



## **Legislative Assembly for the Australian Capital Territory**

Standing Committee on Environment,  
Climate Change and Biodiversity

# **Inquiry into ACT's heritage arrangements**

Legislative Assembly for the Australian Capital Territory  
Standing Committee on Environment, Climate Change and Biodiversity

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Approved for publication

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Report 9  
10th Assembly  
October 2023



# About the committee

## Establishing resolution

The Assembly established the Standing Committee on Environment, Climate Change and Biodiversity on 2 December 2020.

The Committee is responsible for the following areas:

- Climate change
- Climate action
- Environment
- Heritage
- Water and energy policy and programs
- Emissions reduction
- Environment and ecological sustainability
- Commissioner for Sustainability and the Environment
- Environmental Protection Agency
- Parks and conservation

You can read the full establishing resolution [on our website](#).

## Committee members

Dr Marisa Paterson MLA, Chair

Ms Jo Clay MLA, Deputy Chair

Mr Ed Cocks MLA

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## About this inquiry

Under Standing Order 216, standing committees can self-initiate an inquiry into any subject area it is given responsibility for by the establishing resolution. The Standing Committee on Environment, Climate Change and Biodiversity resolved to conduct an inquiry into the ACT's heritage arrangements on 5 December 2023.

The full [terms of reference](#) for the inquiry are available on our [website](#).

# Contents

<b>About the committee</b>	<b>i</b>
Establishing resolution	i
Committee members	i
Secretariat	i
Contact us	i
<b>About this inquiry</b>	<b>ii</b>
<b>Acronyms and abbreviations</b>	<b>vi</b>
<b>Recommendations</b>	<b>viii</b>
<b>1. Introduction</b>	<b>1</b>
Referral and decision to inquire	1
Conduct of the inquiry	1
Acknowledgement	2
<b>2. Background and context</b>	<b>3</b>
Heritage Council dismissal	3
ACT Government Review	4
Review of heritage model	5
Interim Heritage Council	5
Review of Heritage Unit business systems	6
Capability and capacity	6
Strategic heritage framework	7
Legislation	7
Heritage Act 2004	8
Nature Conservation Act 2014	15
Planning Act 2023	15
Urban Forest Act 2023	17
Supporting bodies	17
Heritage Unit	17
Heritage Council Taskforces	19
Heritage Advisory Service	19
<b>3. Matters considered</b>	<b>20</b>
Governance	20
Need for a cohesive system	20
Need for a strategy and vision	23

Strategic alignment	24
Heritage Council	26
Roles and functions of the Heritage Council	26
Expanding the Heritage Council's decision-making capacity	29
Reactive rather than proactive	31
Heritage Council membership and meetings	32
Relationship with the Heritage Unit	36
Location of the Heritage Unit within EPSDD	43
Adaptive reuse and modifications	45
Appropriate limits to preserving heritage	45
Sustainability considerations	51
Accessibility	55
Natural and landscape heritage	56
Local heritage	58
Local heritage significance	58
Programs and engagement	60
Heritage grants	61
Aboriginal heritage (tangible and intangible) and cultural landscapes	63
Aboriginal heritage in the <i>Heritage Act 2004</i>	63
Intangible cultural heritage	64
Registered Aboriginal Organisations	67
Protection of cultural heritage	71
Resourcing, business systems, and processes	74
Resourcing of the Heritage Unit	74
Skillset of the Heritage Unit	76
Business systems and processes	78
Application and nomination processes	81
Monitoring, compliance and enforcement	89
Management of Government Heritage assets	89
Inconsistent monitoring and compliance	92
Appeal rights	95
<b>4. Conclusion</b>	<b>97</b>
<b>Appendix A: Submissions</b>	<b>98</b>
<b>Appendix B: Witnesses</b>	<b>101</b>
Tuesday, 16 May 2023	101
<b>Appendix C: Questions Taken on Notice</b>	<b>103</b>

Questions Taken on Notice	103
<b>Appendix D: Summary of State and Territory Heritage Bodies</b>	<b>104</b>
Heritage Councils	104
Main Act	104
Heritage Council	104
Council Membership	105
Council Members' Term of Office	106
Council Functions	106
Parent Department	108
Power for Council to delegate powers and functions	109
Aboriginal Heritage Councils	111
Main Act	111
Heritage Committee/Council	111
Committee/Council Membership	112
Committee/Council Members' Term of Office	112
Committee/Council Functions	113
Parent Department	115
Power for Committee/Council to delegate powers and functions	116
Local Aboriginal Heritage Bodies	116
Local Aboriginal Heritage Body Functions	117
<b>Appendix E: Dissenting report by Mr Ed Cocks MLA</b>	<b>120</b>

# Acronyms and abbreviations

Acronym	Long form
ACAT	ACT Civil and Administrative Tribunal
ACH	Aboriginal Cultural Heritage
ACHB	Aboriginal Cultural Heritage Body
ACT	Australian Capital Territory
AM	Member of the Order of Australia
AO	Officer of the Order of Australia
ASHA	Australasian Society for Historical Archaeology
CEO	Chief Executive Officer
CMP	Conservation Management Plan
CMTEDD	Chief Minister, Treasury and Economic Development Directorate
Committee	Standing Committee on Environment, Climate Change and Biodiversity
Conservator	ACT Conservator of Flora and Fauna
DA	Development Application
DDTS	Digital, Data and Technology Solutions
EDO	Environmental Defenders Office
EPSDD	Environment, Planning and Sustainable Development Directorate
FTE	Full-time equivalent
Heritage Act	<i>Heritage Act 2004</i>
Heritage Council	ACT Heritage Council
Heritage Unit	ACT Heritage Unit
ICOMOS	International Council on Monuments and Sites
LACHS	Local Aboriginal Cultural Heritage Service
Minister	Ms Rebecca Vassarotti MLA, Minister for Heritage
MLA	Member of the Legislative Assembly
MoU	Memorandum of Understanding
Nature Conservation Act	<i>Nature Conservation Act 2014</i>
OAM	Medal of the Order of Australia
OCSE	Office of the Commissioner for Sustainability and the Environment
NSW	New South Wales
NT	Northern Territory



PCS	Parks and Conservation Service
Planning Act	<i>Planning Act 2023</i>
Qld	Queensland
QTON	Question Taken on Notice
RAO	Representative Aboriginal Organisation
RAP	Representative Aboriginal Party
RARB	Recognised Aboriginal Representative Bodies
SA	South Australia
SHE	Statement of Heritage Effect
Stenning & Associates Report	Stenning & Associates, <i>Celebrating heritage in a growing city: ACT Heritage Jurisdictional Review: Phase 1, Final Report</i> , July 2023
Tas	Tasmania
TCCS	Transport Canberra and City Services Directorate
UNESCO	United Nations Educational, Scientific and Cultural Organisation
Urban Forest Act	<i>Urban Forest Act 2023</i>
Vic	Victoria
WA	Western Australia

Aboriginal/First Nations/Indigenous: In this report, we have used the term Aboriginal people for the First Nations people in the ACT. This is consistent with the *Heritage Act 2004* and the ACT Indigenous Protocol.

# Recommendations

## Recommendation 1

The Committee recommends that the ACT Government urgently address its structure of governance of the ACT's heritage arrangements.

## Recommendation 2

The Committee recommends that the ACT Government develop an ACT Heritage Strategy.

## Recommendation 3

The Committee recommends that the ACT Government ensures that any reforms to the heritage framework be in line with recent planning reforms (such as the *Planning Act 2023* and Territory Plan).

## Recommendation 4

The Committee recommends that the ACT Government review and make a definitive decision on the powers provided to the ACT Heritage Council.

## Recommendation 5

The Committee recommends that the ACT Government, when considering matters pertaining to both planning and heritage, provide reasons on the decisions publicly, to ensure that there is transparency on these decisions.

## Recommendation 6

The Committee recommends that the ACT Government amend the *Heritage Act 2004* to include provisions for a decision-maker to state in their decision the reasons why the matter was resolved, for example, contrary to ACT Heritage Council advice.

## Recommendation 7

The Committee recommends that the ACT Government amend the *Heritage Act 2004* to expand the ACT Heritage Council's remit to be proactive and to include providing advice to the ACT Government on heritage issues.

## Recommendation 8

The Committee recommends that the ACT Government consider increasing the membership of the ACT Heritage Council to include an expert in sustainability and renewable technology.

## Recommendation 9

The Committee recommends that the ACT Government consider removal of the Chief Planner as an *ex-officio* member of the ACT Heritage Council, in the announced review of governance arrangements.

## Recommendation 10

The Committee recommends that the ACT Government increase the frequency of ACT Heritage Council meetings in order to deal with the increased volume of applications and advice that need to be considered.

### **Recommendation 11**

The Committee recommends that the ACT Government clarify the roles and responsibilities between the ACT Heritage Council and ACT Heritage Unit through the Heritage Strategy, and implement clear roles and responsibilities through legislative changes.

### **Recommendation 12**

The Committee recommends that the ACT Government undertake a review of delegations relating to ACT Heritage Unit staff and their engagement with the ACT Heritage Council.

### **Recommendation 13**

The Committee recommends that the ACT Government ensure the ACT Heritage Unit effectively collaborates with other areas of EPSDD, other government agencies, and ensure that there is improved information flow.

### **Recommendation 14**

The Committee recommends that the EPSDD clearly acknowledge and recognise perceptions of conflicts of interest in its decision-making, in order to address community expectations for transparency.

### **Recommendation 15**

The Committee recommends that the ACT Government amend the *Heritage Act 2004* and relevant policies to allow low-impact improvements to be made quickly and easily to heritage-listed properties.

### **Recommendation 16**

The Committee recommends that the ACT Government amend the *Heritage Act 2004* so that the climate change and environmental costs are considered for future heritage advice and decisions.

### **Recommendation 17**

The Committee recommends that the ACT Government make appropriate policy and legislative changes to support improved accessibility to public heritage sites.

### **Recommendation 18**

The Committee recommends that the ACT Government consider increasing support for community sector heritage.

### **Recommendation 19**

The Committee recommends that the ACT Government consider expanding the heritage grants program and provide it with extra resourcing to enable greater uptake from community and grassroots heritage initiatives.

### **Recommendation 20**

The Committee recommends that the ACT Government amend the *Heritage Act 2004* to include a definition of Aboriginal cultural heritage that recognises both tangible and intangible heritage.

### **Recommendation 21**

The Committee recommends that the ACT Government recognise the conflicting pressures faced by RAOs (often those with many roles) and ensure RAOs receive adequate remuneration for their participation in heritage processes.

### **Recommendation 22**

The Committee recommends that the ACT Government investigate whether there are any barriers to Aboriginal organisations in applying for heritage grants.

### **Recommendation 23**

The Committee recommends that the ACT Government amend the governance arrangements so the ACT Heritage Unit must meet with RAOs and report to the ACT Heritage Council.

### **Recommendation 24**

The Committee recommends that the ACT Government and the ACT Heritage Unit provide a report on Aboriginal listed heritage sites in the ACT.

### **Recommendation 25**

The Committee recommends that the ACT Government amend the *Heritage Act 2004* to allow Aboriginal people or appropriate heritage consultants to move an artefact for the purpose of protecting them in an emergency situation.

### **Recommendation 26**

The Committee recommends that the ACT Government strengthen Aboriginal heritage protection by ensuring the ACT Heritage Council's Aboriginal Heritage Taskforce is appropriately resourced.

### **Recommendation 27**

The Committee recommends that the ACT Government increase the budget and resourcing for the ACT Heritage Unit to meet community expectations and meet statutory deadlines for decision-making.

### **Recommendation 28**

The Committee recommends that the ACT Government undertake a functional review to ensure staff in the ACT Heritage Unit are appropriately supported, resourced, and trained to perform the unit's required functions.

### **Recommendation 29**

The Committee recommends that the ACT Government fund the upgrade for the heritage register to include thematic division of items and places registered, as well as information on nominations such as timeframes.

### **Recommendation 30**

The Committee recommends that the ACT Government increase the funding to improve resourcing of the heritage library, particularly for future digitisation work.

### **Recommendation 31**

The Committee recommends that the ACT Government and ACT Heritage Unit provide improved guidance for excavation permits about what is being sought and permitted, as well as provide timely access to advice and appeal processes.

### **Recommendation 32**

The Committee recommends that the ACT Government look to implement reforms to increase improvement in timely and in-person engagement between the ACT Heritage Unit and applicants. This may include:

- establishing clear telephone and online contacts;
- establishing case managers, or similar roles to steward proposals through the system; and
- publishing reasons for decisions.

### **Recommendation 33**

The Committee recommends that the ACT Government ensure that the heritage system in the ACT include greater holistic engagement and consultation with the community, including engagement with interested individuals, community groups, and relevant sectors.

### **Recommendation 34**

The Committee recommends that the ACT Government consider recurrent or long-term funding to maintain and repair ACT Government heritage-listed facilities.

### **Recommendation 35**

The Committee recommends that the ACT Government review the existing monitoring and compliance mechanisms in the *Heritage Act 2004* and associated subordinate legislation.

### **Recommendation 36**

The Committee recommends that the ACT Government explore avenues of appeal for the ACT Heritage Council through the ACT Civil and Administrative Tribunal.

### **Recommendation 37**

The Committee recommends that the ACT Government incorporate this report into the government's review and reform program for heritage in the ACT.



# 1. Introduction

## Referral and decision to inquire

- 1.1. This inquiry was initiated following the dismissal of the ACT Heritage Council (the Heritage Council) in early December 2022 by the Minister for Heritage (the Minister), Ms Rebecca Vassarotti MLA.
- 1.2. The Minister's decision to dismiss the Council was made in response to a review of the Council and ACT Heritage Unit (Heritage Unit) by Nous Group, who were engaged by the Environment, Planning, and Sustainable Development Directorate (EPSDD) in August 2022.<sup>1</sup>
- 1.3. In its submission to the inquiry, the ACT Government outlined the reason for the review:

The review was in response to concerns raised about the nature and effectiveness of the relationship between members of the Council and between the Council and ACT Heritage, the current performance of the Council and its ability to discharge its functions under the Act.<sup>2</sup>
- 1.4. Nous Group's final report, released in November 2022, found that there were strained relationships both within the Heritage Council and between the Heritage Council and Heritage Unit, frustration with structural and workload issues, and inefficient business systems including the heritage database.<sup>3</sup>
- 1.5. When announcing the dismissal of the Heritage Council, the Minister also announced a comprehensive review and reform program for heritage in the ACT, and that she would appoint an interim Heritage Council in 2023.<sup>4</sup>

## Conduct of the inquiry

- 1.6. On 5 December 2022, the Committee resolved to conduct an inquiry into the ACT's heritage arrangements and called for submissions.
- 1.7. On 14 February 2023, the Committee resolved to extend the submission deadline from 3 March 2023 to 31 March 2023.
- 1.8. The Committee received 65 submissions which were published on the inquiry webpage and are listed in [Appendix A](#).
- 1.9. A public hearing was held on Tuesday, 16 May 2023. The Committee heard evidence from witnesses listed in [Appendix B](#). The transcript and video recordings are available on the Legislative Assembly website.

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<sup>1</sup> ACT Government, *Submission 19*, p 4.

<sup>2</sup> ACT Government, *Submission 19*, p 4.

<sup>3</sup> ACT Government, *Submission 19*, p 4.

<sup>4</sup> Ms Rebecca Vassarotti MLA, Minister for Heritage, 'Statement regarding ACT Heritage Council and next steps for heritage reform', *Media Release*, 19 April 2023.

- 1.10. The Committee had three Questions Taken on Notice (QTONs) from the public hearings. The details of the QTONs are listed in [Appendix C](#).
- 1.11. A summary of state and territory heritage bodies' governance arrangements is listed in [Appendix D](#).

## Acknowledgement

- 1.12. The Committee would like to thank everyone who assisted the inquiry, including local, Territory and national heritage organisations, heritage experts and professionals, community councils and resident associations, the Office of the Commissioner for Sustainability and the Environment, the Minister, and accompanying directorate officials.



## 2. Background and context

2.1. This chapter outlines the context in which the ACT's heritage arrangements are currently operating, particularly in relation to:

- the dismissal of the Heritage Council;
- the government's recent heritage reform agenda;
- the *Heritage Act 2004* (Heritage Act) and other associated legislation; and
- the supporting bodies.

### Heritage Council dismissal

2.2. As noted in Chapter 1, the Minister dismissed the Heritage Council in December 2022, following a review into the Heritage Council and Heritage Unit by the consultancy group, Nous Group.

2.3. In a ministerial statement to the Assembly on 29 November 2022, the Minister explained how the review was necessary as she 'was briefed on issues that were impacting on the current performance of the Council, and the strength of relationship between Council members and with ACT Heritage in the Environment, Planning and Sustainable Development Directorate.'<sup>5</sup>

2.4. More specifically, the review was commissioned to examine:

- the relationship of the Heritage Council with the Heritage Unit;
- the impacts on the Heritage Council's performance and ability to deliver its statutory functions under the Heritage Act; and
- options to address the findings of the review.<sup>6</sup>

2.5. Nous Group ultimately found that 'strained Council relationships, together with inefficient ACT Heritage systems, present an imminent risk to ACT heritage sites.'<sup>7</sup>

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<sup>5</sup> Ms Rebecca Vassarotti MLA, Minister for Heritage, *Hansard*, 29 November 2022, p 3910.

<sup>6</sup> Nous Group, *Review of the ACT Heritage Council – Public Report*, November 2022, p 1.

<sup>7</sup> Nous Group, *Review of the ACT Heritage Council – Public Report*, November 2022, p 2.

2.6. The summary of findings by Nous Group is available in Table 1, below.

1. Relationships among Council members, and between the Council and the Heritage Unit, have become strained	2. Frustration with structural and workload issues has contributed to stress
<p><b>Council business has become strained</b></p> <ul style="list-style-type: none"> <li>• Council members do not have a unified understanding of priorities and governance processes.</li> <li>• Trust among Council members has become eroded, with no clear paths to resolution.</li> </ul> <p><b>Understandings of roles and responsibilities between the Council and the Heritage Unit are misaligned</b></p> <ul style="list-style-type: none"> <li>• Councillors and Heritage Unit staff feel that a better working relationship is needed.</li> <li>• Some Council members feel they should have a more strategic and directive role. They feel that the Heritage Unit does not recognise or enable this.</li> </ul> <p><b>There is frustration on both sides regarding how to work together to improve</b></p> <ul style="list-style-type: none"> <li>• Some Council members want to assist in creating more efficient ways of working, but have not been mindful of the operating context.</li> <li>• Heritage Unit staff feel that they do not currently have the capacity to respond to requests that fall outside of their day-to-day work.</li> </ul> <p><b>Unprofessional behaviour has created stress in the work environment</b></p> <ul style="list-style-type: none"> <li>• Some Council members have shown unprofessional behaviour towards other Council members, Heritage Unit staff, and external proponents.</li> <li>• At times some Heritage Unit staff have shown unprofessional behaviour towards Council members.</li> </ul>	<p><b>The Council lacks a unified direction and understanding of their strategic outlook and processes</b></p> <ul style="list-style-type: none"> <li>• The Council does not have a unified understanding of its strategic priorities, roles and responsibilities.</li> <li>• The Council's business processes for triaging tasks and delegating workflow need clarification.</li> </ul> <p><b>Governance arrangements between the Heritage Unit and the Council are unclear</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• There is dissatisfaction and misalignment of expectations between some Council members and the Heritage Unit regarding each other's work processes.</li> </ul> <p><b>Heritage Unit resources do not match the increasing demand or complexity of the work required</b></p> <ul style="list-style-type: none"> <li>• The Heritage Unit's workload has increased substantially in recent years, without a corresponding increase in budget and resources.</li> <li>• COVID and stress-leave absences caused by tensions in the work environment have exacerbated this issue over a six-month period.</li> </ul> <p><b>Inefficient business systems put stress on staff</b></p> <ul style="list-style-type: none"> <li>• The Heritage Unit's internal workflow and business processes are inefficient, including the Heritage Database and linkages to development applications.</li> <li>• 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.</li> </ul>

Table 1: Summary of Nous Group findings [Source: Nous Group, *Review of the ACT Heritage Council - Public Report*, p 2]

## ACT Government Review

2.7. On 7 December 2022, the Minister announced to undertake a more comprehensive review and reform program for heritage in the ACT.<sup>8</sup> The review, undertaken by consultants Stenning & Associates, aims to research, identify, and propose a model for future heritage legislation and arrangements that is fit for purpose in the ACT and reflects best practice from other jurisdictions.<sup>9</sup> The reform program will consider five areas:

- Heritage model;
- Heritage Council;
- Business systems;
- Capability and capacity; and
- Heritage strategy.<sup>10</sup>

<sup>8</sup> Ms Rebecca Vassarotti MLA, Minister for Heritage, 'Statement regarding ACT Heritage Council and next steps for heritage reform', *Media Release*, 19 April 2023.

<sup>9</sup> ACT Government Environment, Planning and Sustainable Development Directorate, [ACT Heritage Council](#) (accessed 21 September 2023).

<sup>10</sup> ACT Government, *Submission 19*, pp 4–5.

## Review of heritage model

- 2.8. In its submission, the ACT Government informed the Committee that it had sought to engage a consultant to undertake a two-stage review of the heritage model:

[The review] will include the governance, processes, policy and procedures for heritage advice and management across the ACT. The outcomes of the Inquiry will also be considered in determining the model for implementation.<sup>11</sup>

- 2.9. The government advised in its submission that Phase 1 of the review featured a jurisdictional review examining the handling of heritage matters in other states and territories, including the role of Heritage Council equivalents and the operation of their heritage legislation.<sup>12</sup> The Phase 1 final report was published in July 2023 by Stenning & Associates (*Stenning & Associates Report*).<sup>13</sup>
- 2.10. Phase 2 (currently being undertaken at the time of this report's publication) will be informed by the findings of Phase 1 and focus on stakeholder and community consultation, as well as the development of an action plan.<sup>14</sup>

## Interim Heritage Council

- 2.11. In its submission to the inquiry, the ACT Government indicated that while the review of the heritage model is being undertaken, work would commence on appointing an interim Heritage Council for a 12-month period to continue delivery of the Heritage Council's functions under the Heritage Act:

While the review is being conducted, an interim Heritage Council will be appointed for a period of no less than 12 months, with the possibility of extension or reappointment. The recommendations of the review and the Committee's Inquiry will be considered in establishing the permanent Council at the end of the interim Council's term.

The functions of the interim Heritage Council will continue to deliver their responsibilities under the current legislation, including their ability to make decisions on the registration of heritage places and objects as outlined in the Act. The interim Heritage Council will also play a key role providing expert advice to support the review.<sup>15</sup>

- 2.12. After the ACT Government provided its submission to this inquiry, an interim Heritage Council was appointed in April 2023.<sup>16</sup>

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<sup>11</sup> ACT Government, *Submission 19*, p 5.

<sup>12</sup> ACT Government, *Submission 19*, p 5.

<sup>13</sup> Stenning & Associates, [Celebrating heritage in a growing city: ACT Heritage Jurisdictional Review: Phase 1](#), Final Report, July 2023.

<sup>14</sup> ACT Government, *Submission 19*, p 5.

<sup>15</sup> ACT Government, *Submission 19*, p 5.

<sup>16</sup> Ms Rebecca Vassarotti MLA, Minister for Heritage, 'New ACT Heritage Council appointed', *Media Release*, 19 April 2023.

## Review of Heritage Unit business systems

- 2.13. In its submission, the ACT Government confirmed that it was also looking to review supporting heritage systems, in particular the heritage database, which was developed in 2005 and was deemed obsolete in a 2020–21 review:

The review of the Heritage Council in 2022 also highlighted that ACT Heritage’s current business systems and database are outdated and are not fit for purpose to support ACT Heritage’s performance and had added to the stress on staff.<sup>17</sup>

- 2.14. The ACT Government advised that EPSDD had begun an internal review of its systems, internal workflow policies, business processes, and was developing a new database. The goal of this review was to develop improved business systems that were ‘fit for purpose’ and would minimise duplication and provide accurate and timely information for the community and other users.<sup>18</sup>

- 2.15. The initial ‘discovery phase’ of developing a new ACT Heritage Register database and website had been undertaken by Nous Group:<sup>19</sup>

The discovery phase comprised deep and wide consultation with more than 70 stakeholders across the ACT Government and externally to understand the current state, including how, when and why heritage data is used, where it is accessed from and what the experience of the current systems and processes is.<sup>20</sup>

- 2.16. The ACT Government’s submission further outlined the steps it had taken once the discovery phase was completed. These included engaging Digital, Data and Technology Solutions (DDTS) within the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) to develop and present an Engagement Plan, which was delivered in late 2022, and continued support for the project from DDTS over the following three years.<sup>21</sup>

## Capability and capacity

- 2.17. In its submission, the ACT Government highlighted increased workload pressures on the Heritage Council, noting that requests for advice had more than doubled between 2014 and 2021. This increased demand had affected the Heritage Council’s ability to provide advice on development applications, leading to delays in providing advice. For example, in the 2021–22 financial year, 64 percent of advice was issued within the statutory referral period, which was below the 90 percent target.<sup>22</sup>
- 2.18. The ACT Government observed that the number of Conservation Management Plan (CMP) applications to the Heritage Council awaiting assessment in 2022 had reached 18, which was ‘significantly’ more than usual. CMPs associated with major projects also required

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<sup>17</sup> ACT Government, *Submission 19*, p 6.

<sup>18</sup> ACT Government, *Submission 19*, p 6.

<sup>19</sup> ACT Government, *Submission 19*, p 6.

<sup>20</sup> ACT Government, *Submission 19*, p 6.

<sup>21</sup> ACT Government, *Submission 19*, pp 6–7.

<sup>22</sup> ACT Government, *Submission 19*, p 7.

referral to Heritage Council Taskforces, and due to an increase in ACT Government major projects, such Taskforce referrals had increased 480 percent between 2014 and 2021.<sup>23</sup>

- 2.19. The ACT Government submission also reported that prioritisation of statutory referrals, such as Development Applications (DAs), in order to meet statutory timeframes, had resulted in longer delays to advice being provided to private owners. This had resulted in increased complaints and update requests, leading to further pressures on the Heritage Council and Heritage Unit.<sup>24</sup>
- 2.20. The ACT Government advised in its submission that it intended that a new model for the Heritage Unit, as well as workforce planning and capacity building, would deliver ‘faster and more streamlined approvals process for the ACT community.’ Action had been taken to engage additional staff on a temporary basis, and additional staff to support the reform work had also been recruited, despite challenges in finding staff with the required qualifications and level of experience.<sup>25</sup>

## Strategic heritage framework

- 2.21. In its submission, the ACT Government proposed to develop a strategic framework for the management, conservation, and protection of heritage in the ACT as a key aspect of heritage reform. This framework would provide a ‘comprehensive direction’ and ensure there was an ‘overarching framework’ in place for ongoing decision making and public engagement.<sup>26</sup>
- 2.22. A strategic business plan for the Heritage Unit was proposed for development in 2023–2024 and would be the initial document to support the framework. The ACT Government submitted that a ‘strategic and outward-facing Heritage Statement of Intent’ would also be developed and would provide a clear vision statement, definition of objectives and direction of heritage in the ACT:

This Statement will reflect the combined learnings from the Government’s comprehensive review and the establishment of the interim Council, as well as the findings of this Inquiry.<sup>27</sup>

- 2.23. The Committee notes that the strategic business plan for the Heritage Unit is not a heritage strategy.

## Legislation

- 2.24. In the ACT, heritage is primarily dealt with under the Heritage Act. The Heritage Act interacts with three other pieces of legislation – the *Nature Conservation Act 2014* (Nature Conservation Act), *Planning Act 2023* (Planning Act), and *Urban Forest Act 2023* (Urban Forest Act).

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<sup>23</sup> ACT Government, *Submission 19*, p 7.

<sup>24</sup> ACT Government, *Submission 19*, p 7.

<sup>25</sup> ACT Government, *Submission 19*, p 8.

<sup>26</sup> ACT Government, *Submission 19*, p 8.

<sup>27</sup> ACT Government, *Submission 19*, p 8.

