

**SUBMISSION BY THE CHAIRPERSON ON BEHALF OF  
THE HERITAGE COUNCIL OF WESTERN AUSTRALIA  
REGARDING THE DRAFT REPORT OF THE PRODUCTIVITY COMMISSION'S INQUIRY  
INTO HISTORIC HERITAGE CONSERVATION IN AUSTRALIA  
February 2006**

**General comments**

The Heritage Council of Western Australia is disappointed that the recommendations in the Productivity Commission's draft report. We find that they are impractical, and do not appear to be founded on good evidence.

If implemented, the recommendations would have the effect of rapidly accelerating the loss of heritage places in Australia, including the conservation of places of state-level significance. Lost historic heritage can never be reclaimed.

Naturally, we accept that the heritage protection system is not perfect and that improvement is something we should strive for.

To that end, sensible recommendations for reform were made to the Environment and Heritage Protection Council in 2004-05, in the *Making Heritage Happen* report and the *Revolving Funds* report. We draw those recommendations to your attention again.

In WA as you know, the *Local Government Heritage Working Party* delivered an extensive set of recommendations in 2005 for improving the way that local governments deal with heritage. By and large those changes involve evolutionary change to the existing system, assisted by modest additional investments by state and local governments.

We do not believe that mainstream support exists for radical change as advocated by the Commission.

**Public vs private interests**

The Commission's report gives overriding priority to the perceived short-term interests of individual property owners, over and above the wider public interest and the long-term interests of the community, including future generations.

As illustrated in the Council's first submission to the Inquiry in July 2004, the lack of adequate protection of Australia's heritage places has had a detrimental effect on the quality of many of Australia's urban areas. This diminishes the quality of our environment, and also has adverse social and economic consequences.

The Commission has treated the environmental, social and economic benefits of heritage conservation in a fairly cursory way, preferring to give emphasis to adverse effects impacting a minority of individuals. In our view, the adverse effects have been exaggerated.

**Community support for heritage conservation**

The findings of the *Allen Group's* survey of community attitudes have been given little weight by the Commission, in spite of its sound methodology. That survey shows majority support for heritage protection in WA and in the rest of Australia.

The findings are consistent with the conclusions of independent research conducted here in WA in 2003-04 within the City of Subiaco.

Most of the written submissions to the Inquiry in 2005 are predominantly in favour of strong heritage protection in Australia, even leaving aside submission from heritage organisations such as our own.

This fact is not reflected in the Commission's report, and indeed a number of 'pro-heritage' submissions have been selectively quoted to give the misleading impression that they support the Commission's arguments. This is of some concern.

### ***The proposed abolition of 'mandatory' heritage listing***

Statutory heritage protection has existed in all jurisdictions in Australia, for more than 30 years or more. It has evolved as the most effective response to a perceived community need, using similar mechanisms to those used throughout the Western world.

Heritage listing and control has evolved as an integral part of Australia's planning law, and been tested through administrative appeals and judicial review.

An effective listing system must be well-reasoned, impartial and comprehensive. It cannot fill that role if all listings are completely voluntary, and subject to objections which bear no relation to places' heritage significance.

Objections by property owners to listings, while significant, are in the minority.

In WA, objections arise over 20% to 30% of all proposed listings. While clear statistics are not available in relation to *local* heritage inventories, our observation of inventory compilations over the last decade indicate that objections usually comprise less than 10% of all proposed listings.

Opposition to the heritage system which appears in the inquiry's written submissions and hearing transcripts is characterised by misinformation and factual errors, including unsubstantiated claims of 'loss of value'.

If the Commission has additional evidence of a more widespread and well-founded opposition that supports the case for deregulation, we believe that evidence should be made public.

### ***Carrots vs sticks (Incentives vs listing and development control)***

A system of protection based purely on 'carrots' and voluntary agreements cannot effectively protect places, except in a very limited and ad-hoc way.

Unless a heritage agency is negotiating from a position of some strength (ie a place is already heritage listed, or the agency has the power to list it without 'consent'), then a property owner will rarely have any real incentive to come to an agreement, or to accept any reasonable offer of financial assistance.

