

**VICTORIAN GOVERNMENT RESPONSE
TO THE PRODUCTIVITY COMMISSION'S
DRAFT REPORT ON THE CONSERVATION
OF AUSTRALIA'S HISTORIC HERITAGE
PLACES**

INTRODUCTION

The Victorian Government welcomes the release of Productivity Commission's draft report on the conservation of Australia's historic heritage places. The Productivity Commission should be commended on its effort to synthesise the many complex issues and sometimes contradictory submissions regarding the conservation of Australia's historic heritage places.

While the issues raised in the draft report are genuine and have a basis, many are not directly applicable to Victoria. Heritage conservation management in Victoria is a long established, rigorous and effective system that is widely accepted by the owners of historic heritage places and the general public alike.

The Victorian Government's submission will respond to the scope of the draft report and address each of the Commission's Findings and Recommendations. It will also address the misconceptions associated with Victoria's heritage conservation management system. A précis of the current issues for historic heritage conservation identified in Section 7 of the Victorian Government's initial submission will be included in Appendix A.

This submission will not attempt to repeat the descriptions included in the Victorian Government's initial submission (submission 184) of the listing system, permit and consent procedures or the incentive programs that operate in Victoria, except where these have been misinterpreted. We would also like to note that the Victorian Government is aware of the independent response prepared by the Heritage Council of Victoria that also describes the Victorian system in some detail.

TERMS OF REFERENCE

The Productivity Commission's *Issues Paper* of May 2005 defines 'historic heritage places' very broadly to include buildings and structures, physically created places and landscapes, and other places of historic significance including archaeological sites. Unfortunately this breadth of places considered within the draft report is largely limited to private dwellings. All of the elements defined as historic heritage places contribute to the wider historic environment in Victoria and should be addressed in the Commission's final report.

Likewise, the draft report did not fully address the terms of reference as determined in the Productivity Commission's *Issues Paper*. For instance, the emerging social, economic, demographic, environmental and technological trends are left largely unexplored. Additionally, the opportunity to identify potential new policies, programs and incentives has not been embraced. The exploration of taxation arrangements in the context of an incentive tool were specifically identified within the scope of the inquiry but unfortunately have not been addressed in any detail.

The draft report does not acknowledge the nature of the existing heritage controls at the local government level in Victoria. Heritage controls are just one of many overlays within the Victorian Planning Provisions, which regulate land use or development to achieve social, environmental or economic outcomes for the wider public good. Within the Victorian Planning Provisions, the meaning of 'use' and 'development' differ and relate to separate provisions of planning schemes. Land use is primarily controlled by the zoning of land (all of Victoria is covered by one zone or another). Development is controlled by a mixture of provisions which can include overlays (including heritage, design and development, inundation, environmental, significant landscape overlays, etc), codes such as the state-wide Rescode or more general provisions such as height restrictions. Victorian Heritage Overlays are applied in the same way as other planning controls, with the same permit and appeal processes. Places on the Victorian Heritage Register are integrated into the local planning system through the Heritage Overlay. Heritage permits are issued by the Executive Director of Heritage Victoria without the need for the owner of a heritage place to seek separate approval for heritage matters from their local council.

The Victorian Government requests that the Commission address the question of alternative sources of funding for historic heritage places. The application of the federally funded tax incentives and grant schemes that operate for natural and Indigenous heritage should be explored for historic heritage places. The lack of deductible gift recipient status for not-for-profit organisations involved in the conservation of immovable historic heritage is not commented upon by the Commission in its draft report.

Although the Commission recognises much of the value the conservation of historic heritage places brings, the draft report does not acknowledge the major contribution made by historic heritage places to cultural tourism in Australia.

THE COMMISSION'S KEY RECOMMENDATION

DRAFT RECOMMENDATION 8.1

Privately owned properties should be included on a national, State/Territory, or local government statutory heritage list only after a negotiated conservation agreement has been entered into and should remain listed only while in an agreement is in force.

Recommendation 8.1 is supported to the extent that negotiated agreements can complement the existing regulatory system in Victoria but should not replace it. The Victorian Government is unaware of any jurisdiction, either within Australia or internationally, that achieves satisfactory heritage conservation outcomes through the use of voluntary negotiated agreements without an underlying statutory heritage protection system. Further information is needed, as is a far more thorough assessment, from the Productivity Commission regarding the costs, benefits and implementation details of the proposed approach.

