



Australian Government
Productivity Commission

Conservation of Australia's Historic Heritage Places

Productivity
Commission
Issues Paper
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The Productivity Commission

The Productivity Commission, an independent agency, is the Australian Government's principal review and advisory body on microeconomic policy and regulation. It conducts public inquiries and research into a broad range of economic and social issues affecting the welfare of Australians.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website or by contacting the Media and Publications section on (03) 9653 2244 or email: maps@pc.gov.au.

INQUIRY INFORMATION

ISSUES PAPER

This Issues Paper is intended to assist individuals and organisations prepare submissions to the inquiry into the policy framework and incentives for conservation of Australia's historic heritage places. It includes the terms of reference, outlines the Commission's procedures and raises issues about which the Commission is seeking information and comment in order to complete the inquiry.

The Issues Paper is not intended to limit comment. The Commission wishes to receive information and comment on any issues which participants consider relevant to the inquiry's terms of reference.

KEY INQUIRY DATES

Receipt of terms of reference	6 April 2005
Visits program	May – June
Due date for initial submissions	29 July
Initial public hearings	August
Draft report	early December
Due date for supplementary submissions	23 January 2006
Public hearings	late January – early February
Final Report	6 April 2006

FURTHER INFORMATION

For further information about the inquiry please contact:

Administrative matters:	Jill Irvine	02 6240 3223
Other matters:	Ross Wilson	02 6240 3219
	Scott Austin	02 6240 3253
	Gary Samuels	02 6240 3225
Facsimile:		02 6240 3311
Email address:	heritage@pc.gov.au	
Inquiry website:	www.pc.gov.au (under 'current projects')	
Freecall number for regional areas:	1800 020 083	
Telephone Typewriter (TTY):	1800 803 344	
Postal address for submissions:	Heritage Inquiry Productivity Commission PO Box 80 Belconnen ACT 2616	

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TERMS OF REFERENCE

INQUIRY INTO THE POLICY FRAMEWORK AND INCENTIVES FOR THE CONSERVATION OF AUSTRALIA'S HISTORIC BUILT HERITAGE PLACES

I, PETER COSTELLO, Treasurer, pursuant to Parts 2 and 3 of the *Productivity Commission Act 1998*, hereby request that the Productivity Commission undertake an inquiry into the policy framework and incentives for the conservation of Australia's historic built heritage places and report within 12 months of receipt of this reference. The Commission is to hold hearings for the purpose of the inquiry.

Background

With the commencement of amendments to the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* on January 1 2004, which provide greater protection of our national heritage values, it is timely to review the current pressures and issues associated with historic heritage conservation. Although there has been significant research into the policy framework and incentives for the conservation of our natural heritage, there has been less work undertaken on historic heritage places and their social and economic value in the context of Australia's overall natural, indigenous and historic heritage. The conservation of our built historic heritage is important. Places of historic significance reflect the diversity of our communities. They provide a sense of identity and a connection to our past and to our nation. There is a need for research to underpin how best to manage the conservation and use of our historic heritage places.

Scope of the Inquiry

The Commission is to examine:

1. the main pressures on the conservation of historic heritage places
2. the economic, social and environmental benefits and costs of the conservation of historic heritage places in Australia
3. the current relative roles and contributions to the conservation of historic heritage places of the Commonwealth and the state and territory governments, heritage owners (private, corporate and government), community groups and any other relevant stakeholders
4. the positive and/or negative impacts of regulatory, taxation and institutional arrangements on the conservation of historic heritage places, and other impediments and incentives that affect outcomes
5. emerging technological, economic, demographic, environmental and social trends that offer potential new approaches to the conservation of historic heritage places, and
6. possible policy and programme approaches for managing the conservation of Australia's historic heritage places and competing objectives and interests.

The Government will consider the Commission's recommendations, and its response will be announced as soon as possible after the receipt of the Commission's report.

PETER COSTELLO [received 6 April 2005]

How to make a submission

There is no specified format for a submission (for example, it may be in written or audio format). Submissions may range from a short letter outlining your views on a particular topic to a substantial document covering a range of issues. Where possible, you should provide evidence to support your views, such as relevant data and documentation. While every submission is welcome, multiple, identical submissions carry no more weight than the merits of the argument in a single submission.

As this is a public inquiry, the Commission will make all submissions available for others to read. Submissions will become publicly available documents once placed on the Commission's website, which will normally occur shortly after receipt of the submission, unless it is marked confidential or accompanied by a request to delay release for a short period of time. Copyright in submissions, however, resides with the author(s), not with the Commission.

