

Heritage Inquiry  
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Dear Commissioners,

8/8/05

## Heritage Inquiry submission.

### *Executive Summary:*

The Association, a member of the Property Owners Association of Australia, representing the registered owners of properties in Victoria, particularly lessors, in response to the Terms of reference & the Commission's **ISSUES PAPER** of 2005, congratulates the Government on this Inquiry and the Commission for its **PAPER**, **however** we note that demand for **heritage properties** is severely limited by lack of property rights and inadequate compensation plus imposition of Rates & Land Tax, with consequential cost increases. The POA stresses that competition by the private sector (as compared to the quasi-community or public sector) is severely limited by these factors especially Land Tax and that we agree with the REIWA, UDIA & PCA reported comments on lack of property rights and inadequate compensation. This is a significant factor in increasing loss of private heritage including loss of private place property rights, which are part of our heritage of rights. The imposition of heritage or conservation controls is confiscation of private land if without adequate compensation. It is unjustifiable theft & intolerable confiscation. It won't work.

**In addition to lack of compensation**, likewise we agree with others (eg sub009) in the need for taxes on these properties to be reduced, and for reduction in red-tape and regulations, because of the increased maintenance costs and decreased capital gains (inflation proofing). Rates & Land Tax are double taxation on the same heritage/etc reserved community asset & is not a fair, equitable or efficient tax as it is an antiquated form of perceived wealth tax, with no corresponding conservation & wealth tax on share or other asset ownership including farming land, pictures, collectibles etc. While some state heritage Orders entail some tax relief, it is not at all offered by municipal restrictions & reservations. This rates & land tax and its bracket creep severely limits private heritage provision in Victoria (plus of course the increased costs of GST on most property maintenance). The aim of the Government to provide the heritage conservation for future generations (a road to the past) should not be at the expense of individual owners for ever: **any proposal** for maintaining compulsory heritage reservations on lands will directly cost owners, occupants and communities more, particularly as time goes by, (as the National Rust in Victoria has found out at Como House.)

The following pages encapsulate our main concerns with State planning laws and municipal outcomes, that require major changes (massive reductions in numbers of reserved properties in lists and zones), not just to reduce the red-tape. The Australian & State heritage places require compensation, further relief from taxes and maintenance funding.

***In conclusion: Rights to compensation to owners for reservations are insufficiently guaranteed by the Constitution. The municipal red-tape must be removed and powers to place heritage orders must be restricted to a State or Federal body & cost based & properly funded & the owners adequately compensated.***

***Put simply: You can lead a horse to water, but you can't make it drink.***

Yours faithfully,

**Property Owners' Association of Victoria Inc**

Attach: 4 pages summary and 5 pages of answers to your Issues Paper questions.  
[www.poa.asn.au](http://www.poa.asn.au)

## ***State planning laws.***

The State imposes Green belts and heritage Orders. The latter are placed on titles without capital compensation generally. It is a costly business to object to these. A unique exception to this rule occurred when the Bracks Govt came to power in 1999. It came to a secret settlement with one country owner who had a draconian Order placed on his quarry farm under the Kennett Govt that meant that he had lost his job, his income, his asset and his retirement fund.

The green Belts were successfully opposed by this Association in 1992 when the Kirner Govt proposed them, but they were re-introduced as part of Melbourne 2030 by the Bracks Govt when the opposition to them was weakened. Unlike heritage Orders, there are no tax reductions with planning restrictions. There should be tax reductions to enable maintenance to take place.

The current State planning laws are a goldmine for lawyers, planners and architects. The housing boom is exaggerated and has everything to do with interest rates. Professional lessors are suffering from low rents and increased taxes & maintenance costs. Lessors have effectively subsidized the VCAT planning appeal system since the Kennett Govt unwisely **confiscated** our lessor bonds to create a VCAT largely to handle the Residential Tenancies system.