Negotiation between the owner and statutory authority is an essential component of the heritage system in Victoria. Permit policies and exemptions are negotiated with the property owner at the time of listing on the Victorian Heritage Register, providing increased certainty and limit the administrative burden on the owner. Permit exemptions may also be renegotiated at any time in the future, based on agreed policies for a heritage place such as those contained within a conservation management plan.

The Victorian *Heritage Act* and the guidance for the application of the Heritage Overlay have adopted the widely accepted separation of the listing decision based on a thorough assessment of cultural heritage significance and management. The Victorian listing and permitting processes enable places that meet the thresholds of State or local significance to be identified and provided with statutory protection. This ensures that consideration is given to the financial and economic impact listing may have on the property owner as part of any subsequent development application.

At both State and local government level, extensive negotiation can take place at the time of application based on a development or conservation works proposal. The inclusion of privately owned historic heritage places on a statutory list ensures that parties are brought together to negotiate an acceptable outcome and allow the community's views to be heard through the permit process. The introduction of voluntary agreements would reduce the transparency and flexibility of this process by attempting to define medium and long-term outcomes for a site prior to the point of listing and without the opportunity for the community to make submissions.

In recognition of the value negotiated agreements can have in complementing the existing regulatory system on complex sites or those subject to major developments, the Victorian Government is now making increasing use of heritage covenants under Section 85 of the *Heritage Act*. These agreements, which run with the title in perpetuity, have proven effective in tying heritage conservation outcomes to major developments such as the TriBeca Apartments in the former Victoria Brewery in East Melbourne. Such covenants have application to sites of multiple ownership and can be used to help ensure the resources are provided for the long-term maintenance of a heritage place subject to a major development, but they can neither modify the assessment of significance nor replace the statutory listing of the individual heritage place. Under the model proposed by the Commission, the necessity to renegotiate a conservation agreement at the transfer of title or end of the contract places significant administrative burden on the owner and statutory body. This will divert scarce resources away from contributing to conservation outcomes.

The proposal for negotiated agreements does not adequately address issues that may arise from the conservation of places owned by members of culturally and linguistically diverse communities. These members of the community may experience difficulties in relation to language, lack of access to relevant information and unfamiliarity with heritage regulations and controls. Due to these challenges, they may not have the same negotiating power as other private owners to establish an appropriate conservation agreement.

Not all owners may be aware of or appreciate the multicultural significance attached to their property, and therefore may be less inclined to enter into a negotiated agreement. This would ultimately lead to an increase in gaps on statutory lists and ultimately the loss of culturally diverse heritage.

Negotiated agreements would also result in the potential inequity of social-economic groups that may not be able to engage professional advice or advocacy to assist in their negotiation with the relevant regulatory agency. This inequity would lead to an imbalance in the levels of incentives being offered for comparable heritage places with similar conservation needs or development potential.

The Commission's proposal identifies the need to provide agreed incentives at the time of negotiating the conservation agreement prior to listing. This creates the potential for costs, especially opportunity costs, to be overstated by owners in order to justify a larger claim for public money. In many cases the highest and best use of land occupied by an historic heritage place cannot be fully realised for a variety of macro-economic or market reasons. The Victorian Government foresees the likelihood of owners of historic heritage places presenting hypothetical development proposals at the time of negotiating an agreement, which are neither being seriously contemplated nor economically viable in order to maximise the incentive offer they might receive.

The distribution of incentives through fixed-term negotiated agreements poses significant risks for the statutory authority. The investment into the conservation of the property may be placed at risk at the time of sale or end of the negotiated agreement, potentially wasting public money. For instance, the regulatory agency may invest a sum of public money to assist an owner in undertaking conservation works as part of the fixed-term negotiated agreement. However, at the end of that agreement there is no longer any requirement by the owner to conserve or even retain that heritage place, which they may choose then to demolish or redevelop.

There is the likelihood that 'jurisdiction shopping' will occur should locally significant heritage places be subject to only voluntary listing. The community would then seek to nominate those privately owned places which do not have conservation agreements with the State heritage register. This outcome would lead to increased costs to both the State Government, as the regulator, and the individual property owner, through the commissioning of reports and expert advice.

Before the Victorian Government could consider implementing draft recommendation 8.1, it would need to be convinced that the application of negotiated conservation agreements would lead to improved heritage conservation outcomes. Further research by the Productivity Commission and information on comparable systems is necessary to better support the rationale for the proposed negotiated conservation agreements.