The Commission strongly encourages participants to make their submissions publicly available. Under certain circumstances the Commission can accept material in confidence, including commercially sensitive material. You are encouraged to contact the Commission before submitting such material, to discuss its nature and whether it would be in the public interest for the Commission to accept it. Such material should then be provided under a separate cover and clearly marked 'IN CONFIDENCE'.

Submissions may be sent by mail, fax, audio cassette or email. Arrangements can also be made to record oral submissions over the telephone. An electronic copy, if not already provided, would be appreciated either by e-mail or on 3.5 inch diskette. The electronic version should be a text document (.txt, .rtf), a Microsoft Word document (.doc) or similar text format, rather than Adobe Portable Document Format (.pdf), as this enables screen readers to be used. The Commission uses Word 2002, but can accept a wide range of formats. Please ensure that the version sent to the inquiry is the final version. Please ensure you have removed any drafting notes, track changes, annotations and other hidden text and marked revisions. Please also remove any internal links and large logos and decorative graphics (to keep file sizes down). This will enable the submission to be easily viewed and downloaded from the website.

1 About this inquiry

The Australian Government has asked the Productivity Commission to review the policy framework and incentives for the conservation of Australia's historic heritage places.

This issues paper is designed to assist you to participate in the inquiry. It gives some background information and asks a number of questions. The issues paper is not intended to limit comment nor are you required to answer the questions posed. However, the Commission would appreciate submissions that address the central issues of the inquiry, namely:

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

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

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?

What are 'historic heritage places'?

Parts of the terms of reference refer to 'historic built heritage places', while other parts refer to 'historic heritage places'. It is clear from initial discussions with a range of interested parties that this inquiry should not be limited to built heritage and should encompass all historic heritage places. In the Commission's view, historic heritage places (and therefore the scope of this inquiry) covers:

- buildings and structures (such as houses, factories, churches, bridges, roads monuments and cemeteries);
- physically-created places demonstrating ways of life, customs, land use or designs that are no longer practised (such as stock routes or gardens);
- physically-created landscapes with evidence related to particular activities (such as mining sites, sawpits or fishing areas); and
- other places of historic significance (such as Captain Cook's landing place at Botany Bay or the Leichhardt tree in Taroom).

Conservation of natural heritage (for example, the Great Barrier Reef), Indigenous heritage (places of significance to Aboriginal peoples and Torres Strait Islanders), moveable cultural heritage (such as artefacts, paintings, recordings, aircraft and steam engines) and intangible heritage that does not form an integral part of a place (for example, folk history) are outside the scope of this inquiry.

Australia has many historic heritage places. They range from internationally recognised buildings, such as the World Heritage listed Melbourne Royal Exhibition Building, to less well known houses, hotels and other places of business. Some heritage places are important to the history of local communities (for example, old Government House in Bathurst), while others have national significance. Certain groups in the community, such as architects, also have particular views on what constitutes historic heritage worthy of conservation.

Conservation refers to all the processes of retaining (to varying degrees) the heritage value of historic heritage places, including maintenance, restoration, reconstruction and adaptation (or reuse). Conservation does not necessarily require a place to be preserved in original condition or use.

This inquiry will not examine the merits of conserving particular historic heritage places, except where this provides insight into the operation of the broader policy framework.

How are historic heritage places recognised?

The identification of historic heritage places can be subjective. Governments have sought to reduce the degree of subjectivity by formally recognising, through listing, those places considered to have particular historic worth (box 1). Some non-government organisations also maintain their own lists of historic heritage places.

Listing requires a property to satisfy criteria, which vary across lists. The Australian Government lists places which are recognised as having **national** significance. Each State and Territory Government maintains a list of places which are regarded as important to the history of its state or territory. Local governments list places of value to local communities.

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?

Box 1 **Official lists of heritage places**

World Heritage List

Lists places assessed by the World Heritage Committee as important to all peoples of the world. Australia has one historic heritage property (the Melbourne Exhibition Building) on the World Heritage List. It is protected under Australian Government law such that an environmental impact assessment is required for any activity that might significantly impact on its heritage values.

National Heritage List

Lists natural, Indigenous and historic places with 'outstanding' heritage value to Australia. These places can be protected by Australian Government law, and special agreements with State and Territory governments and private owners. Action that may impact on a place cannot be taken without approval of the responsible Minister.

