

**Submission
No 56**

INQUIRY INTO REVIEW OF THE HERITAGE ACT 1977

Name: Professor Richard Mackay

Date Received: 25 June 2021



25 June 2021

The Honourable Peter Poulos MLC
Chair
Standing Committee on Social Issues
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Mr Poulos,

Inquiry into the Heritage Act 1977 – Submission by Prof Richard Mackay, AM

I make this submission in a personal capacity, in response to the Inquiry into the *Heritage Act 1977* (the Act) which was referred to the Standing Committee on Social Issues (Committee) for inquiry and report on 13 May 2021 (the Inquiry).

Request to Meet with the Committee

In view of my relevant skills and substantial experience, as outlined below, I request an opportunity to meet with the Committee to discuss my concerns, observations, suggestions and ideas.

Skills and Experience:

- Former Member NSW Heritage Council;
- Inaugural Chair of the NSW State Heritage Register Committee;
- Close familiarity with the operations of the *NSW Heritage Act* since 1982;
- Former Member and Chair NSW Heritage Council Archaeological Advisory Panel;
- Former Chair Australian World Heritage Advisory Committee;
- Strategic advisory roles for Queensland and Victorian Heritage Councils;
- Independent 'Mackay Review' of *Historic Cultural Heritage Act 1995* (Tas);
- Currently expert cultural heritage adviser to the UNESCO World Heritage Committee;
- Cultural tourism expert – eg: Leader of the Angkor (Cambodia) Tourism Management Plan;
- Deep knowledge of Australian heritage systems, legislation, issues and processes through nearly a decade of involvement as principal author of the 'heritage component of the Commonwealth State of the Environment Reports for 2011 and 2016';
- Adjunct Professor in archaeology and cultural heritage;
- Team Leader of more than 1,000 cultural heritage projects, including major conservation programs, archaeological excavations and adaptation of State Heritage Register items;
- Expert witness in numerous 'heritage' matters in the NSW Land & Environment Court; and
- Commissioner of the NSW Independent Planning Commission.

General Comments:

1. The Terms of Reference (ToR) provided to the Committee are narrowly-focused and, while it is technically possible to address important related considerations as “any other related matter”, the Inquiry should look far wider than the Act, to the totality of the heritage system as it currently operates in NSW.
2. The apparent priority given to the Act (and not other legislation) is surprising – although the Inquiry referral refers to “NSW Heritage Legislation”, it is very focused on cultural heritage and particularly historic heritage. This is an inappropriate priority: implementation of outcomes from the process for reform of Aboriginal heritage legislation in NSW should be expedited in preference to any contemplation of amendments to the Act.
3. The Discussion Paper issued to inform and provoke the Inquiry is fundamentally shallow and pre-directed towards particular issues, rather than inviting open comment, critique or suggestions relating to cultural heritage identification, protection, conservation and management.
4. While there will always be opportunities to improve and refine legislation, the issues and challenges that are purportedly addressed in the Discussion Paper arise predominantly from the approach and systems currently used in applying the Act, rather than in the Act itself.
5. It is a glaring omission that the ToR for the Committee do not include benchmarking against other Australian jurisdictions or internationally; for example, the absence of reference to the heritage component of the Commonwealth *State of the Environment Report* is particularly concerning.
6. The ToR do not engage adequately with contemporary cultural heritage issues and challenges, especially the implications of climate change.
7. The principle of ‘subsidiarity’ in which State heritage is best regulated by State Government and ‘local’ heritage is best regulated by local government should be applied in NSW, through a cohesive set of statutory, policy and practice reforms.