The Victorian Government request that the Commission provide additional information on:

- How the introduction of negotiated conservation agreements would improve historic heritage conservation outcomes?
- How issues of equity between individual owners of historic heritage places would be dealt with?
- How negotiated agreements would be enforced, and by what mechanism remedy would be sought for breaches of agreements?
- What the compliance costs of implementing and administering this system would be, including the additional burden on both owners and statutory authorities brought about by increased 'jurisdiction shopping'?
- How the flexibility of the current system of applying for permits for discrete projects would be retained if the Commission's recommendation was implemented?
- How would you ensure transparency of the process and third-party right of appeal?
- The costs and benefits of a voluntary listing system compared with the current regulatory system.
- The details of all existing models operating internationally, that the Commission is aware of, that successfully and solely rely on negotiated agreements without an underlying regulatory system for heritage.
- The way in which investment by government would be protected beyond the life of a negotiated agreement.

VICTORIAN GOVERNMENT'S RESPONSE TO THE FINDINGS AND RECOMMENDATIONS

OVERVIEW OF HISTORIC HERITAGE CONSERVATION IN VICTORIA

DRAFT FINDING 3.1

Little statistical information is available on the conservation of Australia's historic heritage – the number, quality and composition of listed places; the nature, source and types of expenditures on historic heritage conservation; or the effectiveness and cost-effectiveness of those expenditures.

The Victorian Government produces and assembles comprehensive and accurate information on the historic heritage places within the state. Relevant papers and publications were supplied to the Commission in the initial submission. State of the Historic Environment (SHE) reporting has also been initiated to identify the condition of historic heritage places in Victoria, funding and other needs (Heritage Council, 2004). The Victorian Government acknowledges that more work could be done in this area.

The effectiveness of the Victorian Government's grant programs have been independently assessed and key performance indicators such as benefit cost ratios, funding leverage, and community and social benefits are reported (MacroPlan Australia Pty Ltd, 2004 and Sinclair Knight Merz, 2002).

DRAFT RECOMMENDATION 3.1

All levels of government should put in place measures for collecting, maintaining and disseminating relevant data series on the conservation of Australia's historic heritage places.

The Victorian Government supports this recommendation, and is taking steps towards achieving this through State of the Environment Reporting.

VICTORIAN HERITAGE SYSTEM

DRAFT FINDING 4.1

The listing of properties onto a State or Territory Heritage Register results in the relevant Heritage Council becoming the de facto planning authority. This differs significantly from the approach to non-heritage places where the local council is generally the planning authority. This can result in the need for dual approvals for any proposed development.

In Victoria, the owner of property included on the Victorian Heritage Register (VHR) is only required to obtain a permit from the Executive Director of Heritage Victoria if the extent of works requires a planning permit. All places on the VHR appear as individual Heritage Overlays on the local planning scheme, which act as a trigger for the local council and property owner to refer the application to Heritage Victoria. Clause 43.01-3 of the Victorian Planning Provisions ensures that there is no duplication of approvals for places on the Victorian Heritage Register. Section 71 of the *Heritage Act* requires the Executive Director to supply the relevant local council with a copy of the permit application within 14 days of its delivery.

DRAFT FINDING 4.2

The commitment to identify, conserve and manage publicly-owned historic heritage places varies considerably between States and Territories.

The Victorian Government has no comment on issues outside of its jurisdiction.

DRAFT FINDING 4.3

The level of assistance provided to non-government owners of historic heritage places varies considerably between States and Territories. The level of expenditure on government-owned heritage places is difficult to calculate since no jurisdiction requires explicit budgetary recognition of such expenditure.

The Victorian Government has no comment on issues outside of its jurisdiction. The second part of draft finding 4.3 is elaborated on under draft finding 7.4.

PLANNING CONTROLS AND HERITAGE CONSERVATION AT THE LOCAL LEVEL

DRAFT FINDING 5.1

There is a high level of discretion for decision making on heritage matters at the local government level, derived in part from limited State government guidance and this has resulted in inconsistent outcomes within many local governments.

The Victorian Government agrees with draft finding 5.1, which it expects will lead to appropriate recommendations to improve the system rather than its replacement. In Victoria, the Heritage Advisor system allows local governments and the owners of historic heritage places to draw on heritage expertise. There is an acknowledged shortage of appropriately qualified and experienced heritage professionals, which can contribute to inconsistent decision making. The Victorian Government is responding to the shortage through the provision of ongoing training and seminars. The State also hosts a forum on the internet, 'Heritage Chat', facilitating information sharing amongst advisers and heritage professionals.

