



**LEGISLATIVE ASSEMBLY**  
**FOR THE AUSTRALIAN CAPITAL TERRITORY**

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STANDING COMMITTEE ON ENVIRONMENT, CLIMATE CHANGE AND BIODIVERSITY  
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## Submission Cover Sheet

Inquiry into ACT's heritage arrangements

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**STANDING COMMITTEE ON ENVIRONMENT, CLIMATE  
CHANGE AND BIODIVERSITY  
INQUIRY INTO THE ACT'S HERITAGE ARRANGEMENTS**

SUBMISSION BY PROFESSOR ROZ HANSEN AM

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## 1. INTRODUCTION

This submission is based on my experience as a member of the Victorian Heritage Council (then known as the Historic Buildings Council) from 1986 to 1994 during which time I chaired that Council for 6 years (from 1988-1994), as a member of the ACT Heritage Council (from 2020 to 2022) and an urban planner working in the planning and development industry for more than 40 years both in Australia and the Asia Pacific Region. Based on my extensive knowledge and experience in the cultural heritage sector I am of the opinion that the current governance structure related to the ACT Heritage Council (the Council) and the ACT Heritage Unit (the Unit) as well as content of the ACT *Heritage Act 2004* (the Act) are in need of a major overhaul. Despite there being separate legislation dealing with the cultural heritage of the Territory, the Council continues to operate largely as a referral entity with its powers and authority overshadowed and potentially undermined by the ACT *Planning and Development Act 2007*.

The Council acts only as an advisory body to the ACT Government despite its statutory recognition under the *Heritage Act 2004*. The Council has very few decision making powers. Any action to register a place or object on the ACT Heritage Register is a decision made by the Minister for Heritage taking into consideration recommendations from the Council. Any decision on a development application (DA) dealing with a registered heritage place or object is ultimately made by the Environment Planning and Sustainable Development Directorate (EPSDD) and not by the Council. The EPSDD is required to take into account the advice of the Council but does not have to accept that advice when deciding a DA for a registered heritage place.

As a referral entity the Council does not have the right to appeal directly to the ACT Administrative and Civil Tribunal (ACAT). If it wishes to defend its advice that a DA be refused or that specific conditions should be applied to that DA it is required to join as a third party rather than as a recognized statutory authority expert in heritage matters. In essence, the Heritage Council under the current legislation is a 'toothless tiger' with very little power or authority and yet a wealth of expertise and experience in cultural heritage.

This current review of the ACT *Heritage Act 2004* offers a significant opportunity to overcome many of the shortcomings, deficiencies and problems of the current legislation and to establish a statutory body that is aligned with how a 21<sup>st</sup> century Heritage Council can operate effectively, act in the best interests of the community and exercise autonomy in decision making based on independent, objective and evidence based information. It will need a change in the current governance and administrative structure whereby the Council is not a mere referral entity but a separate statutory authority with legal powers to make decisions on the registration of places and objects of heritage significance and approve or refuse development applications which, in turn, can be appealed at ACAT by the property owner, the EPSDD or other interested parties.

However, what is required is more than a review of the legislation per se. There is little doubt that the ACT Heritage Unit also needs to be properly resourced, better trained and skilled in cultural heritage matters and committed to working with the Council in a collaborative way. A structure and composition of the Unit is required where the Council sets priorities, implements an approved ACT Heritage Strategy (which at present does not exist), makes informed decisions dealing with heritage places and objects including Aboriginal places and objects and has 100% support from the Unit. Rather than the Unit wanting to 'control' and restrict the activities of the Council, as has been my experience, it should be supporting the Council in fulfilling its role and functions under a new heritage act.

In preparing this submission I have made numerous references to the *Heritage Act 2017* in Victoria as I believe its structure and content offers valuable insights as to how modern day fit-for-purpose heritage legislation should operate. In addition, the recent review of the NSW Heritage Act is of relevance to this current review including the *Review of NSW Heritage Legislation Discussion Paper, Standing Committee on Social Issues, April 2021* and the *NSW Legislative Standing Committee on Social Issues Review of the Heritage Act 1977, Report 59, October 2021*.

## **2. BACKGROUND**

Reviewing and amending the Act alone will not address what have been ongoing issues in terms of governance and, in particular, the working relationship between the Council and the Unit. The Unit is required to support and advise the Council in its deliberations. It provides administrative support as well as professional advice on cultural heritage matters to Council. During my involvement with the Council I experienced problems including the following:

- A lack of appropriate leadership both within the Council and the Unit that failed to nurture a collaborative and inclusive working relationship.
- A breakdown in communications between the chairman and some members of the Council whereupon some decisions were being made unilaterally rather than in a consultative and engaging manner with all members of the Council.
- A reluctance within the Unit to provide information sought by some Council members to the point that there was an element of stonewalling and lack of co-operation and respect for the Council.
- An unwillingness to include important items on the Council agendas that members requested other than to offer that opportunity as 'Other Business' in the last 10 minutes or so of the meeting.
- A failure from the Unit to deliver within reasonable timelines on Action Items listed in meeting agendas.
- An attitude from some members of the Unit that it is 'in control' of the Council, that it sets the annual priorities and not the Council and a belief that members of the Council did not understand the operations of the Unit or the heritage legislation despite their extensive experience in cultural heritage in both the public and private sectors.

These and other problems culminated in the dismissal of the Council in early December 2022 by Minister Vassarotti based on the Nous consultant report '*Review of the ACT Heritage Council – Report for internal use*' November 2022. The report contains allegations of bullying, unprofessional behaviour, harassment and overbearing behaviour from Council. To this day these allegations have never been independently investigated or proven to be valid and yet appeared in the report as if they were true and, it would seem, formed the basis of the Minister's decision to dismiss the Council. I note that I am not permitted to divulge details of that report other than the Executive Summary which was released to the public as I have been informed by the Minister in her letter to me dated 15 November 2022 that:

*As statutory office-holders, Council members are bound by, and must comply with, the Code of Conduct, division 2.1 of the Public Sector Management Act 1994 and so as a Council member you must not disclose confidential information gained through your role with the Council. The seriousness of this responsibility is reflected in s 153 of the Crimes Act 1900 where public employees and former public employees must not disclose information that it is their duty not to disclose, without lawful authority. I confirm that it is your duty not to disclose the report or its contents.*

However it is fair to say that the report focused primarily on the Council with little, if any comment on the behaviour of the Heritage Unit towards the Council and, in particular, a lack of respect for some Council members who have extensive experience in the cultural heritage sector.