Response to Inquiry Terms of Reference

- (a) the need for legislative change to deliver a heritage system that is modern, effective and reflects best practice heritage conservation, activation and celebration*

Aboriginal Heritage Statutory Reform

The primary need for legislative change to deliver an appropriate heritage system in NSW is stand-alone legislation relating to Aboriginal heritage. This legislation needs to move Aboriginal heritage away from

the laws and regulations used to protect parks, flora and fauna – and needs to encompass an inclusive ‘rights-based’ approach which recognises that Aboriginal people should play a determinative role in decisions that affect their heritage. Aboriginal heritage legislation also needs to deal with far more than the current statutory limit on ‘Aboriginal Objects’ – addressing ‘Country’, beliefs, the meaning of places and other intangible values, storylines and connections. There has already been an inclusive consultative process in place for Aboriginal heritage legislative reform in NSW for many years – and it is unrealistic to expect that they will ever be complete consensus – so; it would be far preferable for the current Government to proceed with immediate statutory legislative change, and to fine tune the new legislation subsequently.

Improved implementation rather than statutory change

The current Act, although not subject to major reform for nearly two decades, is not particularly problematic. Indeed, its objectives, fundamental principles and processes and the protection and consent provisions are well resolved and could be highly workable.

However, the Act is not currently administered as effectively as it might be. At the State level, there appears to be an approach which is often reluctant to allow change including adaptation. At the local level, there are inadequate skills, duplication of processes and inconsistencies. There are inadequate resources provided at the State level – particularly to Heritage NSW. This results in over-reliance on formulaic and bureaucratic approaches, excessive regulation, reluctance to support effective and appropriate intervention, and a general philosophy of change resistance.

In short, the priority should not be legislative change, but rather a change in approach – to focus on retention of identified cultural heritage values rather than minimisation of change – leading to the specified desired outcomes that are “modern, effective and reflecting best practice heritage conservation, activation and celebration”.

Focus Question 1:

What should be the composition, skills and qualities of the Heritage Council of NSW?

There is a fundamental question to be addressed by the Inquiry – namely, whether the NSW Heritage Council would best support the Objectives of the Act as an expert advisory body or a statutory consent authority. The answer to this question should determine the Council composition, skills and qualities.

At present, the NSW Heritage Council fulfils both roles (to some extent), as do the Minister and authorised delegates. This leads to lack of clarity in listing and in consent decisions, as well as a blurring of roles and misunderstandings about the relevant matters for consideration (as revealed by the Sirius Building judgment, for example).

The most successful model for State and National Heritage Councils is where the Council itself is an expert body, identifying and listing heritage items and providing expert advice to a different consent authority – the Minister and/or Government officials.

If this position were to be accepted, it is not necessary for the Heritage Council to be ‘representative’ of sectorial interests – it can, and should, properly be ‘expert’, including a range of experts (some of whom might be drawn from bodies such as the National Trust) with relevant skills and experience who provide independent advice to the Government. The Heritage Council would make decisions about what is included on the State Heritage Register, based on heritage values, only. The Council could then also provide value-adding expert advice on approaches, guidelines, resource and other resource and education materials.

Under this model, the Government would make consent decisions – either at a Ministerial level, or through the relevant government agencies; currently Heritage NSW. The consent authority could – should – and would – seek expert advice from the Heritage Council.

Focus Question 3:

Are the objectives of the Heritage Act still relevant?

The current Objectives of the Act has stood the test of time and neatly encapsulate an appropriate set of aspirational intentions; they are still relevant and there is no need for any change.

(b) *the adequacy of the Act in meeting the needs of customers and the community and the protection of heritage*

The Act itself is adequate to meet the needs of the community, the needs of those who use its provisions (who may not necessarily be “customers”) and to protect heritage; particularly heritage that is significant at the State level.

The main obstruction in delivery of the Act’s Objectives relates to resourcing. In particular, even after more than 20 years, the State Heritage Register is not adequately representative of the State’s heritage and additional resources are required to undertake necessary thematic studies and documentation; (see below).

The Act itself is functional, but some of its provisions are not effectively operated. For example, Section 139 provides for “exceptions” to the need to obtain an archaeological excavation permit. At present, this provision is administered by requiring applicants to apply for an exception. Apart from being arguably being *ultra vires*, this approach is not responsive to the needs and expectations of the community, nor expert practitioners nor applicants.