DRAFT FINDING 5.2

While statements of significance are recommended in State guidance material, no State requires its local governments to include a statutory statement of significance in their local heritage lists. The absence of such statements seriously impairs subsequent decision-making about listed properties.

The Victorian Government agrees with draft finding 5.2, which it expects will lead to appropriate recommendations to improve the system rather than its replacement. Statements of significance are prepared for all entries on the Victorian Heritage Register. While some older listings at the local level do not have statements of significance, it is a common practice in Victoria. At local level, the Victorian Planning Provision Practice Note 'Applying the Heritage Overlay' recommends that individual places, precincts and areas should be assessed against the (former) Australian Heritage Commission's eight criteria for the Register of the National Estate. The guidelines identify that a statement of significance should be provided to justify the application of the overlay.

DRAFT FINDING 5.3

Heritage conservation areas impose less stringent restrictions on the ability to demolish and redevelop properties than do individual heritage controls.

Draft finding 5.3 does not apply to the Victorian heritage system. The development approval provisions for all places covered by a Heritage Overlay are the same, regardless if they are an individual place or larger precincts or areas.

DRAFT FINDING 5.4

Heritage controls can be applied to properties that have not been individually listed or contained within a heritage conservation zone. Typically, the owner is informed only upon seeking development approval.

Draft finding 5.4 does not apply in Victoria. Although objectors to development applications will argue heritage grounds, these will not be given weight by the responsible authority or appeal body (Victorian Civil and Administrative Tribunal) unless the property has been included on the schedule to the Heritage Overlay in the local planning scheme.

DRAFT FINDING 5.5

Many property owners do not fully understand the effect that heritage listing has on their property. This is not simply a reflection of a lack of awareness by owners of the implications of listing, rather it flows from unclear legislative requirements and inconsistent administrative actions. More specifically, it is a direct result of the failure of all

State Heritage Acts to specifically require a statement of significance for heritage listing at the local level

While the Victoria Government agrees with the requirement of statements of significance for locally listed places, it is inappropriate for the provision to be included in the Victorian *Heritage Act*. The Victorian Planning Provisions would be a more appropriate mechanism to introduce this requirement, with testing by an independent Planning Panel as part of the scheme amendment approval process.

DRAFT FINDING 5.6

There is significant scope to improve the management of heritage conservation by local governments in their systems and processes for land use and planning.

The Victorian Planning Provisions are continually evolving to meet changing development and community needs. Improvements to the heritage provisions are implemented as they are identified such as the recent removal of the Heritage Overlay as a trigger for the ResCode¹ amenity provisions. There is provision to enable each local authority to create policies specific to the municipality and community's needs. The Victorian Government is also considering the local government heritage provisions within the current review into streamlining the planning process as part of the *Better Decisions Faster* initiative to improve the State's planning system and reduce red-tape compliance costs.

ANALYTICAL FRAMEWORK

DRAFT FINDING 6.1

While under some circumstances (particularly where neighbourhood amenity is to be preserved) heritage listing can have a positive impact on property values, the constraints on development potential associated with listing can have a significant negative impact on the prices of individual properties. The potential for owner detriment arising from development controls may differ significantly between properties.

There is no evidence at a macro level that heritage listing of any type has a significant positive or negative impact on private property value. Refer to *Managing Cultural Heritage: Heritage Listing and Property* (Armitage & Irons, 2005) and *Heritage Listing and Property Value* (Heritage Victoria, 2001).

DRAFT FINDING 6.2

Current methods of identifying historic heritage places for statutory listing focus on the benefits expected to accrue to the community. Typically, there is little, if any, consideration of the costs imposed either on the owner or the community more generally.

The decision to list a place on the Victorian Heritage Register is strictly based on the cultural significance of a place. Matters such as community benefit, the cost of conservation or economic impact on the owner are considered during the permitting process. This allows for an objective values-based decision for identifying cultural heritage significance against the established criteria.

ASSESSING GOVERNMENT INVOLVEMENT

DRAFT FINDING 7.1

The three-tier legislative framework is an appropriate model for government involvement in heritage conservation. It delineates the responsibility of each level of government for

¹ Rescode is the amenity standard that applies to residential development of up to four stories within the Victorian Planning Provisions (refer to clauses 54 and 55 of the VPP). These provisions were amended in 2005 to remove the Heritage Overlay as a separate trigger for an assessment of development proposals against the Rescode amenity standards. This provision was seen as an unnecessary additional burden on some property owners within an Heritage Overlay, who otherwise would not have to undertake an assessment of the development proposal against the Rescode standards.

historic heritage conservation and, consistent with the principle of subsidiarity, aligns the scale of heritage significance with its level of government decision-making.