I can reveal that the consultant interviewed all nine members of the Council in August 2022 and four of the Unit staff plus received written comments from some participants. These serious allegations of bullying etc. are anecdotal and came to my attention and other members of Council only when reading what is currently an eleven page report that is not available to the public and lacks any context in which to assess such allegations. At no stage were such issues ever raised with members of the Council by the chairman or the Acting Secretary of the Unit but, interestingly arose only during the review of the Council and the Unit. The client for the review was EPSDD being the entity under which the Unit operates. In my opinion the Council became the scapegoat for what were systemic problems within the Unit that had been experienced by members of previous heritage councils in the ACT.

I assume that the Standing Committee has a copy of the full report by Nous consultants and supplementary information provided to the consultant, as well as written submissions to Minister Vassarotti once the report was emailed to Council members for comment. It is imperative that the Standing Committee has an informed understanding as to the context for this review of the heritage arrangements in the ACT.

### **3. OBJECTIVES OF A HERITAGE ACT**

The main objects of the current Act are stated in *Part 1 Preliminary S.3*. These objectives are inadequate and focus too much on process/systems rather than the intent of the Act and its desired outcomes. A good example of objectives of a heritage act can be found in *Part 1 Preliminary* of the *Heritage Act 2017*<sup>1</sup> in Victoria as that legislation not only clearly and succinctly sets out the purpose of the Act in terms of the registration, protection and conservation of cultural heritage, but establishes other instruments to facilitate the achievement of this first objective as indicated below:

#### **1. Purpose**

*The purpose of this Act is to re-enact with amendments the **Heritage Act 1995**—*

- (a) to provide for the protection and conservation of the cultural heritage of the State; and*
- (b) to establish a Victorian Heritage Register for the registration of places and objects; and*
- (c) to establish a Heritage Inventory for the recording of archaeological sites and approved sites of archaeological value; and*
- (d) to establish a Heritage Council to perform functions in relation to cultural heritage; and*
- (e) to establish a Heritage Fund to provide for the conservation and management of cultural heritage; and*
- (f) to provide for the management of places included in the World Heritage List; and*
- (g) to create offences and other enforcement measures to protect and conserve cultural heritage.*

The NSW Heritage Act has the following objectives or purpose:

- (a) to promote an understanding of the State's heritage,*

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<sup>1</sup> It is noted that in Victoria there is separate legislation for Aboriginal places and objects, namely the *Aboriginal Heritage Act 2006*.



- (b) to encourage the conservation of the State's heritage,*
- (c) to provide for the identification and registration of items of State heritage significance,*
- (d) to provide for the interim protection of items of State heritage significance,*
- (e) to encourage the adaptive reuse of items of State heritage significance,*
- (f) to constitute the Heritage Council of New South Wales and confer on it functions relating to the State's heritage,*
- (g) to assist owners with the conservation of items of State heritage significance*

Both sets of objectives are worthy of consideration in the redrafting of objectives for a new ACT Heritage Act.

The current ACT Heritage Act includes an objective related to development applications involving places of heritage significance as follows:

- 3 (e) to provide a system integrated with land planning and development to consider development applications having regard to the heritage significance of places and heritage guidelines.*

The wording of this objective is of concern. I will explain later in this submission as to the inappropriateness of this sub clause.

The objectives of the ACT Heritage Act need to be rewritten and not focus on process and systems but desired outcomes.

#### **4. CONCEPTS AND DEFINITIONS**

The *Burra Charter: the Australia ICOMOS Charter for places of Cultural Significance 2013* is the definitive document for identifying, protecting, conserving and managing places and objects of cultural heritage significance. The document's interpretations/definitions are adopted universally across Australia when dealing with places and objects of heritage significance. They are the definitions applied by experts in the cultural heritage industry. The Victorian *Heritage Act 2017* adopts these definitions and this should be the case also for the ACT. Given that a broader definition of heritage embraces not just tangible elements such as places and objects but also cultural landscapes and intangible heritage (customs, language, stories and beliefs) these terms need to be included in the section on Definitions. The meaning of key words and phrases adopted throughout the legislation e.g. *building, conservation, cultural heritage* etc. need to be grouped together in a section *Definitions* up front in the legislation as is the case in both the Victorian and NSW heritage legislation.

The heading in *Part 2 Important Concepts* is inappropriate as the terms referred to are not concepts. They are meanings of key words and phrases adopted by professionals working in the cultural heritage sector across Australia. The section should be renamed *Definitions* and include key words and terms used throughout the legislation. Reference to other legislation pertinent to the Heritage Act should also be consolidated into a separate section towards the end of the Act and not dispersed throughout the Act itself which becomes cumbersome and confusing.

Rather than outline the assessment criteria regarding cultural heritage significance in *Part 2 Important Concepts* as is the case with the current legislation it would be more appropriate to identify the actual criteria within the section on the functions of the Heritage Council as is the case in the Victorian legislation. The criteria outline the matters to be considered by a heritage council

when assessing a place or object's suitability or otherwise for registration and hence protection under the Act.

The heritage significance criteria for assessment by the Heritage Council should include the following:

- *importance in exhibiting a richness, diversity or unusual integration of features;*
- *rarity or uniqueness of a place or object;*
- *any other matter which is relevant to the determination of the ACT-level cultural heritage significance.*

## **5. THE HERITAGE COUNCIL**

### **5.1 Establishing a Heritage Council**

Unlike the ACT Heritage Council the Victorian Heritage Council is established in the following manner:

#### ***9 Establishment of the Heritage Council***

*(1) The Heritage Council is established.*

*(2) The Heritage Council—*

*(a) is a body corporate with perpetual succession; and*

*(b) has a common seal; and*

*(c) may sue and be sued in its corporate name; and*

*(d) may acquire, hold and dispose of real and personal property; and*

*(e) may do and suffer all acts and things that a body corporate may by law do and suffer.*

*(3) The common seal of the Heritage Council must be kept as directed by the Heritage Council.*

*(4) All courts must take judicial notice of the seal of the Heritage Council on a document and, until the contrary is proved, must presume that the document was properly sealed.*

This additional legal recognition and its associated obligations and potential liabilities should be considered by the standing committee in the drafting of a new act.

### **5.2 Membership of the Heritage Council**

Part 3 of the current legislation establishes the Heritage Council, the composition of its membership and its functions. A maximum of eleven members of the Heritage Council are stipulated in S.17 of the Act. This includes the Conservator of Flora and Fauna and the Chief Planning Executive both of whom attend council meetings but do not have voting rights, and nine independent people offering expertise as stated in sub clause(4) of S.17.