Commonwealth Heritage List

Lists places with 'significant' heritage value that are owned or controlled by the Australian Government including places connected to defence and communications. Responsible agencies are required to undertake certain activities (including preparing heritage strategies and management plans). Action that may impact on a place cannot be taken without approval of the responsible Minister.

Register of the National Estate

Lists important natural, Indigenous and historic places throughout Australia. It is maintained by the Heritage Council under the *Australian Heritage Council Act 2003*. Listing does not impose legal restrictions on private owners in the way they manage, maintain or dispose of their property. Restrictions are, however, imposed on the actions of the Australian Government. Listing on the Register of the National Estate may entitle the owner to financial assistance from the Australian Government under the Cultural Heritage Projects Program (CHPP).

State and Territory heritage registers

Australia's State and Territory Governments have registers of heritage places of importance to the people of a particular State or Territory, with such places protected by that jurisdiction's laws. For example, listing on the NSW State Heritage Register means that approval from the Heritage Council of NSW is required for activities which may compromise the heritage significance of the property. Listing may also provide access for grants and loans, and local rates concessions.

Local government lists

In most States and Territories, local governments keep lists of heritage places important to local communities. These are often attached as schedules to local planning schemes which can provide protection (though this varies).

Historic shipwrecks register

The Australian National Shipwreck Database is administered by the Department of the Environment and Heritage.

Source: DEH (2003; 2004b); New South Wales Heritage Office (2005).

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).

Table 1 provides data on historic heritage places listed by governments. As a result of recent legislative changes, the Australian Government is currently assessing places for inclusion on the National Heritage list. Differing criteria limit comparisons across jurisdictions. The overwhelming majority of places are listed at the local government level.

Table 1 Historic heritage places on official lists^a

<i>Jurisdiction</i>	<i>National Heritage List</i>	<i>State Register</i>	<i>Local government</i>
Commonwealth	5 ^b
New South Wales	..	1490	22 500
Victoria	..	1000	80 000
Queensland	..	1431	na
South Australia	..	2200	3 000 ^c
Western Australia	..	1041	16 000 ^d
Tasmania	..	5277	na
Northern Territory	..	160	..
ACT	..	247 ^e	..

^a Numbers derived from heritage registry databases of the Australian and the State and Territory Governments. ^b There are an additional 53 places which are nominated for inclusion. There are currently 292 places of historic value on the Commonwealth Heritage List ^c As a result of proposed legislative changes in South Australia, this is expected to grow to 10–15 000. ^d Includes non-government lists. ^e There are an additional 303 properties which are nominated for inclusion. **na** Not Available.

Source: EPHC (2004) and heritage registry databases, accessed via <http://www.heritage.gov.au>.

What is the current state of historic heritage places?

According to the Environment Protection and Heritage Council (EPHC), a Ministerial council established by the Council of Australian Governments (COAG), there is little comprehensive information on the condition and integrity of Australia's historic heritage places. There are, however, some partial indicators. A 2001 survey of places in the Register of the National Estate indicated that:

- 6 per cent were in poor condition;
- 9 per cent had low integrity (that is, the intactness of the original fabric that gives heritage value was low); and
- 6 per cent were vacant. (EPHC 2004, p. 1)

The survey indicated that 54 historic places had been removed, because of destruction or loss of heritage values, during the five-year reporting period. However, the Register of the National Estate lists only a small proportion of historic heritage places. Most are recognised at the local government level. Based on local government data, the EPHC estimates that the continuation of current trends would result in the loss of up to 15 per cent of the current stock of historic heritage places within the next two decades (EPHC 2004, p. 2).

Another survey, conducted in 2001, indicated that 13 per cent of heritage places in Western Australia were 'at risk' (either in poor condition or in fair condition and vacant) (EPHC 2004, p. 2).

The EPHC also noted that there had been no comprehensive survey of places whose heritage value has been destroyed, either as a result of neglect or through modification or demolition.

Is there a need for a comprehensive survey of historic heritage places in Australia? If so, who should fund such a study and how would its findings be used?

2 Assessing the policy framework

A central issue for this inquiry is the extent to which governments should participate in the conservation of historic heritage places and the principles which should guide that participation. Government intervention can be warranted in the presence of market failure (that is, where the private benefits or costs of an activity do not fully reflect the social benefits or costs). As government involvement should address the specific causes of any market failure, it is important to identify the impediments to an efficient market outcome when reviewing government policy (ORR 1998, COAG 2004).