In that scenario, property owners will generally prefer to 'keep their options open' and to avoid the possibility of future constraints, even if they are committed to the conservation of the property in the foreseeable future. The time, effort (and sometimes money) required to negotiate an agreement will also be a deterrent.

This is very clear from our own experience in administering the Heritage Act, and observing local government in action.

We support an improved system of incentives, but only as an adjunct to an orderly system of listing and development control. One without the other is dysfunctional.

We agree that too much reliance has been placed in the past on listing and regulation, but what is the reason for that? The reason is that governments at all levels have not invested in incentives, a fact documented in detail in the *Making Heritage Happen* report.

Twenty two pages of the *Heritage of Western Australia Act* are devoted to agreements and incentives (Part 4), making incentives a key platform of the Act. However these provisions remain largely a dead letter because the funds are simply not made available to implement them.

Similar situations prevail in other jurisdictions, including the Commonwealth which has sought to distance itself from responsibilities beyond the National Heritage List and the Commonwealth List. The Commonwealth set up the *Tax Incentives for Heritage Conservation* in the 1990s after a decade of work across Australia. The Working Group which advised on its establishment recommended that the scheme, if it were to be capped, should have a cap of not less than \$20 million; instead the Commonwealth set a cap of \$2 million, and then disbanded the scheme altogether.

To take some recent comparisons outside historic heritage, in June 2004 the Commonwealth Government announced incentive funding of \$75 million to promote the uptake of solar energy technologies (the 'Solar Cities' initiative). In August 2005 the Commonwealth and WA Governments announced funding of \$316 million for Salinity and Water Quality projects in WA alone. In 2004/05, \$281 million was disbursed to projects from Natural Heritage Trust funds.

Smaller investments than these would provide for effective historic-heritage incentives in Australia.

These are facts that deserve to be addressed in the Productivity Commission's report. Instead the Commission has tacitly accepted that current funding levels are all that the public will support, and that incentives, listing and development control must of necessity be accommodated within these arbitrary limits.

### ***Heritage & Town Planning***

The Commission argues that heritage listing is quite different from other planning controls (see for instance section 6.8, p. 142-143). The report states among other things that heritage 'coerces an individual to provide benefits for others' (positive externalities) whereas planning 'constrains activities that are harmful to others' (negative externalities).

This is a false distinction. Positive and negative externalities arise from heritage protection in just the same way as they do from other town planning constraints. Town planning controls aren't confined merely to 'avoiding harm to one's neighbour': among other things, planning schemes operated on a regional basis as well as a local one.

It is misleading to take any single planning constraint in isolation, since in reality development potential involves a 'bundle' of rights and restrictions. Heritage protection contributes to the 'rough reciprocity of benefits' (the Commission's phrase) that the larger town planning system provides.

### ***Demolition by neglect and arson***

The draft report and press statements by the presiding Commissioner have conveyed the impression that the 'perverse effects' of heritage listing are widespread.

The Commission suggests that the deliberate destruction of heritage-listed properties by their owners is often carried out as an 'act of rebellion' against the listing.

In WA, only 3 registered places have been destroyed by fire in the 14 years of the Heritage Act, and fires destroying *locally* listed places (of which WA has 17,000) over the last decade could be counted on one hand.

The evidence of the past two national *State of Environment* reports is that the ratio of heritage buildings in poor condition is low (less than 5%). While demolition by neglect is a genuine problem that concerns us, there is no evidence that it is widespread, or that heritage listing is directly causing the problem.

### ***Compensation***

The Commission's proposed model is effectively a call for 'compensation' for heritage listing.

This is a well-worn argument which has been advocated and debated at length in WA, since the first proposals for heritage legislation were discussed in Parliament in the 1970s.

The WA Parliament has made it clear in both the *Heritage of Western Australia Act* and the *Town Planning and Development Act* that compensation is not appropriate, for sound reasons. Heritage protection is treated in the same way as other constraints on land use enshrined in the planning system.

The same is true in heritage and planning legislation throughout the rest of Australia, and almost without exception, throughout the Western world.

If the Commission is aware of any jurisdictions where a system of voluntary listing and compensation has worked effectively, we believe the evidence should be presented in the Commission's report.