The Chief Planning Executive attends Heritage Council meetings primarily to report on its decisions on DAs that involve registered places of heritage significance. I am of the opinion that the Chief Planning Executive should not be a member of the Heritage Council. As mentioned already, the current situation in the ACT only allows the Council to *advise* on a DA involving a registered heritage place being *considered* by EPSDD. As a statutory authority equipped with the expertise and extensive experience in dealing with developments involving registered heritage places and objects it should be the Council, in its own right, who determines a Heritage Approval for such

developments. The EPSDD should continue to determine the same DA as a separate approval based on the relevant planning instruments. I have more to say about the current DA system later in this submission. I note that the Secretary or Deputy Secretary of the Department of Transport and Planning in Victoria is not a member of the Victorian Heritage Council. In both Victoria and NSW the heritage councils make decisions on permits/DAs that involve a registered heritage place or object separate to a permit/DA under the planning legislation.

As for the skill sets required for a heritage council the current list as outlined in S.17 is appropriate. However due consideration should also be given to an expert in intangible heritage and an expert in cultural landscapes as these are areas of contemporary heritage interest. I note the lack of cultural diversity on the Council when I was a member even though there was excellent representation of women at that time.

### **5.3 Functions of the Heritage Council**

S.18 of *Part 3* of the current Act sets out the functions of the Council. However these functions should be reworded and/or include the following:

- to identify, assess and register places and objects in the ACT with natural and cultural heritage significance;
- to remove places or objects from the Heritage Register, or to amend the registration of a place or object;
- to develop, revise and publish the assessment criteria to be used in considering the cultural heritage significance of places and objects and determining whether those places or objects should or should not be included in the Heritage Register;
- to advise the Minister on the status of the Territory's cultural heritage resources and on any steps necessary to protect and conserve them;
- to advise the Minister administering the Territory Plan on proposed amendments which may affect the protection or conservation of cultural heritage;
- to make and publish guidelines in relation to the conservation of cultural heritage;
- to conduct community information and education programs;
- to advise government departments and agencies and other responsible authorities on matters relating to the protection and conservation of cultural heritage;
- to liaise with other bodies responsible for matters relating to the protection, conservation, management and promotion of cultural heritage;
- to initiate and undertake programs of research related to the identification, conservation or interpretation of cultural heritage;
- to manage the Heritage Grants Fund;
- to perform any other functions conferred on the Heritage Council under this Act or any other Act.

The Victorian Heritage Council has an additional function namely *'the power to do all things necessary or convenient to be done for, in connection with or incidental to, the performance of its functions'* (S.11(2) of the Victorian Heritage Act).

Again there is reference in S.18 (c) of the current Act for the Council to work *'within the land planning and development system to achieve appropriate conservation of the ACT's natural and cultural heritage places and objects, including Aboriginal places and objects'* (S.18 (c)). This framework is a trigger for friction or conflict between heritage considerations versus development considerations when in reality the criteria applied by the Council are not of a planning nature. This function should be deleted alongside the removal of the Chief Planning Executive on the Council.

## 6. HERITAGE REGISTRATION

### 6.1 The Heritage Register

Contemporary concepts and approaches to heritage have changed since 2004. The Territories heritage is more than places and objects. Intangible cultural heritage and cultural landscapes warrant recognition in a new Heritage Act alongside provisions, controls and management frameworks for all categories of cultural heritage.

*Part 4* of the ACT Heritage Act deals with the Heritage Register. It is noted that whilst the ACT legislation requires the Council to keep a register of heritage places and heritage objects, *Part 3* of the Victorian legislation places this responsibility on the Executive Director as the person designated to assist the Council perform its functions. It makes sense that the administrative arm of the Council fulfills these responsibilities based on decisions of the Council to register a place or object on the register.

The current heritage register in the ACT includes a range of places and objects from different eras or historical periods. There is no thematic or category based approach to listing of places or objects making the task of comparative assessment very difficult when considering a particular place or object for heritage registration.

The review of the NSW Heritage Act considered a more tailored response for listed items rather than a perception that all heritage is dealt with as a 'one size fits' all approach. The following categories were considered:

- Category 1: Heritage of exceptional and iconic value
- Category 2: State significant heritage landscapes
- Category 3: State significant heritage
- Category 4: Local heritage

Victoria's framework of historical themes is very interesting and has merit in terms of a more holistic understanding of its heritage as well as being more meaningful to the community. The key headings of the framework are as follows:

1. Shaping Victoria's environment
2. Peopling Victoria's places and landscapes
3. Connecting Victorians by transport and communications
4. Transforming and managing the land
5. Building Victoria's industries and workforce
6. Building towns, cities and the garden state
7. Governing Victorians
8. Building community life
9. Shaping cultural and creative life

[https://heritagecouncil.vic.gov.au/wp-content/uploads/2014/08/Framework\\_at\\_a\\_glance-overview.pdf](https://heritagecouncil.vic.gov.au/wp-content/uploads/2014/08/Framework_at_a_glance-overview.pdf)

The Victorian thematic approach is a valuable tool in understanding and appreciating the complex layers of the state's history from Aboriginal times to current day. Themes can enhance the community's awareness and appreciation of their heritage, assist in comparative analysis when registering a place or object, as a framework for celebrating the diversity of the Territory's heritage

assets and enhance the promotion of heritage during such events as the Canberra Heritage Festival. Due consideration needs to be given to a heritage register that adopts a thematic framework rather than one which is ad hoc and lacking context. Community consultation on this idea of a thematic approach to the register would be beneficial.

In terms of the structure of the new legislation Part 6 of the existing legislation deals with the *Registration of places and objects*. It should become relocated as *Part 5* and commence with *Division 5.1 Nominations for registration*. In this division the following needs to be addressed:

- Who can nominate a place or object for inclusion on the Heritage Register?
- Which nominations cannot be accepted? e.g. if the place or object has already been considered by the council in the last 5 years and was refused for nomination
- When can a nomination be refused and what reasons need to be given if this occurs? e.g. if the place or object has no reasonable prospect of inclusion in the Heritage Register
- Can objects integral to the place also be nominated? In the case of the Victorian legislation significant elements of the interior of a building can also form part of the nomination and registration whereas as the current ACT Heritage Act does not allow for the registration of interiors even though the fabric itself is of significance to the place
- Can additional land be included in the nomination? e.g. where the land surrounding the place is important to the protection and conservation of the place or contributes to the understanding of the place
- Can additional information be sought from the nominator? e.g. when the information provided is incomplete with timelines applied to the lodgment of that information with the council
- What is the procedure for giving notice of a nomination?
- When can deferral of a nomination occur? e.g. if the property is being offered for sale
- If a place or object that has been nominated and is on the market to be sold then should the owner be required to inform any prospective purchaser of the nomination?