With respect to the conservation of historic heritage places, in order to assess what form of government action may be justified, market failures in the conservation of these places must be carefully identified and assessed.

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)?

As representatives of the community's interests, governments are in a position to consider the broader social benefits of heritage conservation which may not be taken into account by private decision makers. Thus, governments may undertake (or facilitate) conservation which, while socially valuable, would not be considered worthwhile from the point of view of a private property holder.

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?

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

As in other areas, the case for government involvement must be based on a rigorous assessment of the relevant benefits and costs, including social and environmental.

That is, it first has to be established that government involvement increases the social value of heritage conservation above that which would otherwise occur. In particular, government-initiated conservation activities only represent a social benefit to the extent that they would not have been undertaken by the private sector.

Similarly, financial assistance paid to individuals and businesses to undertake heritage conservation is not part of the benefit of government involvement if the conservation would have occurred anyway.

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

Second, once the benefits of government participation are identified, it needs to be established that these benefits exceed the costs of government involvement. Among these costs are those associated with raising the funds used to subsidise heritage conservation and the costs to property owners arising from use restrictions or limits to structural modification placed on heritage buildings.

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

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?

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

Capturing the benefits of historic heritage conservation

The conservation of Australia's historic heritage places can generate a number of benefits. These range from commercial benefits (such as those provided by tourism) to more intangible community benefits (including a sense of history, belonging and community, educational and research values, and spiritual values). Conservation activities may also benefit future generations. The Australian Government, in its *Environment and Heritage Legislation Amendment Act (No. 1) 2003*, observed:

[the] heritage value of a place includes the place's natural and cultural environment having aesthetic, historic or social significance, or other significance, for current and future generations of Australians.

In the case of privately-owned heritage properties, some of these benefits may flow directly to the owner and provide incentives for heritage conservation. Other benefits may accrue to the more general community. It has been argued that the existence of these broadly-based community benefits may necessitate government involvement in heritage conservation. The argument is that, if left solely to private initiative, 'too little' heritage conservation would occur as individuals and businesses fail to adequately consider wider community benefits when deciding whether, and how much, heritage conservation to undertake.

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

A key issue, then, is to what extent the private sector is able to capture (or ‘internalise’) the benefits of heritage conservation. In situations where sufficient benefits are able to be captured to make heritage conservation viable from a private perspective, the rationale for government involvement is greatly reduced. As noted above, there are various ways in which the private sector might capture the benefits of historic heritage conservation. Tourism is an obvious example. Where historic heritage is conserved for tourism purposes, other private benefits can arise. For example, hotels, shops and restaurants may be established in historic precincts to cater for tourists. This development of tourist infrastructure may, in turn, return additional benefits to heritage conservation by increasing visitor numbers.

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

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

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

In cases where heritage conservation is not judged to be commercially viable, government involvement may be justified either through financial assistance to make the project viable, or if the private benefits are small, by direct public conservation activities. Ideally, provision of financial assistance should also be sufficiently well targeted to ensure that commercially viable conservation projects are not recipients.

However, the failure of the private sector to adequately undertake heritage conservation does not, of itself, justify government involvement. Governments should become involved only if the benefits (both tangible and intangible) exceed the costs. Since public assistance should be directed towards projects which are not commercially viable, and would not otherwise be undertaken by the private sector, the case for government involvement will normally be based on consideration of the more intangible benefits of heritage conservation.

Do governments and public funding bodies use benefit–cost analysis in allocating funds between heritage conservation projects? Are any types of benefits or costs commonly omitted from these analyses? Are alternative approaches used, such as cost effectiveness?

Intangible benefits — such as the value to a community in having a link to its past or the aesthetic appeal of heritage places — may be difficult, if not impossible, to

quantify. The inability to accurately measure such benefits makes their inclusion in a benefit–cost analysis problematic. In marginal cases, where measurable costs and benefits are finely balanced, intangible benefits — even when they cannot be accurately measured — may usefully inform decision-making. However, where intangible benefits are the major (or sole) criterion for conservation, measurement issues become crucial. Under certain circumstances, approximate measures may be attached to the intangible benefits. For example, members of the community may be surveyed to obtain estimates of valuations placed on historic heritage places. Costs incurred in travelling to visit a historic heritage place may also be used as a minimum estimate of the value that visitors attach to that place.

Can the benefits and costs of the conservation of heritage places be satisfactorily quantified to aid decision making?

How should tangible costs (such as repair costs) be compared with intangible and diffuse benefits (such as educational benefits and ‘sense of community belonging’)?