One area in which the Act seems to be particularly deficient relates to NSW State Government agencies, who are the owners and managers of the majority of the State-significant heritage items in NSW. Section 170 and 170A of the Act would be improved by revisions which place far greater obligations on NSW Government agencies to be exemplary heritage asset managers – and to manage the assets under their control in a manner that conserves their heritage values.

Focus Question 4:

Does the Act adequately reflect the expectations of the contemporary NSW community?

The Act is reflective of expectations of the contemporary NSW community. As noted elsewhere in this submission, overly-bureaucratic, rules-based application of the provisions in the Act can be obstructive and frustrating for some heritage place owners, applicants and their advisers, and it would be helpful to focus more on collaboration and achievement of positive outcomes, which conserve heritage values.

While there are a number of relevant publications and guidelines, the Act could be further supported through preparation and publication of additional resource materials. In this regard, it would be also highly-appropriate to enable the Heritage Council or Minister to be empowered to adopt relevant principles, standards or guidelines from other agencies – in particular the *Australia ICOMOS Charter for Places of Cultural Significance: the Burra Charter* (2013) and its associated practice notes and guidelines, and perhaps to link these to both exemptions and merits-based decision-making under the Act.

(c) *how the Act could more effectively intersect with related legislation, such as heritage elements of the Environmental Planning and Assessment Act 1979 and the National Parks and Wildlife Act 1974*

There is a disconnect in relation to natural heritage resources and places between the respective coverage of the Act and the *NSW National Parks and Wildlife Act 1974* (NPW Act). It would be appropriate to amend both pieces of legislation, to create a greater alignment and greater clarity of coverage and requirements. This might include, for example, inclusion of National Parks, or places within them, on the State Heritage Register, but subject to statutory exemptions under the Act, enabling the NSW Parks Service to continue to manage them in accordance with adopted / endorsed plans of management. (The use of statutory exemptions in this manner is an example of improved intersection between the related legislation).

National Parks and Wildlife Act 1974

Focus Question 2:

How should Aboriginal Cultural Heritage be acknowledged and considered within the Heritage Act

The most significant anomaly arising between the Act and the NPW Act – and in the current Inquiry – is the manner in which Aboriginal heritage is regulated, managed and approached in NSW.

It is an appalling indictment that, in NSW, in 2021, Aboriginal cultural heritage is currently regulated and managed through the same in legislation that deals with parks, flora, fauna and geology. Separate stand-alone Aboriginal heritage legislation is required – and is long, long overdue.

As indicated elsewhere in this submission, it is important that new Aboriginal heritage legislation be derived from a thorough consultation process with Aboriginal people and particularly those who are Traditional Custodians – and it is relevant that this process has already occurred and has been ongoing for some years. It is naive and not realistic to expect (or hope) that there will ever be complete consensus about approaches to Aboriginal heritage protection and regulation. The NSW Government should incorporate within the new legislation elements such as:

- a rights-based approach;
- acknowledgement that Aboriginal people should make decisions about their heritage;
- identification processes for identification of who should speak for ‘Country’;
- consultation with associated people;
- intangible values that are not attached to physical evidence;
- landscape-scale stories and their significance;
- timeframes that reflect and respect Aboriginal culture and practice.

Notwithstanding the need for separate legislation, it is vitally important that the Act should continue to apply to Aboriginal (and natural) heritage, as it is an artificial (European) construct which divides nature and culture – or Aboriginal and non-Aboriginal heritage. As many Aboriginal colleagues would explain, our significant places are the embodiment of natural and cultural values; and many places of great Aboriginal significance involve post-invasion history.

[Environmental Planning and Assessment Act 1979](#)

Focus Question 14:

How could we improve heritage consideration within land use planning systems?