*Division 2 Nominations for registration* in the Victorian Heritage Act addresses these matters in some detail.

## 6.2 Provisional registration

Division 6.2 of a new Act would then include the information in the current *Division 6.1 Provisional registration*. It is noted that a person can make an urgent provisional registration application to the Council. However *S.30 (3)* states, amongst other matters, that:

*The council must accept the application only if-*

*(a) The place or object mentioned in the application is a nominated place or object; and*

*(b) either –*

*(i) the application complies with subsection (2); or*

*(ii) if the application does not comply with subsection (2) – the council agrees to accept the application ; and*

.....

It is likely that the place or object does not meet the first criteria, that is, the place or object is on the nomination for registration list. Currently there are approximately eighty nominations awaiting Council consideration and yet it is highly likely there are many more places or objects within the ACT that are potential candidates for heritage registration. The slow rate of new additions to the ACT Heritage Register, combined with a long and complex assessment approach for registration, is mainly a result of a lack of resources in the Unit. However I also found the information provided by

the Unit recommending a place or object be registered was excessive, overly detailed and prone to irrelevancies that were not directly related to the criteria applied to determine heritage significance. Many of the places on the nomination list are private residential properties and yet there is a reluctance from the Unit to advance the assessment of these properties for potential registration as it may lead to a challenge in the courts which is both time consuming and a drain on already inadequate resources. This approach needs to be addressed especially as it is often residential properties that are subject to either total demolition or significant additions in front of or to the side or rear of the existing building.

*S.34 on Part 6 Registration of places and objects* in the current legislation addresses the Notice of decision about provisional registration. The owner of the place or object being an interested person is to be notified by the Council of its decision to provisionally register the place or object within 15 days of the Council making such a decision. It would be highly beneficial if some additional provisions were included in this notification process to the owner which obligated the owner to provide the following information by a specific date to the Council:

- any works or activities that are being carried out or proposed to be carried out in relation to the place or object; and
- any application for a DA or building permit or for an amendment to an existing DA or building permit that has been lodged but not determined as yet at the time the notification of provisional registration by Council.

Again reference is made to the Victorian legislation in *Division 3 – Recommendations of registration S..42 – Obligations of owners of places and objects*.

### **6.3 Public consultation and notification on matters of registration**

Both *Division 4 -determinations of registration* of the Victorian Heritage Act 2017 and *Division 6.2 - Registration* of the ACT Heritage Act 2004 enable written submissions to be made to the Council in relation to whether or not the place or object should be included on the heritage register. Public consultation on matters of registration is supported.

However, in the case of the Victorian legislation under *S.44(5)* a submitter can also request a hearing before the Heritage Council in relation to his/her submission. This is not the case with the ACT heritage legislation as no such hearings are permitted during the registration process. Hearings can be time consuming. I know because I chaired the Permits Committee (the equivalent of the DATF) for 6 years whilst chairperson of the Victorian Heritage Council. Nevertheless, this procedure did enable all parties, including the owner of the place or object (who may provide evidence from a heritage consultant) the opportunity to be heard on the merits or otherwise of registration.

At the ACT Heritage Council no public hearings occur and the information provided to support or not register a place or object is only prepared by the Unit. This does not allow for other expert opinions to be considered outside of the Council administration and yet such dialogue can often be helpful to a Council in its deliberations. I have more to offer on the issue of hearings later in this submission.

*S.40 Decision about registration* includes the public notification procedures on the Council's decision. *S.49* of the Victorian Heritage Act 2017 is far more detailed as to the Heritage Council's determination on a registration matter of which the content of this clause is worthy of inclusion or consideration in a new heritage act for the ACT. Whilst *S.39 of Division 6.2 Registration* allows the Minister for Heritage to further consider issues related to registration, *Division 5 – Minister's powers regarding registration* in the Victorian Heritage Act provides call-in powers. I am not an advocate of

this approach as it undermines the expertise and independence of the Heritage Council and invites political interference in the registration process.

*Division 6 of the Victorian Heritage Act 2017 deals with the Effects of registration. Of particular relevance to the ACT is the notice of registration to be in the Government Gazette, notification of the Land Titles Office of the registration in the case of a heritage place and notice to the owner of the place or object being registered. Due consideration should be given to the content of this division in a new heritage act for the ACT.*

*Part 7 Cancellation of registration should also include the procedure for making amendments to the heritage register. For example, if a place on the register is destroyed then it needs to be removed from the register or if there is a technical error in the statement of registration it should be corrected via an amendment.*

## **7. THE HERITAGE UNIT**

### **7.1 Resources of the Heritage Unit**

The ACT Heritage Unit which operates within the DEPSD provides the secretariat support and heritage advice to the Council and yet there is no mention of the Unit's roles and responsibilities in the current legislation. This aspect of governance has been addressed in the past by a Memorandum of Understanding between the Council and the Unit. The most recent MoU expired at the end of 2018. It aimed to

*'outline the relationship, roles, responsibilities, expectations, similarities and distinctions between each party (the Council and the Unit), the provisions that guide their engagement and collaboration, and the services provided by ACT Heritage to the Council.'*

In 2021 some members of the Council asked that a new MoU be prepared with input and consultation with the Council. A draft was prepared in early 2022 by the Unit without any consultation with the Council and, up to the dismissal of the Council by Minister Vassarotti in December 2022 there was no MoU. There was no opportunity given to the Council to provide its comments, ideas and recommendations prior to a draft being prepared including how to improve the working relationship between the Council and the Unit. A new MoU or appropriate document is required to ensure that the Unit and the Council work together in fulfilling the Council's responsibilities and functions under a new Act.

The consultant report on the *Review of the Heritage Council* identified the need to better resource the Unit to meet its obligations and responsibilities. Again I am unable to go into the details contained in that report but refer the Standing Committee to the following in the executive summary:

*Heritage Unit resources do not match the increasing demand or complexity of the work required.  
Inefficient business systems put stress on staff.*

This is a view shared by members of the former Council some of whom (including myself) were seeking more traction from the ACT Government to increase staff numbers and budgets for the Unit and Council. Some of us even offered to assist where we could in alleviating some of those pressures. These offers were not taken up by the Unit.

I note that the consultant report in the executive summary also states:

*The current Council and the Heritage Unit do not have a common understanding of how they should work together. Attempts to resolve this misalignment have been unsuccessful.*

This is incorrect. Some members of the Council sought to discuss their concerns with the chairperson on the working relationship between the Council and the Unit but these requests came to no avail. A strategic workshop for the Council was scheduled for 30 June 2022 to discuss a range of issues including how the Council and the Unit could work together in a more collaborative and supportive manner as well as identify strategic opportunities and the development of a heritage strategy for the ACT. However a few days before the workshop the chairperson cancelled it without consultation with the Council members. This lack of communication became frustrating for some members.