It must be remembered that lessors Property Rights across Australia have been savagely reduced in the last 2 decades, as well as having extra Taxes – CGT & GST – and bracket creep on land Tax, and these confiscatory Planning & heritage laws have just broken the camel's back.

## ***Municipal heritage overlays & Orders.***

As part of the State planning laws, the municipal councils try to impose heritage overlays & Orders if not vigorously opposed. It imposes this massive amount of costly red-tape to create jobs for the council officers and for the heritage industry, all without any compensation to owners at all. It is like a politically expedient lottery, with owners of flats being able to propose the neighbours' houses & gardens be kept maintained without any concept of equity or fairness. It doesn't work and it creates depression in the local property market as people realize that the better a property looks from the outside the more likely some envious person or council will wish to have it confiscated.

As an example, an absentee owner (a lessor) will not be advised of the councils' intentions, but if by chance the occupier passes on any street leaflet to the owner and the owner engages lawyers and heritage experts to fight the proposed listing of a specific order at a municipal level, then the council may simply change course without warning and impose a general heritage overlay around the whole area, or may, if sufficiently moved by the objector, excise it from the heritage overlay area, but then fight any subsequent development plan vigorously to create more jobs and costs enabling increased rates. The end effect is to depress the local property market, with consequent added costs and ownership hardships.

As an example of increased costs after a secret listing, the council will simply threaten to prosecute an owner who renews a fence boundary, on the grounds that a planning permit and building permit was not obtained for a heritage place. It threatens a draconian fine if the owner does not apply for council permits, with all the architects and engineering costs, plus costs of stalled building works, plus the costs of the permits application fees. Then when refusing the application, the council holds onto the application fees. The Council may have its expert recommend a corrugated iron fence with timber posts as per construction of a hundred years ago, entailing rust and rot. The Councils are full of stupid inexperienced bureaucrats, and encouraged by self-seeking outside "experts" who generally have no knowledge of property ownership principles.

The local property market then stagnates, but the investor owner is not interested because of the massive costs involved in doing up registered heritage properties and the community suffers with Councils trying to kick-start the area with expensive street work and grants for things like heritage verandas for shop fronts over the streets, costing 10 times as much as conventional verandas.

## ***Major Changes for municipal planning.***

**The better market solution** for municipal planning would be to **EITHER** provide for equitable capital compo for reservations etc on basis of valuations & loss of enjoyment (see below) **&/OR** allow opting out from conservation controls and free permits applications for voluntarily self-registered heritage properties and free rates, together with a free hand to use sensible and compatible modern materials while staying compatible with the general style, and some exemptions from UBRs (BCA, SA). The idea of owners being willing to self-regulate under the market does not appeal to bureaucrats, but it works. Owners are responsible people. It is in our best interests to achieve the happy compromise. It is an insult to owners to be treated like children by bureaucrats who have no knowledge of property ownership principles. In tracing the careers of these temporary planning & building bureaucrats, it is noticeable that the councils try to move them on when they realize their ineptness, but the damage is done and they continue to learn at the expense of owners in other areas.

The system of voluntarily self-registered heritage properties is by means of a covenant or caveat on the title. That system worked so well in the past until war-time emergencies interrupted it but it continues to work to maintain the municipal councils intentions to this day.

The dishonesty and self-interest of inept bureaucrats is profoundly understood by property owners, and that is why generally properties adjacent to clown hall are depressed and unwanted.

## ***General Comments.***

The National Trusts are apparently misguided if they believe that owners don't own their land. The owner is the registered owner on the title. The land is held by the owner under common law as well. The statement by the National Trusts submission is an indication of how far to the "left" of the average owner the Trusts have gone. The original gifts to the Trusts have been mishandled and sold without apologies to the original donors or their descendants. The National Trust of Victoria, despite receiving Como House freely, and being exempted from all rates and charges, while running commercial enterprises there, still loses money and cannot upkeep the property on its own revenue. They are unbelievably arrogant to interfere in other people's management of properties while they can't even manage their own. The properties could be given back to the descendants of the donors with caveats on them to properly maintain them. The costs of the National Trusts far outweigh the benefits they have brought. Whilst they espouse conservation in some books on reproduction techniques, they should not be conceived of as a planning authority. The "style" police from the National Trust have inundated your Inquiry with submissions that are ecologically, financially, and ergonomically wrong. **For example**, the verandas of a hundred years ago reduce light that requires more expensive lighting bills. A simple solution is to allow polycarbonate transparent verandas to provide shelter and allow blinds or shutters to be used for necessary shade, but this evidently offends their fashion statements.

