

**The End of Hope. An assessment on the draft Report of the Productivity Commission's Inquiry into the Conservation of Australia's Heritage Places.**

By Matthew Baird<sup>1</sup>

**Is there a future for built heritage protection in Australia?**

This article focuses on built heritage protection in Australia in response to the issuing in December 2005 of the Productivity Commission's Draft Report on its Inquiry into the Policy Framework and Incentives for the Conservation of Australia's Historic Built Heritage Places ("the Draft Report"). There is no doubt that indigenous, cultural and natural heritage are also in greater danger now than they have been in the past. For a number of years the value of heritage has been debased as governments argue that individuals should not have to shoulder the burden of heritage protection. At the same time governments have moved to place a greater emphasis on the role and responsibility of local governments for the protection and preservation of built heritage. Whilst it is not denied that all too often the burden for heritage protection falls on those who are not able to pay for it, the increasing demands placed on local government and the desire of federal and state to deny their responsibility for the protection of heritage has lead to a crisis in heritage protection in Australia.

Heritage has an intrinsic value that must be recognised and protected. It is not sufficient for a market value to be placed on either individual items of heritage or for communities or conservation areas.

Heritage protection needs to be increased. The federal and state governments must allocate more resources to protect and preserve built heritage and must also provide significant assistance for local governments in the carrying out of local governments obligations to heritage protection.

As local government is required to undertake the significant bulk of the assessment of heritage items and often is required to defend those decisions in Court, more support and resources must be provided to local government.

Additionally in order to effectively protect heritage under existing legislation the state governments should establish an Office of the Heritage Advocate. This would be an office established to prosecute breaches of heritage protection legislation and act as an advocate for heritage protection. The Office of the Heritage Advocate could also provide legal assistance and expert help to councils fighting to protect heritage items and the character of conservation areas. It would be mandated to act to prosecute cases where an item of heritage has been damaged or destroyed and also to take action in cases of neglect and demolition through lack of action. In NSW proceedings could be taken for either civil or criminal enforcement under the broad standing provisions of both the Heritage Act 1977 (NSW) or the Environmental Planning and Assessment Act 1979 (NSW).

**The Hope Inquiry and the Hope Report 1974**

The "Report of the nature and state of the National Estate and the means of conserving and presenting it", was submitted to the Prime Minister Gough Whitlam in 1974.<sup>2</sup> Thirteen meetings and 650 submissions led to the most comprehensive analysis of the issues and problems confronting government to protect and preserve the national estate. One of the first tasks required of the Hope inquiry was to define what was meant by the phrase 'the national estate'. Whitlam first used it in a policy speech in 1972, borrowing the phrase from President Kennedy who referred to it in 1963.<sup>3</sup> The inquiry noted that:

*"the concept itself is a powerful crystallisation of an emergent but hitherto almost unfocussed idea. This idea of a National Estate has been taking shape at an increasing rate precisely because it has*

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2 Report of the National Estate, AGPS, Canberra 1974 ("the Hope Report") The Hope Inquiry was established in May 1973

3 Hope Report, p 20

*been aroused by the realisation that much which is of national, and even international, value in the man-made and natural spheres is coming under very strong threats and pressures from damaging or potentially damaging human action. The National Estate is a limited and valuable possession and much has already been lost”<sup>4</sup>.*

The Hope Report identified the rapid growing trend in environmental consciousness in Australia<sup>5</sup> and also looked at the significant growth in environmental awareness that had developed in Europe and the United States in the 1960s and which had passed Australia by. The Hope Report quoted from the 19 December 1960 UNESCO Recommendation concerning the Protection of Cultural Property Endangered by Public or Private Works;

*Cultural property is the product and witness of the different traditions and of the spiritual achievements of the past and is thus an essential element in the personality of the peoples of the world. It is the duty of governments to ensure the protection and the preservation of the cultural heritage of mankind, as much as to promote social and economic development.”<sup>6</sup>*

The recitals to the Convention Concerning the Protection of the World Cultural and Natural Heritage clearly show the concerns expressed over 30 years ago at the fundamental issues confronting heritage protection:

*Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social economic considerations which aggravate the situation with even more formidable phenomena of damage or destruction,*

*Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all nations of the world.*

The Hope Report clearly considered the costs and benefits of preserving the National Estate. The Inquiry and report were not unaware that what was being proposed was a new approach and one not likely to find favour with both the union movement and the development industry. The Hope Report adopted a precautionary approach, long before this became a dominant theme in sustainable development.