As stated in Section 324X (2) of the *Environment Protection and Biodiversity Conservation Act 1999*, the Commonwealth has the ability to enter into a conservation agreement with the owner of a nationally significant place. Of the 22 places currently on National Heritage List (11 of which are in Victoria), the Commonwealth has shown little evidence of negotiation with the owners prior to listing (at least eight of the 22 are owned and maintained by State or Territory Governments or other public authorities). This has also been recognised in the Commission's draft report, "*of the 15 places listed on the National Heritage List (as at November 2005), only one is subject to a voluntary agreement (albeit yet to be finalised)*" (Productivity Commission, p.45). The draft report refers to the example of the conservation agreement entered into with New South Wales for the Sydney Opera House; this was primarily instigated to allow for the inclusion of the Opera House on the World Heritage List. The new system is largely unproven and there is little evidence of 'conservation by agreement'.

The introduction of the national tier has done little to deal with the costs of conservation, particularly from the Commonwealth Government which collects and distributes the majority of Australia's tax revenue. Whilst the principle of subsidiarity can be effectively applied to the delivery of heritage listing and management services, the level of government best fitted to deliver the service is currently not being appropriately funded.

DRAFT RECOMMENDATION 7.1

The Australian Government should phase out the Register of the National Estate for historic heritage purposes, beginning with the closure of the Register to any new nominations.

Proposals to completely abandon the Register of National Estate (RNE) should be resisted, as the data collected in the RNE remains a valuable source of information on heritage matters. Instead of a list that is added to by the Commonwealth independently of State and Territory and local government, the RNE would benefit Australia as a national inventory reflective of listings in all jurisdictions. The Canadian Historic Places Initiative² model is one such example that the Commission may wish to investigate.

DRAFT FINDING 7.2

Negotiated agreements are desirable as they facilitate voluntary conservation and ensure the costs of conservation are considered alongside the community benefits.

Refer to comments under draft recommendation 8.1.

DRAFT RECOMMENDATION 7.2

State and Territory governments should remove any reference to the Register of the National Estate from their planning and heritage legislation and regulations.

The Victorian Government agrees with draft recommendation 7.2.

DRAFT FINDING 7.3

The current arrangements for (i) agreed management plans and (ii) heritage protection on the sale of property provide a sound basis for the conservation of Australian Government-owned heritage properties. However, clearly identifying expenditure on conservation would improve accountability and provide more incentives for government agencies to better conserve listed heritage places.

The Victorian Government has no comment on issues outside of its jurisdiction.

DRAFT RECOMMENDATION 7.3

Those State governments that have specific legislation governing the operations of the National Trust should repeal such legislation.

² The Historic Places Initiative is being led by the Government of Canada, in collaboration with provincial and territorial governments, to strengthen heritage conservation in Canada. Amongst other things, the initiative will deliver the Canadian Register of Historic Places, an internet based database of all historic heritage places formally recognised by federal, provincial, territorial, and local governments.

Draft recommendation 7.3 reflects the current situation in Victoria, where the National Trust of Australia (Victoria) was established as a company limited by guarantee rather than by act of parliament.

DRAFT FINDING 7.4

State, Territory and local governments do not have a systematic framework for the management of, and expenditure on, the conservation of government-owned heritage places. Management of government-owned places could be improved through the introduction of conservation management plans and transparent reporting of expenditure on conservation.

The Victorian Government acknowledges that governments at Commonwealth, State and local level have a mixed record on the care and maintenance of heritage places in their ownership or management and that there is little available data on the associated costs.

The Victorian Government questions the practicality and compliance costs of capturing and reporting the expenditure on 'heritage conservation' of its own assets as opposed to normal cyclical maintenance or periodic repair. Differentiating between what constitutes repair and maintenance costs of any asset and the additional costs, if any, associated with a heritage listed asset is difficult and potentially costly.