3 Current responsibilities for historic heritage conservation

A broad cross-section of the community is actively involved in the conservation of historic heritage places. Private individuals and businesses, non-government organisations (such as the National Trusts) and governments at all levels contribute to this conservation. Significant costs are incurred in the conservation of historic heritage places.

3.1 Private sector

Individuals and businesses

Many historic buildings are in private hands. For example, based on Commission estimates, about 45 per cent of those buildings recognised by the NSW Government as having heritage status are owned by the private sector. In addition to their heritage value, these buildings are often used in everyday community activities. Historic homes, shops and hotels which are used for their original purpose are obvious examples.

What proportion of historic heritage places are owned by the private sector?

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

Apart from maintaining their suitability for everyday use, there are important incentives for the private sector to undertake heritage conservation activities. Historic buildings may be preserved for the additional aesthetic value they provide to their owners. Conservation may also be undertaken as a means of generating commercial benefits. For example, tourist operators conserve historic heritage places that are attractive for tourists to visit. Historic places may be conserved because they have a distinctive character which can provide commercial or re-sale benefits. Individuals may preserve the historic character of their homes in the expectation that their neighbours will do the same and, in the process, create mutual gains. In all these cases, the interests of the owners or managers of heritage places

coincide, to some extent, with those of the other beneficiaries of heritage conservation.

Businesses also conserve heritage places as part of their social and environmental corporate responsibility. They may provide funds for heritage conservation as part of sponsorship arrangements, or undertake heritage conservation projects.

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

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

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?

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

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

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

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

Non-government organisations

There are a number of non-government organisations involved in heritage conservation. These include:

- National Trusts — each State and Territory has a National Trust, and there is also a nationwide Australian Council of National Trusts;
- Australia ICOMOS (International Council on Monuments and Sites) — a chapter of ICOMOS (International); and
- a diverse range of smaller, often local, conservation groups (such as Friends of Glenbourne Homestead Inc. and the Portland Historical Society).

These organisations undertake heritage repair, maintenance and preservation work, either directly through members' voluntary work or through the funding of such activity. For example, across Australia, the National Trusts own and manage over 300 heritage places, employ around 350 people and manage a voluntary workforce of approximately 7000. They undertake classification work to identify and record places of heritage significance, and run campaigns to save places in immediate threat, assist public debate and raise awareness of heritage issues.

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

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

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

What are the impediments to the conservation activities of volunteer organisations. For example, are there implications for conservation activities of an ageing volunteer community, and concerns about the health and safety and insurance of volunteer workers?

Can the activities of these organisations be improved or expanded?

3.2 Public sector

All levels of government are involved in conserving Australia's heritage places. Among the activities undertaken by governments are the maintenance of heritage lists (box 1), imposition of restrictions on modifications to listed places, the ownership or management of heritage places, and the provision of funding and other assistance for heritage conservation. Governments also maintain a large number of heritage buildings, many of which are used in the provision of public services (historic courthouses, schools and hospitals are examples). Some of these buildings may be surplus to operational requirements.

Public administration of historic heritage conservation

In 1997, the Council of Australian Governments (COAG) delineated the responsibilities of each level of government. COAG agreed that the Australian Government's heritage role should focus only on heritage places of national significance. It also decided to streamline Commonwealth and State processes with

the objective of relying on State processes. However, according to a Senate Committee review, this element of the COAG agreement did not work in practice and substantial disagreement arose between the Commonwealth and the States (SECITARC 2001).

The Australian Government also identified a number of deficiencies with heritage conservation policy, including:

- duplication in heritage laws and processes between the three tiers of government;
- a lack of overarching national policy;
- the Australian Government's involvement in disputes which were more the responsibility of State and local governments;
- community confusion regarding the different lists and heritage systems; and
- a 'lack of real protection' for Australia's heritage places (DEH 2004c).

The new national heritage system

As a result of these perceived problems, on 1 January 2004, a new national heritage system was introduced. The main features were a new National Heritage List (the existing Register of the National Estate was retained), a new Commonwealth Heritage List, and the creation of the Australian Heritage Council (to replace the Australian Heritage Commission). These changes were implemented through the *Australian Heritage Council Act 2003* (Cwlth) and legislation amending the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (EPBC Act).

To what extent has the new heritage system reduced unnecessary duplication in heritage laws and processes between governments?

Has the new national system reduced the level of community confusion over heritage laws and processes?

Has it provided the overarching national policy framework which was sought by the Australian Government?