This **Association** has made numerous submissions to Government and municipal councils on these issues and others, all without charge to them, to explain the problems in property ownership and the principles that Governments should follow to enable stability and prosperity. In a phrase, it is Local say, Equal laws, Property rights. That means that local democracy is essential combined with local justices, everyone does not has the right to live equally well, but that they should have the same laws applied to them as to anyone else, and that the rights to private property are guaranteed with capital compensation if these rights are restricted in any way unjustly.

While few members of this Association are large landowners of rural & agricultural land, we are all like farmers in that we “grow” our income from the land. It is commonsense to point out that the concept of building conservation is totally different to rural environmental conservation. The politics of urban building heritage “greenies” are not based on sound principles, but on envy and fashion. The concept of mutual obligation is well accepted by urban owners and rural farm owners, and these urban conservation issues are largely driven by short term emotions rather than sensible principles of well-being. It is a fact that, after 20 years of imprisonment at Pentridge, many inmates did not want to leave. They, like the municipal neighbouring conservationists – were imprisoned in a psychological state of fear of the unknown and future, that is closely related to **xenophobia**. What would the Exhibition Building be if this attitude held sway in the 1860s?

**Reasons to provide for equitable capital compensation for reservations etc on basis of valuations & loss of enjoyment.**

*State and Federal Governments should ensure that where Conservation, Heritage or similar Orders of Restrictions on land usage are placed on privately owned property, adequate compensation must be paid to the registered owner in the same way as with other compulsory acquisitions and reservations.*

*The State Government Planning Act & other Conservation or Heritage legislation can effectively allow Councils to place new restrictions on land usage so that property valuations can be significantly reduced. Currently, there are no provisions to allow automatic payment of compensation for these orders & restrictions. Road widening reservations, for example, provide for immediate compensation to be paid.*

*That will slow the Councils down from conserving too much. –It was a GOLD RUSH by Councils in Victoria in 1997 with 4 times more properties conserved than ever previously.*

2. *When an Authority puts a reservation order on private land for road widening, for example, the Authority is required to pay compensation to the registered owner because it intends to acquire the land, and the amount can be paid in advance and a reservation order registered on the property title. If the land is no longer required for a road widening, the Order is lifted and the compensation repaid by the current owner, with interest.*

3. *The situation under the Councils at present is that the Conservation or Heritage Order just permanently reserves the land and no compensation is paid because the Council does not intend to acquire the land. Consequently, there is the threat of permanent litigation and possible windfall gains for a new owner if the order is lifted. If a house that had compensation paid and the Heritage Order registered on the title, burns down for example, then the current owner could have to repay the compensation, again with interest.*

4. *A reservation for heritage or conservation purposes should be classed along with reservations for roads - a road to heritage- and that compensation be paid. The Authority that lists a property should pay the compensation.*

5. *It isn't about whether Conservation/heritage Orders should be placed but about adequate compensation. Farmers are paid to plant trees & such like in most democratic countries for conservation work. It isn't fair that the community should put this cost on individuals who may lose their life savings and their income. There are many farmers affected by these Orders – there are headlines in papers we have. Its confiscation of your property for public use. In one case, a family was even prohibited from having a child's swing in their garden! There were headlines, Save our Houses, by people who don't own the properties. It's communism. This change will preserve our heritage of ideals & values first.*