## Heritage Act 2004

2.25. The Heritage Act aims to recognise, protect, and conserve places and objects of natural and cultural significance.<sup>28</sup>

2.26. Under the Heritage Act, objects and places are defined as follows:

**object** means a natural or manufactured object, but does not include a building or any other man-made structure.

**place** includes the following:

- (a) a site, precinct or parcel of land;
- (b) a building or structure, or part of a building or structure;
- (c) the curtilage, or setting, of a building or structure, or part of a building or structure;
- (d) an object or feature historically associated with, and located at, the place.<sup>29</sup>

2.27. Unlike other jurisdictions in Australia, which have separate legislation for indigenous and non-indigenous heritage (see [Appendix D](#)), the ACT's Heritage Act covers both, with aboriginal objects, places, and traditions defined as:

(1) In this Act:

**Aboriginal object** means an object associated with Aboriginal people because of Aboriginal tradition.

**Aboriginal place** means a place associated with Aboriginal people because of Aboriginal tradition.

(2) In this section:

**Aboriginal tradition** means the customs, rituals, institutions, beliefs or general way of life of Aboriginal people.<sup>30</sup>

2.28. Heritage significance is also defined under section 10 of the Heritage Act:

A place or object has **heritage significance** if the place or object meets 1 or more of the following criteria (the **heritage significance criteria**):

- (a) importance to the course or pattern of the ACT's cultural or natural history;
- (b) has uncommon, rare or endangered aspects of the ACT's cultural or natural history;

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<sup>28</sup> *Heritage Act 2004*, long title.

<sup>29</sup> *Heritage Act 2004*, s 8.

<sup>30</sup> *Heritage Act 2004*, s 9.

- (c) potential to yield important information that will contribute to an understanding of the ACT's cultural or natural history;
- (d) importance in demonstrating the principal characteristics of a class of cultural or natural places or objects;
- (e) importance in exhibiting particular aesthetic characteristics valued by the ACT community or a cultural group in the ACT;
- (f) importance in demonstrating a high degree of creative or technical achievement for a particular period;
- (g) has a strong or special association with the ACT community, or a cultural group in the ACT for social, cultural or spiritual reasons;
- (h) has a special association with the life or work of a person, or people, important to the history of the ACT.

2.29. Likewise natural heritage significance is defined:

- (1) For this Act, a place or object has ***natural heritage significance*** if it—
  - (a) forms part of the natural environment; and
  - (b) has heritage significance primarily because of the scientific value of its biodiversity, geology, landform or other naturally occurring elements.
- (2) In this section:

***natural environment*** means the native flora, native fauna, geological formations or any other naturally occurring element at a particular location.<sup>31</sup>

2.30. And cultural heritage significance:

A place or object has ***cultural heritage significance*** if it—

- (a) is—
  - (i) created or modified by human action; or
  - (ii) associated with human activity or a human event; and
- (b) has heritage significance.<sup>32</sup>

## Heritage Council and functions

2.31. The Heritage Act establishes the Heritage Council and allocates to it several functions:

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<sup>31</sup> *Heritage Act 2004*, s 10A.

<sup>32</sup> *Heritage Act 2004*, s 10B.

- (a) to identify, assess, conserve and promote places and objects in the ACT with natural and cultural heritage significance;
- (b) to encourage the registration of heritage places and objects;
- (c) 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;
- (d) to advise the Minister about issues affecting the management and promotion of heritage;
- (e) to encourage and assist in appropriate management of heritage places and objects;
- (f) to encourage public interest in, and understanding of, issues relevant to the conservation of heritage places and objects;
- (g) to encourage and provide public education about heritage places and objects;
- (h) to assist in the promotion of tourism in relation to heritage places and objects;
- (i) to keep adequate records, and encourage others to keep adequate records, in relation to heritage places and objects;
- (j) any other function given to it under this Act or another Territory law.<sup>33</sup>

- 2.32. The Heritage Council comprises the Chief Planner<sup>34</sup> and Conservator of Flora and Fauna (the Conservator) as *ex-officio* members, and nine members appointed by the Minister:
- three public representatives, each representing the Aboriginal community, the community, and the property ownership, management, and development sector; and
  - six experts in one or more of the disciplines of architecture, archaeology, history, landscape architecture, Aboriginal history, Aboriginal culture, engineering, town planning, urban design, and nature.<sup>35</sup>
- 2.33. Members of the Heritage Council are appointed for terms of up to three years, and may be eligible for reappointment.<sup>36</sup>
- 2.34. In April 2023, the Minister appointed an interim Heritage Council for a minimum of one year while the government review was undertaken.<sup>37</sup> The interim Heritage Council was intended to continue to deliver the Heritage Council's responsibilities under legislation,

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<sup>33</sup> *Heritage Act 2004*, s 18.

<sup>34</sup> Note: under the new *Planning Act 2023*, the term Chief Planner replaced the former title of Chief Planning Executive.

<sup>35</sup> ACT Government Environment, Planning and Sustainable Development Directorate, [ACT Heritage Council](#) (accessed 21 September 2023).

<sup>36</sup> See, for example: *Heritage Act 2004*, s 17; ACT Government, *Submission 19*, p 2.

<sup>37</sup> Ms Rebecca Vassarotti MLA, Minister for Heritage, 'New ACT Heritage Council appointed', *Media Release*, 19 April 2023.



including the ability to accept heritage nominations and formally register places/items as outlined in the Heritage Act.<sup>38</sup>

## Powers of the Heritage Council

- 2.35. The Commonwealth Parliament's Joint Standing Committee on Northern Australia pointed out in its final report for its *Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia* that the ACT's Heritage Act is unique amongst its counterparts in Australia:

The law in ACT is distinctive in that it grants decision-making power to the Heritage Council rather than to a Minister, a system whose like is only seen in the Northern Territory and only there in relation to sacred sites.<sup>39</sup>

- 2.36. The Heritage Act grants the Heritage Council several powers. It can:
- make heritage guidelines (section 25);<sup>40</sup>
  - decide both provisional registration (section 32) and registration (section 40) to the heritage register;<sup>41</sup>
  - approve permits to carry out archaeological excavations (section 61F) or statements of heritage effect for works that may damage or diminish the heritage value of a protected place or object (section 61H);<sup>42</sup>
  - approve conservation management plans (section 61K);<sup>43</sup>
  - issue heritage directions to the owner, occupier or custodian of a heritage place or object to perform works or cease works to conserve the place or object (section 62);<sup>44</sup>
  - issue repair damage directions (section 67A);<sup>45</sup>
  - apply to the ACT Supreme Court for heritage orders (section 68);<sup>46</sup> and
  - issue information discovery orders to compel a person to give information or produce a document required for the administration or enforcement of the Act (section 95).<sup>47</sup>

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<sup>38</sup> Ms Rebecca Vassarotti MLA, Minister for Heritage, 'Statement regarding ACT Heritage Council and next steps for heritage reform', *Media Release*, 7 December 2022.

<sup>39</sup> Parliament of Australia Joint Standing Committee on Northern Australia, *A Way Forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge*, Parliament of the Commonwealth of Australia, October 2021, p 135.

<sup>40</sup> *Heritage Act 2004*, s 25.

<sup>41</sup> *Heritage Act 2004*, ss 32, 40.

<sup>42</sup> *Heritage Act 2004*, s 61.

<sup>43</sup> *Heritage Act 2004*, s 61.

<sup>44</sup> *Heritage Act 2004*, s 62.

<sup>45</sup> *Heritage Act 2004*, s 67.

<sup>46</sup> *Heritage Act 2004*, s 68.

<sup>47</sup> *Heritage Act 2004*, s 95.

## ACT Heritage register

### Heritage register

- 2.37. Section 20 of the Heritage Act establishes the heritage register and allocates responsibility for its operation and maintenance to the Heritage Council.<sup>48</sup>
- 2.38. The heritage register must include the following:
- Registration details for each registered place or object;
  - Details of each place or object nominated for provisional registration, including the application date, whether it was an urgent application and if so, the date the application was given to the Council;
  - Each heritage guideline;
  - Each heritage direction;
  - Each repair damage direction;
  - Each heritage agreement; and
  - Each enforcement order.<sup>49</sup>
- 2.39. The Heritage Act also provides for public access to the heritage register through an approved website or public place where it can be inspected, but also allows the Heritage Council to restrict certain information on the register.<sup>50</sup>

### Registration process

- 2.40. Part 6 of the Heritage Act stipulates the process by which places and objects, including aboriginal places and objects, can be provisionally registered and registered in the ACT.
- 2.41. For an object or place to be registered, it must first be nominated for provisional registration in accordance with section 28.<sup>51</sup> If the place or object is an aboriginal place or object, the Heritage Council is required to consult each Representative Aboriginal Organisation before making its decision. Similarly, if the place or object forms part of the natural environment, the Heritage Council must consult with the scientific committee before making a decision.<sup>52</sup>
- 2.42. The Heritage Council is required to assess the merits of an application as soon as practicable, and if an application is accepted, the Heritage Council must then decide whether to provisionally register a nominated place or object.<sup>53</sup>
- 2.43. Once the Heritage Council has decided to provisionally register an object or place, it must be entered into the register, and the Heritage Council must prepare a written decision,

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<sup>48</sup> *Heritage Act 2004*, s 20.

<sup>49</sup> *Heritage Act 2004*, s 20.

<sup>50</sup> *Heritage Act 2004*, s 21.

<sup>51</sup> *Heritage Act 2004*, s 28.

<sup>52</sup> *Heritage Act 2004*, ss 31, 31A. The scientific committee is established under Part 2.4 of the *Nature Conservation Act 2014*.

<sup>53</sup> *Heritage Act 2004*, ss 30, 32.

which is a notifiable instrument, to be placed on the legislation register as well as published on an ACT Government website or in a daily newspaper in the ACT.<sup>54</sup> This notice must also include an invitation to the public to make comments, in writing, about the registration of the place or object to the Heritage Council within four weeks.<sup>55</sup>

- 2.44. Provisional registration lasts for a period of up to five months, except in the case of a precinct, when it lasts for nine months. It may be extended for up to an additional three months by the Minister on application by the Heritage Council.<sup>56</sup>
- 2.45. Once the process of public consultation concludes, the Heritage Council must prepare a report to the Minister outlining the Heritage Council's views on whether the place or object should be registered, together with any issues raised in public submissions, a copy of the written comments, and any other changes the Heritage Council proposes to make to the object or place's registration in response the issues raised.<sup>57</sup>
- 2.46. The Minister may decide to direct the Heritage Council to further consider any issue raised or arising from its report, and if so, must issue the direction within five working days of receipt of the report.<sup>58</sup>
- 2.47. The Heritage Council must then decide whether to register the place or object. If it does decide to register the place or object, its provisional registration status is removed. Whether registration is granted or not, the Heritage Act stipulates that a written notice must be published within five days of the decision.<sup>59</sup>

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<sup>54</sup> *Heritage Act 2004*, s 34.

<sup>55</sup> *Heritage Act 2004*, s 37.

<sup>56</sup> *Heritage Act 2004*, s 35.

<sup>57</sup> *Heritage Act 2004*, s 38.

<sup>58</sup> *Heritage Act 2004*, s 39.

<sup>59</sup> *Heritage Act 2004*, s 40.

2.48. The registration process is outlined in Figure 1, below:

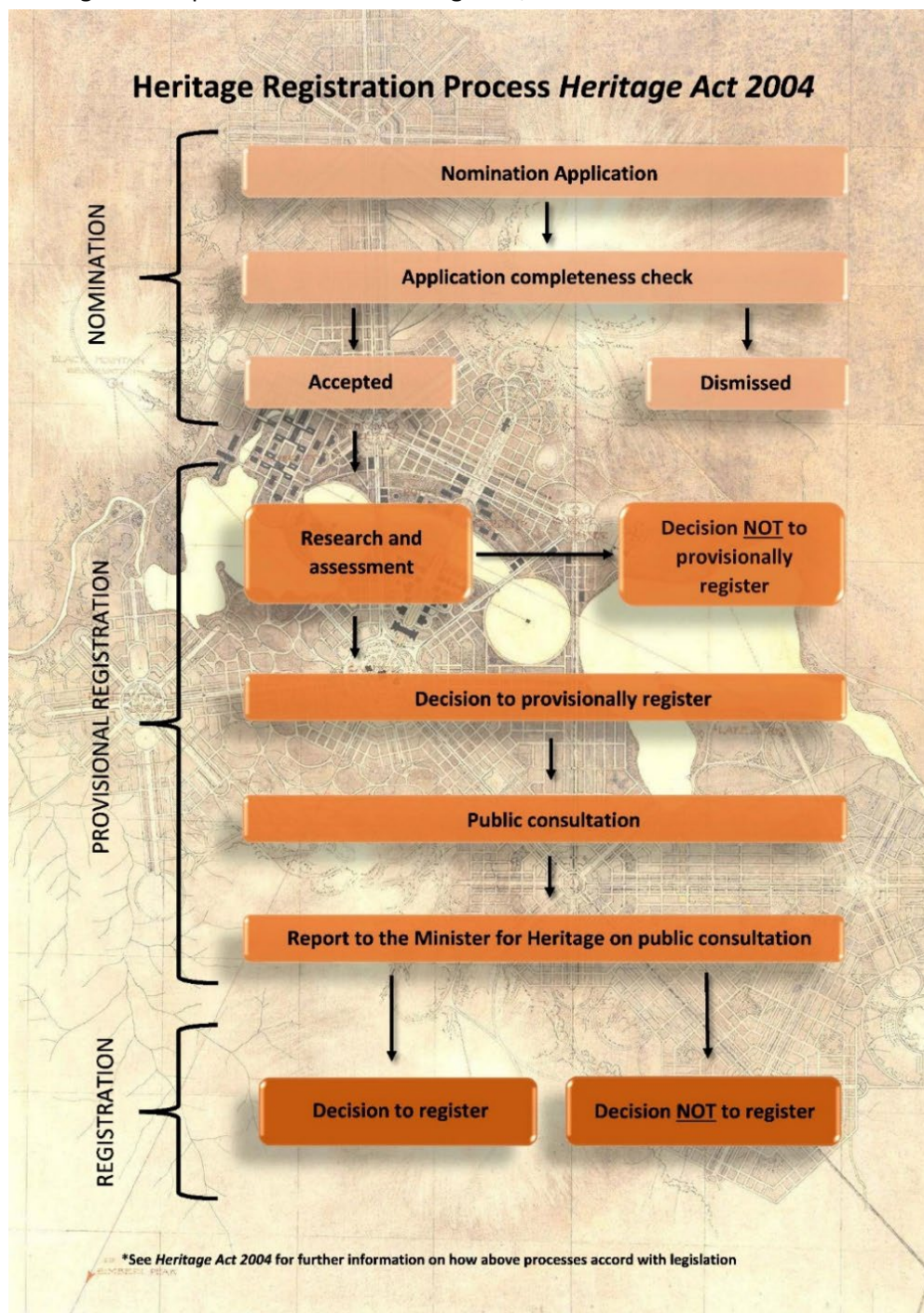


Figure 1: Heritage Registration process under the *Heritage Act 2004* [Source: EPSSD, [Registration-Proess-Flowchart-.pdf \(act.gov.au\)](#), accessed 27 September 2023]

## Registered Aboriginal Organisations

2.49. Section 14 of the Heritage Act provides for the Minister to declare indigenous entities as Registered Aboriginal Organisations (RAOs) after consultation with local Aboriginal people and the Heritage Council.<sup>60</sup>

<sup>60</sup> *Heritage Act 2004*, s 14.

- 2.50. The Heritage Act requires the Heritage Council to consult with RAOs when:
- making heritage guidelines relating to an Aboriginal place or object;<sup>61</sup>
  - making a decision about the provisional registration of an Aboriginal place or object;<sup>62</sup>
  - making a decision to cancel the registration of an Aboriginal place or object;<sup>63</sup>
  - assessing the heritage significance of a discovered and reported Aboriginal place or object;<sup>64</sup> and
  - declaring particular information about the location or nature of an Aboriginal place or object to be restricted information.<sup>65</sup>
- 2.51. Further, the Minister must consult RAOs as well as the Heritage Council when declaring a place to be a repository for Aboriginal objects.<sup>66</sup>
- 2.52. The Heritage Act also provides that RAOs can provide advice to the Conservator in relation to:
- proposed tree damaging activities;
  - tree management plan proposals; and
  - applications that relate to an Aboriginal heritage tree or a tree which forms an important part of an Aboriginal place.<sup>67</sup>

## Nature Conservation Act 2014

- 2.53. Section 42A of the Heritage Act provides that the Heritage Council can register places or objects that include the habitat of a threatened native species, threatened ecological community, or a key threatening process, if it has natural heritage significance of a kind not already protected by the Nature Conservation Act.<sup>68</sup>

## Planning Act 2023

- 2.54. The Planning Act identifies cultural heritage conservation principles as part of the ‘principles of good planning.’<sup>69</sup> Section 10(2) of the Planning Act states that ‘planning and design should promote the unique cultural heritage of the ACT by acknowledging established heritage significance in design and placemaking’ and developments should ‘respect local heritage’ and ‘avoid direct impacts on heritage or, if a direct impact is unavoidable, ensure that the impact is justifiable and proportionate.’<sup>70</sup>

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<sup>61</sup> *Heritage Act 2004*, s 26(5).

<sup>62</sup> *Heritage Act 2004*, s 31.

<sup>63</sup> *Heritage Act 2004*, s 45.

<sup>64</sup> *Heritage Act 2004*, s 53.

<sup>65</sup> *Heritage Act 2004*, s 54(3).

<sup>66</sup> *Heritage Act 2004*, s 53B.

<sup>67</sup> *Heritage Act 2004*, s 61B.

<sup>68</sup> *Heritage Act 2004*, s 42A.

<sup>69</sup> *Planning Act 2023*, s 10(1).

<sup>70</sup> *Planning Act 2023*, s 10(2).



- 2.55. Under the Planning Act, draft major plan amendments require broad consultation. The Territory Planning Authority must consult with each of the following:
- (a) the national capital authority;
  - (b) the conservator of flora and fauna;
  - (c) the environment protection authority;
  - (d) the heritage council;
  - (e) each referral entity;
  - (f) if the draft amendment would, if made, be likely to affect unleased land or leased public land—each custodian of the land likely to be affected.<sup>71</sup>
- 2.56. The Planning Act requires that DAs must be referred to an entity prescribed by regulation.<sup>72</sup> The *Planning (General) Regulation 2023* (yet to commence at the time of this report’s publication) stipulates that the Heritage Council must be referred a DA if it relates to a place registered or provisionally registered, a place or object nominated under the Heritage Act, or if the Territory Planning Authority is aware the proposed development may impact an Aboriginal place or object.<sup>73</sup> The Heritage Council then has fifteen working days to provide its advice to the Territory Planning Authority, who may approve the DA, even if it is contrary to the Heritage Council’s advice.<sup>74</sup>
- 2.57. To gain conditional approval of a DA in relation to a place registered or nominated for provisional registration under the Heritage Act, the applicant must enter into a heritage agreement for the conservation of the heritage significance of the place.<sup>75</sup>
- 2.58. The Territory Planning Authority may revoke a Development Approval if the approval is in relation to a place registered or nominated for provisional registration under the Heritage Act and the applicant for the approval is convicted of an offence against Chapter 13 (Enforcement) of the Heritage Act.<sup>76</sup> Heritage offences include:
- engaging in conduct that diminishes the heritage significance of a place or object;
  - engaging in conduct that causes damage to (including disturbing or destroying) an Aboriginal place or object;
  - being reckless or negligent about whether the conduct would diminish the heritage significance of a place or object; and
  - being reckless or negligent about whether the conduct would cause damage to the Aboriginal place or object.<sup>77</sup>

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<sup>71</sup> *Planning Act 2023*, s 62.

<sup>72</sup> *Planning Act 2023*, s 170(1).

<sup>73</sup> *Planning (General) Regulation 2023*, cl 33(1).

<sup>74</sup> See, for example: *Planning (General) Regulation 2023*, cl 35(a)(ii); *Planning Act 2023*, s 190(1).

<sup>75</sup> *Planning Act 2023*, s 187(2).

<sup>76</sup> *Planning Act 2023*, s 204(1).

<sup>77</sup> *Heritage Act 2004*, ss 74(1), 74(2), 75(1), 75(2), 75(5).

## Urban Forest Act 2023

- 2.59. The Urban Forest Act repealed the *Tree Protection Act 2005*, and interacts with the Heritage Act through provisions relating to applications to carry out activities on leased land that would impact protected trees.<sup>78</sup>
- 2.60. Under subsection 25(1) of the Urban Forest Act, if the application relates to a heritage tree, then the decision-maker must provide a copy of the application to the Council. If the application relates to an Aboriginal cultural tree, both the Heritage Council and RAOs must be provided copies.<sup>79</sup>
- 2.61. The Heritage Council, and if applicable, the RAOs, then have fifteen working days to consider the application and provide advice or agreement. If the Heritage Council fails to provide advice or agreement within that timeframe, this is taken to be agreement by the Heritage Council.<sup>80</sup>
- 2.62. Interaction between the Urban Forest Act and the Heritage Act also occurs when there is a request for disclosure of restricted information concerning an Aboriginal cultural tree, as the Conservator must seek the advice of the Heritage Council and RAOs in deciding whether to approve disclosure.<sup>81</sup>
- 2.63. Tree Management Plans also require the decision-maker to seek Heritage Council advice for heritage trees, and both Heritage Council and RAO advice in relation to Aboriginal cultural trees.<sup>82</sup>

## Supporting bodies

- 2.64. Supporting the statutory arrangements above are the following bodies:
- Heritage Unit;
  - Heritage Council Taskforces; and
  - Heritage Advisory Service.

## Heritage Unit

- 2.65. The Heritage Unit, also known as ACT Heritage or the Unit, is a business unit of EPSDD and provides administrative support and secretariat functions to the Heritage Council, as well as advice to the Minister for Heritage.<sup>83</sup>
- 2.66. Some Heritage Unit staff also exercise some Heritage Council functions under delegations, particularly in relation to heritage advice and approvals. The ACT Government wrote in its submission that these delegations are made:

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<sup>78</sup> *Urban Forest Act 2023*, s 21.

<sup>79</sup> *Urban Forest Act 2023*, s 25(1).

<sup>80</sup> *Urban Forest Act 2023*, ss 26, 27.

<sup>81</sup> *Urban Forest Act 2023*, s 76.

<sup>82</sup> *Urban Forest Act 2023*, s 82.

<sup>83</sup> ACT Government, *Submission 19*, p 3.

... to ensure timeliness, efficiency, and effectiveness in carrying out the administrative functions of the Act and allowing matters of relatively minor consequence to be more easily expedited by the ACT Heritage, on behalf of the Council.<sup>84</sup>

- 2.67. The ACT Government further advised in its submission that most advice and approvals are provided by the Heritage Unit under delegation, with the caveat that complex, contentious, or sensitive applications are assessed collaboratively between the Heritage Council and the Heritage Unit, with assessment conducted by Heritage Council Taskforces and advice provided by the Heritage Council Chair.<sup>85</sup>
- 2.68. Only the Heritage Council may make decisions as to whether a place or object is provisionally registered or registered.<sup>86</sup>
- 2.69. The *Stenning & Associates Report* noted that the Heritage Unit consisted of a Registrations team of 1.5 full-time equivalent (FTE) staff and an Approvals and Advice team of 8.4 FTE.<sup>87</sup>
- 2.70. The *Stenning & Associates Report* also noted that the Heritage Unit had faced increasing workloads, particularly since 2018–19. For example, the workload of the Approvals and Advice team had increased 93 percent between 2015–16 and 2021–22.<sup>88</sup>
- 2.71. Furthermore, in 2021–22 there had been a total of 258 requests for advice that were unassessed due to resourcing constraints. According to the *Stenning & Associates Report*, the Heritage Unit had advised that influencing factors included:
- ‘wide-ranging and complex structural issues’ affecting the Heritage Council and the Heritage Unit’s relationship and performance, as highlighted in the 2022 review by Nous Group;
  - an increase in complex and major project heritage submissions, requiring significant time for review. This also saw Heritage Council Taskforce referrals and meetings increase to a 10-year high;
  - an increase in requests for non-statutory advice to deliver ACT Government priorities, such as to provide heritage advice on proposed reforms to planning legislation;
  - an increase in complaints and status queries due to extended heritage advice timeframes; and
  - an ‘ineffective and inefficient’ model which relied on short-term contracts to support the Approvals and Advice team.<sup>89</sup>

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<sup>84</sup> ACT Government, *Submission 19*, p 3.

<sup>85</sup> ACT Government, *Submission 19*, p 3.

<sup>86</sup> ACT Government, *Submission 19*, p 3.

<sup>87</sup> Stenning & Associates, [Celebrating heritage in a growing city: ACT Heritage Jurisdictional Review: Phase 1](#), Final Report, July 2023, p 10.

<sup>88</sup> Stenning & Associates, [Celebrating heritage in a growing city: ACT Heritage Jurisdictional Review: Phase 1](#), Final Report, July 2023, p 10.

<sup>89</sup> Stenning & Associates, [Celebrating heritage in a growing city: ACT Heritage Jurisdictional Review: Phase 1](#), Final Report, July 2023, p 11.



## Heritage Council Taskforces

2.72. The ACT Government reported in its submission that four sub-committees, or Taskforces, of the Heritage Council had been established ‘to meet out of session to consider matters in detail ahead of Council meetings, and to make recommendations to the full Council.’ The Taskforces comprise of:

- Registration;
- Development Assessment;
- Conservation Management; and
- Aboriginal Heritage.<sup>90</sup>

2.73. These governance arrangements are illustrated in Figure 2, below.

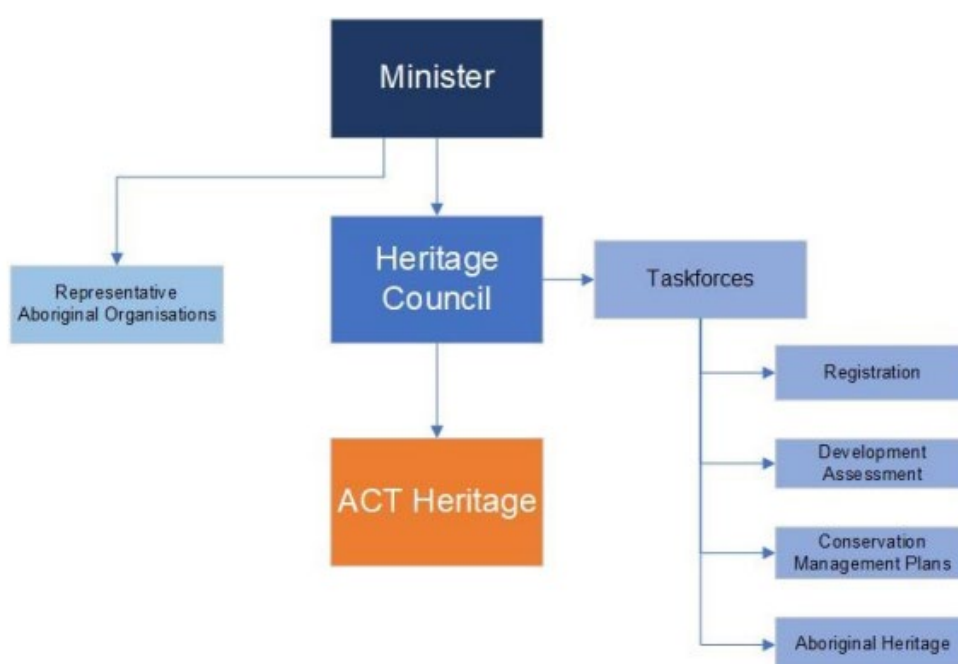


Figure 2: ACT Heritage governance arrangements [Source: Stenning and Associates, *ACT Heritage Jurisdictional Review: Phase 1, Final Report*, July 2023, p 8.]

## Heritage Advisory Service

2.74. The ACT Government provides preliminary heritage advice through a Heritage Advisory Service. This is an independent service providing free heritage and architectural advice to heritage owners and prospective purchasers. It advises on matters such as identifying heritage requirements for an applicant’s property, early advice on development and works, technical architectural and materials conservation advice, and works, alterations and additions, including renovations and extensions on heritage properties.<sup>91</sup>

<sup>90</sup> ACT Government, *Submission 19*, p 2.

<sup>91</sup> ACT Government, ‘Development at heritage sites’, <https://www.environment.act.gov.au/heritage/heritage-registration-and-protection/development-at-heritage-sites> (accessed 20 September 2023).

### 3. Matters considered

3.1. This chapter will examine the various matters and issues raised during the course of the inquiry, such as:

- governance;
- adaptive reuse and modifications;
- natural and landscape heritage;
- local heritage;
- Aboriginal heritage;
- resourcing, business systems, and processes; and
- monitoring, compliance, and enforcement.