The *Environmental Planning and Assessment Act 1979* (EP&A Act) has considerable overlap and some inconsistency with the Act. Fundamental to resolving inconsistency is the notion of subsidiarity in which decisions about heritage items are made at the appropriate level of government. There is an inherent logic that the State heritage agencies should regulate places of State significance and that those of local heritage value should be regulated at the local level. This would be possible, through environmental planning instruments and guidelines (such as development control plans), prepared in accordance with the EP&A Act. The existing processes for ‘Integrated Development Assessment’ (IDA) generally work well to allocate responsibility for ‘State’ heritage issues to the Heritage Council or Heritage NSW – these IDA arrangements might usefully be extended to archaeology (Sections 139 to 146 of the Act).

In changing the Act, the opportunity should be taken to clarify and reinforce arrangements between State and local heritage, noting that places may have both State and local values. This would require not only statutory and regulatory change, but also a substantial increase in resourcing for heritage advice and expertise at the level of local government. Subject to appropriate bi-lateral agreements with the Commonwealth, the opportunity exists to extend such an approach to National Heritage places and World Heritage properties.

An example of this approach relates to archaeology: in cases where appropriate archaeological zoning plans have been prepared and expertise can be made available at the local level, archaeological resources of local significance could be managed locally – rather than through the central State heritage agency.

(d) the issues raised and focus questions posed in the Government's Discussion Paper, in particular:

(i) a category approach to heritage listing to allow for more nuanced and targeted recognition and protection of the diversity of State significant heritage items

A category approach to heritage listing would be inappropriate and would not facilitate improved recognition and protection of State significant heritage items. There is considerable strength in using the existing 'NSW Heritage Assessment Criteria' (and related guidelines) as the basis for determining which places have State heritage value – and it is these places that should be included on the State Heritage Register. There is no need for a 'category approach', nor has that been demonstrated to be helpful or effective in other jurisdictions.

The desirability of a more nuanced and balanced State Heritage Register is acknowledged, and this should be achieved through more proactive strategic approaches, including theme-based studies and pro-active identification (then filling) of gaps.

Such a process is already underway, for example, through the current initiatives to include more First Nations places and places with LGBTQI history and significance on the State Heritage Register. There is no reason, other than lack of resourcing, (and perhaps overly onerous requirements about the necessary level of information and justification), that prevents such a thematic approach being extended successfully.

According to the 2019-2020 Annual Report of the NSW Heritage Council, a document has been prepared called 'Future of the State Heritage Register: Vision and Objectives'. However, this document is apparently not publicly available (which is curious in the context of the current Inquiry). Does it address strategic approaches and thematic listing?

Focus Question 8:

How could tailored heritage protections enhance heritage conservation?

Related to the question of thematic approaches and the need for customised management of different types of heritage place, there is an important opportunity to improve both protective provisions and conservation of heritage values, through the preparation of more customised guidelines and other resources which inform decision-making and guide owners.

The preparation of such guidelines and fit-for-purpose tailored solutions to different types of heritage place: urban areas, cultural landscapes, archaeological sites or industrial works, for example – would both enhance conservation outcomes and support practical real-world solutions. The preparation of such guidelines does not require a ‘category approach’ to listing.

On a similar note, the preparation of sets of customised standard exemptions, which reflected the attributes of different types of heritage place (which could flow from the abovementioned guidelines), would also facilitate improved outcomes for listed heritage places and their owners and managers.

(ii) consideration of new supports to incentivise heritage ownership, conservation, adaptive reuse, activation and investment

Focus Question 5:

How can the NSW Government legislation better incentivise the ownership, activation and adaptive reuse of heritage?

Heritage is a ‘public good’, but also a ‘market failure’. The market failure exists because the benefits of the public good are enjoyed by the entire community, whereas the costs of providing that good are borne by the owners and managers of heritage places. Therefore, it is appropriate that the statutory regime for heritage in NSW should support and provide incentives for those involved in the care, control, and management of heritage places.

