



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2023-2024

Mr Mark Parton MLA (Chair), Ms Jo Clay MLA (Deputy Chair),
Mr Michael Pettersson MLA

ANSWER TO QUESTION TAKEN ON NOTICE DURING PUBLIC HEARINGS

Asked by Mr Mark Parton MLA on 27 July 2023: Mr Geoffrey Rutledge took on notice the following question(s):

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In relation to: Interim Heritage Council Legal Advice

THE CHAIR: I am just wondering also if legal advice was sought on this?

Ms Vassarotti: Yes. Yes, it was.

THE CHAIR: Is it possible to table that legal advice?

Mr Rutledge: It is not normal that we table legal advice, Mr Parton. We are happy to, if you will, table on notice so that I can represent back to you, I suppose, the context and the key elements of the legal advice, but I think our government's solicitor has a long standing policy of not sharing or tabling legal advice. But I can certainly assure you and through on notice assure the committee that, as Minister said, what we did do—or what the Minister did is to signal to the community that the Heritage Council as appointed by her was one that was going to be there for an interim period while we were doing this period of reform and whilst the government was considering whether or not the Heritage Council remained fit for purpose.

There was an end to the Heritage Council. The appointment of the members of which we had great interest in that and a great set of nominees. The Minister appointed them. She made clear in her appointment that they were there for an interim time. Similar, the former council were able to reapply, the interim council will be able to apply for any future council, but just to signal that we are in a time of reform and so the Minister named them an interim council. By law the Heritage Council is the Heritage Council with the full statute power of heritage council, but I think the use of the term interim was to signal the time and to signal that we were in a period of reform and change.

THE CHAIR: In regards to the legal advice. I just want to know who makes the decision that legal advice is not tabled. It is not commercial in confidence. It is not related to an ongoing legal matter. Why is it not possible for that advice to be tabled?

Mr Rutledge: Mr Parton, I will take further advice from our government's solicitor. It is my understanding that we—because the sharing of legal advice of course immediately evaporates any legal privilege. So just as a general rule or a policy, as I said, that—I am sure if I ask the government's solicitor he would be able to remind me all of the many reasons why we do not do that. But as I said, I can assure the committee and on notice we will put in writing, as best as I can. But I think going to the start of or the premise of your question, it is really just a plain letter law reading of the

act that we have something called a heritage council. Minister indicated that it was for interim period. For ease of explanation to the community while we are in this period of reform, we refer to it as an interim heritage council.

Rebecca Vassarotti MLA: The answer to the Member's question is as follows: –

The current ACT Heritage Council was appointed under section 17 of the *Heritage Act 2004*. Appointment instruments can be seen at: <https://legislation.act.gov.au/a/2004-57/>. Appointments were made in accordance with the *Governance Principles – Appointments, Boards and Committees in the ACT*.

Legal advice provided by the ACT Government Solicitor is subject to legal professional privilege, including client legal privilege under the *Evidence Act 2011*. Section 11.1 of the *Law Officers Legal Services Directions 2023* provides that legal professional privilege in any document or advice provided in the course of any Territory legal work may not be waived, except with the express approval of the Attorney-General or the Chief Solicitor on behalf of the Attorney-General.

Approved for circulation to the Select Committee on Estimates 2023-2024

Signature: 

Date: 3/8/2023

By the Minister for Heritage, Rebecca Vassarotti MLA