## Governance

### Need for a cohesive system

3.2. As summarised in Chapter 2, the governance arrangements relating to the Heritage Council and the Heritage Unit was a key issue identified in the 2022 Nous Group review. These concerns were also expressed across numerous submissions to the inquiry.<sup>92</sup>

3.3. Professor Roz Hansen AM, former member of the Heritage Council and former member and Chair of the Victorian Historic Buildings Council, was of the view that the current governance structure for both the Heritage Council and the Heritage Unit, together with the contents of the Heritage Act, were in ‘need of a major overhaul’:

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.<sup>93</sup>

3.4. Another former member of the Heritage Council, Dr Laura Dawes, similarly expressed the opinion that ‘the current governance, administrative and delivery structures for ACT Government heritage activities need revision.’<sup>94</sup>

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<sup>92</sup> See, for example: Professor Roz Hansen AM, *Submission 4*, pp 5–6; Canberra and District Historical Society, *Submission 6*, p 11; Dr Laura Dawes, *Submission 21*, p 1; Mark Butz, *Submission 44*, p 2.

<sup>93</sup> Professor Roz Hansen AM, *Submission 4*, p 5.

<sup>94</sup> Dr Laura Dawes, *Submission 21*, p 1.

- 3.5. The Canberra and District Historical Society identified in its submission and supplementary submission that elements of the ACT's heritage arrangements were 'scattered' among several directorates and lacked coordination:<sup>95</sup>

**Government**

Core elements:

- *ACT Heritage Act 2004*
- Minister for Heritage
- ACT Heritage Council
- ACT Heritage Unit within the Environment, Planning and Sustainable Development Directorate (EPSDD)

Related elements:

- The Environment, Planning and Sustainable Development Directorate
- ACT Heritage Library (TCCS/ACT Library Service)
- Archives ACT (CMTEDD/Territory Records Office)
- Canberra Historic Places (CMTEDD/Cultural Facilities Corporation)
- Canberra Museum and Art Gallery (CMTEDD/Cultural Facilities Corporation)
- Arts ACT (Gorman House, Ainslie School, Power House Glass Works, Strathnairn, Lanyon etc.)
- *Planning and Development Act 2007*<sup>96</sup>
- Minister for Planning and Land Management
- ACT Property Group (management of heritage and historically significant properties).<sup>97</sup>

- 3.6. The Canberra and District Historical Society argued that this led to poor heritage outcomes and weakened the effectiveness of the arrangements to protect and promote heritage.<sup>98</sup> This point was echoed by the National Trust of Australia (ACT), reflecting in its submission that coordination issues impacted the effectiveness of heritage outcomes.<sup>99</sup>
- 3.7. During the public hearing, Mr Duncan Marshall AM, Chair of the interim Heritage Council, agreed that changes needed to be made:

... my personal view, and my view based on previous experience, is that we need a system in which all parts work together effectively in order to achieve what is expected of the council under its legislation. Council will bring certain skills, expertise, roles and qualities to the activity, and the branch is there, in part, to support the council in its work but to also undertake other functions for the ACT government.<sup>100</sup>

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<sup>95</sup> Canberra and District Historical Society, *Submission 6.1*, p 2.

<sup>96</sup> Note: the *Planning and Development Act 2007* has since been repealed. The *Planning Act 2023* came into effect on 20 June 2023. As submissions to this inquiry were received before the enactment of the *Planning Act 2023*, references to the *Planning and Development Act 2007* have been kept as evidence from that point in time.

<sup>97</sup> Canberra and District Historical Society, *Submission 6.1*, p 2.

<sup>98</sup> Canberra and District Historical Society, *Submission 6*, p 11, *Submission 6.1*, p 2.

<sup>99</sup> National Trust of Australia (ACT), *Submission 38*, p 5.

<sup>100</sup> Mr Duncan Marshall AM, Chair, interim ACT Heritage Council, *Committee Hansard*, 16 May 2023, pp 1–2.

3.8. An example cited by both the Canberra and District Historical Society and National Trust of Australia (ACT) as proof of the poor outcomes from a lack of cohesion and communication was the destruction of two Wanniasa scarred trees of Aboriginal cultural significance in 2017 and 2018.<sup>101</sup> Despite being part of a broader collection of 17 trees identified in 1991, and listed on the ACT heritage register for over 25 years, the trees were felled allegedly due to an administrative error.<sup>102</sup>

3.9. For the Canberra and District Historical Society, the failure of the ACT's heritage arrangements to protect these culturally significant trees raised questions over the adequacy of those arrangements:

The removal of the trees is of serious concern to local indigenous groups as well as the National Trust (ACT) and the Canberra and District Historical Society. The unauthorised removal of these heritage trees raises serious issues about the adequacy of existing administrative mechanisms - clearly these mechanisms have failed, and the heritage loss has been significant. This situation could be seen as part of a wider malaise in heritage protection - poor and under resourced administration which, through lack of capacity and/or will to enforce heritage protections, results in the loss of the community's heritage. Much improved practical and fail-safe protections are needed, and it is the government's responsibility to implement such protections.<sup>103</sup>

3.10. The *Stenning & Associates Report* concluded that there is a need to strengthen the governance and administration of the ACT's heritage arrangements:

...the 2022 Nous Report on the ACT Heritage Council foreshadowed, and this review has confirmed, that the governance and operational aspects of the ACT's heritage arrangements need to be strengthened as the basis for managing heritage matters more efficiently, effectively and expeditiously.<sup>104</sup>

## Committee comment

3.11. The Committee is of the view that it is critical for the current governance structures to be reviewed, to ensure that the ACT's heritage arrangements have appropriate oversight and direction.

### Recommendation 1

The Committee recommends that the ACT Government urgently address its structure of governance of the ACT's heritage arrangements.

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<sup>101</sup> See, for example: Canberra and District Historical Society, *Submission 6.1*, pp 17–18; National Trust of Australia (ACT), *Submission 38*, p 5.

<sup>102</sup> Canberra and District Historical Society, *Submission 6.1*, pp 17–18.

<sup>103</sup> Canberra and District Historical Society, *Submission 6.1*, p 18.

<sup>104</sup> Stenning & Associates, [Celebrating heritage in a growing city: ACT Heritage Jurisdictional Review: Phase 1](#), Final Report, July 2023, p vi.

## Need for a strategy and vision

- 3.12. Many submitters and witnesses to the inquiry told the Committee that a missing component in the ACT's heritage arrangements was a heritage strategy or vision for heritage in the Territory.<sup>105</sup>
- 3.13. Mr Marshall and Dr Pearson argued in their submission that a heritage strategy should be developed to clarify the roles and direction of the Heritage Council and the Heritage Unit. This could be achieved by embedding 'the concept' in the Heritage Act or by Ministerial directive. They submitted that the Heritage Council and the Heritage Unit should have a role in developing the strategy and 'a clear direction to implement it.'<sup>106</sup>
- 3.14. In its submission, Australia ICOMOS was critical of the lack of a heritage strategy, being of the view that it suggested a corresponding lack of 'overarching appreciation and direction' for heritage protecting in the ACT. Australia ICOMOS warned that this could lead to 'incremental destruction of Canberra's cultural heritage, including Aboriginal heritage.' They also called for a strategy to assess the state of heritage in the ACT.<sup>107</sup>
- 3.15. Jane Goffman, a heritage researcher, similarly argued that a heritage strategy would provide 'a practical means of drawing a line in the sand, that sets out where we are, where we want to be, and how we get there.'<sup>108</sup>
- 3.16. A similar view was voiced by Professor Nicholas Brown, a professor at the School of History at the Australian National University, who told the Committee that a heritage strategy would support people engaging with the heritage system and provide common objectives and strategies towards heritage priorities.<sup>109</sup>
- 3.17. During the public hearing, Greater Canberra also emphasised the need for a more deliberate strategic direction to heritage in the ACT:

We definitely think that the current institutions around how heritage is handled are broken. We have seen that recently with the implosion of the Heritage Council. We definitely think there needs to be renovation and a more intentional and strategic perspective on how we engage in heritage, where we are going and what we are doing.<sup>110</sup>

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<sup>105</sup> See, for example: Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, pp 2, 5; Professor Roz Hansen AM, *Submission 4*, p 5; Canberra and District Historical Society, *Submission 6*, pp 6, 9; Eric Martin & Associates, *Submission 13*, p 3; Dr Laura Dawes, *Submission 21*, pp 3, 7; Australia ICOMOS, *Submission 34*, p 5; National Trust of Australia (ACT), *Submission 38*, p 8; Mark Butz, *Submission 44*, p 1; Australian Institute of Architects (ACT), *Submission 50*, p 5; Graham Carter OAM, *Submission 59*, pp 3, 4; Mr Duncan Marshall AM, Chair, interim ACT Heritage Council, *Committee Hansard*, 16 May 2023, p 2; Mr Gary Kent, President, National Trust of Australia (ACT), *Committee Hansard*, 16 May 2023, p 10; Professor Nicholas Brown, Professor, School of History, Australian National University and Manning Clark House, *Committee Hansard*, 16 May 2023, p 77.

<sup>106</sup> Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, p 2.

<sup>107</sup> Australia ICOMOS, *Submission 34*, p 5.

<sup>108</sup> Jane Goffman, *Submission 36*, p 1.

<sup>109</sup> Professor Nicholas Brown, Professor, School of History, Australian National University and Manning Clark House, *Committee Hansard*, 16 May 2023, p 77.

<sup>110</sup> Mr Howard Maclean, Convener, Greater Canberra, *Committee Hansard*, 16 May 2023, p 65.

- 3.18. In his submission, Graham Carter OAM called for a heritage vision to move the industry forward:

The industry needs a shared "vision" with a clear understanding of future directions, that can move the industry forward and aid its growth and development. It will move from simply dealing with the current state, to strategically planning to meet the future needs of clients, managers, workforce and others in the industry, and to make a positive impact on other sectors of the economy, in the short and long-term.<sup>111</sup>

### Committee comment

- 3.19. The Committee considers that the development of an ACT Heritage Strategy is a priority to provide strategic direction to the ACT's heritage arrangements and that the strategy should be regularly reviewed and updated approximately every five years.

#### Recommendation 2

The Committee recommends that the ACT Government develop an ACT Heritage Strategy.

### Strategic alignment

- 3.20. Some witnesses and submissions expressed the need for an overarching vision for the ACT to integrate heritage with broader policy elements such as Commonwealth and Territory planning frameworks, and the Territory's Wellbeing Framework.<sup>112</sup>

- 3.21. Mr Eric Martin, Member of the Australian Institute of Architects' National Heritage Committee and Member of the Australian Institute of Architects' ACT Chapter Heritage Committee, emphasised the critical need for the Commonwealth and Territory to work together:

It is ironic that on national capital land the ACT Heritage Act will not apply, and if there is no commonwealth interest in a place, the commonwealth will not put it on the Commonwealth Heritage List. This means there are heritage items within the national capital area that the territory refuses to list and the commonwealth does not want to know about—heritage items not recognised and not protected. Somehow, the planning system has got to work better than that.<sup>113</sup>

- 3.22. Professor Tracey Ireland of Australia ICOMOS similarly expressed that there should be better harmonisation between the National Capital Authority and the ACT when it came to

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<sup>111</sup> Graham Carter OAM, *Submission 59*, p 3.

<sup>112</sup> See, for example: Mr Gary Kent, President, National Trust of Australia (ACT), *Committee Hansard*, 16 May 2023, p 12; Professor Tracey Ireland, Australia ICOMOS, *Committee Hansard*, 16 May 2023, p 36; Mr Eric Martin, Heritage Committee Member, Australian Institute of Architects (ACT Chapter), *Committee Hansard*, 16 May 2023, p 45; Ms Jane Cassidy, ACT President, Australian Institute of Architects, *Committee Hansard*, 16 May 2023, p 46; National Trust of Australia (ACT), *Submission 38*, p 14; Mark Butz, *Submission 44*, pp 1, 3, 6.

<sup>113</sup> Mr Eric Martin, Heritage Committee Member, Australian Institute of Architects (ACT Chapter), *Committee Hansard*, 16 May 2023, p 45.

the National Capital Plan, noting that difficulties had arisen when different organisations such as the ACT Government, the National Capital Authority and stakeholder organisations made decisions and proposals which intersected with each other and the National Capital Plan.<sup>114</sup>

- 3.23. During the public hearing, the Australian Institute of Architects (ACT Chapter) highlighted ‘the importance of a vision for Canberra’, particularly in the context of the Territory’s recent move to an outcomes-focused planning system:

It is really fundamental that we establish what the vision for Canberra is and we take the Canberra community on that journey to explain how we envisage the city growing, changing and adapting over time, and how we might also protect the existing character and the heritage of our fantastic city of design as part of that vision. At the moment, we have got the planning reform piece but the vision for Canberra that brings in all of the different referral agencies along with EPSDD is yet to be undertaken.<sup>115</sup>

- 3.24. In their submissions, National Trust of Australia (ACT) and Australia ICOMOS advocated for heritage to be further embedded into the ACT Wellbeing Framework.
- 3.25. National Trust of Australia (ACT) noted that the community benefits of heritage were ‘well-recognised’ in the framework, but called for legislation to require reporting against a heritage protection goal.<sup>116</sup>
- 3.26. Likewise, Australia ICOMOS called for ‘the development of indicators and the collection of data relevant to these indicators to adequately measure the role that cultural heritage plays in the wellbeing of the ACT community.’<sup>117</sup>

### Committee comment

- 3.27. The Committee observes that, while both national and territory heritage protections apply to sites across the ACT, it is this dual arrangement of heritage protections which can be difficult to navigate for stakeholders. This has potentially led to missed opportunities to ensure heritage consideration and protection is given to significant sites in the ACT.
- 3.28. Further, the Committee considers that there is a need to ensure greater strategic alignment and integration between heritage and other key policy areas, to ensure heritage is an integral part of broader government policies such as housing, development, and sustainability.

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<sup>114</sup> Professor Tracey Ireland, Australia ICOMOS, *Committee Hansard*, 16 May 2023, p 36.

<sup>115</sup> Ms Jane Cassidy, ACT President, Australian Institute of Architects, *Committee Hansard*, 16 May 2023, p 46.

<sup>116</sup> National Trust of Australia (ACT), *Submission 38*, p 14.

<sup>117</sup> Australia ICOMOS, *Submission 34*, p 6.

### Recommendation 3

The Committee recommends that the ACT Government ensures that any reforms to the heritage framework be in line with recent planning reforms (such as the *Planning Act 2023* and Territory Plan).

## Heritage Council

### Roles and functions of the Heritage Council

- 3.29. The Committee heard from some witnesses who expressed satisfaction with the Heritage Council's current authority and role as an advisory body.
- 3.30. The Planning Institute of Australia (ACT Division) was of the view that the Heritage Council should not be elevated to a decision-making body when it came to DAs, and that development assessments should be the responsibility of planners:
- ... it is our view that the council itself, when it comes to DA decision-making, should not be a decision-making body in that context. The decision-making body is the planning authority, in our view. They can be a decision-making body for the registration process and a range of other statutory things, but when it comes to development assessment, the broader issues should be the domain of expert qualified planners, in our view.<sup>118</sup>
- 3.31. Greater Canberra was of the view that heritage decision-making should be 'democratically accountable through the ordinary system of ministerial accountability and democratic government' and supported the Heritage Council's current role as an advisory body providing expert independent advice to the Minister.<sup>119</sup>
- 3.32. The Committee also heard concerns regarding the Heritage Council's current roles and functions. A common view was that the Heritage Council lacked authority and independence, particularly in relation to planning decisions. Another belief was that the Heritage Council was, as a body, reactive rather than proactive. Submitters and witnesses expressed concern that these issues compromised the Heritage Act's effectiveness in protecting the Territory's heritage.<sup>120</sup>
- 3.33. National Trust of Australia (ACT) observed in their submission that much of the language describing the functions of the Heritage Council in the Heritage Act was 'conciliatory', using

<sup>118</sup> Mr Trevor Fitzpatrick, President, Planning Institute of Australia (ACT Division), *Committee Hansard*, 16 May 2023, p 39.

<sup>119</sup> Mr Howard Maclean, Convener, Greater Canberra, *Committee Hansard*, 16 May 2023, p 68.

<sup>120</sup> See, for example: Mr Gary Kent, President, National Trust of Australia (ACT), *Committee Hansard*, 16 May 2023, p 10; Mr Graham Carter OAM, *Committee Hansard*, 16 May 2023, p 71; Ms Susanne Tongue, Vice President, Griffith Narrabundah Community Association, *Committee Hansard*, 16 May 2023, p 83; Ms Anne Forrest, Deputy Chair, Inner South Canberra Community Council, *Committee Hansard*, 16 May 2023, p 84; Professor Roz Hansen AM, *Submission 4*, p 1; Canberra and District Historical Society, *Submission 6*, p 5; Trevor Lipscombe and Tony Maple, *Submission 15*, p 2; Australasian Society for Historical Archaeology, *Submission 25*, p 4; Geoff Ashley, *Submission 30*, p 1; Manning Clark House, *Submission 31*, p 2; Australia ICOMOS, *Submission 34*, pp 3, 5; National Trust of Australia (ACT), *Submission 38*, p 6; Inner South Canberra Community Council, *Submission 49*, p 7; Australian Institute of Architects (ACT Chapter), *Submission 50*, p 1.



words such as ‘encourage, advise, assist, work within.’ They considered that this language use indicated a lack of power for definitive action in the Heritage Council’s role.<sup>121</sup>

- 3.34. The Walter Burley Griffin Society’s Canberra Chapter submitted that the Heritage Council lacked ‘independence and the ability to act on its own initiative’, noting that the Heritage Council can only make heritage guidelines after receiving Ministerial direction to do so, and can be directed by the Minister to further consider issues in relation to a registration.<sup>122</sup>
- 3.35. Professor Roz Hansen AM described the Heritage Council as a ‘toothless tiger’, lacking in power and authority despite ‘a wealth of expertise and experience in cultural heritage.’ Professor Hansen considered that the Heritage Council’s power and authority was ‘overshadowed and potentially undermined’ by the *Planning and Development Act 2007*, noting that DA decisions pertaining to registered heritage places or objects were made by EPSDD, and that the Council itself could not appeal such decisions directly to the ACT Civil and Administrative Tribunal (ACAT).<sup>123</sup>
- 3.36. The Canberra and District Historical Society was concerned that Heritage Council advice in relation to planning could be disregarded:

The effectiveness of the *Heritage Act* is significantly constrained due to the ability of the current *Planning and Development Act* to override it. Expert entity advice from the Heritage Council, even where it relates to mandatory requirements of the Heritage Act, can be ignored. This situation will be compounded if the new Planning Bill is passed without adequate heritage safeguards.<sup>124</sup>

- 3.37. During the public hearing, both the Griffith Narrabundah Community Association and Inner South Canberra Community Council expressed the view that the Heritage Council’s advice was not given due regard by the Planning Authority in DA decisions.<sup>125</sup>
- 3.38. Professor Hansen and Dr Laura Dawes also highlighted in their submissions that, contrary to public perception, almost all DAs were handled by the Heritage Unit and not the Heritage Council, with only very complex or contentious DAs forwarded to the Heritage Council’s Development Assessment Taskforce.<sup>126</sup>
- 3.39. Manning Clark House made a similar observation, and considered that the Heritage Council could be better deployed in considering broader heritage issues:

While the Council is advised of development applications (in a most cursory way, again in my experience) it has no power, and certainly not the resources, to comment let alone decide on those applications unless they are directly related to a nomination [for heritage registration]. The Council has very little capacity to engage in the broader consideration of issues of precinct values and significance.

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<sup>121</sup> National Trust of Australia (ACT), *Submission 38*, p 6.

<sup>122</sup> Walter Burley Griffin Society Canberra Chapter, *Submission 14*, pp 1–2.

<sup>123</sup> Professor Roz Hansen AM, *Submission 4*, p 1.

<sup>124</sup> Canberra and District Historical Society, *Submission 6*, p 5.

<sup>125</sup> Ms Susanne Tongue, Vice President, Griffith Narrabundah Community Association, *Committee Hansard*, 16 May 2023, p 83; Ms Anne Forrest, Deputy Chair, Inner South Canberra Community Council, *Committee Hansard*, 16 May 2023, p 84.

<sup>126</sup> See, for example: Professor Roz Hansen AM, *Submission 4*, p 18; Dr Laura Dawes, *Submission 21*, p 3.

Yet it is in such areas that the expertise and judgement – to the extent they are appropriately recognised by the Heritage Unit and ACT planning agencies – of the Council can be most appropriately utilised.<sup>127</sup>

- 3.40. Several submitters and witnesses indicated confusion and a lack of clarity on the operation and responsibilities of the Heritage Council and the Heritage Unit.<sup>128</sup>
- 3.41. Eric Martin & Associates, an architecture and heritage consultant firm, commented in their submission that the structure and operation of the Heritage Unit was ‘unknown’ and described the system as ‘confusing and frustrating.’<sup>129</sup>
- 3.42. The Australian Institute of Architects (ACT Chapter) similarly commented in its submission that while the structure of the Heritage Council is outlined in the Heritage Act, the structure and operation of the Heritage Unit is unknown.<sup>130</sup>
- 3.43. In their submission, Inner South Canberra Community Council observed a misalignment between section 60 of the Heritage Act, under which the Heritage Council may give advice to the planning and land authority on developments which may affect ‘nominated places or objects likely to have heritage significance’, and the Multi Unit Housing Development Code, which specifies in rule 90 that the authority is only required to refer DAs relating to ‘places registered or provisionally registered’ to the Heritage Council.<sup>131</sup>
- 3.44. The Minister acknowledged in the public hearing that there appeared to be a general misunderstanding of how the heritage system operated:

There is a lack of understanding even about the fact that I am not the decision-maker in heritage decisions—that it sits with the council—and the processes around that decision making. I think there is a low level of understanding about how the current heritage decision-making system works.<sup>132</sup>

### Committee comment

- 3.45. The Committee would like for improvements to the transparency of Heritage Council decision-making principles and processes. Should the legislation or relevant public policies not require amendments, the Committee suggests raising and improving the profile and understanding of these decision-making powers of the Heritage Council to the community.

### Recommendation 4

The Committee recommends that the ACT Government review and make a definitive decision on the powers provided to the ACT Heritage Council.

<sup>127</sup> Manning Clark House, *Submission 31*, p 2.

<sup>128</sup> See, for example: Professor Tracy Ireland, Professor of Cultural Heritage, University of Canberra and President, Australia ICOMOS, *Committee Hansard*, 16 May 2023, p 35; Mr Eric Martin, Heritage Committee Member, Australian Institute of Architects (ACT Chapter), *Committee Hansard*, 16 May 2023, p 39; Eric Martin & Associates, *Submission 13*, pp 2–3; Australian Institute of Architects (ACT Chapter), *Submission 50*, p 4; Family History ACT, *Submission 64*, pp 1–2.

<sup>129</sup> Eric Martin & Associates, *Submission 13*, pp 2–3.

<sup>130</sup> Australian Institute of Architects (ACT Chapter), *Submission 50*, p 2.

<sup>131</sup> Inner South Canberra Community Council, *Submission 49*, p 9.

<sup>132</sup> Ms Rebecca Vassarotti MLA, Minister for Heritage, *Committee Hansard*, 16 May 2023, p 100.

## Expanding the Heritage Council's decision-making capacity

3.46. Several submissions and witnesses called for the Heritage Council and the Heritage Unit to be given greater authority and independence, and some advocated for the Heritage Council to be the final decision-maker on decisions relating to heritage places and objects.<sup>133</sup>

3.47. National Trust of Australia (ACT) told the Committee that it believes the Heritage Council should be given decision-making powers:

... [W]e do not think the current planning arrangements adequately protect heritage. We believe that the Heritage Council should have a decision-making power, which is not included in current arrangements. Again, we would hope that the new heritage legislation reflects that in the new scheme.<sup>134</sup>

3.48. Professor Roz Hansen AM advocated for a dual DA approval process, proposing that the Heritage Council determine heritage approvals for registered heritage places and objects while EPSDD should progress 'the same DA as a separate approval based on the relevant planning instruments.'<sup>135</sup> The idea of a two-approval process was supported by the Reid Residents' Association.<sup>136</sup>

3.49. Professor Hansen also observed that heritage councils in Victoria and New South Wales (NSW) have authority to approve or reject development applications involving a heritage place or object with state registration.<sup>137</sup>

3.50. Similar observations were made in the *Stenning & Associates Report*, where it was identified that having the Heritage Council as a separate decision-maker on development proposals affecting heritage, would result in stronger heritage protection:

In terms of the interface between the recognition, management and conservation of heritage and the ACT planning system, the Heritage Council provides advice on the impact of development proposals on heritage to the ACT Planning and Land Authority (EPSDD). This is similar to all jurisdictions except Victoria, Western Australia, and Tasmania. In those jurisdictions, the Heritage Council is the decision maker on the impact of development proposals on heritage, subject to any Ministerial call-in powers relating to development approvals. This results in heritage receiving stronger protection in those jurisdictions, as it is less likely to be

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<sup>133</sup> See, for example: Griffith Narrabundah Community Association, *Submission 8*, p 3; Dr Laura Dawes, *Submission 21*, pp 1–2, 5, 8; Jane Goffman, *Submission 36*, p 1; North Canberra Community Council, *Submission 41*, p 2; Reid Residents' Association, *Submission 48*, p 6; Inner South Canberra Community Council, *Submission 49*, p 3; Name withheld, *Submission 53*, p 2; Anne Forrest, *Submission 60*, p 4; Mr Gary Kent, President, National Trust of Australia (ACT), *Committee Hansard*, 16 May 2023, p 8.

<sup>134</sup> Mr Gary Kent, President, National Trust of Australia (ACT), *Committee Hansard*, 16 May 2023, p 8.

<sup>135</sup> See, for example: Professor Roz Hansen AM, *Submission 4*, pp 9–10, 15; Reid Residents' Association, *Submission 48*, p 6.

<sup>136</sup> Reid Residents' Association, *Submission 48*, p 6.

<sup>137</sup> Professor Roz Hansen AM, *Submission 4*, p 19.

subject to administratively determined compromise in the development approval process.<sup>138</sup>

- 3.51. In their submission, Canberra and District Historical Society considered that the co-location of heritage and planning functions in the same directorate posed a conflict of interest, and advocated for their separation:

At the least, if heritage is to have the voice it deserves in the councils of government, EPSDD should be divided into two directorates, each reporting to their respective ministers ...

The Heritage Unit should be answerable only to the Heritage Council and not beholden to EPSDD management. This would reduce the likelihood of competing requirements and help improve the independence of the Heritage Council.<sup>139</sup>

- 3.52. The Canberra and District Historical Society also suggested that Heritage Council advice should only be overridden by the planning authority in exceptional circumstances, and that detailed reasoning for such a decision should be made publicly available, tabled in the Legislative Assembly, and subject to appeal by the Heritage Council through ACAT.<sup>140</sup> Similar views were expressed by the Inner South Canberra Community Council and Griffith Narrabundah Community Association.<sup>141</sup>
- 3.53. Professor Hansen also noted that under section 18 of the Heritage Act, one function of the Heritage Council is '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.'<sup>142</sup> Professor Hansen argued in her submission that this provision could lead to conflict between heritage and development considerations for the Heritage Council, and should be removed.<sup>143</sup>

#### Committee comment

- 3.54. The Committee is of the view that, given the perceived lack of weight given to Heritage Council advice by the Territory Planning Authority, there is a need for greater transparency in the decision-making of the Territory Planning Authority, particularly in relation to heritage places, so that Canberrans can have confidence in the planning system's ability to consider heritage amongst competing factors. Placing an onus on the Territory Planning Authority to state why they have disagreed with Heritage Council advice in planning decisions will go some way to ensuring this.
- 3.55. Further, the Committee would like for the Heritage Act to be amended to include that the decision-maker must state in their decisions the reasons why, if, a decision is made

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<sup>138</sup> Stenning & Associates, [Celebrating heritage in a growing city: ACT Heritage Jurisdictional Review: Phase 1](#), Final Report, July 2023, p 9.

<sup>139</sup> Canberra and District Historical Society, *Submission 6*, p 15.

<sup>140</sup> Canberra and District Historical Society, *Submission 6*, p 6.

<sup>141</sup> See, for example: Ms Susanne Tongue, Vice President, Griffith Narrabundah Community Association, *Committee Hansard*, 16 May 2023, p 83; Inner South Canberra Community Council, *Submission 49*, p 3.