The most recent Annual Report of the Heritage Council (2019-2020) indicates that a project was launched to understand the economic and financial impacts of heritage listing. This was stated as contributing more support for owners and managers of state heritage properties and increasing interest in heritage ownership and investment to the broader community. It is understood that this project has been placed on hold owing to other priorities: so: one simple action that the NSW Government might take to incentivise heritage place ownership would be to refine and re-commence this project.

Support and incentives can be both direct and indirect:

Direct support can include various forms of financial subsidy, ranging from grants, low interest loans, rate relief to tax deductibility or tax rebates. All of these should be actively considered. Noting the abovementioned ‘community’ value of heritage, it would be appropriate to consider initiatives that

raise grant or loan funding directly from the community – the UK Heritage Lottery being an example of how this can be achieved with considerable success.

Indirect support is also important – and it is reasonable that owners, managers – and sympathetic developers – of heritage items be provided with operational incentives, such as concessions on development standards, fast-track applications, transferrable floorspace or other development rights, reduced bureaucratic requirements and access to expert advice. In every case, the reasonableness test for such concessions or assistance should be centred around conservation of heritage values. While there are some provisions within standard Local Environmental Plan and Development Control Plan templates in NSW, the tests are too onerous and do not always facilitate optimal heritage outcomes.

Within the Act itself, and in its implementation, more extensive use of ‘heritage agreements’ and greater endorsement of conservation management plans (or better-still – short conservation strategies) would also facilitate and incentivise heritage conservation.

The recent decision by the NSW Heritage Council/Heritage NSW to cease the practice of endorsing conservation management plans (CMPs) is a retrograde step, and a simplistic ‘avoidance’ response to the 2019–2020 CMP review. A far better approach to the overly-bureaucratic CMP review process that had grown over the last 20 years, would be to enable the Heritage Council (or delegate) to endorse a short ‘conservation management strategy’ statement for a heritage item – thereby giving rise to statutory exemptions and/or access to assistance or concessions.

Focus Question 6:

How can we improve incentives within the taxation system to help mitigate the cost of private heritage ownership?

It would make a significant difference to the owners of heritage places in NSW if approved conservation works could be granted some level of tax deductibility – or tax rebate status.

Recognising that taxation is largely a Commonwealth issue, rate reduction or land tax relief are appropriate and potentially highly-effective financial mechanisms to improve incentives for the owners, managers – and potential developers – of heritage items.

As noted above, eligibility for heritage-related tax concessions should be centred around conservation of heritage values.

Focus Question 7:

What sort of initiatives might encourage activation and conservation of heritage through commercial and philanthropic investment?

The incentives already noted above would apply to commercial investment on heritage places and could encourage and facilitate sympathetic development. Philanthropy is more challenging, owing to

competition from other needy causes and should not be seen as a priority relative to better direct and indirect incentives as outlined above. That noted, the NSW Heritage Council could potentially facilitate philanthropic support for conservation projects by preparing an annual ‘prospectus’ and hosting briefing events for corporate and individual philanthropists. The NSW Government could enhance such a process by offering further incentives such as rate or land tax relief, (or even matching grant funding) by way of leveraging philanthropic support.

(iii) *improvements to heritage compliance and enforcement provisions*

Focus Question 16:

How could heritage compliance and enforcement be improved?

Recognising that Heritage NSW has a compliance policy, it is nevertheless apparent that there is relatively little proactive monitoring of compliance with the Act, nor monitoring of compliance with many approval conditions. Heavy reliance is placed on community reporting – and notwithstanding what is indicated in the policy, the reality is that public domain inspections are ad hoc and opportunistic, rather than systematic. They have been very few successful prosecutions under the Act.

