

COMMONWEALTH GOVERNMENT RESPONSE TO THE PRODUCTIVITY COMMISSION INQUIRY INTO THE CONSERVATION OF AUSTRALIA'S HISTORIC HERITAGE PLACES

The 1997 Council of Australian Governments Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment established a three-tiered framework for heritage in Australia, in which the Commonwealth, states and self-governing territories ('the states'), and local governments each have responsibility for listing, protecting and managing heritage of national, state and local significance respectively. National cooperation and coordination on heritage takes place through the Environment Protection and Heritage Council, attended by the Commonwealth and state environment and heritage ministers. This system is designed to avoid duplication and to deliver the best outcomes for the conservation of Australian heritage at all levels of government.

The following outlines the Commonwealth Government's ('the Commonwealth's') response to the Productivity Commission's final report on the Inquiry into the Conservation of Australia's Historic Heritage Places.

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 Commonwealth agrees with this recommendation.

Relevant data and analytic tools are essential to establish priorities, to provide evidence about the benefits and costs of heritage conservation, and to assist with measuring and evaluating the outcomes of programs. At present, the Commonwealth, state and local governments all collect data on the conservation of historic heritage. Consistent standards that dictate the nature of base information to be collected and ensure its ready public availability will improve the compatibility between data being collected and maintained by all levels of government.

In 2006, the Commonwealth and state environment and heritage ministers, through the Environment Protection and Heritage Council, agreed to a Cooperative National Heritage Agenda, which established a coordinated approach to the identification, listing, management and promotion of Australia's heritage. Under the Agenda, the Commonwealth will work with the states to develop common standards for data collection to assist the state of the environment reporting undertaken by all jurisdictions. The Australian Heritage Places Inventory will also be upgraded to provide access to all listing information in Australia.

This activity will take place progressively to ensure that more comprehensive and better coordinated data is available across the three tiers of government.

Recommendation 7.1

The Australian Government should remove all historic heritage places from the Register of the National Estate and transfer the information to a national heritage database. The database would need to be regularly updated and maintained, including the deletion of inappropriate entries.

The Commonwealth supports the intent of this recommendation.

The Commonwealth will phase out the Register of the National Estate (RNE) and has introduced provisions to this effect in the *Environment and Heritage Legislation Amendment Act (No.1) 2006*. The provisions freeze the RNE and remove its statutory basis after a period of five years. The transition period will allow states to complete the task of transferring places to state and local heritage registers where necessary and to amend legislation that refers to the RNE as a statutory list. The RNE will be maintained after this time on a non-statutory basis as a publicly available archive.

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, after ensuring that any places that meet criteria have been recorded on the appropriate (state or local) heritage registers.

The Commonwealth supports this recommendation.

As noted in response to recommendation 7.1, the Commonwealth has provided for a five-year transition period in removing the statutory basis of the RNE to ensure that the states have sufficient time to review places on the RNE for possible inclusion in state or local government heritage registers, where statutory protection is needed. The Commonwealth agrees that the states should remove references to the RNE as a statutory register from their planning and heritage legislation and regulations. However, the states may choose to maintain legislative references to the RNE as a non-statutory list.

Recommendation 7.3

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

The Commonwealth supports the intent of this recommendation. However, the Commonwealth recognises that the state Acts relating to the National Trusts lay down broad objects for the Trusts and do not provide statutory powers in relation to listing and protection.

The operation of the National Trusts in each state is a matter for the states. At present, the eight National Trusts represent each of the states, with the Australian Council of National Trusts acting as the national secretariat body. Now that the three-tiered heritage system is firmly established, it would be timely for this issue to be brought before the Environment Protection and Heritage Council so that the Commonwealth and state environment and heritage ministers can consider options for moving towards a more nationally consistent focus for the Trusts.

Recommendation 8.1

The Australian, state and territory governments should ensure that their agencies are issued with heritage asset management guidelines as part of an integrated asset management framework. Such guidelines could also be adapted for use by local governments.

The Commonwealth agrees with this recommendation in relation to the provision of heritage asset management guidelines to Commonwealth agencies, and urges all jurisdictions to undertake best practice heritage asset management.

The integration of heritage asset management guidelines as part of a general integrated asset management framework reflects the approach to asset management currently taken by a number of Commonwealth agencies. The current Commonwealth guide, *Management Plans for Places on the Commonwealth Heritage List*, provides focussed guidance for agencies to manage the Commonwealth Heritage values of Commonwealth Heritage Listed places within their existing asset management frameworks.

Recommendation 8.2

The Australian Government should implement reporting systems that require, as appropriate: the assigned heritage responsibilities to non-heritage agencies to be recognised as community service obligations and be funded separately; and that the heritage-related expenditures and achievements associated with the conservation activities for historic heritage places to be reported publicly.

The Commonwealth does not agree with this recommendation.

The Commonwealth acknowledges that the public reporting of expenditure and achievements associated with the conservation of government-owned heritage places would assist in better understanding the costs of heritage conservation. However, in practice the costs associated with the conservation of heritage values cannot always be identified separately from the overall operational and maintenance budget for a place. In cases where this can be done, it is not clear that the return from separately identifying the costs would justify the resources needed. In addition, reporting separately on the costs associated with conservation of heritage would be at odds with the integration of heritage into a broader asset management framework.

The Commonwealth does not agree that heritage responsibilities of non-heritage agencies should be recognised as community service obligations (CSOs). CSOs are appropriate where Commonwealth businesses are required to undertake activity that other businesses are not expected to undertake or fund. For Commonwealth agencies, management of heritage assets is core business and is associated with the normal operation of government.