<sup>142</sup> See, for example: Professor Roz Hansen AM, *Submission 4*, p 10; *Heritage Act 2004*, s 18(c).

<sup>143</sup> Professor Roz Hansen AM, *Submission 4*, p 6.

contrary to Heritage Council advice. This could look like section 190(3) of the *Planning Act 2023* for development approvals contrary to entity advice, where ‘a decision-maker must state in their decision the reasons why they were satisfied of the matters...’<sup>144</sup> to not take the Heritage Council’s advice.

### Recommendation 5

The Committee recommends that the ACT Government, when considering matters pertaining to both planning and heritage, provide reasons on the decisions publicly, to ensure that there is transparency on these decisions.

### Recommendation 6

The Committee recommends that the ACT Government amend the *Heritage Act 2004* to include provisions for a decision-maker to state in their decision the reasons why the matter was resolved, for example, contrary to ACT Heritage Council advice.

## Reactive rather than proactive

- 3.56. A number of submissions expressed the view that the Heritage Council and the Heritage Unit were reactive and needed to be more proactive in promoting heritage protection.<sup>145</sup>
- 3.57. Duncan Marshall AM and Dr Michael Pearson AO wrote in their submission that ‘there is an impression that much of the Heritage Council’s work is reactive rather than proactive, including regarding protection and sympathetic development, and the development of the register.’ They argued that a more proactive approach would be best practice.<sup>146</sup>
- 3.58. During the public hearing, Mr Graham Carter OAM, a former Heritage Council member, cautioned that the reactive stance was at odds with public perception of the Heritage Council, and could also mean that Heritage Council advice was sought and provided later than was effective:

One of the big issues that we faced, in addition to the issue of under-resourcing, was that the council itself was always in a very reactive mode. We could only react to the business that was addressed to us by the secretariat. That is a problem in terms of public visibility, because the assumption in a public case, I think, is that the Heritage Council is quite proactive and goes out looking for business. We can only really respond to the business that comes to us, and that business is only often in terms of individual nominations of sites that are

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<sup>144</sup> *Planning Act 2023*, s 190.

<sup>145</sup> See, for example: Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, p 2; Trevor Lipscombe and Tony Maple, *Submission 15*, p 2; Australasian Society for Historical Archaeology, *Submission 25*, p 4; Geoff Ashley, *Submission 30*, p 1; Manning Clark House, *Submission 31*, p 2; Australia ICOMOS, *Submission 34*, p 4; Australian Institute of Architects (ACT Chapter), *Submission 50*, p 3.

<sup>146</sup> Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, p 2.

contested. Often that is too late to make any kind of useful intervention or useful guidance.<sup>147</sup>

- 3.59. The Australasian Society for Historical Archaeology told the Committee that the Heritage Unit needed more resourcing to be more proactive, and that this would allow the unit to engage in more community outreach and consider undertaking ‘things like a gap analysis of the register.’<sup>148</sup>
- 3.60. In response, the Minister acknowledged the desire for a more strategic approach to heritage protection, while noting that there would always be ‘a level of responsive work.’ The Minister also identified a desire by the Heritage Council to carry out such responsive work in a more efficient and ‘user-friendly’ manner.<sup>149</sup>

### Committee comment

- 3.61. The Committee considers that the existing provisions of the Heritage Act limit the ability of the Heritage Council to be a proactive protector and promotor of ACT heritage matters. The functions of the Heritage Council in the Heritage Act should be amended to encourage more proactive efforts on the part of the Heritage Council to take initiative in foreseeing and anticipating future needs.

### Recommendation 7

The Committee recommends that the ACT Government amend the *Heritage Act 2004* to expand the ACT Heritage Council’s remit to be proactive and to include providing advice to the ACT Government on heritage issues.

## Heritage Council membership and meetings

### Composition

- 3.62. A number of submissions offered a range of views on the membership of the Heritage Council, with several fields of expertise suggested as warranting inclusion to the Heritage Council’s composition.<sup>150</sup>
- 3.63. Professor Roz Hansen AM suggested in her submission that consideration should be given to including expertise in intangible heritage and cultural landscapes in the Heritage Council’s skill sets, and noted a historical lack of cultural diversity on the Heritage Council.<sup>151</sup>
- 3.64. Dr Ken Heffernan, who had served as Deputy Chair and Chair of the Heritage Council, considered that indigenous and general community representatives, an architect, and

<sup>147</sup> Mr Graham Carter OAM, *Committee Hansard*, 16 May 2023, p 71.

<sup>148</sup> Dr Siobhan Lavelle OAM, National Executive Committee Member, Australasian Society for Historical Archaeology, *Committee Hansard*, 16 May 2023, p 30.

<sup>149</sup> Ms Rebecca Vassarotti MLA, Minister for Heritage, *Committee Hansard*, 16 May 2023, p 99.

<sup>150</sup> See, for example: Professor Roz Hansen AM, *Submission 4*, p 6; Dr Ken Heffernan, *Submission 5*, p 2; Australasian Society for Historical Archaeology, *Submission 25*, p 3; North Canberra Community Council, *Submission 41*, p 2; Reid Residents’ Association, *Submission 48*, p 3; Australian Institute of Architects (ACT Chapter), *Submission 50*, p 2.

<sup>151</sup> Professor Roz Hansen AM, *Submission 4*, p 6.

archaeologist were essential roles on the Heritage Council, given the nature and flow of its work.<sup>152</sup>

- 3.65. The Australian Institute of Architects (ACT Chapter) observed in their submission that some expertise could theoretically not be covered in the Heritage Council, as there were more fields covered by the Heritage Act than there were members of the Heritage Council. They noted that other Australian jurisdictions always require Councillors who are experts in large disciplines such as architectural heritage and archaeology.<sup>153</sup>
- 3.66. The Australasian Society for Historical Archaeology submitted that there should be a range of professional expertise, including historical archaeology, on the Heritage Council and the Heritage Unit. They were also of the view that appointing members against clearly identified primary skills sets would assist the Heritage Council and the community's awareness of the expertise available and assist in the identification of gaps in expertise.<sup>154</sup>
- 3.67. Reid Residents' Association was of the view that as the authority responsible for managing the heritage register, the Heritage Council should include environmental, ecological, and multicultural expertise, as well as local Aboriginal representation.<sup>155</sup>
- 3.68. Other submissions called for skilled members in fields such as housing, climate expertise, landscape architecture, history, and for representation on the Heritage Council from peak bodies and historical societies.<sup>156</sup>

#### Committee comment

- 3.69. The Committee notes that in some jurisdictions, organisations and sectors such as the National Trust, Local Government Association, and the development sector are included in the membership of the Heritage Council.
- 3.70. The Committee also observes that in other states and territories, the number of expert Heritage Council members available for appointment is often less than the number of expert fields listed in the legislation (see [Appendix D](#)).<sup>157</sup>
- 3.71. Notwithstanding the above, the Committee is of the view that there is a need to expand the membership of the Heritage Council to reflect the importance of contemporary issues in the heritage space – in particular, climate change and sustainability.

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<sup>152</sup> Dr Ken Heffernan, *Submission 5*, p 2.

<sup>153</sup> Australian Institute of Architects (ACT Chapter), *Submission 50*, p 2.

<sup>154</sup> Australasian Society for Historical Archaeology, *Submission 25*, p 3.

<sup>155</sup> Reid Residents' Association, *Submission 48*, p 3.

<sup>156</sup> See, for example: Canberra and District Historical Society, *Submission 6*, p 11; National Trust of Australia (ACT), *Submission 38*, p 6; Inner South Canberra Community Council, *Submission 49*, p 13; Greater Canberra, *Submission 57*, p 14.

<sup>157</sup> *Heritage Act 1977* (NSW); *Heritage Act 2017* (Vic); *Queensland Heritage Act 1992* (Qld); *Heritage Act 2018* (WA); *Heritage Places Act 1993* (SA); *Historic Cultural Heritage Act 1995* (Tas); *Heritage Act 2011* (NT).



## Recommendation 8

The Committee recommends that the ACT Government consider increasing the membership of the ACT Heritage Council to include an expert in sustainability and renewable technology.

### Ex-officio members

3.72. A number of submissions questioned the inclusion of the Chief Planner as one of the two non-voting *ex-officio* members of the Heritage Council.<sup>158</sup> The other non-voting *ex-officio* member is the Conservator of Flora and Fauna.

3.73. National Trust of Australia (ACT) did not consider the Chief Planner's membership of the Heritage Council to be appropriate, asserting that heritage assessment should be conducted independently of the planning process:

There are inherent tensions between the role of chief planner and the Heritage Council. You can imagine, through no fault of the chief planner, tensions emerging in discussions ... There is, we would suggest, a conflict of interest.<sup>159</sup>

3.74. In their submission, Reid Residents' Association described the inclusion of the Chief Planner as 'an obstacle to genuine and comprehensive heritage decision making.'<sup>160</sup>

3.75. Both the Griffith Narrabundah Community Association and Inner South Canberra Community Council commented in their submissions that the Chief Planner, as Director-General of EPSDD, held delegations under the Heritage Act, which they saw as in conflict with membership of the Heritage Council:<sup>161</sup>

So the head of the agency making the decision on the DA is also the head of the agency of the decision maker giving advice. This is inappropriate.<sup>162</sup>

3.76. The Australasian Society for Historical Archaeology suggested that the Chief Planner and the Conservator roles, if they were to remain on the Heritage Council, should continue to be non-voting positions:

... whilst it can be a very good thing to have ex-officio positions from expert departments that provide advice and can give the views of those other departments, we actually felt that they should not be voting positions.

<sup>158</sup> See, for example: Professor Roz Hansen AM, *Submission 4*, pp 10–11; Australasian Society for Historical Archaeology, *Submission 25*, p 3; Margaret Henderson, *Submission 37*, p 1; National Trust of Australia (ACT), *Submission 38*, p 12; Reid Residents' Association, *Submission 48*, p 3; Mr Gary Kent, President, National Trust of Australia (ACT), *Committee Hansard*, 16 May 2023, p 8.

<sup>159</sup> Mr Gary Kent, President, National Trust of Australia (ACT), *Committee Hansard*, 16 May 2023, p 8.

<sup>160</sup> Reid Residents' Association, *Submission 48*, p 3.

<sup>161</sup> See, for example: Griffith Narrabundah Community Association, *Submission 8*, p 3; Inner South Canberra Community Council, *Submission 49*, p 18.

<sup>162</sup> Griffith Narrabundah Community Association, *Submission 8*, p 3.



... For one department to be voting on a decision that is being made by another independent expert body, just seems to be a bit of a potential conflict<sup>163</sup>

- 3.77. Other submitters called for a clarification of the role of *ex-officio* members of the Heritage Council.<sup>164</sup>

#### Committee comment

- 3.78. The Committee notes that the two *ex-officio* roles on the Heritage Council are currently non-voting roles.
- 3.79. The Committee observes that in NSW, Western Australia (WA), Tasmania, and the Northern Territory (NT), *ex-officio* members are included in Heritage Council membership, and that in NSW, WA, and the NT the Chief Planner or equivalent of the parent Department/Directorate is an *ex-officio* member (see [Appendix D](#) table).
- 3.80. Given the Chief Planner's role in leading the Territory's Planning Authority as well as being the head of the parent Directorate of the Heritage Unit, and the consequential risk of perceived or actual conflicts of interest, the Committee considers it inappropriate for the Chief Planner to be a member of the Heritage Council.

#### Recommendation 9

The Committee recommends that the ACT Government consider removal of the Chief Planner as an *ex-officio* member of the ACT Heritage Council, in the announced review of governance arrangements.

#### Frequency of meetings

- 3.81. A small number of submissions offered views on the frequency of Heritage Council meetings.<sup>165</sup>
- 3.82. The ACT Government informed the Committee in its submission that the Heritage Council met approximately every six weeks.<sup>166</sup> Additional evidence noted that Heritage Council Taskforces met between Heritage Council meetings on an as needed basis.<sup>167</sup>
- 3.83. However, some submissions argued that meetings should be more frequent, citing the example of the practices in other jurisdictions.<sup>168</sup>

<sup>163</sup> Dr Siobhan Lavelle OAM, National Executive Committee Member, Australasian Society for Historical Archaeology, *Committee Hansard*, 16 May 2023, p 27.

<sup>164</sup> See, for example: North Canberra Community Council, *Submission 41*, p 2; Mr Nick Swain, Secretary, Canberra and District Historical Society, *Committee Hansard*, 16 May 2023, p 9.

<sup>165</sup> See, for example: Geoff Ashley, *Submission 30*, p 2; Australasian Society for Historical Archaeology, *Submission 25*, pp 3–4; Australia ICOMOS, *Submission 34*, p 5.

<sup>166</sup> ACT Government, *Submission 19*, p 2.

<sup>167</sup> See, for example: ACT Government, *Submission 19*, pp 2–3; Dr Laura Dawes, *Submission 21*, p 2.

<sup>168</sup> See, for example: Geoff Ashley, *Submission 30*, p 2; Australasian Society for Historical Archaeology, *Submission 25*, pp 3–4.

- 3.84. Australia ICOMOS was of the view that ‘a greater number of meetings and allowance for additional time for Council members may be required in order for the Council to fulfil its statutory functions.’<sup>169</sup>

#### Committee comment

- 3.85. The Committee is of the view that the Heritage Council meeting once every six weeks is insufficient in meeting the volume of applications and advice that it is referred, and would therefore like for the Heritage Council to meet more frequently, to appropriately manage the workload, along with proactively anticipating and addressing future issues.

#### Recommendation 10

The Committee recommends that the ACT Government increase the frequency of ACT Heritage Council meetings in order to deal with the increased volume of applications and advice that need to be considered.

### Relationship with the Heritage Unit

- 3.86. A key area of tension identified in the 2022 review by Nous Group was the relationship between the Heritage Council and the Heritage Unit and the apparent lack of clarity over roles and responsibilities.<sup>170</sup>
- 3.87. Evidence received by the Committee also reflected on the imbalance in the dynamics between the Heritage Council and the Heritage Unit.<sup>171</sup>

#### Unbalanced dynamics

- 3.88. Heritage consultant Geoff Ashley was of the view that the Heritage Unit had become a ‘gatekeeper’ in relation to the Heritage Council:<sup>172</sup>

It is overly focussed on already listed places and approvals rather than identifying, supporting and promoting heritage conservation in the ACT more generally. I believe that its lack of staff resources and relevant skills did not help this situation.<sup>173</sup>

- 3.89. Mr Ashley provided an example of this ‘gatekeeping’ activity at the public hearing:

... I had a role in the National Capital Design Review Panel in terms of a development in the city and I came to the view in giving that advice that the ACT government, particularly the Heritage Council, should form a view about one of the buildings, which was a modern building on that site which was going to be demolished. In fact, the proponent’s heritage adviser said, “It is not listed;

<sup>169</sup> Australia ICOMOS, *Submission 34*, p 5.

<sup>170</sup> Nous Group, *Review of the ACT Heritage Council – Public Report*, November 2022, p 2.

<sup>171</sup> See, for example: Professor Roz Hansen AM, *Submission 4*, p 2; Kosciuszko Huts Association, *Submission 7*, p 2; Dr Laura Dawes, *Submission 21*, p 2; Geoff Ashley, *Submission 30*, p 1.

<sup>172</sup> Geoff Ashley, *Submission 30*, p 1.

<sup>173</sup> Geoff Ashley, *Submission 30*, p 1.

therefore there are no heritage values,” which is my whole point: I believe that it may have and I believe the ACT Heritage Council should have addressed it.

I kept saying that over a number of our meetings and basically got bounced back and ultimately I was told that the Heritage Unit told the admin people that basically they could only do it with a nomination. So I was providing advice to the ACT government and I was told to go away and that, basically, if I wanted to do anything about it, I would have to make a nomination, which is quite crazy, because I am giving the government advice; I am not there as a private person making a nomination.<sup>174</sup>

3.90. An impression of ‘gatekeeping’ by the Heritage Unit was also given by Professor Roz Hansen AM, who stated in her submission that she had witnessed the following issues between the Heritage Council and the Heritage Unit:

- 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 Council agendas that members request 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 delivery 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.<sup>175</sup>

3.91. Dr Laura Dawes informed the Committee that the general public may have misconstrued the roles and responsibilities of the Heritage Council and the Heritage Unit:

I note that, contrary to public characterisation of the Heritage Council in parliament and in the media, the Council does not in fact have management powers or service delivery functions. It does not manage the Heritage Unit. Nor can it require the Unit to carry out activities. The Council is a largely advisory body. It is the Heritage Unit within EPSDD that manages heritage activities, including developing policy, and providing services, and determines whether Council input is sought on any matter and, with the Chair, decided whether meetings are held.<sup>176</sup>

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<sup>174</sup> Mr Geoff Ashley, *Committee Hansard*, 16 May 2023, p 50.

<sup>175</sup> Professor Roz Hansen AM, *Submission 4*, p 2.

<sup>176</sup> Dr Laura Dawes, *Submission 21*, p 2.

3.92. Dr Laura Dawes also noted that opportunities for wider Heritage Council input had been limited through meetings not being scheduled or cancelled, or when agenda topics requested by members were not included for discussion.<sup>177</sup>

3.93. The Kosciuszko Huts Association commented that they had observed behaviour from the Heritage Unit consisting of ‘overreach of power and authority, and professional arrogance’:<sup>178</sup>

The HU [Heritage Unit] thinks it is the authority and not the HC [Heritage Council]. It appears that the HU expects the HC to be no more than a rubber stamp for the opinions of HU members.<sup>179</sup>

3.94. Professor Tracy Ireland, President of Australia ICOMOS, felt that the issue of the lack of clarity in roles and responsibilities between the Heritage Council and the Heritage Unit, identified by Nous Group, partly stemmed from the absence of an ‘overarching strategic approach for heritage in the ACT’:<sup>180</sup>

What we have seen described is very much a process-driven approach, where people are trying their very best to excellently work through a governance agenda and to do a good job on the assessment of regulation processes. I think that, because there has been little in the way of a strategic framework, even a very broad mission statement for what the government wants to see as the key outcomes from its heritage management processes and its heritage regulation, that makes it a harder management task to show people where their role in the process helps to achieve that overarching strategic agenda.<sup>181</sup>

3.95. Greater Canberra elaborated that the conflict between the Heritage Council and the Heritage Unit was an inevitable product of structural problems:

The current conflict between the Heritage Council and the Heritage Unit is a necessary—well, it is not necessary, but it is an unfortunate consequence of the current system where we have a collection of statutory office holders in the Heritage Council and then we have a bureaucracy they do not direct. This, combined with all the other statutory office holders and the various different statutory agencies, which are all independent of each other in the planning framework, produces a lot of dysfunction in the current system.<sup>182</sup>

3.96. Dr Ken Heffernan was of the view that rules for conduct of council business should be set out in regulations, including requiring that Heritage Council members’ behaviour be

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<sup>177</sup> Dr Laura Dawes, *Submission 21*, p 2.

<sup>178</sup> Kosciuszko Huts Association, *Submission 7*, p 2.

<sup>179</sup> Kosciuszko Huts Association, *Submission 7*, p 2.

<sup>180</sup> Professor Tracy Ireland, Professor of Cultural Heritage, University of Canberra and President, Australia ICOMOS, *Committee Hansard*, 16 May 2023, p 35.

<sup>181</sup> Professor Tracy Ireland, Professor of Cultural Heritage, University of Canberra and President, Australia ICOMOS, *Committee Hansard*, 16 May 2023, p 35.

<sup>182</sup> Mr Howard Maclean, Convenor, Greater Canberra, *Committee Hansard*, 16 May 2023, pp 67–68.

governed by the ACT Government's integrity framework, its values and standards of behaviour.<sup>183</sup>

- 3.97. Dr Heffernan also suggested in his submission that the ability to work in a team be included in the selection criteria used to assess potential Heritage Council members.<sup>184</sup>

### Clarifying the relationship

- 3.98. In its guideline *Governance principles for boards of public sector entities in Australia*, the Governance Institute of Australia advises that 'an effective public sector governance framework ensures there is clear and shared understanding by all parties of their roles, powers, responsibilities and accountabilities', and that it is 'good practice to clearly define the relationships in a board charter or other governing document that is regularly reviewed to ensure it remains current, even where there is applicable legislation.'<sup>185</sup>
- 3.99. Several submissions stressed the importance of clarifying the roles and responsibilities between the Heritage Council and the Heritage Unit to ensure that both the Heritage Council and the Heritage Unit are able to work together harmoniously, including recalibrating and defining the relationship between each other.<sup>186</sup>
- 3.100. Reid Residents' Association was of the view that 'the ACT Heritage Unit should act as a secretariat to the Heritage Council within the limits of a clearly defined remit and should provide "frank and fearless" advice but not act as an influencer.'<sup>187</sup>
- 3.101. Duncan Marshall AM and Dr Michael Pearson AO suggested in their joint submission the following, to improve the relationship between the Heritage Council and the Heritage Unit:
- Establishing in the first instance and maintaining clear lines of advice by the Minister regarding Councillors' roles, consistent with statutory provisions, and by appropriate briefing of new members by the Directorate/Heritage Unit. This is particularly relevant when new Council members are appointed from other jurisdictions, and the particular context of the local Act and administration needs to be clarified.
  - Establishing and maintaining a clear understanding within the Council as to its statutory functions, the mechanisms within Council for developing Council positions and decisions (such as delegating work to sub-committees or taskforces), the respective roles and responsibilities of Council members and the Chair in decision-making and representation of Council, and the methods of formal requests by Council for Unit advice or action.

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<sup>183</sup> Dr Ken Heffernan, *Submission 5*, p 2.

<sup>184</sup> Dr Ken Heffernan, *Submission 5*, p 2.

<sup>185</sup> Governance Institute of Australia, *Governance principles for boards of public sector entities in Australia*, p 9.

<sup>186</sup> See, for example: Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, p 2; Professor Roz Hansen AM, *Submission 4*, p 10; Dr Ken Heffernan, *Submission 5*, p 2; Dr Laura Dawes, *Submission 21*, pp 5, 7; Geoff Ashley, *Submission 30*, p 2; Australia ICOMOS, *Submission 34*, p 3.

<sup>187</sup> Reid Residents' Association, *Submission 48*, p 3.

- Establishing and maintaining a clear understanding within the Heritage Unit of the Council's statutory functions as an independent statutory body, the mechanisms available for Council requests for Unit advice or action, and the avenues for indicating any obstacles in responding to such requests.<sup>188</sup>

3.102. Professor Roz Hansen AM expressed the view that the Heritage Unit should be supporting the work of the Heritage Council:

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 its 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.<sup>189</sup>

3.103. Professor Hansen identified in her submission that the existing provisions of the Heritage Act make no mention of the Heritage Unit, its roles or responsibilities, and has been dealt with in the past by a Memorandum of Understanding (MoU) between the Heritage Council and the Heritage Unit – however, the most recent MoU had expired in 2018.<sup>190</sup>

3.104. Australia ICOMOS similarly indicated that there is no reference to the Heritage Unit in the Heritage Act, nor does the Heritage Act define the relationship between the Heritage Council and the Heritage Unit.<sup>191</sup> It was of the view that the respective roles of the Heritage Council and the Heritage Unit should be defined so that the public has an understanding of each body, and which matters are assessed by each body.<sup>192</sup>

3.105. Dr Ken Heffernan advocated for clarifying aspects of the relationship between the Heritage Council and the Heritage Unit, in the regulations:

c. It should be clear who has the determinative role in establishing Council task forces, their membership, and chair.

d. It should be clear who has the determinative role in expenditure of funds available for Council activity.

e. It should be clear who has the determinative role in setting the agenda for formal Council Meetings and Task Forces. This is needed to ensure an adequate

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<sup>188</sup> Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, p 2.

<sup>189</sup> Professor Roz Hansen AM, *Submission 4*, p 1.

<sup>190</sup> Professor Roz Hansen AM, *Submission 4*, p 10.

<sup>191</sup> Australia ICOMOS, *Submission 34*, p 3.

<sup>192</sup> Australia ICOMOS, *Submission 34*, p 3.

coverage of different heritage areas of interest (Ngambri-Ngunnawal, historic, built, geological etc) and priority issues in the limited time available.<sup>193</sup>

- 3.106. Another suggestion from submissions and witnesses was to establish the Heritage Unit as a separate and dedicated support unit for the Heritage Council.<sup>194</sup>
- 3.107. Professor Roz Hansen AM highlighted how the Victorian equivalent of the Heritage Unit – the Office of the Executive Director – is created in the Victorian Heritage Act as a dedicated secretariat and support function to the Victorian Heritage Council and which reports directly to the Heritage Council.<sup>195</sup> The clear articulation of the role of the Executive Director in Victoria’s heritage arrangements was also noted by Australia ICOMOS in its submission.<sup>196</sup>
- 3.108. Currently, the Heritage Unit is headed by a Secretary to the Heritage Council who reports to EPSDD, and whose role is not specified in the Heritage Act.<sup>197</sup>
- 3.109. The Secretary, according to Professor Hansen, ‘is largely managerial and operates under the umbrella of the EPSDD rather than having independence and autonomy from that government directorate.’<sup>198</sup>
- 3.110. Professor Hansen considers that there is ‘considerable merit’ in altering the existing Heritage Unit’s governance arrangements and adopting a model akin to that in Victoria.<sup>199</sup> Under this model, the Victorian Heritage Act establishes an Executive Director role and sets out the role’s functions and responsibilities, which include:
- establishing and maintaining the heritage register;
  - recommending to the Council the registration of any place or object on the register;
  - determining applications for permits and consents under the Heritage Act;
  - reporting to the Council on all actions or decisions by the Executive Director; and
  - managing the enforcement of the Heritage Act.<sup>200</sup>
- 3.111. The Kosciuszko Huts Association also advocated for changes to ensure the independence of the Heritage Unit, arguing it must be at arms-length from asset management agencies and in a separate chain of management to land managers and development approvers to prevent undue influence by staff seeking certain outcomes.<sup>201</sup>

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<sup>193</sup> Dr Ken Heffernan, Submission 5, p 2.

<sup>194</sup> See, for example: Mr Duncan Marshall AM, Chair of the interim Heritage Council, *Committee Hansard*, 16 May 2023, p 3; Professor Roz Hansen AM, *Submission 4*, p 12; Mr Nick Swain, Secretary, Canberra and District Historical Society, *Committee Hansard*, 16 May 2023, p 9.

<sup>195</sup> Professor Roz Hansen AM, *Submission 4*, pp 7, 11.

<sup>196</sup> Australia ICOMOS, *Submission 34*, p 3.

<sup>197</sup> Professor Roz Hansen AM, *Submission 4*, p 11.

<sup>198</sup> Professor Roz Hansen AM, *Submission 4*, p 12.

<sup>199</sup> Professor Roz Hansen AM, *Submission 4*, pp 11–12.

<sup>200</sup> *Heritage Act 2007* (Vic), s 19.

<sup>201</sup> Kosciuszko Huts Association, *Submission 7*, pp 3–11.

- 3.112. The Canberra and District Historical Society suggested the approach of placing the Heritage Council and the Heritage Unit in a situation analogous to the relationship the Suburban Land Agency has with EPSDD:

It would be much better if it were at least in a more independent situation. For example, you have the Suburban Land Agency, which does report to the chief planner, but it is out to one side. It is not in the main organisational structure of EPSDD, so it is perhaps not subject to situations. I imagine, for example, that the heritage unit staff, basically report to two sets of people; they report to the Heritage Council and they report to the hierarchy in EPSDD. That must create some sort of tension and [...] potential conflicts and those sorts of things.<sup>202</sup>

- 3.113. The *Stenning & Associates Report* summarised that current work processes and systems are inadequate to efficiently support the Heritage Council, Heritage Unit, and broader heritage arrangements:

A review and strengthening of matters such as the decision-making capacity of the Council's taskforces, delegated functions and internal and external policies must be conducted to improve support to the Heritage Council.<sup>203</sup>

#### Committee comment

- 3.114. The Committee considers that, to ensure the effective operation of the ACT's heritage arrangements, the respective roles and responsibilities of the Heritage Council and the Heritage Unit should be clarified.
- 3.115. The Committee also considers that standardised processes and procedures for Heritage Council functions should be developed and published.

#### Recommendation 11

The Committee recommends that the ACT Government clarify the roles and responsibilities between the ACT Heritage Council and ACT Heritage Unit through the Heritage Strategy, and implement clear roles and responsibilities through legislative changes.

#### Recommendation 12

The Committee recommends that the ACT Government undertake a review of delegations relating to ACT Heritage Unit staff and their engagement with the ACT Heritage Council.