6. *In Stonnington, these heritage orders have seriously devalued the properties compared to previous real valuations by over 25% on average. The foremost valuer Herron Todd - an international firm - has listed the changes and warned that as time goes by, more people will feel the effect as the properties age, requiring expensive repairs, and land becomes more expensive to keep. Herron Todd measured the devaluations specifically for 300 properties in Malvern, and in many cases, the losses exceeded \$100,000 in 1998 dollars. After the mortgage, all their assets - gone. A group of 300 owners - the Stonnington Democratic Society – was opposed to this.*

7. *The Heritage Industry has descended on Victoria like a plague. The new buzzwords for heritage planners include cultural "Character". If this cultural cringe will devalue a property, the valuation will pick this up. The valuation is a statistical analysis of the cost factors and cross-checked with reality at every opportunity. With new data processing methods, it is an easy matter to measure the devaluations. Valuation is no longer an art, it is a science.*

8. *You wouldn't expect an owner to give up use of land for road widening without compensation, so why would you expect an owner to do it for "heritage". Some people who haven't owned old houses don't know the costs - with Mr Pratt of VISY in Raheen, the cost is such that he might prefer to give the property away. Even Como House can't pay for its own maintenance, despite exemption from rates and taxes and initial costs. Imagine a heritage order on every Holden car that's 10 years old to require it be kept in use on the roads for possibly forever. That would drop prices on them quick smart. There were in 1998, about 12,000 places listed around Australia, and about 1000 on the Victorian Heritage Register, many of them being Churches and Public buildings. You can find them on the Internet. The on-line register of Council Heritage Orders & reservations, on the Council's Planning Schemes under the Planning Act, showed there were about 20,000 private places on the Councils Heritage overlays in Victoria then. It is not known whether the figure of 80,000 shown on the Issues Paper includes all the properties in the heritage "precincts" or similar, and it certainly doesn't include the properties adjacent and near to these properties – that are also affected by more stringent planning controls on development. The massive growth in municipal "listings" in Victoria, has had a terrible affect on people's assets.*

9. We don't believe in bureaucratic red tape or unfair random expropriation, especially of after-tax assets. Even if you don't accept that there is an extra maintenance cost or property loss involved, remember firstly the principal expressed in the film "The Castle", that you're entitled to compensation if your freedom to decide how and where you live is unfairly expropriated- remember that child's swing, and secondly, that this change simply asks for adequate compensation, which means, if any loss is determined. So why would anyone oppose this change?

## **Answers to Questions on Issues paper**

*What is the rationale for government involvement in historic heritage conservation and what principles should guide that involvement?*

### **Property Rights**

*How does the policy framework for historic heritage conservation currently operate and what are its strengths and weaknesses?*

Strengths: National has some funding. Weaknesses: Lack of Property Rights:  
See above

*What are the current pressures and emerging trends influencing the conservation of historic heritage places and, in light of these, how can the policy framework be improved?*

### **1. Envy, 2. Property Rights**

*Do current lists adequately recognise degrees of cultural significance of historic heritage places? If so, are the factors which determine degrees of cultural significance appropriate?*

No. Include a panel of local owners- not just councillors, planners and antiquarians.

**Disagree** with your Paper: "Entering a property onto a heritage list can bring both benefits (recognition of the historic worth of a building may identify its need for conservation and may also increase its commercial value to the owner) and costs (listing may impose costs through restrictions on the modifications which can be made to a building and the loss of future development opportunities)." – It does not increase its commercial value except for something extraordinary like the Melbourne Exhibition Buildings.

*Are market failures present in the conservation of historic heritage places? If so, do they differ in significance or scope from those which may exist in other forms of conservation (such as conservation of natural heritage)?*

**Yes they do differ.** A building if it needs be conserved, can be moved or rebuilt later. The country rural land is often delineating where a "natural" feature is a water course or rock structure, and a habitat of many features. Whilst transplanting is successful in "zoo" like expensive industries, in general, the country rural land is much less expensive than urban land. The fact that **no land tax** or significant Rates are payable on Country rural land means the forfeiture is much less onerous. Failure (to conserve at the natural heritage site using the natural market presumably of eco-tourism) can often be an expensive operation compared to the price of the land.