The definition of "conservation" in Section 3 of the *Heritage Act* includes "(a) the retention of the cultural heritage significance of a place or object; and (b) any maintenance, preservation, restoration, reconstruction or sustainable use of a place or object". This explicitly includes maintenance and implies repair (as part of the action required for preservation, restoration and reconstruction), both of which are part of the normal asset management regime for buildings whether or not they have recognised heritage significance. For instance, the Victorian Government's Asset Management Policies and Practices require departments and agencies to provide five year management strategies from which annual maintenance plans for each asset are developed. Differentiating between regular asset management costs and 'heritage conservation' for public sector owners will provide little benefit and would not provide consistent data due to the inevitable distortions of reporting from one agency to another.

The Victorian Government has funded and implemented conservation management plans for many of its most significant heritage buildings. Conservation management plans are a useful tool for managing historic heritage places, but their use will not necessarily make differentiating between 'heritage conservation' and normal maintenance and repair any easier.

DRAFT RECOMMENDATION 7.4

The Australian Government should implement reporting systems that require government agencies with responsibility for historic heritage places to document and publicly report on the heritage related costs associated with their conservation.

The Victorian Government has no comment on issues outside of its jurisdiction.

DRAFT FINDING 7.5

At the State, Territory and local government levels, there is an over-reliance on prescriptive regulation to achieve heritage conservation objectives. In many cases, this has led to poor outcomes, through for example, inappropriate listing imposing unwarranted costs (such as denial of redevelopment opportunity) and possibly perverse effects (such as destruction to avoid maintenance costs).

There is little evidence in Victoria to support draft finding 7.5. In the experience of the Victorian Government, the 'perverse effects' of prescriptive regulation identified in the Commission's draft report are extremely rare, and Victoria's heritage system leads to positive heritage conservation outcomes in the vast majority of cases.

DRAFT RECOMMENDATION 7.5

State, Territory and local governments should:

- *produce adequate conservation management plans for all government-based statutory-listed properties; and*

- *implement reporting systems that require government agencies and local governments with responsibility for historic heritage places to document and publicly report on the heritage-related costs associated with their conservation.*

Although the Victorian Government recognises the value of conservation management plans, draft recommendation 7.5 is not supported as it would be too costly and impractical. It would be preferable if the Commission recommended that government agencies be encouraged to complete conservation management plans for all listed places.

DRAFT FINDING 7.6

The current listing process does not provide a mechanism for rigorously identifying the costs and benefits of conserving a place. Typically, the assessment process does not prioritise places according to heritage significance or conservation need, and little or no account is taken of the added costs of conservation when the decision is made to list a place and impose regulatory controls. As a consequence:

- *the community has an incentive to over-list (or be non-selective) as they do not bear the costs of conservation; and*
- *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.*

The Victorian Government does not believe that prescriptive listing creates an incentive for the community to over-list. Statistics taken from the Victorian heritage database demonstrate that over-listing is not a problem in Victoria, this has been proven by the limited opposition to the listing process. The Commission's draft report can lead the casual reader to assume that there is large opposition to listing, which is not borne out by the figures in Table 1 below.

TABLE 1: Historic Heritage Places added to the Victorian Heritage Register

	2002- 2003	2003-2004	2004-2005
Number of places nominated to the Victorian Heritage Register (VHR)	65	82	56
Number of places recommended for addition to the VHR	47	36	33
Number of places which were NOT recommended for addition to the VHR	18	46	23
Number of hearings where the owner objected to the inclusion of a place on the VHR	7	3	2

DRAFT RECOMMENDATION 7.6

The assistance available to private owners of heritage properties is poorly targeted, and in some cases, falls well short of the additional costs of obligations imposed on owners as a result of listing. In these circumstances, property owners will not have an incentive to actively conserve heritage values.

The Victorian Government carefully targets its heritage incentive programs (free heritage advisory services, grants and loans schemes etc) according to need, urgency, public benefit and wider social, environmental and economic outcomes.

DRAFT FINDING 7.8

At the local government level, the management of heritage conservation under local planning schemes is not working well, primarily because of:

- *the imposition of unclear and uncertain restrictions on property owners;*
- *the failure to prepare a statement of significance for each place listed on a local list;*
- *inconsistent use and interpretation of heritage controls; and*

- *the application of heritage controls to places that have little, if any, heritage significance in order to achieve other planning objectives.*

The current statutory listing and management process in Victoria is the result of in excess of 30 years of practise and refinement. It effectively balances the rights of the private property owner and the public benefits associated with the identification and protection of historic heritage places, this is demonstrated by the overall lack of dispute. The suggestion that restrictions are unclear and uncertain cannot be supported, nor can the notion that places of little or no significance are being included to achieve other planning objectives. The planning amendment process in Victoria invites public input and review. The level of objection to the introduction of heritage overlays is minimal compared to the extent of its coverage.