*1.58 Losses of this kind [i.e. through development], and their effects, are essentially long-term, difficult to predict with certainty, and difficult to evaluate in financial or social terms of cost. Environmental costs, in the present state of ecological knowledge, are even more unpredictable, as is the possible cost of repair.*

*1.59 However, in such situations, the crucial question should be, not ‘Can we afford, in the short term, to conserve and present this building or area?’ but rather ‘Can we afford, in the long term, to lose it?’ In the long-term view, the major factors will be the increase in population and in need for cultural and recreational landscapes, the present rate of disappearance of these amenities, and the total public-interest factor in contrast to the immediate private interest.”<sup>7</sup>*

The Hope Report was also presented against the background of the adoption by UNSECO of the Convention Concerning the Protection of the World Cultural and Natural Heritage at the General Conference in Paris on 16 November 1972. The declaration recognised the duty of “ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage”<sup>8</sup> of “outstanding universal value”<sup>9</sup>.

The World Heritage Convention, as it ultimately became, did not enter into force in Australia until the passage of *World Heritage Properties Conservation Act 1983* (Cth), was passed after the election of the Hawke government in March 1983.<sup>10</sup>

4 Hope Report, p 20

5 Hope Report, p 25

6 Hope Report, p 25

7 Hope Report, p 29

8 UNESCO Declaration, Article 4

9 UNESCO Declaration, Articles 1 and 2

10 See P Toyne, *The Reluctant Nation*, Chapter 3, ABC Books, 1994

## The Burra Charter

In August 1979 in the South Australian town on Burra, the Australian National Committee of the International Council on Monuments and Sites (Australia ICOMOS) adopted an Australian version of the International Charter for the Conservation and Restoration of Monuments and Sites (adopted in Venice in 1964) and the Moscow resolutions of the 5th General Assembly of ICOMOS. The Charter was revised in 1981, 1988 and 1999.

The Australian ICOMOS Burra Charter ("the Burra Charter") recognises that conservation is an integral part of the management of places of cultural significance and is an ongoing responsibility<sup>11</sup>.

In response to the question 'why conserve?' the Burra Charter states:

*Places of cultural significance enrich people's lives, often providing a deep and inspirational sense of connection to community and landscape, to the past and to lived experiences. They are historical records, that are important as tangible expressions of Australian identity and experience. Places of cultural significance reflect the diversity of our communities, telling us who we are and the past that has formed us and the Australian landscape. They are irreplaceable and precious.*

*These places of cultural significance must be conserved for present and future generation.*<sup>12</sup>

These statements have been echoed in the Australian policy context for the past 30 years. In 1986 the Australian Heritage Commission ran a series of workshops examining the administrative and legal context of heritage protection in Australia. Speaking during those workshops Professor Ben Boer observed:

*The past and present cultural environment and the present natural environment is the heritage of humankind. How we conserve or modify various environments now will determine what value we place on them tomorrow. From a practical point of view, value choices are made every day about how we conserve or modify environments. Those we value highly now, and conserve now, may become the heritage of future generations. Those with low conservation priority may or may not be highly valued on the future, or may not be in existence to value in the future.*<sup>13</sup>

The Hope report saw the role of national, state and local governments as indispensable to the protection and management of heritage items. In 1986 those involved in heritage protection were calling not only for significantly increased funding for the Australian Heritage Commission<sup>14</sup> but also for national leadership. It was noted that the major constraint on incorporating heritage conservation principles into the mainstream environmental planning process is that of political commitment.<sup>15</sup>