*To what extent does historic heritage conservation generate benefits for the community? How do these community-based benefits compare to the personal benefits which owners of heritage places would receive through conservation?*

– It does not increase the commercial value or returns to the owner except for something extraordinary like the Melbourne Exhibition Buildings.

*How well do existing government regulations or activities specifically address market failures that are directly relevant to conservation of historic heritage places?*

**This question angers the writer. You bureaucrats should pay & sweat and suffer the fate of an owner with old properties on an unfunded register.**

*Does government involvement in heritage conservation displace private sector involvement which would otherwise occur? If so, to what extent?*

**Yes. A compulsory order is like a jail sentence, to hard labour without pay or rights. You catch more flies with honey.**

*What are the costs of government involvement in the conservation of historic heritage places and who bears them?*

**The owner.**

*Have these costs changed as a result of economic trends? For example, have pressures on government finances limited the amount of resources available for public heritage conservation?*

**What funding????**

*How do these costs vary depending on the nature and extent of conservation?*

**Massively increased with unsuitable conservation.**

*Are there any regulatory barriers which prevent private organisations from capturing benefits from the conservation of historic heritage places?*

**Heaps of red-tape & costs at local levels.**

*What are the benefits from government involvement in the conservation of heritage places and to whom do they accrue?*

To the Council staff & consultants, architects and planners. **SERIOUSLY, there are no net benefits in 95% of these municipal ones because the costs detract from other possible benefits.**

*How do these benefits vary depending on the nature and extent of conservation?*

**For the 5% referred to above, effectively, the more expensive the building, with less land, the less the disadvantages. There should be a cost barrier below which no conservation order should apply. A cost benefit analysis should be a basic requirement before listing.**

*What are the benefits to tourism from heritage conservation, and what impact does heritage tourism have on the conservation of heritage places?*

Tourism is localized onto the well known beaten tracks. The idea that "Conserve it & they will come" is nonsense.

*What are the strengths and weaknesses of private ownership of historic heritage places?*

There are no strengths currently. The weaknesses are the lack of equity for the majority of the owners.

*How is the private sector contributing to the conservation of historic heritage places?*

The private sector is funding it all practically – sometimes willingly, mostly without compulsion, but we will never work for free where we disagree with a listing & there is no economic return. Our sense of mutual obligation relies on something that is missing here, **necessity & equity**. There is no justification for 90% of the municipal listings.

*Are there impediments to commercial conservation activities (for example, perception by owners that conservation costs are prohibitive compared to benefits to them)?*

Yes

*Have shortages of skilled tradespeople acted as an impediment to historic heritage conservation? If so, to what extent do these shortages reflect economic cycles in the building industry?*

Massive shortages due to insufficient immigration of building trades & insufficient motivation to take on apprentices.

*Are there constraints on the availability of finance or insurance for historic heritage buildings?*

Yes

*Have technological trends improved the ability of the private sector to undertake heritage conservation (for example, by increasing opportunities for adaptive reuse)?*

Not in the majority of orders & zones.

*What have been the impacts of social and demographic trends (such as population growth in inner city areas)?*

The greenies & owner/occupiers of flats are reacting against denser building.

*Are there specific issues for certain groups who own or manage historic properties (such as churches or universities)?*

These are NGO's. Many are tax free already.

*How do non-government organisations contribute to the conservation of historic heritage places?*

They fight municipal orders more than anyone on their own properties. As to conservation work, on their own properties generally in the short term, but they sell them for tax free profit when they like and generally the properties are demolished because they can afford the expensive appeal process or the developer of these large blocks can. The money mostly goes to employees.

*What are the strengths and weaknesses of the involvement of non-government organisations in historic heritage conservation?*

It is used for fund raising purposes & then they sell them for tax free profit.