The Victorian Government recognises there is room for improvement regarding a greater use of statements of significance for locally significant individual places and precincts in overlays. It also acknowledges the need for more consistent interpretation of controls, and is addressing the issue through the development and use of consistent heritage guidelines (currently under review by the Heritage Council).

GETTING INCENTIVES RIGHT

DRAFT FINDING 8.1

Conservation of historic heritage on privately owned heritage property could be more effectively achieved through negotiated conservation agreements between governments and owners.

This finding would be more acceptable to the Victoria Government if it was restated as:

Conservation of historic heritage on privately owned property could be assisted, but not replace the current system, by negotiated conservation agreements between governments and owners.

CONSERVATION AGREEMENTS FOR PRIVATELY OWNED HERITAGE PLACES

DRAFT RECOMMENDATION 9.1

The Australian Government should implement processes whereby any additions of non-government owned properties to the National List occur only after a conservation agreement with the owner has been entered into, and that the property remains on the list only while an agreement is in force. Consistent with its stated preference of relying on agreements for the management of world and nationally significant historic heritage places, the Australian Government may wish to make this a statutory requirement under the Environment Protection and Biodiversity Conservation Act.

The Victorian Government has no comment on issues outside of its jurisdiction.

DRAFT RECOMMENDATION 9.2

State and Territory governments should modify heritage legislation to ensure that 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.

The Victorian Government does not support draft recommendation 9.2 for the reasons described in its response to draft recommendation 8.1.

DRAFT RECOMMENDATION 9.3

State governments should require their local governments to add non-government owned properties to a local heritage conservation list only after a conservation agreement with the owner has been entered into and remains in force.

The Victorian Government does not support draft recommendation 9.3 for the reasons described in its response to draft recommendation 8.1.

DRAFT RECOMMENDATION 9.4

State governments should put in place systems for their local governments to request compulsory acquisition in cases where this becomes the only way to ensure cost-effective conservation of places of local significance.

The Victorian Government does not support draft recommendation 9.4 as it is an unnecessarily complex and costly mechanism to deal with the listing of locally significant historic heritage places.

DRAFT RECOMMENDATION 9.5

Private owners of already listed properties, where the listing occurred after purchase of that property should be able to apply for a negotiated conservation agreement and for listing to continue only if an agreement is reached.

If implemented, draft recommendation 9.5 would lead to the need to redirect valuable resources to the constant re-examination of the existing lists. This draft recommendation would also provide owners, who had acquired the place at a value which reflected the listing, the opportunity to reevaluate their property by insisting on a new agreement with the regulatory agency.

DRAFT RECOMMENDATION 9.6

Private owners of already listed properties, where the listing occurred prior to the purchase of that property, would remain covered by the existing 'package' of restrictions and concessions. These arrangements would be reassessed at the time of any substantive development application when negotiated for a new conservation agreement would occur and listing would continue only if an agreement is reached.

The existing permit provisions within the Victorian *Heritage Act* and *Planning and Environment Act 1987* allows the new owner of the listed place to apply for any permit, including demolition.

DRAFT RECOMMENDATION 9.7

State and Territory governments should modify their planning legislation and regulations to remove any requirement to take heritage considerations into account in relation to any individual property other than those requirements relating to zoned heritage areas.

The Victorian Government does not support draft recommendation 9.7 as it sets the heritage issues outside the established planning process, which would lead to less clarity and transparency.

DRAFT RECOMMENDATION 9.8

State and Territory governments should remove the identification and management of heritage, zones, precincts or similar areas from their heritage conservation legislation and regulations, leaving these matters to local governments planning schemes.

The Victorian Government does not support draft recommendation 9.8, as it would not allow areas and precincts which have cultural heritage significance at a State level to be given appropriate recognition.

CONCLUSION

The Victorian Government welcomed the inquiry into the conservation of Australia's historic heritage places. However, the draft report did not meet the terms of reference, as determined by the Federal Treasurer, nor did it examine the designated scope in its entirety.

The Victorian heritage system is a successful model for conserving historic heritage places, evolving to meet the changing needs of development and the community. The key recommendation of negotiated conservation agreements could complement this regulatory system, but should not be seen as a replacement. The Commission believes the proposed system would encourage flexibility in the listing of historic heritage places, steering away from the 'stick' and relying on the benefits of the 'carrot'. The Victorian heritage system is effective and efficient due to the flexibility allowed through permit exemptions and appeal procedures. Whilst the Commission has asserted that their proposed system of voluntary listing and negotiated conservation agreements has worked elsewhere, the Victorian Government is unaware of any successful examples of similar historic heritage conservation systems.