Effective actions that can be taken to improve heritage compliance and enforcement include:

- increasing resources for Heritage NSW – and employing allocated dedicated compliance officers;
- placing greater reliance on competent practitioners; – for example Australia ICOMOS members or others who subscribe to an appropriate Code of Ethics;
- accreditation of heritage practitioners by a NSW Government agency or professional association;
- improved collaboration with local government.

(iv) *streamlining heritage processes*

Focus Question 11:

Would streamlining enhance the listing process?

If the principle of subsidiarity is accepted, heritage processes could be streamlined through better allocation of resources and responsibilities between State and local heritage. This would require adjustment and alignment between the Act and the EP&A Act.

Noting suggestions made elsewhere in the submission, there are considerable opportunities to streamline processes through preparation of more-customised statutory exemptions, relating to particular types of heritage place.

The level of intervention and ‘hands-on’ involvement by officers from Heritage NSW could be reduced through greater reliance on competent, ethical practitioners. This would be facilitated by accreditation of heritage practitioners.

Endorsement of conservation management approaches could be facilitated, by endorsing succinct ‘conservation management strategy’ documents, rather than requiring lengthy, cumbersome ‘conservation management plans’ (CMPs) – or worse still, declining to endorse CMPs at all.

If the owner of a nominated item does not object to heritage listing (or is the nominator), the assessment process and level of information required could be reduced.

Focus Question 12:

How could we improve the current approval permit system?

Recent initiatives by Heritage NSW have improved the approval system – particularly the new range of standard exemptions which were introduced in December 2020.

The system could be further improved by facilitating even greater use of ‘exemption’ and ‘exception’ provisions, without the need for application or notification to Heritage NSW.

Greater reliance could and should be placed on appropriately skilled, experienced professionals who subscribe to an appropriate Code of Ethics. This would also be facilitated by accreditation of heritage practitioners.

Greater delegation could and should be provided to local government, and, as noted elsewhere in this submission, more local issues could be dealt with at the local level, through the EP&A Act.

Focus Question 13:

Are the current determination criteria for heritage permits still appropriate?

There are opportunities to improve the Act, through simplifying the basis for determining heritage approvals and permits – the fundamental question is the is whether or not there is either a material adverse affect on heritage significance, or a compelling practical reason (such as structural failure) to approve a proposed change (or both).

Relevant considerations for issue of approvals or permits would be more appropriately located within associated guidelines or regulations – such as, for example, customised guidelines for different types of State Heritage listed place.

This approach could usefully be extended to heritage regulation at the local level, through better integration with the EP&A Act.

Focus Question 15:

Are there opportunities to enhance consideration of heritage at the strategic level?

There is a fundamental systemic flaw in heritage regulation and management in NSW, because of over-reliance on incomplete statutory lists. At both State and local level, heritage places are typically managed through inclusion on a heritage schedule in a planning instrument, or listing on the State Heritage Register. That is all very well for the places which have been identified, but leaves many important aspects many important places languishing.

In the case of local heritage places, even if these are identified, that is often based on a cursory study and limited documentation, which can become problematic in the case of contested applications or legal proceedings – where the resources available to Applicants and developers typically far exceed those of statutory agencies and consent authorities.

One obvious suggestion to address this problem is to increase the level of support for comprehensive heritage surveys and assessment reports – at the local and State level. This would accord with suggestions made elsewhere in this submission about a more a better-resourced approach to gap analysis and thematic studies to support an expanded State Heritage Register.

It is also worth considering an alternative approach – in which heritage is considered more holistically as an underlying resource, not primarily in response and reaction to pre-listed places, but as a general scoping and assessment obligation of development proponents. This is particularly appropriate for large-scale projects, such as resource extraction. Under such circumstances, strategic evaluation of potential heritage assets would be undertaken, in the same way that in other environmental factors – such as geology, biology, contamination or social context are researched, documented and evaluated as part of a ‘Strategic Environmental Assessment’. The same approach could be applied to natural and cultural heritage – thereby avoiding the regular perception that ‘heritage’ has arisen late in the process (owing to deficient lists or registers) and is the ‘problem’ – when the potentially-affected heritage assets were there all the time.