*How do these organisations establish priorities for conservation, and measure and report on their activities and performance?*

As above.

*To what extent (if at all) are current heritage approaches that separate conservation of historic, Indigenous and natural heritage places impeding conservation of historic heritage places?*

**Loss of freehold** in the marketplace is creating loss of value & consequent loss of returns.

*Are there conflicts between public policy in historic heritage conservation and in other forms of conservation (such as natural or Indigenous heritage)? If so, how are these conflicts resolved?*

Over-regulation simply creates **loss of freehold**.

*Are government incentives for private participation in historic heritage conservation comparable to those offered for participation in other forms of heritage conservation? If not, what does this imply for the level of private sector participation in historic heritage conservation?*

Historic heritage **buildings** conservation is generally unfunded..

*Should the potential costs of conservation be included in listing criteria to better target scarce government resources?*

Yes.

*What criteria do local governments use to list historic heritage places and how do these relate to those used by other levels of government?*

They call it what ever they like – but, bottom line, it is political expedience.

*How well do local governments resolve conflicts between protecting private property rights and achieving legitimate heritage conservation objectives?*

**They generally use political expedience – meaning the “information & network poor” are taken advantage of – and others are deceived.**

*Should governments (at any level) be required to compensate for their actions which infringe on the property rights of private owners?*

**Yes – all levels.**

*To what extent do local governments provide clear guidance about the rights and responsibilities of owners of heritage-listed properties?*

**There are no rights, just responsibilities.**

*How do local government regulations designed to protect historic heritage places relate to more general planning regulations?*

**They do cross the boundaries – and sometimes they invent a history to justify a planning decision.**

### **Government ownership and management of heritage properties**

*Is there greater scope for adaptive reuse for publicly owned heritage places than for those in private ownership?*

Yes. The Kew Mental Institute buildings & land as an example. Sold & granted demolition permits & rebuilding units with express ministerial speed.

They seem to regard private property as their plaything, and let their public property be changed at will. Their most stupid planning decisions are involving private trees in back yards hidden from general view. They impose planning regulations to require a permit to remove these & go to extremes in requiring compliance yet will rip out street trees, and plant others without even a leaflet asking what trees people are allergic to. The recent Victorian Govt decision to keep a gum tree at extra cost of about \$100,000 shows the lengths to which green voting power is appeased.

### **Funding**

*Are these the only ways in which governments can encourage greater private involvement in historic heritage conservations? How effective are these policies at increasing private conservation activities? What are the costs and benefits of each of these policies?*

**No, the only satisfactory method is cash settlement based on adequate compensation on listing - & until paid to an owner or the original owner, the property is not properly conserved. This is similar to the confiscations of alien or lessor property by the Nazis, Maoists etc.**

*Does international experience offer any guidance to policies which might be effective in Australia?*

**Yes, full & adequate compensation is paid in many other countries.**

*How effective and efficient have grant programs, tax deductions and concession programs been (past and current) in conserving heritage places?*

**Ineffective at the local level.**

*Have the criteria and priorities for funding been transparent and consistent, and what improvements could be made?*

**No, they are secretive. Make them fully transparent by requiring a statement of them with the Rates notices.**

*Can aspects of the funding/assistance processes be improved (for example, prioritisation, transparency, and scope for more innovative approaches)?*

**This begs the question that conservation is warranted in many cases. At a local level, make the Rates notices state the classification of the building etc, state the total funding received and granted in the Municipality & on this property, and name the properties that receive it. Make the Rates reflect the lack of compensation paid, by showing the amount owed to the owner.**

*Are heritage agreements an effective way of protecting the State's heritage, and can the process of developing agreements be improved (for example, is there adequate consultation with owners)?*

**No, they are usually not by agreement in Victoria. Make them fully transparent by requiring the agreements be kept on the Public Register. Give free legal aid (that is not a charge on the owner or property) to an owner to fight the Orders.**