As stated in the Victorian Government's initial submission, the conservation of historic heritage places contributes to social outcomes through increased community cohesion and sense of place; environmental outcomes through the adaptive reuse of places, thereby retaining embodied energy and leading to waste reduction; and economic activity by contributing to tourism and local regeneration projects. The multifaceted benefits accrued to the wider community provide a clear rationale for the three tiers of government to be actively involved in the conservation of Australia's historic heritage places through regulation and incentives.

Before the proposed recommendation of negotiated agreements could be considered for implementation, a detailed assessment comparing the proposed system to the current system is necessary. The assessment would have to produce definitive evidence that the proposed system would have a higher net benefit to the community through the comparative analysis of heritage outcomes (benefit to the community versus costs to the owner).

In summary, the Victorian Government does not intend to enact the statutory or regulatory changes necessary to implement any of the recommendations contained within the Productivity Commission's draft report. The proposed new model, based around the notion of voluntary listing for individual historic heritage places, is not based on empirical evidence and may increase compliance costs. This may result in inequitable outcomes for individual property owners. The Victorian Government contends that its current heritage identification, protection and management system is a successful model of heritage conservation and meets the diverse needs of the Victorian community.

APPENDIX A: SUMMARY OF THE CURRENT ISSUES FOR HERITAGE IN VICTORIA

A wide range of incentive mechanisms have been utilised in Victoria. These include a combination of direct grant aid, tax concessions, advice and other practical support. There are opportunities for the incentives applied to the natural environment to be utilised for historic heritage conservation, including direct grant aid, tax concessions, covenanting schemes and the wider use of tax deductible recipient status.

An impediment to the appropriate conservation of historic heritage places is the evident skills shortages and lack of training opportunities for both tradespeople and heritage professionals. These shortages impact on the quality of decision making of heritage place owners and the ability of the market to provide heritage conservation services at an economically efficient level.

Victoria, like the rest of Australia, has undergone immense social and economic change over the last 50 years. The interest in and value placed on historic heritage places have increased markedly. The community's view of what constitutes historic heritage has also broadened, it is no longer limited to grand public buildings and suburban mansions. The Victorian Government has reflected and embraced changes in public attitude through the various revisions of the Heritage Act. Demographic changes have occurred in the inner areas of Victoria's cities which has introduced a level of affluence, creating a positive environment for private heritage conservation. Conversely, the gradual decline of population in some rural areas has had the opposite effect. Declining populations lead to the closure of older community institutions and the remaining population are often unable to afford to invest in the remaining physical infrastructure. The 'Sea Change' generation has also created demographic changes which has lead to a substantial investment in restoration and conservation of historic heritage places such as Maldon and Port Fairy.

Redundancy of historic heritage places is an issue of increasing importance in Victoria. Societal changes, such as the decrease in congregations of established Christian churches, and economic changes, such as the loss of traditional manufacturing and resource industries, result in the redundancy of historic heritage places. The use of a building will often change over time as trades or crafts become redundant or economic imperatives change. This poses a particular challenge for historic heritage places where the original or traditional use may be an intrinsic part of their values.

The Victorian Government recognises the need for all historic heritage places to be economically sustainable, and appropriate adaptive reuse is a primary mechanism to for achieving this goal. As well as providing for the conservation of historic fabric, adaptive reuse has significant social and environmental benefits. Conserving heritage buildings can also make an important contribution to reducing environmental impacts.

Empirical evidence suggests that some historic heritage owners have difficulty in securing property insurance when included on a heritage list. Various insurance companies appear to adopt different and often inconsistent approaches. Although there is no known general survey of industry practise, some insurance companies have openly stated they do have a policy of excluding places on heritage lists. The exclusionary policies of certain insurance companies appear to be borne out of both lack of understanding about the implications of heritage listing and a general fear of the impact of regulatory regimes, without reference to the policies of the regulatory agencies.

The Victorian Government has identified that information asymmetry and unsubstantiated myths negatively impact on the public's perception of historic heritage conservation. Broad engagement with the community, place owners and managers and other stakeholders is necessary to ensure the true benefits and obligations associated with historic heritage conservation are better understood. This is particularly necessary in the areas of insurance, property value and the implications of heritage listing on private property.

APPENDIX B: References

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