(e) any other related matter.

State Government Leadership

The attention of the Inquiry is drawn to the heritage component of the 2016 Commonwealth *State of the Environment Report*, and particularly its conclusions regarding heritage as a ‘shared responsibility’ between different levels of government, corporations, community organisations and private owners. If this position is accepted, the NSW Government has an important leadership role, not only in documenting and regulating heritage, but in leading by example and co-ordinating local government efforts. This applies particularly in relation to state-owned heritage assets, but also in terms of educational and promotional activities, capacity building for local government, resourcing, support for

private heritage owners and many of the other matters raised in the submission. In short, the NSW Government should become a leader in exemplary heritage conservation and management.

Other Discussion Paper Focus Questions

Focus Question 10:

Would greater community engagement deliver a more robust State Heritage Register?

The NSW community is already strongly engaged in heritage conservation – and the Inquiry should be mindful that the vast majority of identified heritage places in New South Wales are items of local significance that are important to local communities. That is not to exclude the importance of a more comprehensive, representative and robust State Heritage Register.

Community engagement in the State Heritage Register can be facilitated through a less cumbersome listing process, expanded opportunities, such as a regular ‘call for nominations’ program, and some of the incentives suggested elsewhere in this submission.

Focus Question 17:

How could understanding of state heritage be enhanced?

In NSW, the notion of State Heritage is reasonably well understood; particularly by agencies and individuals involved in the process. Heritage NSW has, over recent years undertaken an effective range of community outreach and awareness programs.

If the Inquiry (and Government) were to accept the position put in the submission that category listing is not desirable, but that additional guidelines and resources should be prepared related to particular categories of heritage place, community understanding could be significantly enhanced, through a promotional program associated with those new resources.

Focus Question 18:

How could we improve heritage tourism or help activate heritage places for tourism?

The most-recent (2019-2020) Annual Report of the NSW Heritage Council makes reference to a new ‘tourism project’, but it is understood that this did not proceed. So; an obvious and simple thing to be done, to improve heritage tourism and/or activate heritage places for tourism, would be to reactivate and/or revise and resource this project.

There are examples in other Australian jurisdictions and internationally of effective cultural tourism programs which draw upon the data held by heritage agencies and the public interface of tourism agencies to create tourism ‘products’. In this regard, a potentially appropriate initiative would be a collaboration between Heritage NSW and Destination NSW aimed at making information about State and local listed heritage places available to the tourism industry and to visitors. An example of this approach is a Victorian heritage app which can be easily used by visitors to regional Victoria.

Focus Question 19:

How could public heritage buildings be activated to meet the needs of communities?

This final focus question highlights that the Act, and the mindset of many of those involved in its implementation, is formulated with 'buildings' in mind. In fact, many of the important public heritage places in New South Wales are not buildings – and this question should be expanded to consider other types of sites – such as Aboriginal places, industrial heritage, infrastructure works, national parks, archaeological sites, shipwrecks or landscapes.

As noted elsewhere in this submission, the NSW Government has an important opportunity to become an exemplar manager of state-owned heritage assets. Sections 170 and 170A of the Act should be amended accordingly – and proactively implemented by the relevant agencies.

The same approach could be applied to local government, noting that in many regional communities, significant heritage assets are in State or local government ownership.

In terms of community needs, there is nothing particularly special or different about 'public' heritage buildings (and other assets) – they warrant the same care, control and management in a way which conserves that identified heritage values, consistent with established principles, and in particular the *Australia ICOMOS Charter for Places of Cultural Significance: the Burra Charter* (2013).

Conclusion

Thank you for the opportunity to provide this submission. I repeat my request that an opportunity be provided to meet directly with the Standing Committee on Social Issues.

Yours Sincerely,

Prof Richard Mackay, AM