The Unit not only needs to be better resourced but improved recruiting and training of staff, customer service and better leadership are also needed. These are not legislation issues. They are issues that need to be addressed by the ACT Government.

Furthermore, the consultant report states in the executive summary:

*The Heritage Unit's internal workflow and business processes are inefficient, including the Heritage Database and linkages to development applications.  
While work has commenced, a digital transformation would improve the efficiency and functioning of the Heritage Unit and the Council and would reduce current stressors.*

These comments relate to the managerial and operational aspects of the Unit as well as the outdated data base format. They are matters to be addressed not by a Council but primarily by the Unit and should be given high priority by the ACT Government.

## **7.2 Appointment of an Executive Director**

Unlike the ACT the Victorian legislation includes the appointment of an Executive Director (ED) rather than an Acting Secretary who currently reports to the EPSDD. *Part 2 – Heritage Administration, Division 2 – Executive Director* of the Victorian Heritage Act 2017 sets out the functions and powers of the ED which are extensive. They include:

- Establishing and maintaining the Heritage Register
- Recommending to the Heritage Council the registration of any place or object on the Register
- Determining applications for permits and consents under the Act
- Reporting to the Council on all actions or decisions by the ED
- Managing the enforcement of the Act

*Part 2 – Heritage Administration S.15* sets out the delegation of powers by the Victorian Heritage Council. This governance structure results in the ED making recommendations to the Council on matters such as whether a place or object should or should not be included on the Register with the Council making the final decision. On DAs/permits the ED can determine such matters. However an applicant, owner or a person with a '*real and substantial interest in the place or object*' may make a written request for the Heritage Council to review the ED decision. A public hearing held by the Council may follow and a final decision made on the application which can be subject to appeal at VCAT.



The current Acting Secretary/Secretary position to the ACT Heritage Council is largely managerial and operates under the umbrella of the EPSDD rather than having independence and autonomy from that government directorate. There is considerable merit in changing the current governance structure of the Unit and appointing an ED with functions and responsibilities as permitted in the Victorian legislation. In my experience it assists in fine tuning the workload of the Council and still ensures transparency and accountability in decision making.

## **8. TASKFORCES/COMMITTEES**

An administrative function of the Council is the establishment of taskforces. At present there are four such taskforces they being:

- Register Task Force (RTF)
- Development Applications Task Force (DATF)
- Aboriginal Task Force (ATF)
- Conservation Management Plan Task Force (CMPTF)

Each taskforce reports to the Council noting that the final recommendation of each taskforce is usually made by the Council chairperson (exercising his or her powers of delegation) or the full Council. This arrangement is different to what occurs in Victoria for instance where the Executive Director of Heritage has specific powers which are delegated to him/her.

The ability of the Council to operate committees should be included in a new Heritage Act noting that I prefer the use of the term 'committee' rather than taskforce. As is the case in the Victorian legislation (*Part 2 – Administration, s.13*) the new Act should include the following:

- (1) For the purposes of this Act, the Heritage Council may appoint committees consisting of at least 3 members of the Heritage Council and any other persons as the Heritage Council considers necessary.*
- (2) A committee may—*
  - (a) make recommendations to the Heritage Council on any matter referred to it by the Heritage Council; and*
  - (b) perform any other function, duty or power given to it under this Act.*

As to the appointment of Council members on a committee, this should be based on what skill sets are required for that committee rather than the chairperson of the Council being the chair of every taskforce which was the case while I was a member of the Council. For example, the committee dealing with DAs should include skills in heritage architecture, landscape architecture, urban design, urban planning and property development. The committee on Aboriginal cultural heritage should have skills at least in Aboriginal culture, Aboriginal history and archaeology. Specific Terms of Reference would apply to each committee.

Another function of a heritage council should be its ability to consult with others and seek advice, where required. This is the case in the Victorian Heritage Act 2017 (*Part 2 - Administration, S.14*) as follows:

### **14 Consultation and advice**

- (1) In performing its functions or duties or exercising its powers under this Act, the Heritage Council or a committee may do any of the following—*
  - (a) consult with any person or body;*

- (b) perform any investigation it considers appropriate;*
- (c) prepare, commission the preparation of or adopt any guidelines, statements of policy, reports, studies and conservation plans it considers appropriate;*
- (d) have regard to any information it considers relevant.*
- (2) The Heritage Council may engage persons with suitable qualifications and experience as consultants.*
- (3) An engagement under subsection (2) may be on any terms and conditions that the Heritage Council considers appropriate.*

## 9. DELEGATION

A Heritage Council can delegate various matters. Currently S.121 of the Act refers to Delegation. It would be beneficial if this section were included in the Administration Part of the Act under the heading *Delegation powers of the Heritage Council*. It is noted that if, as a result of the review of the current Heritage Act, it is proposed to increase the powers of the Secretary of the Heritage Unit (who would instead become the Executive Director of ACT Heritage) then the powers of delegation will need to address clearly what is and is not delegated to that person. Reference to the ACT Legislation Act regarding delegation will also be required.

For example, under the current Heritage Council powers and function in Victoria the following applies:

### **15      *Delegation of powers—Heritage Council***

- (1) Subject to subsection (2), the Heritage Council, by instrument, may delegate any of its functions, duties or powers under this Act to the Executive Director or the executive officer, other than—*
  - (a) the power to review the Executive Director's refusal of a nomination; or*
  - (b) the power to determine that a place or object should or should not be included in the Heritage Register; or*
  - (c) the power to approve sites of archaeological value; or*
  - (d) the power to remove sites from the Heritage Inventory; or*
  - (e) the power to review determinations of the Executive Director in relation to consents; or*
  - (f) the power to review determinations of the Executive Director in relation to permits.*
- (2) The Heritage Council cannot delegate any of its functions, duties or powers in relation to the management of the Heritage Fund to the Executive Director.*
- (3) The Heritage Council, by instrument, may delegate any of its functions, duties or powers under this Act to a committee.*

There also is a need to include a requirement for immunity from liability within the powers and functions of the ACT Heritage Council as is the case in S.16 of the Victorian *Heritage Act 2017*.

## 10. DEVELOPMENT APPLICATIONS

The present development approval approach in the ACT is a fundamental problem treating one DA on both planning and heritage criteria. It undermines the power, authority, credibility and community standing of the Council who are at the behest of the final decision by the EPSDD. Heritage considerations should be kept separate to those of a planning nature otherwise there is a potential and damaging conflict between protection and conservation of heritage places versus demolition and redevelopment. This is a fundamental flaw in the process given that the Council is a statutory authority and should be given the responsibility to make decisions rather than recommendations regarding DAs as they relate to registered heritage places or objects.