It was noted in the 1986 seminars that a number of major recommendations of the Hope Report had not been implemented, including tax incentives and other financial measures.<sup>16</sup>

## The EPBC Act and the doctrine of subsidiarity

Recent changes to the relationship between the three spheres of government have impacted significantly on the protection of the environment in Australia. On 7 November 1997, the Council of Australian Governments agreed in principle to the Heads of Agreement on Commonwealth and States Roles and Responsibilities for the Environment. This was also signed by the Australian Local Government Association<sup>17</sup>. It provides for the Australian Government to have primary responsibility for environmental

11 Burra Charter 1999, preamble [www.icomos.org/australia/burra.html](http://www.icomos.org/australia/burra.html)

12 Burra Charter preamble

13 Ben Boer, "The Legal Framework of Heritage Conservation", in Cultural Conservation – Towards a National Approach, Special Australian Heritage Publication Series Number 9, AGPS, Canberra, 1995, 15

14 Alison Blake and Ian Higgins, "Role of the National Trust and the voluntary heritage conservation movement", in Cultural Conservation – Towards a National Approach, Special Australian Heritage Publication Series Number 9, AGPS, Canberra, 1995, p. 134-135 noted that the budget to the National Estate Grants Program from 1975 to 1986 has decreased by 17% in real terms. The Draft Report of the Productivity Commission noted that the budget for the National Heritage Grants Programme was \$1 billion over the next 4 years but none was directed to heritage conservation

15 Sheridan Burke, "Heritage conservation and the environmental planning process", in Cultural Conservation – Towards a National Approach, Special Australian Heritage Publication Series Number 9, AGPS, Canberra, 1995, p. 176

16 Alison Blake and Ian Higgins, "Role of the National Trust and the voluntary heritage conservation movement", in Cultural Conservation – Towards a National Approach, Special Australian Heritage Publication Series Number 9, AGPS, Canberra, 1995, p. 134-135

17 It must be remembered that despite its role in delivering services and government functions to the community, local government has no constitutional existence. Local governments are creatures of State statutes

matters of national and world significance, and for the State and Territory governments to have primary responsibility for matters of State and local significance. With the exception of Tasmania, the States have since variously assigned to local governments matters of local significance.<sup>18</sup>

The new three-tier framework for government involvement, in keeping with principle of subsidiarity<sup>19</sup>, now explicitly recognised not only the different scales of significance of items of heritage but also assigns these different scales of significance to each of the three spheres of government.

Consequently it is on local government that the primary burden of protection and assessing heritage significance falls.

The Federal government's implementation of the key aspects of the 1997 Agreement led to the passage of the *Environmental Protection and Biodiversity Conservation Act 1999* and ultimately the passage of the *Australian Heritage Council Act 2003*<sup>20</sup>, which included the abolition of the Australian Heritage Commission (established following the Hope Inquiry). This could be termed the end of Hope.

## The Productivity Commission Inquiry

On 4 April 2005, the Treasurer Peter Costello MP, provided the Productivity Commission with terms of reference into an inquiry into the policy framework and incentives for the conservation of Australia's historic built heritage places. The terms of reference states the background to the inquiry:

*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.<sup>21</sup>*

If ever there was any doubt that the focus of the federal government towards environmental protection in general and heritage protection specifically had moved away from direct intervention by government, the announcement of the scope of the inquiry would have dispelled it.

## Scope of the Inquiry

The Commission is to examine:

1. The main pressures on the conservation of historic heritage place
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

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18 Draft Report, p 3

19 The principle is defined "to suggest that responsibility for a function should be assigned to the lowest level of government that is able to exercise it effectively, and this as close as possible to consumers to allow them choice as to the service that they receive" Draft Report, p,xxi

20 Draft Report, p 3

21 Productivity Commission, Inquiry into the Policy Framework and Incentives for the Conservation of Australia's Historic Built Heritage Places, Issues paper, p 3, 2005

6. Possible policy and programme approaches for managing the conservation of Australia's historic heritage places and competing objectives and interests.<sup>22</sup>