Are the roles and responsibilities of each level of government clear, appropriate and mutually supportive?

The Australian Heritage Council

As noted above, the Australian Heritage Council has replaced the Australian Heritage Commission. The Council is an independent statutory body advising the Australian Government on heritage matters. Its functions include:

- assessing the values of places nominated for National and Commonwealth lists;
- nominating places for inclusion on the lists;
- maintaining the Register of the National Estate; and
- providing advice to the Minister on heritage matters (*Australian Heritage Council Act 2003* (Cwlth)).

Are the roles, responsibilities and powers of the Heritage Council appropriate for the Australian Government's primary advisory body on heritage matters?

State/Territory policy frameworks

Most State and Territory governments have recently undertaken, or are currently undertaking, reviews of heritage conservation. For example:

- In 2003 the Heritage Council of Victoria completed a review of heritage management. The Victorian Department of Sustainability and Environment, and the Heritage Council of Victoria, are currently developing a broad heritage strategy for 2005–10.
- On 9 March 2005, a new Heritage Act came into force in the Australian Capital Territory with the intention of moving the policy framework for heritage conservation closer to that of other jurisdictions.
- In Western Australia, a review of heritage protection measures has been announced.
- Heritage legislation is being reviewed in the Northern Territory.
- Currently, two bills, related to historic heritage conservation, are before the South Australian Parliament.

Does legislation in each State/Territory, and its implementation (for example, monitoring and enforcement), provide for efficient heritage conservation outcomes and, if not, why not? Are objectives clear, measurable and consistent with other legislation?

How might the current, or recent, State/Territory reviews improve outcomes?

Will recent changes to Australian Government legislation affect the way State and Territory legislation is implemented and outcomes for heritage conservation?

Do all States and Territories manage heritage places within an explicit strategic framework? How can existing strategic frameworks be improved? How important are well developed frameworks for facilitating historic heritage conservation?

Are there major differences in legislation, and its implementation, between States/Territories and, if so, do these differences affect historic heritage conservation?

In most States and Territories, primary heritage legislation interacts closely with other State legislation. In the Northern Territory, for example, planning, heritage and Indigenous issues cut across the heritage, planning and Aboriginal sacred sites Acts. They also interact with local planning laws.

How does interaction between various Acts, and between State/Territory legislation and local planning regulation, impact on heritage conservation outcomes? Is there scope for improvement?

State and Territory legislation establish heritage councils (and in South Australia, an authority). Many of the councils perform similar functions, including advising the relevant Minister on heritage matters, maintaining the State/Territory heritage register, approving financial assistance, and promoting public understanding of heritage issues.

Are State and Territory heritage councils (or authorities) producing efficient outcomes for heritage conservation? Are their functions appropriate? How well do they balance private and public development needs with historic heritage conservation?

How does the relationship between heritage councils and State/Territory government departments/agencies function, and are their respective roles clear and mutually supportive?

Policy framework efficiency

Another important question for this inquiry is the extent to which government involvement in historic heritage conservation is undertaken efficiently. Particular issues which may determine the efficiency of government involvement are whether conservation of historic heritage places should be undertaken independently of other forms of heritage conservation and the extent to which responsibilities should be divided between the Australian, State/Territory and local governments.

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?

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?

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?

Heritage listing

Governments at all levels maintain lists of historic heritage properties. Listing is typically designed to preserve the heritage value of a structure by placing limitations on modifications which can be undertaken. In some cases, listing may entitle the owner to financial assistance to maintain the property.

National lists

As noted above, the Australian Government has recently introduced changes to heritage listing with the intention of recognising those places considered to have particular heritage worth to the entire nation. The Australian Government established the National Heritage List and the Commonwealth Heritage List (while maintaining the existing Register of the National Estate). Inclusion on a national list provides criminal sanctions for unapproved actions which have, or are likely to have, a ‘significant’ impact on the environment of a listed place, including its heritage values.

Have the recent legislative changes by the Australian Government improved the administration of national lists and the overall conservation of historic heritage places?

Heritage places are selected by the Australian Heritage Council for inclusion on the National or Commonwealth heritage lists according to specified criteria. The criteria for the two lists are similar. However, a ‘significance threshold’ test may also be applied — the threshold for inclusion on the National list (‘outstanding’ heritage value) is higher than for the Commonwealth list (‘significant’ heritage value). Listing criteria — together with a ‘significant’ heritage value threshold —

also apply to the inclusion of places on the Register of the National Estate. Box 2 outlines the listing criteria for inclusion on the National Heritage List.