## 10.1 A two approval system

Development applications include buildings and works such as demolition, alterations and extensions to a registered heritage place. Managing change to registered places and objects can be controversial. In my experience some owners of heritage places find the approval system costly, prone to uncertainty, time consuming, lacking consistency in the advice being given and even adversarial. There can be a negative perception of a property which is heritage listed by those who own such places and a culture of resisting change by the bureaucracy dealing with heritage. There are also issues with some architects and property owners who simply have a limited appreciation and understanding as to the significance of a place and become somewhat recalcitrant when the design is being questioned by the Council or the Unit. They may even complain to the Minister for Heritage claiming that the delays are the fault of the Council when the development itself has had little regard for what is significant from a heritage perspective.

Under the current Act almost all of the DAs are dealt with by the Unit and not the Council. It is only very complex or contentious DAs that are forwarded to the DATF for comment. The Council and the Unit do not make final decisions on DAs. The advice of the Unit or Council is advisory only to EPSDD who make the final decision. I note that the number of DAs referred to the Council and hence to the Unit has increased dramatically but the resources for dealing with them has not. This has been a cause of stress and burn out for staff in the Unit responsible for fulfilling the Act's referral entity responsibilities. The additional pressures placed on the Unit staff during the Covid pandemic and stress-leave absences triggered by an increasing workload have further caused tensions within the Unit workplace.

There is also an ill-informed perception within the community and government politicians that it is the Council that makes the final decisions on DAs, which is simply not the case, and that delays in such decisions are the fault of the Council.

I submit there is a need to separate the powers of the EPSDD and the ACT Heritage Council. The matters of consideration by a heritage council are not of a planning nature. They are specific matters defined in the heritage legislation. Although EPSDD may argue that it takes into consideration matters of cultural heritage significance in the present single DA approval system that prevails in the ACT, such an arrangement can invariably result in one set of objectives, policies and plans under the Planning and Development Act overriding heritage considerations. EPSDD does not have the expertise to deal with heritage matters. That responsibility should lie with the Council under the Heritage Act thus enabling the Council to make informed and expert decisions based on heritage considerations only and to defend those decisions in its own right as a statutory authority before ACAT. For Council to be the responsible authority for approving or refusing DAs for registered places or objects will require more staff that are appropriately skilled with qualified experts and additional administrative support to provide advice in a timely manner.

On this issue there are various opinions about a development requiring two approvals. One view is that a single so called *integrated* system is the most efficient and stream lined approach – one approval rather than two. Another view is that one application dealt with under the planning system addresses the planning strategies, policies and provisions of the planning legislation whilst the other only deals with the heritage considerations. This separation of criteria for decision making ensures that each approval is based on the relevant expertise of the decision makers and maintains the independence of each authority. Some may argue a two approval system – that is a DA based on heritage considerations and a DA based on planning and development considerations – is inefficient and time consuming. This is not the case in my experience as both approvals can run concurrently. Associated with this approach is the ability for an applicant of a Heritage DA to lodge an appeal at

ACAT and the opportunity for the Heritage Council, in its own right, as a direct party to such an appeal to put its case for its determination of the Heritage DA. Review procedures of relevance to this approach are detailed in *Division 5 – Reviews of determinations relating to permits* in the Victorian Heritage Act 2017. Scope also exists in the Victorian legislation for dealing with applications for buildings and works approvals for nominated places or objects and before registration processes have been completed. See *Division 6 – Miscellaneous* of the Victorian Heritage Act 2017. This division also deals with delegation matters.

The permissions and approvals for excavation works as addressed in *Part 10B* of the current Heritage Act 2004 should be addressed in the Land development applications as effectively excavation is ‘works’ that can affect a registered place or object. Again, the Heritage Council should be autonomous in its decision making on such applications thus allowing an affected party the opportunity to appeal at ACAT.

In NSW and Victoria the heritage councils have separate jurisdiction, as stipulated by their respective heritage legislation, to actually approve or refuse development applications involving State registered places and objects of heritage significance. This is not the case in the ACT as the current planning and development system treats the Council as a referral entity with no powers to challenge a EPSDD decision at ACAT other than by joining with a third party to address heritage matters. The annual budget for the Council and the Unit is so small that it cannot afford the costs associated with an ACAT case. This current situation undermines the statutory obligations and responsibilities of the Council and potentially places at risk the protection and conservation of the Territory’s rich and diverse heritage places and objects. This is a fundamental and important deviation from the approach adopted in the ACT.

It is submitted that a two approval system should operate when dealing with a DA for a registered heritage place and that the object S.3( e) in *Part 1 Preliminary* be deleted.

## **10.2 Exempt works and pre-lodgment meetings**

Scope exists in the preparation of a statement of heritage significance during the registration process to include a list of exempt works that are standard or site specific thus streamlining the approval process for owners. This approach is applied in Victoria and requires the technical expertise of the Unit to advise Council as to what works should be exempt. See *Division 3, S.38* of the Victorian *Heritage Act 2017*.

Assuming there is a separate DA required from the Council changes to delegation powers could assist in reducing time to assess DAs such as a list of minor works that are either exempt or relegated to a member of the Unit to assess rather than going to the Council for approval. Another mechanism that can assist the decision making on a Heritage DA is to mandate pre-lodgment meetings between the applicant and the Unit staff to ensure the applicant is clear as to the statement of significance for the place, the required information to be submitted with the DA and what changes are likely to be considered permissible. These meetings would benefit from being held on site where possible. Statutory timeframes for decisions on a DA need to apply but this needs to be cognizant of the resources required to adequately meet these timeframes.

## **10.3 Heritage Agreements**

*Part 15* of the current Heritage Act deals with Heritage Agreements in relation to the conservation of a place or object, whether or not it is registered. However it is the Minister and not the Council that enters into such an agreement even though the Council advises the Minister on the content of the

agreement. Agreements can address such matters as restrictions on the use of the place or object, requirements to carry out work and the availability of the place or object for public inspection. I cannot see any need for such agreements and their existence only further complicates the system of protection, conservation and management of registered places and objects under a Heritage Act. I support the deletion of *Part 15*.