<sup>202</sup> Mr Nick Swain, Secretary, Canberra and District Historical Society, *Committee Hansard*, 16 May 2023, p 9.

<sup>203</sup> Stenning & Associates, [Celebrating heritage in a growing city: ACT Heritage Jurisdictional Review: Phase 1](#), Final Report, July 2023, p vi.



## Location of the Heritage Unit within EPSDD

- 3.116. Some submissions and witnesses felt that the issues in the relationship between the Heritage Council and the Heritage Unit arose from the Heritage Unit's location within the EPSDD and the associated tensions in managing the potentially competing demands and interests of heritage and planning.
- 3.117. Duncan Marshall AM and Dr Michael Pearson AO expressed the view in their joint submission that 'the Heritage Unit can have a difficult role in serving two masters – the Council on the one hand and the Directorate on the other.'<sup>204</sup>
- 3.118. Mr Marshall expanded on this during his appearance before the Committee:

One of the things that has come to mind in reflecting on the recent past is the difficulty the branch may have in dealing with two masters: the council on the one hand, and EPSDD, the government and the minister on the other hand. I think perhaps even in my time it was apparent there were some tensions there and that the branch were not always comfortable responding to some council requests—very few requests, but occasionally the branch was uncomfortable when we got a little active or when we were perhaps pushing some boundary.<sup>205</sup>

- 3.119. This view of potential conflicts of interest was echoed by the Canberra and District Historical Society:

The location of the Heritage Council and the Heritage Unit within the EPSDD appears to be detrimental in relation to resourcing, governance and support at senior levels. The Heritage Unit is in a tricky situation of being answerable to both the Heritage Council and EPSDD managers. There is potential for conflicting requirements. More broadly, there can be a fundamental conflict of objectives between heritage and development planning. It appears that in the draft Planning Bill good planning is not considered to include maximising the value of ACT's valuable heritage assets or that this is a good planning outcome.<sup>206</sup>

The Heritage Unit is in a difficult situation as it is answerable to both the Heritage Council and senior EPSDD managers. There is potential for this to lead to conflicting requirements.<sup>207</sup>

- 3.120. Inner South Canberra Community Council also expressed concerns, suggesting that the heritage and planning laws be better aligned in order to 'remove the splintering in the Heritage Act whereby the Council administers certain provisions, while the Minister for Planning administers others. ACT Heritage supports both, providing administrative and secretariat functions to the Council and advice to the Minister.'<sup>208</sup>

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<sup>204</sup> Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, p 3.

<sup>205</sup> Mr Duncan Marshall, Chair of the interim Heritage Council, *Committee Hansard*, 16 May 2023, p 2.

<sup>206</sup> Canberra and District Historical Society, *Submission 6*, p 5.

<sup>207</sup> Canberra and District Historical Society, *Submission 6*, p 11.

<sup>208</sup> Inner South Canberra Community Council, *Submission 49*, p 4.

3.121. The Inner South Canberra Community Council cautioned that the location of the Heritage Unit in EPSDD created a danger of bias in heritage decisions that could favour Territory Planning Authority actions.<sup>209</sup>

3.122. Concerns of potential bias was also shared by the National Trust of Australia (ACT):

It is not so much the quality of advice. It could possibly skew the advice. At the moment, the Heritage Unit, as we understand it, is in the direct line of management of the chief planner, so there would naturally be an impact on the nature of the advice provided. That is no reflection on anyone; it is simply a symptom of what happens in a big government agency. We think that heritage is so important that any suggestion of conflicts of interest or working to achieve a particular outcome, to the extent that that has occurred, should be completely removed from the heritage and planning systems.<sup>210</sup>

3.123. Mr Nick Swain, Secretary of the Canberra and District Historical Society, added that the location of the Heritage Council and the Heritage Unit within EPSDD itself does not lend itself to the appearance of independence.<sup>211</sup>

3.124. Jane Goffman, a heritage researcher and town planner, reflected on the time when a development adjacent to Dickson Library was proposed, and how the Heritage Unit 'appeared to be compromised by its relationship with *ex-officio* members of the Heritage Council.'<sup>212</sup>

3.125. Dr Laura Dawes raised in her submission that despite the Heritage Unit being located with EPSDD, there appears to be a lack of effective collaboration between the Heritage Unit with other areas of the Directorate. Dr Dawes provided the example of the incompatibility between the online heritage register with the platforms and applications used by the planning areas of EPSDD, and the failure to include the Heritage Unit in planning activities affecting heritage places, such as the City Renewal Plan.<sup>213</sup>

3.126. In contrast, the Planning Institute of Australia (ACT Division) felt that the location of the Heritage Unit within EPSDD was appropriate:

From our perspective, in the highest level of governance, we believe that the heritage unit is appropriately placed within the EPSDD. We believe the interaction between the planners and the planning authority, the close interaction, is necessary to give a holistic assessment of development proposals. That is primarily where it comes to that end point—at the development assessment point of development proposals. We believe that close interaction, that working relationship, is critical, and therefore they should be within the exact same

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<sup>209</sup> Inner South Canberra Community Council, *Submission 49*, p 6.

<sup>210</sup> Mr Gary Kent, President, National Trust of Australia (ACT), *Committee Hansard*, 16 May 2023, p 8.

<sup>211</sup> Mr Nick Swain, Secretary, Canberra and District Historical Society, *Committee Hansard*, 16 May 2023, p 9.

<sup>212</sup> Jane Goffman, *Submission 36*, p 1.

<sup>213</sup> Dr Laura Dawes, *Submission 21*, pp 4–5.

“jurisdiction”, sitting side by side if that is physically necessary in that context as well.<sup>214</sup>

### Committee comment

- 3.127. The Committee sees benefit in the Heritage Unit strengthening and building on its relationships with other areas of its parent Directorate, EPSDD, and with other agencies outside of EPSDD including the ACT Property Group, Housing ACT, and the Transport Canberra and City Services Directorate, so that heritage in the ACT can be advocated to co-exist with other demands and interests, such as planning.

#### Recommendation 13

The Committee recommends that the ACT Government ensure the ACT Heritage Unit effectively collaborates with other areas of EPSDD, other government agencies, and ensure that there is improved information flow.

## Adaptive reuse and modifications

- 3.128. An area of complexity identified in submissions and during the course of the public hearing was around adaptations and modifications to heritage properties, particularly in the context of issues such as climate change, sustainability, and accessibility.

## Appropriate limits to preserving heritage

### Balancing heritage and development

- 3.129. A discussion over adaptive reuse and modifications was seen as part of a broader discussion around what the appropriate limits to heritage are, with many submissions expressing varying views on the definition of heritage or the place of heritage when it came to developments.<sup>215</sup>
- 3.130. Several individuals expressed frustration at heritage protections for, in their view, stifling development.
- 3.131. Colin Walters, for example, was of the view that ‘heritage listing should be reserved for old buildings that are either beautiful, unusual or both.’ They added that listing of structures such as old electrical sheds, which are ‘ugly and having no remaining usefulness’, risk crowding out attractive and useful new buildings.<sup>216</sup>
- 3.132. Chris Carter was strongly of the view that the heritage rules were an impediment to increasing housing supply:

<sup>214</sup> Mr Trevor Fitzpatrick, President, Planning Institute of Australia (ACT Division), *Committee Hansard*, 16 May 2023, p 38.

<sup>215</sup> See, for example: Colin Walters, *Submission 2*, p 1; Stephen Driscoll, *Submission 17*, p 1; Manning Clark House, *Submission 31*, p 2; Greater Canberra, *Submission 57*, p 8.

<sup>216</sup> Colin Walters, *Submission 2*, p 1.

Please sack the entire heritage committee and let people finally build things. All the rules are mostly nonsense and stop people building more houses that we so desperately need.

Just let people build houses!<sup>217</sup>

3.133. Stephen Driscoll questioned whether the opportunity costs of heritage-listing a building are being weighed in the currently heritage listing process, noting the present high cost of housing.<sup>218</sup>

3.134. Dr Beatrice Bodart-Bailey was critical of the impacts of developments over the last decade on the heritage characteristics of Canberra, like Walter Burley Griffin's Garden City Plan, and was sceptical of the new planning system.<sup>219</sup>

3.135. Meanwhile, organisations had differing views on how to balance heritage and development.

3.136. Manning Clark House called for developments to respect heritage characteristics:

We accept that there needs to be sensitive multi-purpose use and diversity in residential forms in an aging and spacious suburban area. But that development must continue to respect established and (in this instance) historically significant neighbourhood and landscape character.<sup>220</sup>

3.137. Greater Canberra viewed the existing heritage arrangements as too onerous and restrictive when it came to planning and other considerations:

Heritage should not be about trapping in amber a particular moment or building and preserving it for eternity. Doing so robs future generations from truly understanding its importance and place in Canberra's story. It also greatly restricts the ability of our city to use the site for more appropriate modern uses or to face new challenges in our city. Instead, heritage should be about telling the story of our city's past and journey to the present. Unfortunately, our current heritage system is built to keep certain parts of our city trapped in a moment in time, no matter the cost of doing so, and this has major impacts on the potential to deliver housing, services, and environmentally sustainable upgrades through our existing city footprint.<sup>221</sup>

3.138. For example, Greater Canberra considered the designation of certain suburbs such as Reid, Ainslie, Kingston, and Griffith as heritage precincts to have the effect of locking these suburbs into 'low density refuges for the city's wealthy', preventing the development of medium-density housing in areas close to services, and limiting the redevelopment of houses even though they may not be individually heritage-listed.<sup>222</sup>

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<sup>217</sup> Chris Carter, *Submission 16*, p 1.

<sup>218</sup> Stephen Driscoll, *Submission 17*, p 1.

<sup>219</sup> Dr Beatrice Bodart-Bailey, *Submission 45*, pp 1–2.

<sup>220</sup> Manning Clark House, *Submission 31*, p 2.

<sup>221</sup> Greater Canberra, *Submission 57*, p 8.

<sup>222</sup> Greater Canberra, *Submission 57*, p 12.

- 3.139. Greater Canberra argue that the heritage system should instead consider contemporary needs and issues, and not be focused on preserving places as they existed:

Future Canberrans will have different needs for their city. They will need to do different things, and every heritage registration we currently make is taking away that choice from future Canberrans about what they do with a place, because we are of the view that what currently exists is superior use of land and is more important than any possible use in any of the centuries to come. We think that currently we are doing that at far too high a rate, far too fast, and that we should have a more judicious process that weighs the long-term economic, environmental and commute time, and, also as mentioned, accessibility considerations, to have a more balanced decision-making framework.<sup>223</sup>

- 3.140. The conflict of views was particularly visible on this issue of ‘façadism’, where most of a building is redeveloped, but the original façade is retained.
- 3.141. For example, Greater Canberra was in favour of retaining the façades of buildings, but endorsed relaxing restrictions for other parts of buildings to enable adaptive reuse to suit contemporary needs.<sup>224</sup>

For example, in place of imposing strong restrictions on a heritage building, such as the Commonwealth Bank site in Civic, the Heritage Council should be looking to encourage the upgrading and redevelopment of the building in a way that preserves the original metal façade and cladding which makes it unique. In such a way, the building can have new life and allow modern uses that are more economical and environmentally sustainable while also preserving the important heritage features that makes the original building important. This change allows us to tell the story about how the needs of our city change and its future, while also paying homage to the past.<sup>225</sup>

- 3.142. Greater Canberra argued more broadly that placing too many limits on heritage can detract from a place’s amenity and value, using the heritage precinct of Reid as an example:

Conversely, despite being a much larger, beautiful, tree lined suburb, within walking distance of the CBD, Reid, as a heritage district, receives minimal attention from the broader Canberra community. Its heritage value is diminished by its limited accessibility and ability to tell its part in our story. Instead of being a site that adds to our city’s history, it remains a largely exclusive oasis to the wealthy without delivering anything to the broader population. Heritage has little value if it isn’t enjoyed or appreciated by the residents of our city. In that way, the Sydney Building has delivered far more in terms of heritage value than the suburb of Reid, despite being allowed to evolve and change over time.<sup>226</sup>

- 3.143. However, the Inner South Canberra Community Council did not share this view:

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<sup>223</sup> Mr Howard Maclean, Convenor, Greater Canberra, *Committee Hansard*, 16 May 2023, p 64.

<sup>224</sup> Greater Canberra, *Submission 57*, pp 8–10.

<sup>225</sup> Greater Canberra, *Submission 57*, p 8.

<sup>226</sup> Greater Canberra, *Submission 57*, p 9.

It is of significant concern that developments within Inner South Heritage Precincts have appeared, in some cases, to degrade heritage fabric. In extreme cases, dwellings have been almost completely demolished and rebuilt. This phenomenon, referred to as façadism, has been capturing the attention of experts and concerned citizens in Australia and overseas. In at least two of the Heritage Precincts in the Inner South retention of the original built fabric is not now required.<sup>227</sup>

- 3.144. Margaret Henderson was of the view that in relation to the then-proposed planning reforms, there was an ‘undercurrent of anti-heritage feeling which seems to be driven by misguided worry about housing affordability or by a development at all costs approach’ and that ‘both sides of this discussion are tense and anxious, stressed and distressed. The role of government is to achieve a workable balance. Improved, robust heritage arrangements are an important element in achieving this balance now and for the future.’<sup>228</sup>
- 3.145. Similar concerns around the mindset of developers, politicians and government officials when it comes to heritage was also expressed by the Reid Residents’ Association.<sup>229</sup>
- 3.146. More broadly, submissions received by the Committee commented on what they perceived to be an inherent tension between heritage and development.
- 3.147. Professor Roz Hansen AM explained that managing change to registered places and objects can be controversial:

In my experience some owners of heritage places can 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 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.<sup>230</sup>

- 3.148. The Canberra and District Historical Society similarly observed that ‘there is in some quarters a narrow, dated view not backed by evidence, that heritage is an unnecessary brake on Canberra’s development’:<sup>231</sup>

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<sup>227</sup> Inner South Canberra Community Council, *Submission 49*, pp 3, 5.

<sup>228</sup> Margaret Henderson, *Submission 37*, p 1.

<sup>229</sup> Reid Residents’ Association, *Submission 48*, p 3.

<sup>230</sup> Professor Roz Hansen AM, *Submission 4*, p 14.

<sup>231</sup> Canberra and District Historical Society, *Submission 6*, p 4.

The bleak reality of the overriding approach to heritage in the ACT is that heritage is regarded as an impediment to development, especially urban densification.<sup>232</sup>

- 3.149. The Canberra and District Historical Society referred to the Bauhaus-inspired flats along Northbourne Avenue, most of which were removed to make way for light rail redevelopment:

The Heritage Council was keen to place the whole precinct on the ACT Heritage Register. However other parts of government saw this as locking up a valuable piece of real estate that would provide extensive value capture to help fund the Light Rail project. There were ongoing negotiations and eventually an agreement was reached to place on the ACT Heritage Register a representative sample of dwellings.<sup>233</sup>

- 3.150. Andrew Dibb, however, expressed the view in his submission that the retention of a small portion of the Northbourne Avenue apartments was an example of getting the balance right, arguing that ‘keeping all of them would have too much impact on the future growth and use of the city, but keeping none would have been a mistake.’<sup>234</sup>

#### Committee comment

- 3.151. The Committee acknowledges that getting the balance right in heritage decision-making between preserving heritage and pursuing development can be difficult.
- 3.152. The Committee considers that in decisions made around heritage, it is necessary to ensure that a broad range of factors and interests are taken into consideration, including social and economic costs. This will go some way towards getting the balance in heritage decisions right.

#### Recommendation 14

The Committee recommends that the EPSDD clearly acknowledge and recognise perceptions of conflicts of interest in its decision-making, in order to address community expectations for transparency.

#### Balancing heritage and liveability

- 3.153. The Australian Institute of Architects (ACT Chapter) asserted that heritage requirements should be prioritised according to scale and complexity, arguing that smaller maintenance works should not have the same application requirements as larger scale proposals.<sup>235</sup>

<sup>232</sup> Canberra and District Historical Society, *Submission 6*, p 4.

<sup>233</sup> Canberra and District Historical Society, *Submission 6.1*, pp 22–23.

<sup>234</sup> Andrew Dibb, *Submission 65*, p 2.

<sup>235</sup> Australian Institute of Architects (ACT Chapter), *Submission 50*, p 2.

- 3.154. They put forward in their submission and during the public hearing that, unlike in the ACT where any intervention to a heritage property requires an approval, other states and territories have clearly listed exemptions for heritage approval.<sup>236</sup>
- 3.155. At the public hearing, both the Australian Institute of Architects (ACT Chapter) and Mr Geoff Ashley suggested that applications for less complex works and maintenance activities could be contracted out to experts such as a Heritage Advisory Service to reduce workload on the Heritage Unit, as it is done in other jurisdictions.<sup>237</sup>
- 3.156. Several other submissions supported the idea of exemptions for low-impact activities or works already approved in a CMP, with some arguing it could assist in freeing up Heritage Unit resources to deal with more important matters.<sup>238</sup>
- 3.157. Mr Mark Butz concurred, expressing the view that policies should be developed to allow regular maintenance and minor works to be conducted without approval, provided that advice has been received from specialist heritage advisors in a network supported by the government.<sup>239</sup>
- 3.158. At the public hearing, both Ms Sarah Reid and Ms Amy Blain argued that heritage needs to be an evolving concept instead of a static concept, as ‘...we need to prioritise people who are trying to do the right thing on sustainability and how that can sit with heritage, rather than one trumping the other.’<sup>240</sup>
- 3.159. Mark and Beverly Francis were of the view that the Heritage Council should be required to consider comfort and efficiency when making a decision:
- If they do not then decisions will not reflect a healthy balance between the heritage and [sic] livability, appeals will be common, and dissatisfaction with the council will continue (and for good reason). We think that clear policies and guidelines should be set for the ACT Heritage Council to achieve these goals.<sup>241</sup>
- 3.160. In response to questions around allowing exemptions for adaptations such as solar panels, the Minister indicated that the government is looking at the issue, acknowledging that ‘we know that the best heritage assets and heritage buildings are the ones that are being used. The need to be useable as well.’<sup>242</sup>
- 3.161. In its submission to the inquiry, the ACT Government put forward the view that while it is important to conserve history, this does not necessarily mean preserving it, ‘especially if

<sup>236</sup> Australian Institute of Architects (ACT Chapter), *Submission 50*, p 2.

<sup>237</sup> See, for example: Mr Eric Martin and Ms Jane Cassidy, Australian Institute of Architects (ACT Chapter), *Committee Hansard*, 16 May 2023, pp 41–42; Mr Geoff Ashley, *Committee Hansard*, 16 May 2023, p 54.

<sup>238</sup> See, for example: Professor Roz Hansen AM, *Submission 4*, p 15; Kosciuszko Huts Association, *Submission 7*, pp 8, 10; Australia ICOMOS, *Submission 34*, p 4; Reid Residents’ Association, *Submission 48*, p 6.

<sup>239</sup> Mr Mark Butz, *Committee Hansard*, 16 May 2023, p 49.

<sup>240</sup> See, for example: Ms Amy Blain, *Committee Hansard*, 16 May 2023, p 18; Ms Sarah Reid, *Committee Hansard*, 16 May 2023, p 19.

<sup>241</sup> Mark and Beverly Francis, *Submission 33*, p 1.

<sup>242</sup> Ms Rebecca Vassarotti MLA, Minister for Heritage, *Committee Hansard*, 16 May 2023, p 94.



that means that we have placed unnecessary constraints on our ability to improve the sustainability of our heritage buildings.’<sup>243</sup>

- 3.162. The Minister reiterated her views on heritage co-existing with other values during the public hearing:

My great desire, and what I have stated as part of my vision, in terms of the review is that we get to a place where we do not see heritage and something else basically being pitted against each other, and it is a fight about which value trumps which value. I think environment and heritage is a really good example of that.

I want us to get to a point where we really see those values complementing and supporting each other, rather than them being pitted against each other and one winning over the other one. That is what we are trying to achieve through the process that we are doing through now.<sup>244</sup>

### Committee comment

- 3.163. The Committee is of the view that low-impact home modifications and improvements to heritage properties should be subject to exemptions or a fast-tracked approvals process. The Committee considers this approach would have particular benefit in relation to sustainability-friendly adaptations such as solar panels.

#### Recommendation 15

The Committee recommends that the ACT Government amend the *Heritage Act 2004* and relevant policies to allow low-impact improvements to be made quickly and easily to heritage-listed properties.

### Sustainability considerations

- 3.164. The Committee heard from several submissions and witnesses who were frustrated at what they perceived to be a lack or absence of consideration or recognition in the heritage system towards climate change and sustainability modifications.
- 3.165. In their submission, Graham Mannall highlighted the difficulties they experienced in attempting to get approval for fifteen solar panels installed on the roof of their house, which, while not heritage-listed, is located in a suburb which is a heritage precinct.<sup>245</sup> Due to the property being located within a heritage precinct, the Heritage Council only gave conditional approval for six panels on the western roof plane, citing the precinct conservation requirement of minimal visibility of roof elements from the street, as nine

<sup>243</sup> ACT Government, *Submission 19*, p 9.

<sup>244</sup> Ms Rebecca Vassarotti MLA, Minister for Heritage, *Committee Hansard*, 16 May 2023, p 95.

<sup>245</sup> See, for example: Graham Mannall, *Submission 12*, p 1; Graham Mannall, *Exhibit 4*, p 1.

panels on the eastern roof plane would have had ‘visual impacts on the heritage streetscape.’<sup>246</sup>

- 3.166. Mr Mannall was critical of this decision, writing that ‘there is no point for us to install a 6 panel system as we require a new inverter for the additional panels and the costs far outweigh the benefits’, and that there needs to be a ‘balance reached between maintaining heritage values and achieving the Territory objectives of becoming truly [sic] sustainable.’<sup>247</sup>
- 3.167. Mauro Aviles expressed similar sentiments, questioning whether retaining heritage aesthetics should be given more weight than sustainability:

Solar panels, a lot of the heritage listed buildings have so much roof space for placing solar panels. Yes, I admit that solar panels take away from the aesthetics of an old building, but the question should be asked. What is more important, freezing a moment in time, which has come and gone or using roof spaces for solar panels for the benefit of current and future generations?<sup>248</sup>

- 3.168. Greater Canberra was similarly critical of what they perceived to be onerous heritage conditions and the listing of places with tenuous links to Canberra’s past, owing to a ‘trap in amber’ mentality by the Heritage Council, preventing adaptive reuse and the installation of sustainable products such as solar panels.<sup>249</sup>
- 3.169. Similar frustrations were conveyed by Sarah Reid, whose submission documented her frustrations since 2008 in unsuccessfully attempting to get solar panels on the street-facing side of the roof of her heritage-listed house.<sup>250</sup>
- 3.170. Amy and Danny Blain also expressed frustration with the apparent stringent prioritisation of heritage considerations over sustainability considerations such as solar panels, housing footprint, and verge use.<sup>251</sup>
- 3.171. Mark and Beverly Francis detailed the difficulties they experienced in trying to update their 1936 heritage house to be more comfortable and energy efficient, arguing that during the design process, they could not determine what trade-offs would be acceptable to the Heritage Council, and that the heritage rules and guidelines do not appear to recognise the ‘importance of a comfortable, practical and efficient home, yet these are (or should be) essential.’<sup>252</sup>
- 3.172. Eric Martin & Associates Architects argued that the fifteen year-old general conservation guidelines require updating to deal with contemporary issues, such as solar panels.<sup>253</sup>

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<sup>246</sup> Graham Mannall, *Exhibit 4*, pp 1–2.

<sup>247</sup> Graham Mannall, *Submission 12*, p 1.

<sup>248</sup> Mauro Aviles, *Submission 56*, pp 1–2.

<sup>249</sup> Greater Canberra, *Submission 57*, pp 5–6.

<sup>250</sup> Sarah Reid, *Submission 20*, pp 1–2.

<sup>251</sup> Amy and Danny Blain, *Submission 58*, p 1.

<sup>252</sup> Mark and Beverly Francis, *Submission 33*, p 1.

<sup>253</sup> Eric Martin & Associates Architects, *Submission 13*, p 3.

Technology has taken a huge advance since then, and I think it is really important that those fundamental guidelines about solar panels or other issues be updated. They need to be kept up to date to be far more effective. There are ways to be far more sustainable in respect of builders, not only from solar panels—there are other related issues of embodied energy.<sup>254</sup>

- 3.173. The need to update or issue new heritage guidelines to account for contemporary issues was also noted by the Australian Institute of Architects (ACT Chapter) and Australia ICOMOS.<sup>255</sup>
- 3.174. The Australian Institute of Architects (ACT Chapter) was of the view that ‘the ACT’s development approvals process should consider all aspects of sustainability, such as embodied energy, the energy used in the manufacture of building products and the transport of building products.’<sup>256</sup>
- 3.175. The Office of the Commissioner for Sustainability and the Environment (OCSE) informed the Committee that recognition exists for the interaction between heritage and the environment both nationally and internationally, particularly with respect to climate change.<sup>257</sup>
- 3.176. However, the OCSE pointed out that there is no such recognition or consideration in the ACT, noting that the Heritage Act does not mention climate change, and how there is no interaction between heritage and climate policies as legislation in the ACT does not identify or address the impacts of climate change on heritage.<sup>258</sup> For example:
- the *Heritage Act 2004* makes no explicit mention of climate change;
  - the *Climate Change and Greenhouse Gas Reduction Act 2010* make no explicit mention of heritage;
  - the *Nature Conservation Act 2014* does not mention heritage;
  - the *Tree Protection Act 2005* considers heritage but not climate change; and
  - the *Urban Forest Strategy 2021-2045* includes considerations of both heritage and climate change but not their interactions.<sup>259</sup>
- 3.177. The OCSE added that there were other areas where heritage and environmental values and objectives are poorly aligned and require review.<sup>260</sup> The OCSE pointed to the existing planning system, where heritage matters form part of the Territory Plan and are considered as part of development assessment processes, and take precedence over environmental and sustainability matters. The OCSE argued in her submission that ‘serious

<sup>254</sup> Mr Eric Martin, Heritage Committee Member, Australian Institute of Architects (ACT Chapter), *Committee Hansard*, 16 May 2023, p 42.

<sup>255</sup> See, for example: Australia ICOMOS, *Submission 34*, p 4; Australian Institute of Architects (ACT Chapter), *Submission 50*, p 1.

<sup>256</sup> Australian Institute of Architects (ACT Chapter), *Submission 50*, p 4.

<sup>257</sup> Office of the Commissioner for Sustainability and the Environment, *Submission 3*, p 1.

<sup>258</sup> Office of the Commissioner for Sustainability and the Environment, *Submission 3*, pp 1–2.

<sup>259</sup> Office of the Commissioner for Sustainability and the Environment, *Submission 3*, p 2.

<sup>260</sup> Office of the Commissioner for Sustainability and the Environment, *Submission 3*, p 2.

consideration should be given as to whether this hierarchy is appropriate given the dual climate and biodiversity crises we are living through.’<sup>261</sup>

- 3.178. The OCSE also argued that there is no recognition of the role heritage places often play in conserving greenspace within Canberra’s urban areas, and that a more holistic and nuanced approach to how heritage and environmental matters are considered in the planning system could provide co-benefits to both areas.<sup>262</sup>
- 3.179. National Trust of Australia (ACT) viewed the absence of any reference to climate change in the Heritage Act as a key issue, noting the implications that climate change has for the protection and conservation of heritage objects and places.<sup>263</sup>
- 3.180. National Trust of Australia (ACT) felt that climate change should be considered as part of updated heritage arrangements:

The heritage sector has a big role to play. One example is that even the process of demolishing an old building and building a new one has a significant effect on climate change. Preserving the old building, to put it simply, is a contributor to dealing with climate change, and we think that should be recommended, using the new heritage arrangements. We think that climate change, as I said earlier, could be a separate strand as an objective of the new Heritage Council. It is not there at the moment, and heritage has a big role to play. The assessment of heritage applications and whether, for example, a decision should be made to approve a demolition should take into account those externalities.<sup>264</sup>

#### Committee comment

- 3.181. The Committee acknowledges that the government has begun incorporating climate change as a consideration in heritage decision-making through the recently issued Minister’s Statement of Expectations to the interim Heritage Council.<sup>265</sup>
- 3.182. Notwithstanding this, the Committee is of the view that there is a critical need for consideration of climate change and sustainability as part of future heritage advice and decisions.

#### Recommendation 16

The Committee recommends that the ACT Government amend the *Heritage Act 2004* so that the climate change and environmental costs are considered for future heritage advice and decisions.