The Productivity Commission is established by legislation<sup>23</sup>. The Productivity Commission is the Australian Government's principal advisory body on all aspects of microeconomic reform. The Commission's work covers all sectors of the economy. It extends to the public and private sectors and focuses on areas of Commonwealth as well as State and Territory responsibility. The statutory functions of the Commission are to:

- Hold public inquiries and report on matters related to industry and productivity;
- Provide secretariat services and research services to government bodies such as the Council of Australian Governments;
- Investigate and report on complaints about the implementation of the Australian Government's competitive neutrality arrangements;
- Advise the Treasurer on matters related to industry and productivity as requested;
- Initiate research on industry and productivity issues; and
- Promote public understanding of matters related to industry and productivity<sup>24</sup>.

The Productivity Commission has statutory based guidelines. In brief, they require the Productivity Commission to:

- a) Improve the productivity and economic performance of the economy;
- b) Reduce unnecessary regulation;
- c) Encourage the development of efficient and internationally competitive Australian industries;
- d) Facilitate adjustment to structural change;
- e) Recognise the interests of the community generally and all those likely to be affected by its proposals
- f) Promote regional employment and development;
- g) Have regard to Australia's international commitments and the trade policies of other countries and;
- h) Ensure Australian industry develops in ecologically sustainable ways<sup>25</sup>.

Like any government body established to look and "productivity" and "reduce unnecessary regulation", such as the NSW Public Accounts Committee, the primary focus is on the reduction of "inefficiencies" and the elimination of the role of government in achieving desired policy outcomes. The Productivity Commission does not look at the best way of achieving a particular policy outcome rather it examines ways of improving a non-regulatory response that allows the market to determine the outcome.

The Productivity Commission Inquiry was limited to the consideration of "all historic heritage places"<sup>26</sup>. These were:

- 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 practiced (such as stock routes or gardens);
- Physically-created landscapes with evidence related to particular activities (such as mining sites, sawpits or fishing areas); and

<sup>22</sup> Draft Report, p v

<sup>23</sup> *Productivity Commission Act 1998*

<sup>24</sup> *Productivity Commission Act 1998* (Cth) s 6(1)

<sup>25</sup> *Productivity Commission Act 1998* (Cth) s 8(1)

<sup>26</sup> Issues Paper, p 5

- Other places of historic significance (such as Captain Cook's landing place at Botany Bay or the Leichhardt tree in Taroom).

The Productivity Commission identified that historic heritage places are recognized and identified in a fairly hierarchical manner with the use of listings.<sup>27</sup> This is the method that has been well used in Australia since the Hope Report<sup>28</sup>. Most states and territories have also adopted a listing system. The current listing system provides for the Australian government to list those items that have a national significance. Each State and Territory Government maintains a list of places which are regarded as important to the history of its state and territory. Local governments list places of value to local communities, including areas and locations.<sup>29</sup>

In addition the Australian Government has the role to nominate those places that are of "outstanding universal value" that should be on the World Heritage List.

One of the important surveys carried out by the Productivity Commission was a survey of local governments across Australia of their heritage registers. The response highlighted that the overwhelming responsibility for the protection of the built heritage rests with local governments.<sup>30</sup> The Productivity Commission identified that with some 75 per cent of the responding councils having a statutory list, over 76 000 individual places and 1770 heritage areas were identified under those lists.<sup>31</sup> It also identified that heritage "is one of the few areas in planning where local councils still retain significant levels of discretion as to the approval of developments."<sup>32</sup>

The Productivity Commission also recognized the enormous contribution made by the NGO sector in the preservation of built heritage. In particular the Productivity Commission recognized the role of the National Trusts across Australia. Formed in Sydney in 1945 "in response to the destruction of old colonial building for site redevelopment along Macquarie Street and the clearing of bush for suburban development on the North Shore"<sup>33</sup> the Trusts have a membership of 72 200. They employ a workforce of 7400 and manage some 253 properties, some 170 of which are opened regularly to the public.<sup>34</sup>