Are the criteria and thresholds for listing on the registers administered by the Australian Government appropriate? How are the terms 'significant' and 'outstanding' interpreted in practice?

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

Given that the lists are expanding and government conservation resources are scarce, is there need for further prioritisation such that some on the lists are able to receive more conservation activity than others?

How do existing lists link with other heritage conservation policies and programs, including funding?

The Australian Government is also responsible for nominating Australian places with significant world historical heritage value for inclusion on the World Heritage List. The World Heritage Committee, with representatives from 21 countries, manages this list.

How do listing criteria for the World Heritage list compare with criteria for national lists? Given the existence of national lists, what additional benefits does World Heritage Listing provide?

State and Territory lists

State and Territory Governments maintain registers of places considered to have heritage significance to each state or territory. They are extensive and cover a range of public and private heritage places.

What are the listing criteria for State and Territory heritage registers?

How does inclusion on a State or Territory register protect historic heritage places?

Given that registers keep expanding, and the scarcity of government conservation resources, is there prioritisation such that some historic heritage places are able to receive more conservation activity than others? What options are there for prioritising heritage places (for example, use of threat/value assessments)?

Is there adequate opportunity for public input in the listing process? Are the review and reporting requirements adequate?

Are there differences between States and Territories regarding breadth of coverage, list size and content, and processes for listing (such as criteria and extent of community consultation)? If so, do they affect conservation outcomes?

Box 2 Criteria for inclusion on the National Heritage List

Inclusion on the National Heritage List requires a place to be assessed as having 'outstanding' heritage values against one or more of the following nine criteria.

A place may be included on the National Heritage List because of its:

- a) importance in the course, or pattern, of Australia's natural or cultural history;
- b) possession of uncommon, rare or endangered aspects of Australia's natural or cultural history;
- c) potential to yield information that will contribute to an understanding of Australia's natural or cultural history;
- d) importance in demonstrating the principal characteristics of (i) a class of Australia's natural or cultural places; or (ii) a class of Australia's natural or cultural environments;
- e) importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
- f) importance in demonstrating a high degree of creative or technical achievement at a particular period;
- g) strong or special associations with a particular community or cultural group for social, cultural or spiritual reasons;
- h) special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history;
- i) importance as part of Indigenous tradition.

Source: DEH (2005).

Local government lists

Local governments play an important role in heritage conservation, with the majority of Australia's heritage places listed and protected at the local level (often through local planning schemes) (table 1).

The roles, responsibilities and heritage activities of local governments vary between (and within) Australian States. In New South Wales, for example, local governments have primary responsibility for managing local heritage issues (New South Wales Heritage Council 2003).

Historic heritage places can be protected by local governments using local development controls, planning schemes (including heritage overlays), local environment plans and so on, depending on the state. Heritage places of local significance are often included in schedules (or lists) attached to local plans.

How does local government recognise and protect historic heritage places?

Historic heritage places listed by local governments tend to be homes or places of business which are important to people's everyday lives. Typically, local governments require owners to preserve the façade of a listed building although other areas (such as gardens, outbuildings and fences) may also be protected. The extent and nature of local government listings therefore raises significant potential for encroachment of individual property rights. The potential for conflict between private property rights and historic heritage conservation objectives is probably greater at the local level than for places of national or state/territory significance because a greater proportion of places on the national and state/territory lists are in public ownership, and have been since their construction.

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

How well do local governments resolve conflicts between protecting private property rights and achieving legitimate heritage conservation objectives? Should governments (at any level) be required to compensate for their actions which infringe on the property rights of private owners?

The potential for disagreement over listing criteria may also be greater at the local level. The threshold issue of whether a particular place is locally significant, and worthy of conservation, may not be as clear-cut to members of the community as whether a place is of national or state/territory significance. Listings by the national or state/territory governments include a larger proportion of iconic places whose cultural status is not in dispute. The potential for dispute over listing is increased where there is a lack of clear guidelines for listing or procedural transparency.

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

Another complication at the local level is that heritage objectives may be confused with general planning issues. For example, heritage protection of a place may be invoked to protect the aesthetic appeal or amenities of an area.

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

Non-official lists

A number of non-government institutions, such as the National Trust of Australia and the Royal Australian Institute of Architects, maintain their own lists of historic heritage places. These are primarily intended to inform people and governments of the existence of historic heritage places.

What criteria do non-government organisations use to list historic heritage places?