<sup>261</sup> Office of the Commissioner for Sustainability and the Environment, *Submission 3*, p 2.

<sup>262</sup> Office of the Commissioner for Sustainability and the Environment, *Submission 3*, p 2.

<sup>263</sup> National Trust of Australia (ACT), *Submission 38*, p 9.

<sup>264</sup> Mr Gary Kent, President, National Trust of Australia (ACT), *Committee Hansard*, 16 May 2023, p 12.

<sup>265</sup> Jasper Lindell, ‘[Rebecca Vassarotti tells heritage council to consider climate change as it makes decisions](#)’, *The Canberra Times*, 6 September 2023, accessed 5 October 2023.

## Accessibility

- 3.183. Advocacy for Inclusion urged consideration of amenity for people with a disability in relation to heritage-listed sites that are open to the general public, and drew attention to the potential for creative solutions to better balance heritage and accessibility.
- 3.184. Advocacy for Inclusion raised that, with the proportion of people living with a disability increasing over time (from 15.8 percent in 2012 to 19.4 percent in 2018), improving accessibility to buildings and spaces for people with a disability is important in achieving progress in several domains of the ACT Wellbeing Indicators, as ‘inaccessible spaces can be the different between community living and independence, and highly restricted lives for people with disabilities.’<sup>266</sup>
- 3.185. At the public hearing, Mr Craig Wallace, Head of Policy at Advocacy for Inclusion, expanded on his explanation of the barriers for people with a disability, which included:
- poor way-finding in outside spaces;
  - lack of signage;
  - parking that is not adjacent to the building or does enable equal access;
  - lack of a seamless path of travel (seamless path at drop-off, through the building and to the exit); and
  - lack of disability-accessible toilets.<sup>267</sup>
- 3.186. Mauro Aviles also raised accessibility issues for people with mobility issues:
- Heritage seems to want to freeze a moment in time, turning buildings into museums. Wanting to keep a memory of times gone by alive, forcing society to adapt to buildings, instead of allowing the buildings to adapt, grow and thrive with the society of the current time. Because of this, we have buildings that are not fully fit for purpose. Also, the buildings are not easily accessible to people with mobility issues.<sup>268</sup>
- 3.187. Advocacy for Inclusion stated that historic buildings and places were rarely designed with accessibility to all in mind, meaning that adaptations and alterations are often required to ensure their continued enjoyment and use.<sup>269</sup>
- 3.188. Advocacy for Inclusion stated that under the *Disability Discrimination Act 1992*, all buildings, including heritage listed-buildings, are required to provide equitable and dignified access for all people. However, due to the complaints based nature of the Act, proactive facilitation of accessibility is not necessarily encouraged.<sup>270</sup>
- 3.189. Advocacy for Inclusion also raised in its submission that heritage-listing is often blamed for poor accessibility, but argued that reconciling improved accessibility and ensuring the

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<sup>266</sup> Advocacy for Inclusion, *Submission 47*, p 1.

<sup>267</sup> Mr Craig Wallace, Head of Policy, Advocacy for Inclusion, *Committee Hansard*, 16 May 2023, pp 59–60.

<sup>268</sup> Mauro Aviles, *Submission 56*, p 2.

<sup>269</sup> Advocacy for Inclusion, *Submission 47*, p 2.

<sup>270</sup> Advocacy for Inclusion, *Submission 47*, p 2.

continued use of a culturally significant building or space is largely possible if sufficient investigation and consideration is undertaken.<sup>271</sup>

3.190. Mr Wallace advised that it is about being ‘more intelligent about the trade-offs’, noting that disability access is not all or nothing, and neither is heritage and conservation work. There is always some flexibility, some allowance being made to keep a building in use.’<sup>272</sup>

3.191. Mr Wallace referenced Old Parliament House as an example where smart design was used:

Some of the best examples of disability access have occurred in buildings where you say, “How are they going to do that?” At Old Parliament House, the steps are a totemic part of the building. They are where Gough was sacked. You would not want to remove them, so what they did was quite clever. They said, “We cannot change that. What we can actually do is overdeliver in other areas of accessibility within the buildings and the exhibition spaces,” and they have done that quite well.<sup>273</sup>

3.192. Advocacy for Inclusion was of the view that the Heritage Council and the Heritage Unit should include people with expertise in accessibility in heritage sites, and that objectives of inclusive design, universal design, or access for all, should be included the heritage framework.<sup>274</sup>

#### Committee comment

3.193. The Committee is of the view that ensuring accessibility to public heritage buildings and locations to be extremely important in ensuring that the cultural history of the ACT can be enjoyed by all. The Committee considers that government policy and the Heritage Act should be amended to enable solutions which balance heritage protection and accessibility.

#### Recommendation 17

The Committee recommends that the ACT Government make appropriate policy and legislative changes to support improved accessibility to public heritage sites.

## Natural and landscape heritage

3.194. Several submissions highlighted areas for improvement relating to natural and landscape heritage, including garden landscapes.<sup>275</sup>

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<sup>271</sup> Advocacy for Inclusion, *Submission 47*, pp 2–3.

<sup>272</sup> Mr Craig Wallace, Head of Policy, Advocacy for Inclusion, *Committee Hansard*, 16 May 2023, p 58.

<sup>273</sup> Mr Craig Wallace, Head of Policy, Advocacy for Inclusion, *Committee Hansard*, 16 May 2023, p 58.

<sup>274</sup> Advocacy for Inclusion, *Submission 47*, p 3.

<sup>275</sup> See, for example: Office of the Commissioner for Sustainability and the Environment, *Submission 3*, pp 3–4; Australian Garden History Society ACT Monaro Riverina Branch, *Submission 29*, p 1; Margaret Henderson, *Submission 37*, p 2; Friends of Grasslands, *Submission 39*, p 1; Amy and Danny Blain, *Submission 58*, p 2.

- 3.195. The OCSE was of the view that the *Heritage Act*'s existing definition of natural heritage significance (see paragraph 2.29) was 'unhelpful.'<sup>276</sup>
- 3.196. The OCSE argued that basing natural heritage significance on its 'scientific value' appears to be 'incongruous with other aspects of the Act which make no mention of science being a consideration in determining heritage values.'<sup>277</sup>
- 3.197. The OCSE was also critical of the *Heritage Act*'s requirement that places or objects of natural heritage significance may only be registered if they have 'natural heritage significance of a kind not protected under the *Nature Conservation Act 2014*.' The OCSE felt that this makes it difficult to determine what constitutes natural heritage, how the requirements for this differ from the *Nature Conservation Act 2014* and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), and that its application in practice is unclear.<sup>278</sup> This matter was also raised in Margaret Henderson's submission.<sup>279</sup>
- 3.198. An example of the unclear application of the *Heritage Act* was Hall Village Heritage Precinct's heritage register entry, which the OCSE noted as having several inconsistencies:

The Leek Orchid and Yellow Gum/Red Box Endangered Woodland Community are included in the entry and listed as elements of 19 and 20 of its heritage significance. However, other sites in the ACT with these two elements are not registered as heritage places under the Act. It is not apparent from the available information why endangered species and habitats are considered to be 'natural heritage' in some instances and not in others. Further, these elements are both protected under the *Nature Conservation Act* (Box-Gum Grassy woodland was listed in 1997 and the *Prasophyllum petilum* Leek Orchid in 1996, so prior to the heritage gazettal). This appears at odds with the requirements of the Act.<sup>280</sup>

- 3.199. The OCSE's submission also outlined unclear provisions relating to the *Heritage Act*'s requirements that the Heritage Council consult with the scientific committee on matters affecting a place or object that has natural heritage significance, or relating to the provisional registration or cancellation of registration for a place or object that forms part of the natural environment.<sup>281</sup> The OCSE argued that this is imprecise and could potentially be applied to any site.<sup>282</sup> They also noted that the *Heritage Act* is silent on whether the Heritage Council has to act on the advice it received from the scientific committee.<sup>283</sup>
- 3.200. Friends of Grasslands was of the view that places of natural heritage, particularly those of high ecological value, are poorly represented on the ACT heritage register.<sup>284</sup> It advocated for greater environmental and ecological expertise on the Heritage Council 'to advance

<sup>276</sup> Office of the Commissioner for Sustainability and the Environment, *Submission 3*, p 3.

<sup>277</sup> Office of the Commissioner for Sustainability and the Environment, *Submission 3*, p 3.

<sup>278</sup> Office of the Commissioner for Sustainability and the Environment, *Submission 3*, pp 3–4.

<sup>279</sup> Margaret Henderson, *Submission 37*, p 2.

<sup>280</sup> Office of the Commissioner for Sustainability and the Environment, *Submission 3*, p 4.

<sup>281</sup> See, for example, *Heritage Act 2004*, ss 19A, 31A, 45A.

<sup>282</sup> See, for example, *Heritage Act 2004*, ss 19A, 31A, 45A.

<sup>283</sup> See, for example: *Heritage Act 2004*, ss 19A, 31A, 45A.

<sup>284</sup> Friends of Grasslands, *Submission 39*, p 1.

conservation of natural heritage, in particular, the nationally endangered grasslands and grass woodlands habitats and species in the ACT.<sup>285</sup>

- 3.201. Amy and Danny Blain also advocated for greater protection of natural heritage in their submission:

Increasingly we should be protecting sites that should be conserved for their natural significance. There are native remnants that we should be restoring for their environmental and biodiversity benefits. We have sites like the Quick Street Ainslie Volcanics that have grasslands that need preserving and urgent protection.<sup>286</sup>

- 3.202. The Australian Garden History Society's ACT Monaro Riverina Branch put forward in its submission that 'heritage conservation is an evolving discipline and modern practice now validates gardens, settings and cultural landscapes as significant types of heritage in their own right, rather than mere add-ons to architecture.'<sup>287</sup>
- 3.203. The Australian Garden History Society's ACT Monaro Riverina Branch was of the view that the existing Heritage Act does not appropriately recognise this, observing that many cultural places in the ACT are registered with little reference to the significance of the gardens or wider landscape settings.<sup>288</sup> It argued that this is particularly significant given that Canberra is a garden city 'established in a deliberately chosen landscape setting of a river valley and hills.'<sup>289</sup>
- 3.204. Margaret Henderson also advocated for the inclusion of heritage protection of gardens, referencing the destruction of a residential backyard traditional Chinese scholars garden.<sup>290</sup>

## Local heritage

### Local heritage significance

- 3.205. A number of submissions considered that the heritage system should recognise local forms of heritage.
- 3.206. In its submission, the Canberra and District Historical Society raised that in the ACT, local heritage and heritage places related to a particular ethnic group are not recognised, unlike in other states and territories. It was of the view that this was 'an insult to local community groups', and that the failure to include these in the Heritage Act meant that they are not recognised when planning decisions are made.<sup>291</sup>

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<sup>285</sup> Friends of Grasslands, *Submission 39*, p 1.

<sup>286</sup> Amy and Danny Blain, *Submission 58*, p 2.

<sup>287</sup> Australian Garden History Society ACT Monaro Riverina Branch, *Submission 29*, p 1.

<sup>288</sup> Australian Garden History Society ACT Monaro Riverina Branch, *Submission 29*, p 1.

<sup>289</sup> Australian Garden History Society ACT Monaro Riverina Branch, *Submission 29*, p 1.

<sup>290</sup> Jane Goffman, *Submission 37*, p 2.

<sup>291</sup> Canberra and District Historical Society, *Submission 6*, p 10.



- 3.207. Eric Martin & Associates and the National Trust of Australia (ACT) were similarly of the view that the absence of local heritage significance and only territory level significance heritage meant that items of local significance are ignored, unprotected, and lost.<sup>292</sup>
- 3.208. Eric Martin & Associates pointed out in its submission that in other jurisdictions, there is a separation between heritage of local or state significance, with the former managed by local councils and the latter by state level heritage bodies.<sup>293</sup> This was similarly highlighted by the Australian Institute of Architects (ACT Chapter), the Australasian Society for Historical Archaeology and the National Trust of Australia (ACT).<sup>294</sup>
- 3.209. In his submission, heritage consultant Mark Butz argued that the lack of a mechanism for recognising local heritage is a source of friction between the community and the heritage decision-makers, and diminishes the heritage value and protection of such places:

At present a place that is assessed as having fallen short of the criteria for listing is shown on the Heritage Register as having been Rejected. The effect is an assumption that the place: does not enrich our understanding of history and identity; does not warrant legal protection or require advice by the Heritage Council on development issues to ensure good conservation outcomes; and does not warrant being eligible for development and architectural advice and funding from the ACT Heritage Grants Program.

Notably, it will appear to an enquirer that the place has been assessed and rejected and it seems reasonable to assume that there are therefore no heritage issues or limitations relating to it. It is not flagged as having any value that has to be taken into consideration. For a community that has put considerable effort into a nomination this is a most dissatisfying outcome. It may result in the loss of a place important to that community. It may discourage further community engagement. It may discredit or taint the larger picture of heritage protection in the ACT.<sup>295</sup>

- 3.210. The absence of a means to recognise local heritage was also criticised by Dr Siobhan Lavelle OAM of the Australasian Society for Historical Archaeology:

It seems that, if there is a decision about registration and that threshold is not met, then there is no fallback. I certainly take your point that the size of the jurisdiction is very different. But there does seem to be that gap there. I think the main link that would be required there would be planning. One mechanism could be referral of plan proposals to the Heritage Council, but there would be other mechanisms that could be looked at for how we might modify what is happening

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<sup>292</sup> See, for example: Eric Martin & Associates Architects, *Submission 13*, p 2; National Trust of Australia (ACT), *Submission 38*, p 10.

<sup>293</sup> Eric Martin & Associates Architects, *Submission 13*, p 2.

<sup>294</sup> See, for example: Australasian Society for Historical Archaeology, *Submission 25*, pp 5–6; National Trust of Australia (ACT), *Submission 38*, p 10; Australian Institute of Architects (ACT Chapter), *Submission 50*, p 3.

<sup>295</sup> Mark Butz, *Submission 44*, p 4.

in adjacent jurisdictions, if that is an area that is of interest to the ACT in heritage management.<sup>296</sup>

## Programs and engagement

3.211. Several submissions provided positive views on the annual Heritage Festival and other government programs.<sup>297</sup>

3.212. Dr Laura Dawes wrote of her favourable impression of the Heritage Festival:

I note that the Heritage festival is greatly appreciated by the ACT Community and has grown over the years. Unit Staff achieve this good outcome despite a small budget, and are to be congratulated on this addition to the Canberra calendar.<sup>298</sup>

3.213. Hall Heritage Centre also praised the Heritage Festival:

While the Heritage Grant program has been of central significance to our survival and achievements, we have also been a regular and reliable contributor to the annual Canberra and District Heritage Festival, and are appreciative of the efforts of Heritage Unit staff who have sustained the Festival as a major annual focus for heritage activities.<sup>299</sup>

3.214. The Hall Heritage Centre also noted that the 'Canberra Tracks' program, which shares the stories of Indigenous and colonial Australia in the Canberra area, is a program that it has been actively involved in.<sup>300</sup>

3.215. The Fire Brigade Historical Society of the ACT was similarly positive about current government programs and engagement:

The Society has participated in most ACT Heritage Festivals in recent years and contributed to the development of Canberra Tracks signage for the Forrest Fire Station. Communication was clear and timely, and [name redacted] has been a superb leader and advocate for these highly visible programs. The Society have always felt individually supported ... and been proud and grateful to be included.<sup>301</sup>

3.216. The Inner South Canberra Community Council viewed the Heritage Festival and Heritage Grants as aspects of the heritage arrangements which work well.<sup>302</sup>

3.217. Mark Butz was pleased about the communication of these programs:

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<sup>296</sup> Dr Siobhan Lavelle OAM, National Executive Committee Member, Australasian Society for Historical Archaeology, *Committee Hansard*, 16 May 2023, p 28.

<sup>297</sup> See for example: Dr Laura Dawes, *Submission 21*, p 7; Fire Brigade Historical Society of the ACT, *Submission 24*, p 2; Hall Heritage Centre, *Submission 26*, p 1; Mark Butz, *Submission 44*, p 5; Inner South Canberra Community Council, *Submission 49*, p 5.

<sup>298</sup> Dr Laura Dawes, *Submission 21*, p 7.

<sup>299</sup> Hall Heritage Centre, *Submission 26*, p 1.

<sup>300</sup> Hall Heritage Centre, *Submission 26*, p 1.

<sup>301</sup> Fire Brigade Historical Society of the ACT, *Submission 24*, p 2.

<sup>302</sup> Inner South Canberra Community Council, *Submission 49*, p 5.

Current communication through the Canberra Tracks and Heritage Grant programs has been exemplary, although seemingly constrained, and they reflect the high level of capability and the tenacity of the officers who drive and support them on an on-going basis.<sup>303</sup>

- 3.218. In contrast, some submissions called for the government to improve its engagement and messaging around heritage in the ACT.
- 3.219. The Australasian Society for Historical Archaeology felt that better outreach and ongoing engagement of the community by the Heritage Council and the Heritage Unit was required to raise awareness and deliver positive messaging around heritage:

Better community outreach is important. The perception that heritage is anti-development has been mentioned. Media coverage of heritage in Canberra tends to be generally negative rather than an opportunity to celebrate Canberra and its heritage and identity. It would be an improvement if there was an ongoing Heritage Council/Heritage Unit outreach and educational program, to complement the annual Heritage Festivals. It should include Historical Archaeology and be available for school age children.<sup>304</sup>

- 3.220. The Australian Garden History Society ACT Monaro Riverina Branch was of the view that there are limited channels for regular consultation and involvement for local community organisations in ACT heritage matters, noting that the only real formal link between the government's Heritage Unit and non-government heritage organisations is the Heritage Festival.<sup>305</sup>
- 3.221. The Australian Garden History Society ACT Monaro Riverina Branch added that, in its view, the Heritage Council has not taken full advantage of the Heritage Festival to engage with community organisations that run the event.<sup>306</sup>
- 3.222. Heritage consultant Geoff Ashley believed that the apparent lack of engagement with local heritage and promoting heritage values in the community stems from the transition to self-government, resulting in a 'top-down' approach to heritage management instead of one that is 'bottom-up' like in other jurisdictions.<sup>307</sup>

## Heritage grants

- 3.223. Several submissions and witnesses documented positive experiences with the heritage grants program. However, some felt that the program should be expanded or better supported to enable more local heritage places to be celebrated.<sup>308</sup>
- 3.224. Dr Laura Dawes commented on how the 'excellent program' should be given more funding:

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<sup>303</sup> Mark Butz, *Submission 44*, p 5.

<sup>304</sup> Australasian Society for Historical Archaeology, *Submission 25*, p 4.

<sup>305</sup> Australian Garden History Society ACT Monaro Riverina Branch, *Submission 29*, p 2.

<sup>306</sup> Australian Garden History Society ACT Monaro Riverina Branch, *Submission 29*, p 2.

<sup>307</sup> Geoff Ashley, *Submission 30*, p 1.

<sup>308</sup> See, for example: Reid Residents' Association, *Submission 48*, p 4; Family History ACT, *Submission 64*, p 1; Mr Gary Kent, President, National Trust of Australia (ACT), *Committee Hansard*, 16 May 2023, p 11; Mr Mark Butz, *Committee Hansard*, 16 May 2023, pp 55–56.

Similarly, the Heritage Grants program provides useful funds to individuals and community organisations for heritage activities and building conservation. This is an excellent program, which could be expanded with greater funding. These elements of heritage activities work well and should continue to be supported.<sup>309</sup>

- 3.225. The Fire Brigade Historical Society of the ACT commented that the heritage grants program has had a significant impact on the preservation and interpretation of heritage in the ACT:

While the Society have always felt energetically supported, given the number of stakeholders across the Program, we speculate that the workload for the Heritage Unit must be extremely heavy.<sup>310</sup>

- 3.226. Hall Heritage Centre, a community-based heritage centre focused on historic Ginninderra, was very supportive and appreciative of the heritage grants program, but observed that stagnant levels of funding had potentially limited the positive outcomes that could be achieved:

Without access to the Heritage grants program, Hall Heritage Centre would have become a mere shadow of what it is today, and we are pleased to recognise the great value of that program. We observe however that total funding available for the program seems to have stood still at around \$350,000 for many years, which means effectively that less and less is getting done. We surmise that the returns to government and the community from the current annual quantum would more than justify a doubling of the size of the program.<sup>311</sup>

- 3.227. During the public hearing, Mr Mark Butz similarly praised the administration of the program, but felt that demand for the grants continuously outstripped what was available and called for an expansion to the program:

The Heritage Grants Program always seems to have not enough for the demand. I am aware that there are questions about what gets paid out of the line item for heritage grants that are, arguably, a government program, as distinct from community effort. But I do not want to go too much into that; I am not aware of why certain decisions were made. But I would like to see the Heritage Grants Program expanded and better resourced.<sup>312</sup>

- 3.228. The Australian Garden History Society was of a similar view, and was also critical of the application process:

The Heritage Grants program provides highly valued but limited funds for community heritage projects, but the competitive process of application is complicated, off putting and tends to distance rather than unite community and government.<sup>313</sup>

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<sup>309</sup> Dr Laura Dawes, *Submission 21*, p 7.

<sup>310</sup> Fire Brigade Historical Society of the ACT, *Submission 24*, p 2.

<sup>311</sup> Hall Heritage Centre, *Submission 26*, p 1.

<sup>312</sup> Mr Mark Butz, *Committee Hansard*, 16 May 2023, p 56.

<sup>313</sup> Australian Garden History Society ACT Monaro Riverina Branch, *Submission 29*, p 2.

- 3.229. The Canberra and District Historical Society felt that the grants could be more effective if plugged into a heritage strategy and that more grants could be freed up if guaranteed operational funding was provided for heritage organisations.<sup>314</sup>
- 3.230. Mr Geoff Ashley proposed introducing a dual funding system based on Victoria's Living Heritage Grants System model, which allows for small grants to be provided to individuals and communities, as well as larger funds to government priority projects.<sup>315</sup>

#### Committee comment

- 3.231. The Committee is of the view that more support needs to be provided to local heritage organisations – in particular, the heritage grants program should be expanded to meet the demand from local and community heritage organisations.

#### Recommendation 18

The Committee recommends that the ACT Government consider increasing support for community sector heritage.

#### Recommendation 19

The Committee recommends that the ACT Government consider expanding the heritage grants program and provide it with extra resourcing to enable greater uptake from community and grassroots heritage initiatives.

## Aboriginal heritage (tangible and intangible) and cultural landscapes

### Aboriginal heritage in the *Heritage Act 2004*

- 3.232. A number of submissions noted shortcomings in the Heritage Act with respect to Aboriginal heritage.<sup>316</sup>
- 3.233. In their joint submission, Duncan Marshall AM and Dr Michael Pearson AO observed that:
- [T]he approach to First Nations' heritage in other jurisdictions has evolved well beyond the provisions of the current Act, with a much greater recognition that First Nations should play a central role in the care and management of their heritage ...<sup>317</sup>
- 3.234. Australia ICOMOS stated that the structure of Aboriginal heritage in the ACT was 'premised on outdated concepts' and that the legislation's focus on 'objects and sites' did not allow

<sup>314</sup> Mr Nick Swain, Secretary, Canberra and District Historical Society, *Committee Hansard*, 16 May 2023, p 11.

<sup>315</sup> Mr Geoff Ashley, *Committee Hansard*, 16 May 2023, p 56.

<sup>316</sup> See, for example: Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, pp 2, 5; Office of the Commissioner for Sustainability and the Environment, *Submission 3*, p 3; Environmental Defenders Office, *Submission 28*, p 22; Australia ICOMOS, *Submission 34*, p 2.

<sup>317</sup> Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, p 2.

for consideration of ‘broad Aboriginal cultural values.’<sup>318</sup> They also argued that the current system for input by RAOs was outdated and ineffective:

Current mechanisms also do not empower the Aboriginal community in any decision-making processes relating to their heritage and its potential incremental destruction.<sup>319</sup>

- 3.235. The OCSE commented in their submission that treating Aboriginal cultural sites under the same legislative framework as European heritage seemed ‘problematic from an environmental perspective’, noting that ‘living and thriving’ local traditional culture included deep knowledge which could aid in the protection of the natural environment:<sup>320</sup>

Many significant sites for the Ngunnawal people provide links to the way that humans on this Country have interacted with the land for tens of thousands of years and continue to do so today. Preservation of these sites needs to be considered in this context, including facilitating access to significant sites for members of the Ngunnawal community to ensure a continuation of culture and knowledge across generations. This should be explicitly provided for in heritage arrangements.<sup>321</sup>

- 3.236. The Environmental Defenders Office (EDO) noted that, under the Heritage Act, the Minister could enter into a heritage agreement with ‘the owner of the place or object’ or, with the owner’s consent, someone else.<sup>322</sup> However, as ‘owner’ in the Heritage Act is defined only in terms of a place, and relates to a registered proprietor of a lease, a unit owner or an owners corporation,<sup>323</sup> EDO considered it unlikely that the owner of a place or object could include traditional owners or custodians.<sup>324</sup>
- 3.237. During the public hearing, EDO told the Committee that they ‘were not able to find any real, accessible mechanism for members of the community to be able to enforce the Heritage Act, including First Nations people’ and that it seemed like ‘a very significant gap.’<sup>325</sup>

## Intangible cultural heritage

- 3.238. Several submissions and witnesses advocated for recognition of Aboriginal intangible heritage under the Heritage Act.<sup>326</sup>

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<sup>318</sup> Australia ICOMOS, *Submission 34*, p 2.

<sup>319</sup> Australia ICOMOS, *Submission 34*, p 2.

<sup>320</sup> Office of the Commissioner for Sustainability and the Environment, *Submission 3*, p 3.

<sup>321</sup> Office of the Commissioner for Sustainability and the Environment, *Submission 3*, p 3.

<sup>322</sup> See, for example: Environmental Defenders Office, *Submission 28*, p 22; *Heritage Act 2004*, s 99(1).

<sup>323</sup> *Heritage Act 2004*, Dictionary.

<sup>324</sup> Environmental Defenders Office, *Submission 28*, p 22.

<sup>325</sup> Ms Frances Bradshaw, Senior Solicitor, Environmental Defenders Office, *Committee Hansard*, 16 May 2023, p 91.

<sup>326</sup> See, for example: Office of the Commissioner for Sustainability and the Environment, *Submission 3*, p 3; Professor Roz Hansen AM, *Submission 4*, pp 8, 11; Australasian Society for Historical Archaeology, *Submission 25*, p 4; Environmental Defenders Office, *Submission 28*, p 14; Australia ICOMOS, *Submission 34*, p 7; National Trust Australia (ACT), *Submission 38*, p 12.

- 3.239. During the public hearing, Australia ICOMOS told the Committee that the current legislation does not provide for intangible cultural heritage:

... at the moment, reasonably traditional approaches to heritage significance are framed up in the legislation and in the processes that follow the legislation. It is time to review those processes, because they tend to lead to a focus on archaeological significance and other more discrete silos of significance, when we now know that a First Nations approach to heritage is more holistic and tends to bring together the tangible and the intangible.<sup>327</sup>

- 3.240. In their submission, Australia ICOMOS advocated for proactive identification of ‘gaps’ in existing heritage listings, saying that this could enhance protection of cultural landscapes and intangible cultural heritage:

Cultural landscapes are an important type of heritage, particularly in relation to First Nations heritage, as this is one of few place types that affords protection for broader Aboriginal values, adequately recognising connection to place and that First Nations heritage is living heritage.<sup>328</sup>

- 3.241. The Committee heard from National Trust of Australia (ACT) during the public hearing that ‘intangible Aboriginal heritage’ was not recognised under the Heritage Act, and instead it relies heavily ‘on the presence of physical objects and structures.’<sup>329</sup>

- 3.242. National Trust of Australia (ACT)’s submission argued that intangible heritage was inadequately protected, and the Heritage Act should be reviewed and updated:

But where there is no tangible evidence of First Nation significance such as stone artefacts, scarred trees or stone arrangements, the so called ‘place’ is deemed of little or no significance under the Act and is therefore excluded from First Nations heritage significance. This lack of understanding that all places have heritage significance causes anger and distress to First Nations people. These anomalies are inconsistent with contemporary understandings of heritage in Australia and internationally and warrant a review of the *ACT Heritage Act 2004* to ensure it meets accepted First Nations heritage protection and conservation standards.<sup>330</sup>

- 3.243. In its submission, the EDO noted that the Heritage Act protected ‘objects and places associated with Aboriginal people because of Aboriginal tradition’, and that ‘Aboriginal tradition’ was defined as ‘the customs, rituals, institutions, beliefs or general way of life of Aboriginal people.’ EDO considered that this could imply that the Heritage Act would be applicable to intangible heritage but argued that such an application should be made explicit in the legislation.<sup>331</sup>

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<sup>327</sup> Professor Tracy Ireland, Professor of Cultural Heritage, University of Canberra and President, Australia ICOMOS, *Committee Hansard*, 16 May 2023, p 33.