In its submission to the Inquiry the Australian Council of National Trusts ("ACNT") sought to debunk "one of the greatest misconceptions in our legal system"<sup>35</sup> namely that heritage and other planning controls are "fetters" to the use and enjoyment of property. The ACNT correctly stated the position in its submission to the Inquiry:

*That evolutionary process which we can trace back over the centuries is nothing more than a recognition that when one actually holds property, one is doing it as part of a community and one is cognizant of the rights of others within the community. The fact that one is putting a constraint – if that is indeed the consequence of heritage listing – on ownership of property to protect the heritage values in it, ought not to be seen as anything different from the evolutionary process of ensuring that we have clean air or we don't pollute the streets or cause an issue of health and safety. Philosophically it is the same and is entirely consistent with the evolution of property laws over the centuries.<sup>36</sup>*

Australian ICOMOS, in its submission to the Inquiry noted that restrictions on land-use were generally accepted by the Australian community:

*Property regulations are a fundamental part of land and planning systems in Australia. It has been recognized for decades and is now generally accepted in the community that land development and*

27 Issues Paper p 6

28 Hope Report, recommendation 34, page 340

29 Issues paper, p 6, Draft report p 56

30 Draft Report, Appendix B page 225ff

31 Draft Report, p 34, and see Table 3 5 at page 35

32 Draft Report, p 95

33 Draft Report, p 1

34 Draft Report, p 26

35 Draft Report, p 143

36 Draft Report, p 143

*changes to real estate cannot proceed without limit or control. Australian society does not allow unregulated development...*<sup>37</sup>

## Recommendations of the Draft Report.

The Draft Report examined how local government aimed to conserve heritage. Local government planning and land use systems were identified as the primary mechanisms that conserved heritage items at a local level.<sup>38</sup> The Productivity Commission specifically identified that the role of States and Territory Governments was “absolutely critical to a coherent and effective national framework”<sup>39</sup>.

The Draft Report concluded however that “private sector involvement in the conservation of historic heritage places is extensive and pre-dates formal government involvement. Indeed, the bulk of historic heritage places have been conserved, and will continue to be conserved, by the private sector.”<sup>40</sup>

The following problems with the prescriptive approach was identified:

- Inconsistent heritage outcomes within local governments;
- More onerous development requirements for heritage properties, including a greater red tape burden;
- Imposition of heritage controls over properties that were not listed in local planning schemes; and
- Unclear and uncertain restrictions imposed on heritage properties.

The Draft Report’s criticism of the problems faced by those seeking to protection heritage were nevertheless acknowledged. Heritage listing, it was observed, did not necessarily protect the heritage item from demolition or neglect.

The primary conclusion of the Draft Report was however based on a central theme in the inquiry - the extent to which governments should participate in the conservation of heritage and the principles that should guide such intervention.<sup>41</sup> The Inquiry noted:

*The case for government intervention rest primarily on the desire to ensure that the community benefits associated with historic heritage places are provided at a socially optimal level.*<sup>42</sup>

The Inquiry’s draft finding 7.8 stated:

*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.*<sup>43</sup>

The primary recommendation by the Draft report was that legislation should be amended such 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”<sup>44</sup> [My emphasis]

<sup>37</sup> Draft Report, p 144

<sup>38</sup> Draft Report, p 101

<sup>39</sup> Draft Report, p 192

<sup>40</sup> Draft Report, p xviii

<sup>41</sup> Draft report, p 109

<sup>42</sup> Draft Report, p 128

<sup>43</sup> Draft Report p 172

<sup>44</sup> Draft Report Draft Recommendation 9 2 and 9 3, pp 194 and 195

A consequence of this recommendation is that the property agreement would be the primary document dealing with all heritage values for that property. The Inquiry also recommended that "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"<sup>45</sup>, by local councils when making a planning or development decision, once a conservation agreement has been entered into.

The Draft Report focused on the role of a negotiated conservation agreement as the primary mechanism for achieving the balance between the rights and interest of the non-government owner of a heritage item and the state seeking to enforce an interest in protecting and conserving the heritage value of the item, on behalf of the community.