#### **10.4 Heritage Guidelines**

It is noted that the registration of a place or object on the Heritage Register in the ACT can include a set of guidelines as part of the statement of registration. At present Heritage Guidelines are dealt with in *Part 5 - Heritage guidelines*. I do not agree that the Council should only be able to make heritage guidelines for a place or object at the request of the Minister for Heritage and that a guideline is a disallowed instrument (See *S.25 (2)*). Guidelines are prepared to ensure the conservation of the place or object. These are not matters that should be at the discretion of a Minister but rather be at the discretion of the Council as the expert body responsible for the protection and conservation of ACT's heritage.

Guidelines are guidelines only but they are required in some cases where the context of place or object is as important as the place or object itself. For example, the ACT has several heritage precincts that are representative of the urban development of the Territory. Often there are key unifying or distinctive elements within the heritage precinct that may be present on those properties identified to be significant in that precinct e.g. established hedges, uniformity in building materials and roof forms, consistent frontage setbacks which are landscaped etc. Guidelines are warranted to protect these key elements or features when considering DAs for additions and alterations as well as new development within the precinct. Guidelines also inform the community and the property owner as to the nature and degree of change that can occur on a registered place.

*S.25(2)* of the current legislation should be deleted and replaced with a new clause that sets out what matters can be addressed in a guideline. In addition, *S.26B Report to the Minister about public consultation on heritage guidelines* and *S.26C Minister may require further consideration by council on heritage guidelines* should also be removed as these provisions undermine the very independence, objectivity and expertise of the Council and the Unit who often provide the first draft of such guidelines for Council consideration. The Council should have the trust and support of the Minister to prepare guidelines as well as carry out the community consultation prior to adoption of guidelines and for the process to be devoid of political interference.

#### **10.5 Conservation Management Plans**

Whilst registration of a place or object on the ACT Heritage Register provides the legal instrument for protecting such a place or object the process of conservation, adaptation and managing change is often dealt with by way of a conservation management plan (CMP), especially for the more complex sites. The CMP may be required during the registration of the place or object or as part of a DA. CMPs are often applied to large and complex development applications and the ICOMOS Burra Charter under Article 26 makes reference to such plans.

[http://portal.iphan.gov.br/uploads/ckfinder/arquivos/The-Burra-Charter-2013-Adopted-31\\_10\\_2013.pdf](http://portal.iphan.gov.br/uploads/ckfinder/arquivos/The-Burra-Charter-2013-Adopted-31_10_2013.pdf)

For example, the Canberra Brickworks site which includes registered heritage buildings, objects and land, requires an approved CMP to guide the future development and management of that site for a mixed use development. This is another means of providing greater guidance to an owner as to what is appropriate in the development and management of a registered place or object and hence will

influence the content of a DA. Therefore provisions relating to CMPs should be included in the Part on Land development applications. This also applies to *S.110 Conservation management plans* in *Part 16 Heritage and public authorities* which should be relocated to a new heading CMPs in the Part on Land development applications. In effect, all of the clauses in *Part 16* dealing with public authorities should be incorporated into the Part on land development applications and not be treated as a separate situation.

## **10.6 Statement of Heritage Effects**

Scope also exists within the current Act to allow an alternative approach to Heritage Guidelines or an approved CMP when an applicant is preparing a DA. Even when guidelines do not exist as part of the statement of registration the applicant can put a case to justify what is being proposed if, on initial review the DATF or the Unit has indicated issues with the DA. *S.61G Application for approval of statement of heritage effects* (SHE) sets out clearly the information to be provided by the applicant when directed to provide a SHE. *S.61H* empowers the Council to assess and approve a SHE and *S.61I* enables Council to direct that a SHE be done if it is of the view that works being contemplated by an owner or have started may diminish the significance of the place or object. These provisions should remain in the new Act.

The requirements for Council's advice about development as listed in *S.60* and *S.61* of the current ACT legislation would, in effect, be the reasons given for refusing an approval for buildings and works on a registered heritage place or object. The application of a SHE should also be included in the Land development applications division of the new legislation. This is a mechanism allowing the applicant to demonstrate that:

- the proposed activity on the heritage place or object is justifiable; and
- there are no reasonable or practicable alternative ways to carry out the proposed activity; and
- the applicant has identified reasonable steps it will take to reduce the risk of diminishing or damaging the heritage significance of the heritage site; and
- any other matter prescribed in legislation has been considered.

In my experience on the ACT Heritage Council DATF the SHE process is a valid and workable process allowing the applicant to address concerns about the proposed development before a decision is made. There can be very valid reasons as to what the applicant is proposing is warranted and the SHE process offers this opportunity.

## **11. HEARINGS**

Another important difference between the operations of the ACT Heritage Council and other heritage councils in states e.g. Victoria and NSW is the opportunity for the Council to receive written submissions and hold public hearings in relation to determinations of registration of places or objects (Victorian Heritage Act 2017, *Division 4 – Determinations of registration*) and DA/Heritage Permit Applications for registered places or objects (Victorian Heritage Act 2017, *Division 5 – Reviews of determinations relating to permits*).

*Part 12 – Hearings* in the Victorian legislation outlines the procedures for hearings which are held by Council or a delegated committee of the Council, who can attend (interested person, a community group such as the National Trust, and the owner of the place or object) with submissions and evidence either orally and/or in writing to that committee. Hearings are open to the public, and written submissions and expert evidence is to be provided well in advance of the hearing to shorten the actual time spent at the hearing and to focus on questions and clarification from the members of

the committee. The Council or a delegated committee is required to prepare a written statement outlining its decision and the reasons for such decision in terms of a registration or DA/permit and this statement is available to all participants. During my time on the Victorian Heritage Council I chaired numerous public hearings on heritage permit applications and was instrumental in streamlining the process to be more efficient and effective.

The ACT Heritage Council does not operate public hearings. An applicant or owner can address the DATF either at his/her request or at the request of the task force and this enables experts on behalf of the applicant to also attend and speak at that forum. No members of the public can attend and they are closed meetings. If we are genuine in encouraging more public participation and involvement in the protection, conservation and management of registered heritage places and objects that due consideration needs to be given to the inclusion of hearings in the new legislation coupled with the authority of the Council to make determinations on both heritage registration and DAs.

## **12. NOTIFICATION AND REVIEW OF DECISIONS**

*Part 17* of the current Act deals with notification and review of decisions. *S.114 Applications for review* only allows an interested person to apply to ACAT for a review of a decision by EPSDD on a DA involving a heritage place or object. For the Council to be a submitter at an appeal dealing with a DA affecting a heritage place or object it is required to join a third party rather than appear in its own right as the statutory authority responsible for administering the Heritage Act. This lack of expert involvement in such an appeal before ACAT is contrary to the appeal provisions in Victoria. In that State *S.109 - S.114* inclusive allow the relevant Minister to either call-in a Heritage Council decision on a permit application and make a determination or refer the matter to VCAT to review that decision. This process allows the Council the opportunity to be heard at VCAT.