<sup>328</sup> Australia ICOMOS, *Submission 34*, p 7.

<sup>329</sup> Mr Gary Kent, President, National Trust of Australia (ACT), *Committee Hansard*, 16 May 2023, p 7.

<sup>330</sup> National Trust of Australia (ACT), *Submission 38*, p 12.

<sup>331</sup> Environmental Defenders Office, *Submission 28*, p 14.

- 3.244. The EDO also told the Committee during the hearing that the definition of intangible heritage should be developed by Aboriginal peoples and ‘not just solely by ACT Government and non-Indigenous drafters.’<sup>332</sup>
- 3.245. Professor Roz Hansen AM argued in their submission 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)’, and that definitions in the Heritage Act should include such terms:<sup>333</sup>
- The Territories [sic] 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.<sup>334</sup>
- 3.246. The OCSE stated in their submission that protection of local cultural knowledge and traditions was ‘a well-established concept globally’ and should be better reflected in the ACT’s heritage arrangements.<sup>335</sup>
- 3.247. The OCSE commented that UNESCO had specifically recognises intangible cultural heritage, including oral traditions, language, craftsmanship, and traditional ecological wisdom. The OCSE further argued that ‘Indigenous cultural knowledge is crucial to the preservation of the country’s ancient and fragile ecosystems’ and should be formally recognised.<sup>336</sup>
- 3.248. Similarly, the 2010 report of an independent expert on cultural rights to the United Nations Human Rights Council emphasised cultural heritage, both tangible and intangible, as a human rights issue ‘intrinsically linked to human dignity, identity and social cohesion’, as noted by the ACT Human Rights Commission in their submission.<sup>337</sup>
- 3.249. Of two reform themes for heritage legislation in the ACT, the *Stenning & Associates Report* recommended that ACT Aboriginal people be re-established as ‘the decision-makers on their cultural heritage.’<sup>338</sup>
- 3.250. The *Stenning & Associates Report* asserted that significant change was required to achieve this goal, and proposed the creation of an Aboriginal Cultural Heritage Body (ACHB) with decision-making powers. The ACHB, comprising traditional cultural custodians, would have delegated authority from the Heritage Council to make decisions on the ‘recognition, conservation, and management’ of Aboriginal cultural heritage.<sup>339</sup>

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<sup>332</sup> Ms Frances Bradshaw, Senior Solicitor, Environmental Defenders Office, *Committee Hansard*, 16 May 2023, p 88.

<sup>333</sup> Professor Roz Hansen AM, *Submission 4*, p 8.

<sup>334</sup> Professor Roz Hansen AM, *Submission 4*, p 11.

<sup>335</sup> Office of the Commissioner for Sustainability and the Environment, *Submission 3*, p 3.

<sup>336</sup> Office of the Commissioner for Sustainability and the Environment, *Submission 3*, p 3.

<sup>337</sup> ACT Human Rights Commission, *Submission 43*, p 5.

<sup>338</sup> Stenning & Associates, [Celebrating heritage in a growing city: ACT Heritage Jurisdictional Review: Phase 1](#), Final Report, July 2023, pp iii–iv.

<sup>339</sup> Stenning & Associates, [Celebrating heritage in a growing city: ACT Heritage Jurisdictional Review: Phase 1](#), Final Report, July 2023, p iv.



- 3.251. The *Stenning & Associates Report* also recommended ongoing consultation between the ACT Government and Aboriginal communities to determine the governance model and composition of the body.<sup>340</sup>
- 3.252. The ACT Government's submission identified protection and conservation of Aboriginal cultural heritage and places as a 'key priority.'<sup>341</sup>

#### Committee comment

- 3.253. The Committee considers that intangible heritage is a vital part of cultural life, and especially important to Aboriginal people, and that the heritage system should genuinely recognise and protect intangible cultural heritage.
- 3.254. The Committee is of the view that the ACT's heritage arrangements and legislation should provide definitions of intangible and non-build cultural heritage in line with the UNESCO 'Convention for the Safeguarding of the Intangible Cultural Heritage', and should focus on providing appropriate recognition and protection to allow and encourage Aboriginal culture and traditions to thrive and prosper.

#### Recommendation 20

The Committee recommends that the ACT Government amend the *Heritage Act 2004* to include a definition of Aboriginal cultural heritage that recognises both tangible and intangible heritage.

### Registered Aboriginal Organisations

- 3.255. The Minister may declare an entity to be a Representative Aboriginal Organisation (RAO) under the Heritage Act.<sup>342</sup> There are currently four RAOs, identified in the *Heritage (Representative Aboriginal Organisations) Declaration 2006 (No 1)* as:
- Buru Ngunawal Aboriginal Corporation;
  - Consultative Body Aboriginal Corporation on Indigenous Land and Artefacts in the Ngunnawal Area;
  - Ngarigu Currawong Clan; and
  - Little Gudgenby River Tribal Council.<sup>343</sup>
- 3.256. EPSDD's website lists the RAOs as Buru Ngunawal Aboriginal Corporation, King Brown Tribal Group, Mirrabee, and Ngarigu Currawong Clan.<sup>344</sup>

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<sup>340</sup> Stenning & Associates, [Celebrating heritage in a growing city: ACT Heritage Jurisdictional Review: Phase 1](#), Final Report, July 2023, pp iv–v.

<sup>341</sup> ACT Government, *Submission 19*, p 8.

<sup>342</sup> *Heritage Act 2004*, s 14(8).

<sup>343</sup> NI2006-298: *Heritage (Representative Aboriginal Organisations) Declaration 2006 (No 1)*.

<sup>344</sup> ACT Government Environment, Planning and Sustainable Development Directorate, [Representative Aboriginal Organisations](#) (accessed 21 September 2023).

3.257. The *Heritage (Representative Aboriginal Organisations) Declaration 2006 (No 1)* specifies that RAOs are consulted about:

- the development of heritage guidelines relating to Aboriginal cultural heritage places and objects;
- Council decisions about provisional registration of Aboriginal places and objects;
- Council decisions about cancellation of registration of Aboriginal heritage places and objects;
- the heritage significance of Aboriginal cultural heritage places and objects;
- Council decisions about restricted information regarding Aboriginal cultural heritage places and objects;
- the Minister's decision about declaring a repository for Territory-owned Aboriginal cultural heritage objects; and
- the impacts of proposed development on Aboriginal heritage places and objects.<sup>345</sup>

### Remuneration for consultation services

3.258. In its submission, the EDO observed that Aboriginal peoples and organisations are frequently consulted for input on various government policies and programs, which takes up their time and resources and may also result in 'consultation fatigue.'<sup>346</sup>

3.259. The EDO further noted that there was no provision under the Heritage Act for RAOs to be remunerated for their consultation services. EDO considered it inappropriate that RAOs might spend a 'significant amount of time' providing consultation services to government without remuneration.<sup>347</sup>

3.260. During the public hearing, the EDO told the Committee that RAOs should be remunerated:

In our view, they are providing expert evidence that should be remunerated as such, because they are giving the benefit of their lived experience, or they have professional expertise as well. We consider that they should be remunerated much like everybody else when they are being consulted, for either each individual consultation or perhaps having their organisations better funded so that they can respond to multiple inquiries. We note that the heritage RAO declaration specifically excludes remuneration, which we find problematic.<sup>348</sup>

3.261. The National Trust of Australia (ACT) also suggested in its submission that ongoing consultation such as that with RAOs should be reimbursed appropriately.<sup>349</sup>

3.262. In its submission, the ACT Government described working with RAOs and other Aboriginal groups as a key aspect of strengthening the ACT's heritage arrangements. The government

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<sup>345</sup> NI2006-298: *Heritage (Representative Aboriginal Organisations) Declaration 2006 (No 1)*.

<sup>346</sup> Environmental Defenders Office, *Submission 28*, p 18.

<sup>347</sup> Environmental Defenders Office, *Submission 28*, p 18.

<sup>348</sup> Ms Melanie Montalban, Managing Lawyer, Environmental Defenders Office, *Committee Hansard*, 16 May 2023, pp 91–92.

<sup>349</sup> National Trust of Australia (ACT), *Submission 38*, p 12.

expressed an intention to work with traditional owners and to ensure that ‘understanding and responding to First Nations cultural heritage is front and centre in our approach.’<sup>350</sup>

### Committee comment

- 3.263. The Committee considers that it would be appropriate to compensate Aboriginal organisations for the consultation services they provide on government policies and programs, in recognition of the significant time and resources required to do so and the frequency of demand for such services.

#### Recommendation 21

The Committee recommends that the ACT Government recognise the conflicting pressures faced by RAOs (often those with many roles) and ensure RAOs receive adequate remuneration for their participation in heritage processes.

### Access to heritage grants

- 3.264. Aboriginal heritage is listed as one of five funding priorities on the ACT Heritage Grants Program webpage. Projects ‘initiated by or involving local Aboriginal communities in cultural heritage activities’ can potentially qualify for a grant under this priority.<sup>351</sup>
- 3.265. Each year, approximately fifteen to twenty grants are made under the ACT Heritage Grants Program. The following grants were allocated to Aboriginal-related projects in the past five years:

Year	Applicant	Project	Amount
2019–2020	Nicola Lambert	Yhurramuulan Murra Trail. A trail in the inner-north of Canberra that will allow for the sharing of Ngunnawal stories, art and language, and celebrate and strengthen cultural heritage.	\$40,848 <sup>352</sup>
2020–2021	N/A	N/A	\$0 <sup>353</sup>
2021–2022	Woodland and Wetlands Trust	Ngunnawal Night Tales at Mulligans Flat	\$26,140 <sup>354</sup>

<sup>350</sup> ACT Government, *Submission 19*, pp 8–9.

<sup>351</sup> ACT Government Environment, Planning and Sustainable Development Directorate, [Heritage Grants](#) (accessed 21 September 2023).

<sup>352</sup> ACT Government Environment, Planning and Sustainable Development Directorate [Successful Projects for 2019-2020](#) (accessed 21 September 2023).

<sup>353</sup> ACT Government Environment, Planning and Sustainable Development Directorate [Successful Projects for 2020-2021](#) (accessed 21 September 2023).

<sup>354</sup> ACT Government Environment, Planning and Sustainable Development Directorate [Successful Projects for 2021-2022](#) (accessed 21 September 2023).

2022– 2023	Ginninderra Catchment Group	Community Learning on Ngunnawal Country	\$25,250 <sup>355</sup>
2022– 2023	National Rock Garden	Signs and online content – Indigenous Welcome	\$10,552 <sup>356</sup>
2023– 2024	Ginninderra Catchment Group	Canberra Tracks signage for Indigenous cultural trees at Hall	\$11,230 <sup>357</sup>

- 3.266. In 2023-2024, a Community Heritage Partnership Project for 'Cultural Trees Heritage Assessments' also received funding of \$54,500.<sup>358</sup>

### Committee comment

- 3.267. The Committee is concerned that the data shown in the above table clearly shows the low allocation of heritage grants to Aboriginal organisations.
- 3.268. The Committee notes that the ACT Government agreed to a recommendation in the Committee's report on its *Inquiry into environmental volunteerism* that 'the ACT Government fund Aboriginal heritage projects to protect and preserve Country and Ngunnawal culture.'<sup>359</sup>
- 3.269. In its response to the recommendation, the ACT Government stated that programs including ACT heritage grants 'provide opportunities for community to protect and preserve Country and Ngunnawal culture' and commented that further programs and projects would 'continue to be explored as funding and opportunities become available.'<sup>360</sup>
- 3.270. The Committee believes that it is important for direct leadership and engagement on Aboriginal matters, and notes that it had made efforts to engage with local Aboriginal organisations as part of this inquiry. The Committee acknowledges the often competing demands faced by such organisations, which takes up their time and resources. It also acknowledges the structural challenges that the parliament presents, and is committed to reducing these barriers.
- 3.271. The Committee deeply regrets it was unable to engage with Aboriginal organisations as part of an inquiry that deals with matters that should be informed by Aboriginal knowledge and experiences.

<sup>355</sup> ACT Government Environment, Planning and Sustainable Development Directorate [Successful Projects for 2022-2023](#) (accessed 21 September 2023).

<sup>356</sup> ACT Government Environment, Planning and Sustainable Development Directorate [Successful Projects for 2022-2023](#) (accessed 21 September 2023).

<sup>357</sup> ACT Government Environment, Planning and Sustainable Development Directorate [Successful Projects for 2023-2024](#) (accessed 21 September 2023).

<sup>358</sup> ACT Government Environment, Planning and Sustainable Development Directorate [Successful Projects for 2023-2024](#) (accessed 21 September 2023).

<sup>359</sup> Standing Committee on Environment, Climate Change and Biodiversity, *Report 6 – Inquiry into environmental volunteerism*, 22 November 2022, Recommendation 21.

<sup>360</sup> ACT Government, *Report 6 – Standing Committee on Environment, Climate Change and Biodiversity – Inquiry into environmental volunteerism, Government Response*, March 2023, p 9.

### Recommendation 22

The Committee recommends that the ACT Government investigate whether there are any barriers to Aboriginal organisations in applying for heritage grants.

## Liaison with the Heritage Council and the Heritage Unit

- 3.272. Australia ICOMOS described current consultation arrangements with Aboriginal communities as outdated and requiring revision as they were not reflective of the local community. It reported that RAOs had expressed concern that they were not actively engaged with the Heritage Council in decision-making.<sup>361</sup>
- 3.273. In its submission, the National Trust of Australia (ACT) described expanded inclusion of knowledge-holder and affected parties in decision-making as an ‘essential requirement for good governance and informed outcomes’. It advised that to engage in genuine partnership would require ‘mechanisms for ensuring First Nations voices are central in protecting and conserving their cultural heritage.’<sup>362</sup>

### Committee comment

- 3.274. The Committee considers that regular meetings between the Heritage Unit and RAOs to review and discuss proposed projects – with the Heritage Unit providing the RAOs’ feedback to the Heritage Council – would promote engagement between the RAOs and the Heritage Council, and allow RAOs to have an active voice in Heritage Council decision-making.
- 3.275. The Committee notes that one option would be for the above engagement to be undertaken by the Heritage Unit’s Aboriginal Liaison Officer, and that this may support a stronger relationship with RAOs.

### Recommendation 23

The Committee recommends that the ACT Government amend the governance arrangements so the ACT Heritage Unit must meet with RAOs and report to the ACT Heritage Council.

## Protection of cultural heritage

### Site identification and protection

- 3.276. National Trust of Australia (ACT) expressed its view that the community should be assured that culturally significant places and objects afforded protection by being listed on the ACT heritage register were indeed given appropriate protection and that heritage assets were conserved for present and future generations.

<sup>361</sup> Australia ICOMOS, *Submission 34*, p 2.

<sup>362</sup> National Trust of Australia (ACT), *Submission 38*, p 12.

- 3.277. It cited a failure of such protection when two heritage-registered ‘scar trees’ were felled in 2017 and 2018, with at least one of the trees being removed by an ACT Government contractor due to an administrative error.<sup>363</sup>
- 3.278. National Trust of Australia (ACT) said that these incidents highlighted the need for stronger enforcement of heritage protections, and ‘much-improved practical and fail-safe protections’ with enhanced education and accountability requirements for contractors and ACT Government personnel.<sup>364</sup> It called for ‘wide systemic change’ including more effective and timely engagement with Aboriginal representatives and organisations:
- Underpinning all these, is the need for a much greater community education and communication to foster an increased valuing of Aboriginal and other ACT heritage assets across the community.<sup>365</sup>
- 3.279. Australia ICOMOS commented that the lack of an ACT heritage strategy documenting strategic priorities and heritage recognition and protection ‘potentially allows for the incremental destruction of Canberra’s cultural heritage, including Aboriginal heritage.’<sup>366</sup>

### Committee comment

- 3.280. The Committee is concerned that cultural heritage sites listed on the ACT heritage register may not be receiving the protection to which they are entitled under the Heritage Act, and may be susceptible to damage or destruction through inadvertent error by ACT Government officials, contractors, or members of the public.
- 3.281. The Committee considers that a survey of listed Aboriginal sites and the protections in place for them would be a useful measure in establishing community confidence in the ongoing conservation of such sites of significance.

### Recommendation 24

The Committee recommends that the ACT Government and the ACT Heritage Unit provide a report on Aboriginal listed heritage sites in the ACT.

### Emergency protection of sites

- 3.282. Under the Heritage Act, a person who ‘engages in conduct that causes damage to an Aboriginal place or object’, where to cause damage ‘includes disturb and destroy’, commits a strict liability offence with penalties attracting 100 to 1,000 penalty points.<sup>367</sup>
- 3.283. A ‘governmental officer’ engaging in authorised conduct is exempt from this provision.<sup>368</sup>
- 3.284. Confidential evidence provided to the Committee indicated that this could result in a situation where an artefact was identified, for example, by an Aboriginal person or a

<sup>363</sup> National Trust of Australia (ACT), *Submission 38*, pp 22–23.

<sup>364</sup> National Trust of Australia (ACT), *Submission 38*, p 23.

<sup>365</sup> National Trust of Australia (ACT), *Submission 38*, p 23.

<sup>366</sup> Australia ICOMOS, *Submission 34*, p 5.

<sup>367</sup> *Heritage Act 2004*, s 75.

<sup>368</sup> *Heritage Act 2004*, s 76.

heritage consultant, and was in danger of being damaged, but could not be moved (or 'disturbed') in a timely manner without committing an offence under the Heritage Act.<sup>369</sup>

#### Committee comment

- 3.285. The Committee is of the view that, where an Aboriginal artefact is in immediate danger of being damaged unless it is moved, an Aboriginal person or heritage consultant should be able to take prompt action to prevent the damage. Such action should be the minimum disturbance to provide immediate protection, and should only be carried out by recognised subject matter experts or local cultural experts.
- 3.286. The Committee would also like for the reporting of such incidents to be mandated, and for the reporting to be undertaken as soon as practicable after such incidents.

#### Recommendation 25

The Committee recommends that the ACT Government amend the *Heritage Act 2004* to allow Aboriginal people or appropriate heritage consultants to move an artefact for the purpose of protecting them in an emergency situation.

#### Improved decision-making

- 3.287. In its outline of current heritage arrangements, the ACT Government submission indicated that four sub-committees or Taskforces of the Heritage Council had been established to consider matters in detail and make recommendations to the full Heritage Council (see Chapter 2).<sup>370</sup>
- 3.288. The Registration Taskforce met regularly before the Heritage Council's meetings, approximately every six weeks, while the Taskforces on Development Assessment, Conservation Management Plans, and Aboriginal Heritage met 'on an as-needs basis.'<sup>371</sup>
- 3.289. Professor Roz Hansen AM stipulated that sub-committee membership should be skills-based, and that Aboriginal Heritage Taskforce members 'should have skills at least in Aboriginal culture, Aboriginal history, and archaeology.'<sup>372</sup>
- 3.290. Similarly, Dr Laura Dawes' submission recommended that Taskforce composition be based 'on the mix of skill sets required' and specified that Taskforce convenors should be Heritage Council members other than the Chair.<sup>373</sup>

#### Committee comment

- 3.291. The Committee is of the view that strengthening provisions and resourcing for the Aboriginal Heritage Taskforce would contribute to ensuring that Aboriginal heritage is

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<sup>369</sup> Confidential, *Submission 10*.

<sup>370</sup> ACT Government, *Submission 19*, pp 2–3.

<sup>371</sup> ACT Government, *Submission 19*, pp 2–3.

<sup>372</sup> Professor Roz Hansen AM, *Submission 4*, p 16.

<sup>373</sup> Dr Laura Dawes, *Submission 21*, p 8.

protected according to best practice and centres Aboriginal engagement and empowerment.

### Recommendation 26

The Committee recommends that the ACT Government strengthen Aboriginal heritage protection by ensuring the ACT Heritage Council's Aboriginal Heritage Taskforce is appropriately resourced.

## Resourcing, business systems, and processes

### Resourcing of the Heritage Unit

3.292. Several submissions highlighted concerns over inadequate resourcing of the Heritage Unit, often resulting in less-than-optimal outcomes.<sup>374</sup>

3.293. In their submission, Duncan Marshall AM and Dr Michael Pearson AO noted that the 2022 Nous Group review had indicated under-resourcing of the Heritage Unit, and commented that in their experience, mis-matched demands and resources arose 'from time to time.' They believed that there had recently been an increase in workload without a corresponding increase in resources but were unsure whether this was mainly due to Heritage Council functions or planning system requirements. Shortfalls had previously been addressed by engaging contractors:

Some relief has been achieved in the past by outsourcing some of the recurrent work to contractors (such as the Heritage Advisory Service and specific studies to provide context for heritage listing and other Council objectives).<sup>375</sup>

3.294. Professor Roz Hansen AM observed that the increase in workload without corresponding resourcing had affected staff and the culture of the Heritage Unit:

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.<sup>376</sup>

3.295. The Canberra and District Historical Society argued that under-resourcing of the Heritage Unit was illustrative of 'the low priority heritage is given ... within the ACT government':

<sup>374</sup> See, for example: Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, pp 3, 5; Professor Roz Hansen AM, *Submission 4*, pp 14–15; Dr Ken Heffernan, *Submission 5*, p 1; Canberra and District Historical Society, *Submission 6*, pp 5, 11–12; Griffith Narrabundah Community Association, *Submission 8*, p 3; Eric Martin & Associates, *Submission 13*, p 1; Walter Burley Griffin Society Canberra Chapter, *Submission 14*, p 3; Dr Laura Dawes, *Submission 21*, p 1; Australasian Society for Historical Archaeology, *Submission 25*, pp 4–5; Geoff Ashley, *Submission 30*, pp 1–2; Reid Residents' Association, *Submission 48*, pp 3–5.

<sup>375</sup> Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, p 3.

<sup>376</sup> Professor Roz Hansen AM, *Submission 4*, p 18.



More specifically, it is not evident that the Heritage Council and the Heritage Unit have the necessary resources to perform their functions at the level expected by the community and to deliver best practice outcomes (expertise, funds, staffing, high level support within EPSDD, time and so on).<sup>377</sup>

- 3.296. In their submission, the Kosciuszko Huts Association held concerns that the Heritage Unit ‘inserted itself into operational matters for which it is not responsible’ despite lacking sufficient resources. The Kosciuszko Huts Association was of the view that ‘cultural and business process reform’ should be carried out before considering further resourcing.<sup>378</sup>
- 3.297. The *Stenning & Associates Report* found that the Heritage Unit has insufficient resources to carry out the functions required to support the work of the Heritage Council:

... based on the evidence of long wait times for responses and work backlogs, it is clear that current staffing levels are not adequate to address the current volume of work, nor will they be adequate to deal with the additional activities proposed by this review. Recent additional temporary short-term resourcing, while helpful, does not attract and develop the skills necessary. Accordingly, the ACT Government needs to increase the permanent capacity and specialised capability within ACT Heritage to support all functions of the Heritage Council. This includes ensuring positions within ACT Heritage are competitive with the private sector to attract and retain staff with appropriate specialist skills. It also includes ensuring ACT Heritage has the mixture of specialist and support staff required to meet the statutory workload, as well as those strategic and policy skills necessary for facilitating change.<sup>379</sup>

- 3.298. The *Stenning & Associates Report* also highlighted the need for permanent administrative support staff for specialist teams within the Heritage Unit, as currently, the specialist staff are undertaking the administrative work, which was found to be ‘an inefficient use of their time.’<sup>380</sup>
- 3.299. In response to questions from the Committee on resourcing for the Heritage Unit, Mr Geoffrey Rutledge, Deputy Director-General of EPSDD, indicated that the recent increase in workload had not been anticipated, but that making the best use of resources available now was a priority:

We did not predict the increase in workload in the last few years, particularly around the inner suburbs of the inner south and the inner north, where we have heritage precincts and people expanding and doing renovations et cetera on their sites. So that is where we are.

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<sup>377</sup> Canberra and District Historical Society, *Submission 6*, p 12.

<sup>378</sup> Kosciuszko Huts Association, *Submission 7*, p 9.

<sup>379</sup> Stenning & Associates, [Celebrating heritage in a growing city: ACT Heritage Jurisdictional Review: Phase 1](#), Final Report, July 2023, p vi.

<sup>380</sup> Stenning & Associates, [Celebrating heritage in a growing city: ACT Heritage Jurisdictional Review: Phase 1](#), Final Report, July 2023, p 19.

I do not think it is so much how FTEs we have—currently we have 13 working on it. It is more about harnessing the resources and getting the advice at the right time ...

I do not think it is just numbers; I think it as much business improvements that we can do.<sup>381</sup>

### Committee comment

- 3.300. The Committee believes that the current staffing level of the Heritage Unit is inadequate to deliver the volume of work required for an effective heritage system. The Committee considers the ACT Government should increase the staffing level and the capability of the Heritage Unit to support the Heritage Council, manage the administrative functions of the heritage system, and improve client experiences of interacting with the heritage system.

#### Recommendation 27

The Committee recommends that the ACT Government increase the budget and resourcing for the ACT Heritage Unit to meet community expectations and meet statutory deadlines for decision-making.

### Skillset of the Heritage Unit

- 3.301. Concerns were expressed in submissions in relation to the skills and experiences of staff in the Heritage Unit.<sup>382</sup>
- 3.302. In their submission, the Canberra and District Historical Society reported a perception that that the Heritage Unit staff did not have the appropriate skills and experiences to support the Heritage Council.<sup>383</sup>
- 3.303. Eric Martin & Associates similarly observed a ‘lack of understanding of architectural details and building practice in responses to submissions’ due to what appeared to be a lack of architectural expertise in the Heritage Council and the Heritage Unit.<sup>384</sup>
- 3.304. The Australasian Society for Historical Archaeology called for the Heritage Unit to have a wide range of expertise available:

There needs to be expertise in natural heritage, landscape heritage, architectural heritage, urban design/town planning, archaeology, Aboriginal cultural heritage and community engagement. Skills such as moveable cultural heritage or intangible heritage could be considered.<sup>385</sup>

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<sup>381</sup> Mr Geoffrey Rutledge, Deputy Director-General, EPSDD, *Committee Hansard*, 16 May 2023, p 97.

<sup>382</sup> See, for example: Canberra and District Historical Society, *Submission 6*, p 11; Eric Martin & Associates, *Submission 13*, p 1; Australasian Society for Historical Archaeology, *Submission 25*, p 4; Geoff Ashley, *Submission 30*, p 2.

<sup>383</sup> Canberra and District Historical Society, *Submission 6*, p 11.

<sup>384</sup> Eric Martin & Associates, *Submission 13*, p 1.

<sup>385</sup> Australasian Society for Historical Archaeology, *Submission 25*, p 4.

- 3.305. The submission from Robert Yallop AM highlighted a need for appropriately-skilled staff to deal with planning system reforms:

While the establishment of the ACT Planning Bill 2022 sets up an “outcomes-focussed system”, protection of designated heritage areas and respect of established heritage-based Precinct Codes must take precedence over expediency and marginalisation of heritage protections.

In order to ensure that this can be achieved, the ACT Heritage Unit must be strengthened in both capacity and capability with both additional staffing and appropriate expertise of staff to meet the demands of review and determination of heritage matters in a more fluid “outcomes-focussed” planning system.<sup>386</sup>

- 3.306. In advocating for greater expertise in the Heritage Unit, some submissions and witnesses referenced instances where it had contradicted advice given by expert heritage consultants or by the Heritage Unit’s own Heritage Advisory Service, leading to much frustration for those using the service.<sup>387</sup>
- 3.307. Ms Anne Forrest, Deputy Chair of the Inner South Canberra Community Council, questioned the value of having a Heritage Advisory Service whose advice might be contradicted by Heritage Unit:

You have the Heritage Advisory Service, which I think Mr Eric Martin pointed out is advisory. At the end of the day, their advice can be set aside by a non-expert within the Heritage Unit—unless there is an expert there that we do not know about. What is the point of the Heritage Advisory Service, which is represented by qualified heritage architects? You can go through the Heritage Advisory Service; you can go straight to the unit with your query about what you would like to do to your property; or you can go to EPSDD and assume that EPSDD will send that application to the unit for advice, and that it will then come back to the EPSDD.<sup>388</sup>

### Committee comment

- 3.308. The Committee notes that the effectiveness and efficiency of the heritage system depends on the skills and knowledge of the staff in the Heritage Unit. The Committee also recognises the perception that there is a mismatch between staff roles and skills.