How do the lists maintained by non-government organisations relate to those maintained by governments?

Government ownership and management of heritage properties

Historic heritage properties are owned and managed by all levels of government. Some of these properties may be utilised in the provision of a public service for which their heritage value is incidental. Courthouses, town halls, schools and hospitals are examples.

Australian Government agencies are required (under the EPBC Act) to develop a heritage strategy and inventory and a management plan for each listed place. A management plan ‘sets out the significant heritage aspects of a place, and details the appropriate policies to manage it, so that its values are retained for future use and appreciation’ (DEH 2004d, p. 1). The EPBC Act specifies that management plans must ‘not be inconsistent’ with gazetted heritage management principles. Management principles can differ between heritage lists.

Australian Government agencies are also required to seek advice from the relevant Minister if any action will, or is likely to, have a significant impact on a Commonwealth heritage place (unless that action is in accordance with an approved management plan). They must also consider whether there are feasible and prudent alternatives, and any measure that can be reasonably taken to mitigate the impact on heritage values.

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

Do management plans efficiently meet the objectives set out in the gazetted heritage principles? How useful and appropriate are the management principles in guiding management plans? Can they be improved?

There are several historic heritage places of significance to Australia that are located in other countries (for example, Lachlan Macquarie’s mausoleum in Scotland).

Are there issues related to the management of historic heritage places of importance to Australia, but located in other countries?

State and Territory government agencies own and manage some historic heritage places on State/Territory registers. A number of these are located in State or Territory parks and managed by park management agencies (such as New South Wales National Parks and Wildlife Service).

Does State ownership result in better conservation outcomes than private ownership? Is State/Territory ownership of these places necessary or could alternative arrangements be envisaged?

Do State and Territory government agencies follow best practice, such as the use of performance indicators, and if not, how can management practices be improved?

Are the agencies currently responsible for historic heritage conservation on State and Territory land the most appropriate?

Funding and other assistance

There are a number of ways in which governments may provide support for greater private sector involvement in historic heritage conservation. These include:

- grants and other forms of direct financial assistance;
- loans (including the use of revolving funds);
- tax concessions;
- heritage agreements;
- concessional planning and zoning arrangements; and
- advisory services and technical assistance.

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?

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

Financial grants are the most common form of assistance provided by governments (EPHC 2004, p. 12). The Australian Government provides funding for conservation of heritage places through different heritage funds including:

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- the Cultural Heritage Projects Program (CHPP) which funded \$3.8 million in projects in 2002-03 (for example, the Ultimo Uniting Church restoration (NSW) and work on the Fremantle War Memorial (WA)) (DEH 2004e);
 - the Distinctly Australian Program which provided \$13.3 million over four years with the aim of ensuring that places of national cultural and natural heritage are protected and better understood (Australian Government 2004); and
 - Grants in Aid to the National Trusts to support heritage activities (DEH 2004f).

The Tax Incentive for Heritage Conservation scheme, which provided a 20 per cent rebate for approved conservation work in excess of \$5000, was replaced by funding under the CHPP in July 1999. However, donations to the National Trusts remain tax deductible.

State and Territory governments provide funding and other assistance for conservation of heritage places to local governments, not-for-profit organisations, academic institutions, private companies, individuals and other recipients. For example, the Northern Territory Heritage Grant Program provides grants for research, conservation and presentation of significant heritage places. Heritage Victoria provides advice and assistance to local governments and funds the conservation of numerous heritage projects through the Public Heritage Program.

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

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

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

In most States and Territories, legislation provides for heritage agreements that are usually entered into by the Minister (or representative) with the owner of a 'listed' building or land. Agreements can cover a variety of heritage provisions relating to, for example, conservation, financial advice or assistance, restriction on use, charges for admission and requirements for specified work.

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)?

Local governments also provide a wide range of services, including advisory services to owners, awards in recognition of outstanding heritage work, and

financial incentives, loans and rewards. In some instances, local governments provide funding in conjunction with State governments.

Heritage conservation can be undertaken through partnerships between businesses, volunteer groups, individuals and/or government agencies. Examples of partnerships include the Heritage Loan Scheme in Western Australia which involves the State and local governments and StateWest Credit Society, and assists owners of heritage places by offering loans for conservation work at discounted interest rates. Other examples include the National Trust's partnerships with Goldman Sachs JBWere, Porter's Paints and the Tasmanian Government, and the 'Hands on Heritage' program involving the Heritage Council (Victoria) and Conservation Volunteers Australia.

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?

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