

Much of the community confusion also seems to relate to how the various heritage regimes interact (eg. Australian Government, State, local and other heritage lists), within the broader context of confusion over the land-use planning system as a whole.

It is reasonable to expect that the confusion will reduce over time, as the public becomes accustomed to reading about the new National Heritage List in the media. The recent listing of the Sydney Opera House is an example. In light of the fact that the broader community is still not absolutely familiar with the system, it is critical that communication activities to reduce this confusion continue, and are even enhanced.

3.2.2 Public support for a National Heritage strategy

The new national heritage system is driven strongly by public nominations of places to both the National and Commonwealth Heritage lists. As indicated in the previous section, this is a very positive aspect of the new system. Most people who have attended heritage workshops have supported this approach.

However, there are also workshop attendees who have commented that they would be highly supportive of an Australian Government strategy to populate the lists with ‘obvious’ National Heritage places that are not, for one reason or another, nominated by the public, yet should be listed. This strategy could complement the public nomination process.

This strategy could include a research component to identify the more obvious National Heritage sites across the country, ideally with a high level and wide range of community input. Identified sites could then be internally processed, without the need for on-ground communities to go through the nomination process.



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3.2.3 Access and equity

The fact that the new national heritage system is also strongly driven by public nominations of places to the new heritage lists means that the lists could, over time, be skewed towards those who have access to the knowledge, information and resources to put up nominations.

An example of this is the fact that the term ‘heritage’ usually only resonates with a certain portion of the population. This has been experienced by the EPBC Unit Project in the promotion of workshops in both urban and regional areas. Many potential participants to whom the information may be relevant do not attend because they do not identify themselves with the term ‘heritage’ (eg. those who could be involved in the nomination of historic migrant heritage places).

Because of this, it is important that communications activities around the new national heritage system take this into account. For example, the Heritage Outreach Officer is very mindful of this in her work, and has attempted to try and reach a broad cross-section of the public with information outreach activities, and shall continue to do so. This is achieved by using words other than ‘heritage’ in communications, as well as targeting communications to a broad range of groups not necessarily engaged in the heritage debate.

3.2.4 Resources to help communities with nominations

On-ground communities and even heritage professionals are often extremely under-resourced, relying on donation of time and money to undertake nominations to the new national heritage lists and providing comments on assessments. The time and effort taken to put together a sound nomination to either the National or Commonwealth Heritage list can be significant, especially if a consultative approach to formulating the nomination is taken.

In addition, on-ground communities are almost always locally or regionally focussed. This frequently makes it difficult for them to look at the national picture, and makes grappling with the criteria and thresholds for listing on both the National and Commonwealth Heritage lists extremely difficult.

For this reason, many workshop attendees are also highly supportive of the development of additional resources to help them put together strong nominations that are likely to meet the criteria and thresholds for the National Heritage List.

For example, a set of ‘administrative guidelines’ that help to ‘translate’ the National Heritage criteria into sub-sets of tangible themes would greatly help to get the on-ground community’s heads around the heritage criteria and thresholds.

In addition to this, a number of national thematic studies have been at least partially conducted by the Department of Environment and Heritage, but at this stage only one is available as a public resource. The Australian Natural Heritage Assessment Database is also not publicly available for a number of reasons.

If these sorts of reference materials and data (and others) were available to the public it would be likely to greatly enhance the quality of nominations put forward. This would be of benefit to the community, as they would need to invest a smaller amount of time and effort into the nomination with a greater likelihood of success. It would also help the Department of

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Environment and Heritage and the Australian Heritage Council, in that they would be investing their time and effort into the assessment of strong nominations likely to make threshold.





3.2.5 Marketing of the new national heritage system

One of the drivers for some communities seeking listing under the new national heritage system is to put their place on the “National Heritage map”. Like World Heritage, this is seen as a ‘brand’ that the community can utilise to attract additional tourists, and therefore make the heritage resource ‘pay for itself’.

Obviously, additional tourist activity will only be appropriate at some sites. However, at many National Heritage sites it may well be possible to accommodate a rise in tourist visitation without a significant impact on the heritage values occurring. This is particularly desirable when the alternatives are other more inappropriate forms of development.

However, the ability of National Heritage owners and managers to effectively leverage the National Heritage ‘brand’ will only be possible when the public is both aware of National Heritage, as well as its significance, and thus why they should be interested in visiting the site.

At this point in time, it appears that general, public knowledge of the National Heritage List is very low. Again, this is likely to increase over time, especially when high-profile sites are listed and get media coverage. However, all efforts to communicate the National Heritage in a novel and interesting way to the general public could be considered a contribution towards incentives towards ongoing management of these places.

3.2.6 General EPBC Act issues

One of the main drivers for community engagement with the new National Heritage system is gaining legal protection for the recorded historic heritage values of the place under the EPBC Act. However, there appear to be a number of factors that lead to community cynicism that the EPBC Act will be able to effectively protect the historic heritage values of places against actions likely to have a significant impact.

One example is the fact that the EPBC Act does not provide protection of the historic heritage values of a listed National Heritage place against the significant impact of actions taken by individuals in some circumstances. Where this is felt to be the main threat to these values, community members often ask why they should go through the ‘bother’ of the listing process.

A second example is the EPBC Act defines ‘action’ as a “project, development, undertaking and an activity or series of activities”. By definition, this does not include demolition by neglect. Again, where this is believed to be the main threat to the historic heritage values of the place, the community will be less likely to go through the effort of the listing process.

And a third example is that DEH does not have any EPBC Act compliance officers based in any of the States or Territories. What this means is that enforcement often relies on community vigilance.

4. Recommendations

The Commission is urged to recognise that Australia’s historic heritage places have a range of non-economic values that can accrue to property owners as well as the community as a whole. These values are frequently not factored into decision-making processes about these places, but should be.

The Commission is also urged to recognise that historic heritage places are frequently expensive to conserve and maintain, and that these economic costs cannot always be recouped by owners and managers without eroding the other more intangible heritage values.

On the basis of this market failure, there is a strong rationale for the intervention of governments in the conservation of historic heritage places. This intervention should ideally be targeted to historic heritage of significance to the level of government concerned, as structured by the current system.

In light of opportunities to strengthen the implementation of the new national heritage system, the following recommendations are made.

4.1 Allocate resources to resource development & incentives

The Commission is urged to recommend the allocation of additional funds to support the continued and effective implementation of the national heritage system. Allocation of these funds should be tied to the development of the resources required to optimally implement the new heritage system. It also includes the allocation of fund to provide ‘incentives’ to support private conservation of historic heritage.

4.2 Develop resources to aid the public with nominations

The Commission is encouraged to support the development of resources and tools to help the public engage in high-quality nominations. This includes:

- Criteria and threshold guidelines
- Finalisation and publication of thematic studies
- Conducting of additional research to identify historic heritage places of outstanding national value throughout the country

4.3 Develop a National Heritage Strategy

The Commission is urged to support the development of a National Heritage Strategy to guide listing of National Heritage sites to complement community-based nominations. This should ideally include a research component to identify the more obvious National Heritage sites across the country, with a high level and wide range of community input and engagement.



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4.4. Broadly market National Heritage as an incentive strategy

The Commission is urged to encourage increased marketing of the National Heritage List as an incentive mechanism. This will assist owners and managers of these places to promote these sites to an educated public, who are aware of the general level of significance of the place. This is likely to increase heritage tourism activity, which can help site managers cover the costs of managing and conserving the site





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