Alternatively, the Minister may require the Council to hold a hearing to allow the applicant or other person requesting the review the opportunity to be heard and, if so, for the Council to then provide a report to the Minister on submissions considered at the hearing. The Minister can then determine the matter. These procedures should be adopted in the new ACT legislation as they are fair and reasonable and allow each party, including the Heritage Council, the opportunity to put their case to the Minister or VCAT.

## **15. PENALTIES AND OFFENCES**

*Part 5 Permits* of the Victorian Heritage Act 2017 sets out the DA/permits process undertaken by the Heritage Council. It includes general matters such as penalties for knowingly or recklessly removing, relocating or demolishing, damaging or despoiling, developing or altering or excavating all or any part of a registered place or registered object. These provisions are stated up-front in this section dealing with unlawful development/buildings and works sending a very clear message to an owner of a registered place or object of the consequences of not applying for approval from the Heritage Council.

The ACT Heritage Act deals with Offences in *Parts 11 – Heritage directions, Part 11A – Repair damage directions, Part 12 – Civic protection of heritage* and *Part 13 – Heritage offences*. This current structure of offences being dealt with in different parts of the legislation is cumbersome and confusing. It would benefit by being grouped into one Part with various sub headings dealing with the relevant instrument and actions and penalties associated with:

- the issuing of a heritage direction

- damage to a heritage place or object including an Aboriginal place or object
- diminution of heritage significance of a heritage place or object
- the application for a heritage order

The Part in the new Act dealing with Offences may more logically be located after the Part on Development Applications as the offences relate to either unlawful buildings and works or buildings and works that are not carried out in accordance with the approval directions/conditions of the Council. This approach also assumes the Council is responsible for approving rather than just advising on DAs including the authority to include conditions on a DA in relation to the conservation and management of a registered place or object.

## **14. ENFORCEMENT**

### **14.1 Power to enter premises**

*Part 14* of the current heritage legislation addresses Enforcement. Whilst an authorized person may at any reasonable time enter premises based on the provisions of *S.80 Power to enter premises*, subclause (2) does not authorize entry into any part of the premises that is being used only for residential purposes. Given that there are already many residential properties on the ACT Heritage Register that are used for residential purposes and there are likely to be many more that are prima facie candidates for heritage nomination and registration, it is inappropriate for such properties to be excluded from entry by an authorized person.

*Cl.198 Offence to hinder inspector or authorized person of Part 10* of the Victorian Heritage Act 2017 states that it is an offence to hinder an inspector or authorized person from entering a premises regardless of whether or not it is residential unless there is a reasonable excuse for hindering or obstructing such access. The Executive Director of the Victorian Heritage Council can appoint specific persons to be inspectors who are then empowered to access a registered heritage place for the purpose of:

- investigating the cultural heritage significance of the building or land or an object located in, at or under the building or land;
- determining whether or not the Heritage Act has been complied with in relation to the registered place or object.

*Division 2 – Powers of entry, search and seizure in Part 10* of the Victorian legislation set out clearly the powers and procedures for accessing a registered heritage place. Similar provisions as above are addressed in *Division 14.3 Power of authorized people* in the current ACT Heritage Act but again it does not apply to any part of a premises used for residential purposes. There is no rational or justifiable reason as to why this exemption applies and the fact that it exists places such places at risk of unlawful buildings and works being undertaken that could impact the heritage significance of the place or object.

### **14.2 Interim Preservation Orders (IPOs)**

*Division 1 – Interim protection orders in Part 8 – Orders* of the Victorian Heritage Act 2017 enables the Heritage Council or its Executive Director to make an Interim Protection Order (IPO) in relation to a place or object if it is necessary or desirable to do so for the purposes of the Act. The place or object does not have to be on a nomination list. This mechanism should be seriously considered as an inclusion in a new heritage act for the ACT. The provisions set out in the division are very specific about the effect of the IPO, requirements relating to the service of the IPO, what works or activities



may be undertaken whilst the IPO is in place, the time period in which the order is valid (usually a period of up to 4 months) to enable the Council to assess the significance or otherwise of the place or object etc. The new Heritage Act for the ACT should include the provision of IPOs.

### **14.3 Stop Orders**

*Division 45* of the Victorian legislation deals with the issuing of stop orders which can be issued by the Executive Director and the penalties for a person who does not comply with such an order. This is a very quick and direct way of dealing with unlawful buildings or works rather than having to seek such an order from another entity or a court. The new Act should include a provision for stop orders and delegate this action to the Executive Director of the Heritage Unit.

## **15. A HERITAGE FUND**

Currently the ACT Heritage Unit is responsible for the allocation of annual heritage grants for projects that meet the criteria relevant to such grants. The annual amount for heritage grants is very small and is totally reliant on ACT Government annual budget allocations. An alternative to this approach is a provision under the Heritage Act for the establishment and operation of a Heritage Fund as is the case in Victoria under *Part 11 – Heritage Fund*. The funds are available for the conservation and management of cultural heritage, as loans or grants, payment for expenses incurred in the administration of the act etc.

The Council can also borrow money, accept gifts and bequests, acquire a registered place or object etc. The details of the operation and use of the heritage fund are clearly set out in *Part 11*. Other funds related to the operation and administration of the Heritage Council in Victoria come from state government annual budget allocations. Due consideration should be given to the establishment of an actual Heritage Fund in the ACT as a means of assisting owners and community groups in conserving and maintaining heritage places and objects.

## **16. CONCLUSION**

There is much to be gained by referring to the heritage legislation in other states particularly Victoria and NSW. Both states have undergone relatively recent reviews of their heritage legislation enabling positive changes in the way they operate.

A major overhaul of both the ACT *Heritage Act 2004* and the structure, administration and operation of the ACT Heritage Council and the ACT Heritage Unit is urgently required. Both the Heritage Council and the Heritage Unit need to be better resourced both financially and in terms of skilled and experienced staff in the cultural heritage sector. This review requires more than a fiddle at the edges. It warrants a recognition that the ACT Heritage Council and its administration should be autonomous to the EPSDD with statutory powers to register places and objects of heritage significance, determine development applications impacting on such places and objects, and the ability to be a party at ACAT and not just a referral entity.

The governance and structure of the Heritage Council and the Heritage Unit would include the appointment of an Executive Director who acts independently of the EPSDD with authority and powers of delegation that streamline the business of the Council, where appropriate. Finally this review of heritage arrangements in the ACT needs to ensure that there are arrangements in place that foster a collaborative, productive and respectful relationship between the Heritage Council and the Heritage Unit.