*What is the nature and extent of coordination and/or partnerships between the private and public sectors for conserving historic heritage places? Are these partnerships effective means of encouraging private involvement in heritage conservation?*

**Practically Nil at a local level in Victoria. Grants can be applied for particular works but the paperwork involved means it is not worth the trouble.**

## **References:**

<http://www.theage.com.au/articles/2004/02/26/1077676897766.html?oneclick=true>  
(quarry –won compensation under the Archaeological and Aboriginal Relics Preservation Act

“He has been seeking compensation since 1998, through either the Victorian Government or the Federal Government's Aboriginal and Torres Strait Islander Heritage Protection Act”

<http://www.dse.vic.gov.au/dse/dsenher.nsf/LinkView/2531EC17B2BECE1DCA256D32001B35EA718331E8AB7D9987CA256D1900299B45>

Heritage overlays

<http://www.dse.vic.gov.au/planningschemes/>

While the listed places in a municipality - ex Stonnington – lists 24 pages approx 250 places there are 20 times that many places included in 7 pages of “precincts” – ex – see on the Heritage Overlay maps

<http://www.dse.vic.gov.au/planningschemes/stonnington/Maps/stonnington02ho.pdf>

State settles out of court in quarry dispute - National – [www\\_theage\\_com\\_au](http://www.theage.com.au).text

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State settles out of court in quarry dispute  
By Martin Boulton  
February 27, 2004

Michael Joyce's nephew David Carter at his uncle's sand quarry near Ararat.  
Picture: Craig Sillitoe

An invalid farmer accepted a confidential settlement from the State Government in the Supreme Court yesterday after he was forced to stop mining sand on his property five years ago.

Michael "Mick" Joyce, 60, of Willaura North, 33 kilometres from Ararat, issued proceedings against Victorian Minister for Aboriginal Affairs Gavin Jennings, seeking compensation under the Archaeological and Aboriginal Relics Preservation Act.

Mr Joyce, who had a stroke early last year, bought his farm in Snake Lane from his father in 1973. He knew the land well, having worked it since he left school as a teenager.

However, after an independent consultant confirmed that the site contained Aboriginal remains and artifacts, the Framlingham Aboriginal Trust (which is responsible for maintaining areas of cultural significance in the region) said Mr Joyce could no longer allow excavation of the site. The Framlingham Aboriginal Trust was unavailable for comment yesterday, but according to archaeological reports the high-quality sand on Mr Joyce's property is all that remains of a lake where Aboriginal people regularly met thousands of years ago.

Until he was forced to stop work on the 40-hectare site, Mr Joyce earned up to \$1500 a month selling the sand, which is in constant demand in the quarry industry.

He has been seeking compensation since 1998, through either the Victorian Government or the Federal Government's Aboriginal and Torres Strait Islander Heritage Protection Act.

Until now, both levels of government have been reluctant to accept responsibility for the situation, with former federal environment minister Robert Hill advising Mr Joyce in 2001 that "primary responsibility for the protection of Aboriginal heritage lies with the state" and with Keith Hamilton, who was then Victoria's Aboriginal affairs minister.

Mr Hamilton later wrote to Mr Joyce saying he believed the federal minister's view was "based on a misunderstanding" of part of the Commonwealth act. Before yesterday's hearing Mr Joyce told The Age he had "never set foot in a court before" and he hoped he would never have to again. "I've tried my guts out to be peaceful... I just want a bit of compo, that's all," he said.

"I was a farmer, never wanted to do anything else, but now I can't work... it's not very nice.

"This isn't about black and white. I have no problem with the Framlingham people... it's the bigwigs that took away my living... I think they'd grizzle a bit if they had their income taken away."

A spokesman for Mr Jennings said the minister and the Government were pleased the matter was settled, but would not comment further.

Mr Joyce at the Supreme Court yesterday.

Craig Sillitoe

The Federal Government was represented in court.

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Gibson's Passion inspires the converted  
Fans pay out \$637,000 on opening day

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