Recommendation 8.3

State, Territory and local governments should:

- **produce adequate conservation management plans for all government-owned statutory-listed properties;**
- **appropriately recognise assigned heritage responsibilities to non-heritage agencies as community service obligations and fund them separately; 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.**

The Commonwealth supports point one of this recommendation and does not support points two and three.

The management of properties owned by state and local governments is a matter to be addressed by those governments. Nevertheless, it is appropriate to respond in principle to the issues underlying the recommendation. As discussed in response to recommendation 8.2, the Commonwealth does not agree that heritage responsibilities of non-heritage agencies should be recognised as CSOs and notes the difficulties that can arise in separating the costs of heritage conservation from the overall operation and maintenance costs for a place that happens to have historic heritage values. Where state and local governments choose to require the identification of costs associated with the conservation of historic heritage places, clear criteria should establish the extent and nature of costs that can be reported as heritage-related costs.

Recommendation 9.1

Australian, state and territory governments should enable non-government owners to appeal the statutory listing of their property on the additional basis that it imposes “unreasonable costs”. This appeal should be available for non-government owners of all newly listed properties. In addition, it should be available for non-government owners of those properties that were acquired before the property was statutorily listed.

The following factors establish a prima facie case of unreasonable costs:

- **the zoning of the land permits higher value land use than that allowed under heritage restrictions; or**
- **maintenance, repair or restoration costs required to continue a property’s heritage significance impose an unjustifiable hardship on the owner.**

The Commonwealth agrees that private owners should generally not have unreasonable costs imposed upon them by heritage listing. There may be more cost-effective means of addressing this issue than by providing private owners with an appeal right on the grounds of ‘unreasonable cost’.

The Commonwealth also agrees that the system needs rigour to ensure that the benefits of historic heritage listing outweigh the costs, and there is a ‘net benefit’ to society. At present, under the *Environment Protection and Biodiversity Conservation Act 1999* (‘the EPBC Act’), the Minister for the Environment and Water Resources may take into account heritage, social and economic considerations when making listing decisions. The Commonwealth upholds the policy principle of fairness by balancing community interests with the private costs of listing through a suite of mechanisms, including

heritage grants and funding activities, such as the National Heritage Investment Initiative.

The Commonwealth proposes that the risk of ‘unreasonable costs’ being imposed on an owner of a heritage property be minimised at all levels of government by:

- improving the nature and extent of data and methodologies that are available about the benefits and costs of heritage listing;
- improving transparency about listing decisions, including assessing the benefits and costs of listing;
- considering options for improving consistency of heritage decision-making, such as through the development of national guidelines;
- ensuring that, if there is a dispute, there is a means for the listing authority to further explore the costs and benefits of a listing decision; and
- developing options to enhance the existing requirements under the EPBC Act to take into account heritage, social and economic considerations in considering whether to heritage list a place.

The issue of appeal rights for owners of heritage requires a full consideration in the context of the three tiers of heritage protection in Australia. There is a range of risks associated with creating the opportunity to appeal heritage listing on the basis of unreasonable cost. This approach would create an incentive to appeal heritage listing where owners may otherwise have had no opposition to the listing of their property. If enacted, the recommendation would establish as a judicial process the administrative decision of balancing private and community interests in heritage listing places, which will result in significant costs for government and private landowners. This issue will be referred to the Environment Protection and Heritage Council so that environment and heritage ministers can consider the best way forward.

Recommendation 10.1

In relation to state, territory and local listing, state and territory governments should:

- **mandate that statements of significance be prepared at the time that a statutory listing decision is being considered and that these statements should be prepared by the listing authority;**
- **require that listing authorities directly notify owners of any intention to add their place to the statutory list;**
- **require that listing authorities make available a preliminary statement of significance to the owner and the public prior to public consultation;**
- **require that listing authorities follow timely public consultation procedures following a decision to consider a place for statutory listing;**
- **require that listing authorities, when proceeding with a listing, provide a comprehensive final statement of significance to the owner of the property and make it publicly available;**
- **implement an additional appeal grounds in relation to listing, based on unreasonable cost; and**
- **ensure that listing authorities have the authority to negotiate and enter into heritage conservation agreements.**

The Commonwealth agrees that points one to five and point seven of this recommendation encourage best practice in the management of privately-owned historic heritage places by state and local governments. As outlined in the response to recommendation 9.1, there may be more cost-effective methods of balancing public and private interests in heritage listing private places than that proposed at point six.

Recommendation 11.1

State governments should ensure that all local planning instruments include the following information for each heritage zone or area:

- **statement of significance applying to the whole area;**
- **outline of what type of use and development is permitted;**
- **outline of what type of use and development is prohibited; and**
- **development standards (or codes) that trigger automatic approval upon proposed developments meeting them.**

The Commonwealth supports the principle underlying this recommendation, that it is important to provide clarity for owners of places in relation to the type of use and development that is permitted within a heritage zone or area, through clear and explicit planning instruments and legislation. How this goal is achieved in relation to the management of heritage zones by the states will be a matter for those governments to pursue.

Recommendation 11.2

Upon adoption of recommendation 11.1, state and territory governments should remove the requirement for a Heritage Impact Statement for properties not individually listed within a heritage zone.

Recommendation 11.3

State governments should ensure that state planning policies do not contain local heritage exceptions which could be used to undermine the objectives of the state planning policy.

Recommendation 11.4

State Heritage Acts should not contain powers to proclaim heritage zones or areas. Heritage zones and areas should only be imposed under the state's planning laws and regulations.

Recommendation 11.5

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 not already listed as locally significant, other than those requirements relating to zoned heritage areas.

In response to recommendations 11.2 to 11.5, the Commonwealth notes that state planning policies are designed to conserve and protect listed heritage places while balancing the needs of the community with the rights of individuals. How this balance is met is a matter for the relevant state or local government to decide, within the context of principles of good government such as clarity, transparency and accountability.