## Comments and conclusions

The predominant driver for the conclusion expressed in the draft report is the reduction of the role of government in the conservation of historic places. In order for government intervention to be supported by the Productivity Commission it is necessary for there be a demonstration that the market is not able to effectively produce a satisfactory outcome. However it is also clear that coupled with that driver is a re-evaluation of the intrinsic value of heritage. Despite the rhetoric maintained by the federal government as to the value of symbols and 'cultural icons' in the development of an Australian national identity, the Productivity Commission would suggest that government has no actual role to play in that development. There must be a market failure before the balance shifts towards government intervention.

Such propositions ignore two important factors.

The first is the development over the last 200 years of local government and planning controls. Community regulation has been a feature of Australian society for many years. Self-regulation has led to the formation of local governments and the passage of by-laws and ordinances to control the actions of individuals within the community.

The second is the very history of heritage protection in Australia. From the very beginning the desire to preserve and protect both the natural and built environment arose from a failure of governments to regulate the market and a clear failure of the market to protect heritage values.

The post-war creation of the National Trust was a recognition that heritage required more than the market. It was, as a state sanctioned NGO a powerful reminder that the community could not trust government alone, or even government and the market working together, to preserve the community's, or the nation's heritage.

In the 1960's and 1970's the failure of the market was clear with the world's first Green Ban on 17 June 1971 to protect Kelly's Bush, Hunters Hill<sup>46</sup>. The battle for Kelly's Bush brought together the middle class (represented by the residents of Hunters Hill) and the working class (represented by the NSW Builder's Labourer's Federation under Mundy and Owens) to directly oppose developers and the government to preserve remnant bush-land in a suburb of significant heritage value and one listed on the Register of the National Estate.

During the four years of the Green Bans in Sydney it was estimated that over 40 greens bans had been applied under the Munday-Pringle-Owens leadership of the NSW BLF, halting projects in the Rocks, Newtown and other areas to the value of \$3000 million.<sup>47</sup> These Green Bans altered the future of Sydney and the shape of the character of that city.

Elsewhere around Australia, actions taken by local communities, together with unions and sympathetic politicians led to the protection and preservation of heritage items that would not have occurred under the recommendations proposed by the Productivity Commission.

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45 Draft Report, p 205

46 Dr B Sherry and D Baglin, *Hunter's Hill, Australia's Oldest Garden Suburb*, David Ell Press, 1981, p 104

47 M Hardman and P Manning, *Green Bans, The Story of an Australian Phenomenon*, ACF Publication,



The recommendations proposed by the Productivity Commission would see heritage revert to being another property right for which compensation would be required as the price of protection.

Rather than weakening the existing system it would be better to offer opportunities to reform and strengthen the heritage listing processes. There is no doubt that, with greater financial assistance provided by both state and federal governments to local government, more work could be done on assessing items of heritage and determining what values should be preserved and what values are able to be altered or developed.

One of the most pressing matters not addressed by the Productivity Commission Draft Report is the need to increase the mechanisms for protection and compliance with existing legislation. Prosecutions for breaches of the heritage protection legislation of for failing to maintain heritage values are rare<sup>48</sup>. One way that this could be addressed would be to establish at state and territory level an Office of the Heritage Advocate ("OHA"). The OHA would be mandated to investigate and prosecute potential breaches of conditions designed to preserve heritage items. The OHA would operate either independently or in support of local government. It could act either using criminal or civil enforcement mechanisms.

The preservation and protection of heritage is an intrinsic part in the development of a civil society. For government to abandon this field and rely on individually negotiated conservation agreements would be a significant set-back in the development of an Australian civil society.<sup>49</sup>

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48 For further examination of this issue see C Allen, "New South Wales Heritage Act – lion or mouse", (2005)11 LGLJ 88

49 This paper focuses on the built heritage as a consequence of the Productivity Commission Draft Report. The protection of natural, cultural and moveable heritage also require a strengthening of existing mechanism and not any reduction