#### Recommendation 28

The Committee recommends that the ACT Government undertake a functional review to ensure staff in the ACT Heritage Unit are appropriately supported, resourced, and trained to perform the unit’s required functions.

<sup>386</sup> Robert Yallop AM, *Submission 40*, p 1.

<sup>387</sup> See, for example: Australian Institute of Architects (ACT Chapter), *Submission 50*, p 1; Ms Amy Blain, *Committee Hansard*, 16 May 2023, pp 23–24; Mr Eric Martin, Heritage Committee Member, Australian Institute of Architects (ACT Chapter), *Committee Hansard*, 16 May 2023, p 41.

<sup>388</sup> Ms Anne Forrest, Deputy Chair, Inner South Canberra Community Council, *Committee Hansard*, 16 May 2023, p 84.

## Business systems and processes

### Heritage register and online database

- 3.309. Several submissions called for the heritage register (also referred to as the heritage database) to be upgraded.<sup>389</sup>
- 3.310. In their submission, Duncan Marshall AM and Dr Michael Pearson AO expressed the view that the existing register was not fit-for-purpose as it was hard to navigate, did not include photographs unless those had been included in the formal listing citation, did not include links to related documents or sites, and could not easily be linked to the planning system. They suggested that the register could ‘fulfil a more active information and education function’ by allowing searches by different criteria, including for places related by type or history.<sup>390</sup>
- 3.311. Dr Ken Heffernan’s submission described the register as ‘unreliable ... very clunky and old fashioned’. Dr Heffernan advocated for ‘urgent investment’ and said that improvements in reliability would reduce staff workload.<sup>391</sup>
- 3.312. The Australasian Society for Historical Archaeology’s submission also called for the register to have more maps and links:
- The ACT Heritage Register is not useful in its design and limited interactivity for heritage places, including Historical Archaeology, seeing images, maps, making comparative assessments and researching places and objects. Interconnectedness/interactivity to planning links, including ACTmapi, also needs improvement. These are very basic requirements for a useful heritage database.<sup>392</sup>
- 3.313. Mark Butz submitted that a more accessible, map-based public interface for the heritage register would allow the community to connect with information about heritage places and build understanding.<sup>393</sup>
- 3.314. Both the National Trust of Australia (ACT) and the Canberra and District Historical Society also called for upgraded transparency on the register, including the ability to track nominations or determine the number of outstanding nominations.<sup>394</sup>

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<sup>389</sup> See, for example: Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, pp 3, 4; Dr Ken Heffernan, *Submission 5*, p 1; Trevor Lipscombe and Tony Maple, *Submission 15*, p 1; Icon Water, *Submission 22*, p 3; Australasian Society for Historical Archaeology, *Submission 25*, p 6; Australian Garden History Society ACT Monaro Riverina Branch, *Submission 29*, p 3; Australia ICOMOS, *Submission 34*, p 6; Jane Goffman, *Submission 36*, p 2; Mark Butz, *Submission 44*, p 5; Inner South Canberra Community Council, *Submission 49*, p 4.

<sup>390</sup> Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, pp 4–5.

<sup>391</sup> Dr Ken Heffernan, *Submission 5*, p 1.

<sup>392</sup> Australasian Society for Historical Archaeology, *Submission 25*, p 6.

<sup>393</sup> Mark Butz, *Submission 44*, p 5.

<sup>394</sup> See, for example: Mr Gary Kent, President, National Trust of Australia (ACT), *Committee Hansard*, 16 May 2023, pp 14–15; Mr Nick Swain, Secretary, Canberra and District Historical Society, *Committee Hansard*, 16 May 2023, p 14.

- 3.315. Submissions from Australia ICOMOS and Professor Roz Hansen AM echoed this call for a thematic or category-based approach to listing places or objects, to assist in comparative assessment when considering a particular place or object for heritage registration.<sup>395</sup>
- 3.316. Mr Gary Kent, President of the National Trust of Australia (ACT), thought thematic sorting would be extremely useful, as it would increase people's ability to understand what is happening across the ACT heritage scene, and also enable for reviewing of nominations.<sup>396</sup>
- 3.317. Professor Hansen argued that a thematic framework for the heritage register would add useful context to listings and enhance its relevance:

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.<sup>397</sup>

- 3.318. Dr Ken Heffernan was of the view that the heritage website should also be updated:

The heritage web presence should be inviting and delightful for the community. Sadly, it is neither. It deserves investment.<sup>398</sup>

- 3.319. Icon Water also echoed this sentiment, commenting that the website was outdated, sitting on an old platform, and lacking relevant information which impacts data interrogation.<sup>399</sup>
- 3.320. Australia ICOMOS was of the view that the website needs an overhaul, especially the register entries:

The existing online register is hard to navigate, is usually limited to the statutory Heritage Register Entry (CMPs and background documents have only begun to be included recently) and does not link to other relevant sources such as ACTmapi. A dynamic database is required which provides appropriate search functions to ensure that relevant listings can be readily accessed. The databases of other jurisdictions allow for a place search to be undertaken using a variety of fields that include location, name and keyword as well as attributes that facilitate comparative analysis such as designer, style, date etc.<sup>400</sup>

- 3.321. When asked about funding and timelines for a new heritage register and website during the Select Committee on Estimates 2023–24's public hearings in July 2023, the ACT Government stated that initial scoping work had been conducted with funding allocated in 2020–21, and that funding in the 2023–24 Budget was proposed to continue that work.<sup>401</sup>

<sup>395</sup> See, for example: Professor Roz Hansen AM, *Submission 4*, pp 11–12; Australia ICOMOS, *Submission 34*, p 4.

<sup>396</sup> Mr Gary Kent, President, National Trust of Australia (ACT), *Committee Hansard*, 16 May 2023, p 14.

<sup>397</sup> Professor Roz Hansen AM, *Submission 4*, pp 7–8.

<sup>398</sup> Dr Ken Heffernan, *Submission 5*, p 1.

<sup>399</sup> Icon Water, *Submission 22*, p 3.

<sup>400</sup> Australia ICOMOS, *Submission 34*, p 6.

<sup>401</sup> Mr Geoffrey Rutledge, Deputy Director-General, EPSDD, Select Committee on Estimates 2023-24, *Proof Committee Hansard*, 27 July 2023, p 941.

- 3.322. The ACT Government also gave evidence that EPSDD had completed a needs assessment and was doing a comparison with products used in other jurisdictions, and aimed to have a ‘minimum viable product’ in operation by the end of the 2023–2024 financial year or early in the 2024–25 financial year.<sup>402</sup>

### Committee comment

- 3.323. The Committee recognises the ongoing work by the ACT Government to upgrade and improve the heritage register and website. The Committee considers that upgrades should include information on the progress of nominations and a feature allowing for thematic categorisation of registered places and objects. An allocation of funding should be provided for these upgrades to occur.

#### Recommendation 29

The Committee recommends that the ACT Government fund the upgrade for the heritage register to include thematic division of items and places registered, as well as information on nominations such as timeframes.

### Heritage library and digitisation

- 3.324. The Committee also heard that there was a need to improve support for the heritage library.<sup>403</sup>
- 3.325. In their submission, Duncan Marshall AM and Dr Michael Pearson AO called for the heritage library to be ‘substantially enhanced’ to continue its current activities, enable it to function as a heritage resource centre and to support and integrate the work of ‘other key information keepers’ in the ACT.<sup>404</sup>
- 3.326. The Australasian Society for Historical Archaeology submitted that links to the ACT Archive would improve the heritage library’s utility for comparative assessments and research:

There should be an effort made to source ‘grey literature’ so it can be included in either of these sources to improve search quality and access to existing data.<sup>405</sup>

- 3.327. Mr Mark Butz called for increased investment in the heritage library, which he believed was an under-appreciated resource, saying in his submission that adequate support could be vital in the preservation of historical maps and documents.<sup>406</sup> During the public hearing, he expanded on the need for digitisation of these artifacts:

... it is a vital resource and it is something that should get more recognition and it should get more resourcing, particularly to get material digitised. It is constantly

<sup>402</sup> Mr Geoffrey Rutledge, Deputy Director-General, EPSDD, Select Committee on Estimates 2023-24, *Proof Committee Hansard*, 27 July 2023, p 941.

<sup>403</sup> See, for example: Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, p 3; Australasian Society for Historical Archaeology, *Submission 25*, p 6; Mark Butz, *Submission 44*, pp 1–2; Mr Mark Butz, *Committee Hansard*, 16 May 2023, p 55; Mr Geoff Ashley, *Committee Hansard*, 16 May 2023, p 55.

<sup>404</sup> Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, p 3.

<sup>405</sup> Australasian Society for Historical Archaeology, *Submission 25*, p 6.

<sup>406</sup> Mark Butz, *Submission 44*, pp 1–2.

receiving paper based material, which could drown it, except that they are very good at what they do. It means that a lot of the material is less accessible than it would be useful to be. If it were digitised, it would be more accessible—in the same way Trove operates at the National Library.<sup>407</sup>

3.328. Mr Geoff Ashley concurred that the heritage library was a valuable resource:

I visited it recently and it was amazing. I think one of the particular advantages of the ACT Heritage Library is that it is dealing with more local community places and heritage values. That is particularly important in Canberra where you are getting this mishmash of national, commonwealth and local. I think it is really great to have the library having a focus on that local resource, and I think that will help the community identification of heritage as well.<sup>408</sup>

### Committee comment

3.329. The Committee considers that the heritage library is an under-appreciated heritage institution that should be provided with more funding so that it can continue to perform the valuable work that it undertakes.

#### Recommendation 30

The Committee recommends that the ACT Government increase the funding to improve resourcing of the heritage library, particularly for future digitisation work.

### Application and nomination processes

3.330. Several witnesses reported that processes for seeking heritage approvals and for making heritage register nominations were lengthy, burdensome, and difficult to navigate.<sup>409</sup>

3.331. Ms Sarah Reid detailed a lengthy experience in seeking approval of solar panels, describing it as cumbersome, requiring several iterations of information-sharing, and lengthy intervals between meetings:

We first started the conversation in 2008 ... We ultimately put in our Statement of Heritage Effect. That required more technical information from our solar provider. We have been through three at this point ... We would fill in the Statement of Heritage Effect based on information shared by our solar providers and that goes to the panel. There would be a long time between meetings. The panel would finally meet. They would refuse our application at that point and come back with a whole series of further questions, which we would then have to defer to the

<sup>407</sup> Mr Mark Butz, *Committee Hansard*, 16 May 2023, p 55.

<sup>408</sup> Mr Geoff Ashley, *Committee Hansard*, 16 May 2023, p 55.

<sup>409</sup> See, for example: Ms Sarah Reid, *Committee Hansard*, 16 May 2023, pp 16–17; Mr Graham Mannall, *Committee Hansard*, 16 May 2023, p 24; Dr Siobhan Lavelle OAM, National Executive Committee Member, Australasian Society for Historical Archaeology, *Committee Hansard*, 16 May 2023, p 29.

solar provider, who obviously is very busy. You get about two cracks at that before everyone just falls off and it is too hard.<sup>410</sup>

- 3.332. The Australasian Society for Historical Archaeology told the Committee that it had consulted its national organisation as well as local ACT members, and had heard that it was difficult to get feedback from the Heritage Unit on requirements for permits:

For example, there are requirements in the act that the work or the application for work under a permit has to be justifiable, but there is not good guidance or criteria around how you would justify that that archaeology needs to be done.

... It is quite difficult for people to understand what is being sought, what the requirements are and what will be delivered if a permit is actually achieved.<sup>411</sup>

- 3.333. Mr Graham Mannall suggested the level of detail being asked in applications was taxing on applicants:

If you read what is actually set out in all of the individual heritage requirements, they are very detailed. That is potentially where the problem is—when you read through all those things. I do not think that they need more in those sorts of areas.<sup>412</sup>

### Committee comment

- 3.334. The Committee is of the view that there is a need to provide improved guidance and clarity around applications for heritage advice and approval so that they are easier to understand, navigate, and complete.

#### Recommendation 31

The Committee recommends that the ACT Government and ACT Heritage Unit provide improved guidance for excavation permits about what is being sought and permitted, as well as provide timely access to advice and appeal processes.

### Timeliness and engagement

- 3.335. In discussing their experiences with the Heritage Unit, several submitters and witnesses raised concerns over the length of time taken by the Heritage Council and the Heritage Unit to respond to applications for approvals, Statements of Heritage Effect, CMPs, or to provide advice.<sup>413</sup>

<sup>410</sup> Ms Sarah Reid, *Committee Hansard*, 16 May 2023, pp 16–17.

<sup>411</sup> Dr Siobhan Lavelle OAM, National Executive Committee Member, Australasian Society for Historical Archaeology, *Committee Hansard*, 16 May 2023, p 29.

<sup>412</sup> Mr Graham Mannall, *Committee Hansard*, 16 May 2023, p 24.

<sup>413</sup> See, for example: Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, p 2; Eric Martin & Associates, *Submission 13*, pp 1–2; Dr Laura Dawes, *Submission 21*, p 3; Icon Water, *Submission 22*, p 2; Fire Brigade Historical Society of the ACT, *Submission 24*, p 1; Australasian Society for Historical Archaeology, *Submission 25*, p 2; Mark and Beverley Francis, *Submission 33*, p 1; Australia ICOMOS, *Submission 34*, pp 3–4; National Trust of Australia (ACT), *Submission 38*, p 5; Robert Yallop AM, *Submission 40*, pp 1–2; Cuppacumbalong, *Submission 42*, p 2; Australian Institute



- 3.336. A number also observed that there was an extensive backlog of nominations to the heritage register awaiting processing.<sup>414</sup>
- 3.337. Mr Duncan Marshall AM, Chair of the interim Heritage Council, indicated to the Committee that the backlog of nominations was a longstanding chronic issue affecting both the Heritage Council and the Heritage Unit.<sup>415</sup>
- 3.338. Dr Laura Dawes noted in her submission that the backlog had only decreased from 83 to 77 nominations since a review in 2013, and that some of the nominations were over twenty years old.<sup>416</sup>
- 3.339. Icon Water reported in its submission that the limited responsiveness of the Heritage Unit for matters other than DA submissions had impacted its projects. It stated that ‘heritage typically becomes the critical pathway and source of extensive delays’ and, as such, that it was a missed opportunity for an informed approach to heritage protection.<sup>417</sup>
- 3.340. The owners of Cuppacumbalong homestead also outlined their frustrating experience with the Heritage Unit:

Throughout 2022, and the previous few years, it became incredibly disappointing, and increasingly frustrating that communication with the Heritage Directorate / Unit continued to be unsatisfactory and at times non-existent. Emails would go unanswered for days, weeks or receive absolutely no response at all - not even an auto-generated response indicating emails had been received. When questioned on this fact the response was that we should have looked at the Directorate’s website for timelines for responses. This in itself is indicative of the poor communication from the Directorate - that the public are expected to source information for themselves rather than be given any guidance / information / support from a government department.<sup>418</sup>

- 3.341. Professor Tracy Ireland, President of Australia ICOMOS, was of the view that there was a need to improve responses to application processes:

For instance, I think we made the point in the submission that one could lodge an application and there was not an automatic receipt notification of some of those applications. I know that there are statutory time frames for some processes but not all. Because of the pressured way in which work is carried out when you are working on a development project, time frames are everything and crucial to good working relationships between the different parties involved.

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of Architects (ACT Chapter), *Submission 50*, p 1; Planning Institute of Australia (ACT Division), *Submission 51*, p 3; Mr Graham Mannall, *Committee Hansard*, 16 May 2023, pp 17–18.

<sup>414</sup> See, for example: Canberra and District Historical Society, *Submission 6*, p 12; Eric Martin & Associates, *Submission 13*, p 3; Trevor Lipscombe and Tony Maple, *Submission 15*, p 1; Dr Laura Dawes, *Submission 21*, p 3; Fire Brigade Historical Society of the ACT, *Submission 24*, pp 1–2; Australia ICOMOS, *Submission 34*, pp 3–4; Inner South Canberra Community Council, *Submission 49*, p 11; Australian Institute of Architects (ACT Chapter), *Submission 50*, p 1.

<sup>415</sup> Mr Duncan Marshall AM, Chair of the interim Heritage Council, *Committee Hansard*, 16 May 2023, p 5.

<sup>416</sup> Dr Laura Dawes, *Submission 21*, p 4.

<sup>417</sup> Icon Water, *Submission 22*, p 2.

<sup>418</sup> Cuppacumbalong, *Submission 42*, p 2.

What I am hearing from our members is this desire not only for you to reform processes, to simplify processes so that they are not so demanding and time consuming, but to have that contract between the stakeholders around how progress and delays might be communicated, how to make that transparent, so that everybody is on the same page.<sup>419</sup>

3.342. Ms Sarah Reid described the response times from the Heritage Unit in relation to solar panel applications as ‘glacial’ and labelled the process cumbersome.<sup>420</sup>

3.343. Mr Trevor Fitzpatrick, President of the Planning Institute of Australia (ACT Division), was of a similar view, telling the Committee that the processes are onerous for the applicant(s):

The interaction with Heritage is simply that you apply for information, you follow it up and weeks later they tell you there is backlog, and you follow it up weeks later. You have to be a registered user of the information to get the information from them, but that comes sometimes many months after you have initially applied, and that is the only level of interaction. You cannot do much else other than send an email asking what is going on.<sup>421</sup>

3.344. Trevor Lipscombe and Tony Maple were of the view that the backlog and delays were a product of the lack of available expert heritage assessors as well as the increasing complexity of nominated sites and precincts, adding that ‘Increasing demand for heritage advice related to urban infill projects, greenfield development, and residential works has increased delays, and the urgency of these matters has meant that other nominations etc. have experienced even more extended delays.’<sup>422</sup>

3.345. In its submission, the Australian Institute of Architects (ACT Chapter) described the timeframe for the Heritage Unit’s responses as ‘unworkable’, noting that some of its members reported waits of up to two years. It argues that such delays showed ‘a lack of understanding of architectural processes and building practices, and cost ramifications for architects, builders, and their clients.’<sup>423</sup>

3.346. Dr Laura Dawes was of the view that the in-house development of assessments of nominated places and objects by the Heritage Unit was inefficient, and would be better suited to engaging consultants. Dr Dawes was also of the view that the assessments by the Heritage Unit were overly detailed to the point where the information they provided was in excess of what Heritage Council members needed to determine heritage significance.<sup>424</sup>

3.347. Mark Butz also viewed shortcomings of in-house assessments by the Heritage Unit as products of a reluctance by the Heritage Unit to use outside expertise and knowledge in the broader heritage community, often leading to errors or deficiencies in the information

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<sup>419</sup> Professor Tracy Ireland, Professor of Cultural Heritage, University of Canberra and President, Australia ICOMOS, *Committee Hansard*, 16 May 2023, p 34.

<sup>420</sup> Ms Sarah Reid, *Committee Hansard*, 16 May 2023, p 16.

<sup>421</sup> Mr Trevor Fitzpatrick, President, Planning Institute of Australia (ACT Division), *Committee Hansard*, 16 May 2023, pp 43–44.

<sup>422</sup> Trevor Lipscombe and Tony Maple, *Submission 15*, p 1.

<sup>423</sup> Australian Institute of Architects (ACT Chapter), *Submission 50*, p 1.

<sup>424</sup> Dr Laura Dawes, *Submission 21*, p 4.

provided to the Heritage Council. When these errors were addressed to the Heritage Unit during the consultation process, there has either been poor or no response, leading to errors remaining on the record.<sup>425</sup>

- 3.348. Both Mr Ashley and Mr Butz, along with the Australian Institute of Architects (ACT Chapter), suggested that the Heritage Unit should engage with independent qualified heritage consultants to assist with surges and clearing backlogs in nominations and applications.<sup>426</sup>
- 3.349. A number of submissions identified reputational risks for the Heritage Council arising from these delays.
- 3.350. Duncan Marshall AM and Dr Michael Pearson AO wrote in their joint submission that lengthy delays in responding to tasks seriously undermines the effectiveness of the Heritage Act.<sup>427</sup>
- 3.351. Eric Martin & Associates similarly raised that the ‘delays are giving heritage a bad name when it should be a positive one for Canberra’, commenting earlier that ‘projects are planned to occur in reasonable time frames and excessive delays become costly and frustrating for clients.’<sup>428</sup>
- 3.352. The Australasian Society for Historical Archaeology submitted that ‘delays have the potential to affect positive working relations, the reputation of the Heritage Council with other ACT Government agencies, and may create a perception that heritage seeks to prevent development.’<sup>429</sup>
- 3.353. Dr Laura Dawes too was concerned with the impression the delays leave on the community, writing:
- Failure to assess nominations within a reasonable time doesn’t meet obligations to the community. When a citizen nominates a place or object for heritage protection, they have a reasonable expectation that it should be considered in a timely manner.<sup>430</sup>
- 3.354. Australia ICOMOS was of the view that the delays in obtaining approvals for works at a heritage listed place disincentivises owners and managers, and can lead to works being undertaken prior to, or without, approval.<sup>431</sup>
- 3.355. Australia ICOMOS argued for statutory timeframes to be applied to works proposals submitted directly to the Heritage Unit for formal advice and to applications for a Statement of Heritage Effect (SHE). It said that the lack of a required response time led to

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<sup>425</sup> See, for example: Mark Butz, *Submission 44*, p 3; Mr Mark Butz, *Committee Hansard*, 16 May 2023, pp 50, 52.

<sup>426</sup> See, for example: Mark Butz, *Submission 44*, p 3; Australian Institute of Architects (ACT Chapter), *Submission 50*, p 3; Mr Geoff Ashley, *Committee Hansard*, 16 May 2023, p 54.

<sup>427</sup> Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, p 2.

<sup>428</sup> Eric Martin & Associates Architects, *Submission 13*, p 1.

<sup>429</sup> Australasian Society for Historical Archaeology, *Submission 25*, p 2.

<sup>430</sup> Dr Laura Dawes, *Submission 21*, p 4.

<sup>431</sup> Australia ICOMOS, *Submission 34*, p 4.

considerable uncertainty and lengthy delays which had a negative impact on the perception of heritage in the ACT.<sup>432</sup>

3.356. The Architects Institute of Australia (ACT) and the Planning Institute of Australia (ACT Division) likewise advocated for time limits on decisions relating to heritage nomination and registration.

3.357. During the public hearing, the Architects Institute of Australia (ACT) noted that statutory timeframes were in place for planning decisions but not for other matters:

The other related issue is that there are some statutory time frames in respect of the planning decisions; in other words, the DA has to be assessed within a certain time. But if it is a statement of heritage effects, which is another mechanism to provide comment on an item, which does not necessarily go through a planning process, there is no statutory time frame to respond and no appeal rights. This means you are at an extreme disadvantage in getting informed decisions on something which usually is not a major issue. It is just unbelievable; you could wait six months for a response to an SHE, which is unbelievable.<sup>433</sup>

3.358. Paired with some submitters' frustrations with the timeliness of processing applications was an inability to directly contact and communicate with Heritage Unit staff in order to discuss these issues as well as other related matters.<sup>434</sup>

3.359. In their submission, Eric Martin & Associates observed that it was often not possible to make direct contact with appropriate individuals in the Heritage Unit because contact details were not made available and approaches via the general Heritage Unit email address and telephone number were often not responded to in a timely matter or at all.<sup>435</sup>

3.360. During the public hearing, Mr Eric Martin was critical of the inability to discuss matters directly:

... what frequently is lacking is an opportunity to discuss and interact with the relevant people and discuss the issues. A discussion can be far more effective in respect to solving a problem rather than waiting months for a formal written response and then having to go through a reiteration of it.<sup>436</sup>

3.361. Mr Martin noted that by comparison, his architectural firm have found interactions with the NSW heritage section far quicker and effective due to direct engagement:

It is interesting in comparison with New South Wales; we submitted a DA to Goulburn and got a phone call from the heritage section while they were

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<sup>432</sup> Australia ICOMOS, *Submission 34*, p 2.

<sup>433</sup> Mr Eric Martin, Heritage Committee Member, Architects Institute of Australia (ACT Chapter), *Committee Hansard*, 16 May 2023, p 40.

<sup>434</sup> See, for example: Eric Martin & Associates, *Submission 13*, p 1; Australasian Society for Historical Archaeology, *Submission 25*, p 4; Australian Institute of Architects (ACT Chapter), *Submission 50*, p 4; Mr Trevor Fitzpatrick, President, Planning Institute of Australia (ACT Division), *Committee Hansard*, 16 May 2023, pp 42–43.

<sup>435</sup> Eric Martin & Associates, *Submission 13*, p 2.

<sup>436</sup> Mr Eric Martin, Heritage Committee Member, Australian Institute of Architects (ACT Chapter), *Committee Hansard*, 16 May 2023, p 39.

assessing it to clarify some issues—rather than interpreting it their own way and then sending a written response back. It was a quicker, more effective way of interacting—whether it was with the unit or the heritage council. Because the critical thing, as Jane indicated, is that time is money in the building industry, and it is fundamental to get back appropriate responses in a timely manner.<sup>437</sup>

- 3.362. The Australasian Society for Historical Archaeology similarly expressed that the Heritage Unit should be consistently professional in assisting and advising stakeholders:<sup>438</sup>

For example, the HU should, in an ideal world, be accessible, responsive, timely, helpful and give sound and relevant advice. ASHA is aware this might not always have been the case as it may be difficult to raise a member of staff by phone – the first step in the process. This level of service needs to be fixed. Resourcing factors and workload are obvious factors that may be an issue here, and must be addressed.<sup>439</sup>

- 3.363. Icon Water also expressed concern in their submission at being unable to reach the Heritage Unit staff directly:

The ACT Heritage Unit personnel are generally helpful and reasonable, if we are able to establish contact and they follow through on commitment to respond. However, there is some uncertainty regarding ... the appropriate contact for follow-up and escalation other than the generic email address.<sup>440</sup>

- 3.364. Australia ICOMOS suggested in their submission that improvements should be made to communication with applicants and the public. They indicated that there was no formal system for acknowledging received applications and that applicants generally received only an automated response email advising of delayed assessments and minimum response times.<sup>441</sup>
- 3.365. Australia ICOMOS also submitted that, unlike other jurisdictions in Australia, the Heritage Unit did not provide a formal application number, and that it was difficult to obtain advice on the progress or status of an application due to the apparent lack of a designated assessment officer.<sup>442</sup>

### Committee comment

- 3.366. The Committee is of the view that timely and direct engagement with applicants and the community is a key area for improvement for the Heritage Unit. Statutory timeframes should be implemented to ensure applications for advice and approval are not unreasonably delayed.

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<sup>437</sup> Mr Eric Martin, Heritage Committee Member, Australian Institute of Architects (ACT Chapter), *Committee Hansard*, 16 May 2023, pp 39–40.

<sup>438</sup> Australasian Society for Historical Archaeology, *Submission 25*, p 4.

<sup>439</sup> Australasian Society for Historical Archaeology, *Submission 25*, p 4.

<sup>440</sup> Icon Water, *Submission 22*, p 3.

<sup>441</sup> Australia ICOMOS, *Submission 34*, p 4.

<sup>442</sup> Australia ICOMOS, *Submission 34*, p 4.

### Recommendation 32

The Committee recommends that the ACT Government look to implement reforms to increase improvement in timely and in-person engagement between the ACT Heritage Unit and applicants. This may include:

- establishing clear telephone and online contacts;
- establishing case managers, or similar roles to steward proposals through the system; and
- publishing reasons for decisions.

### Consultation

3.367. Another area for improvement identified by submitters and witnesses was community consultation on heritage matters.<sup>443</sup>

3.368. The Australian Institute of Architects (ACT Chapter) told the Committee that the limited opportunities for public input could lead to errors and further delays:

... for instance, under the commonwealth, for a conservation management plan or a heritage management plan, it is mandated that public consultation occur on that document as part of the review process that occurs within government.

ACT will not permit the public to comment on the conservation management plan until they have made their decision on it. There have been examples where the decision has been made and they have made basic errors—in other words, forgotten essential elements in the heritage assessment, and they then had to go back and amend it later.<sup>444</sup>

3.369. In their submission, the Inner South Canberra Community Council expressed concern that community input was ignored and that decisions about DAs were made by the Heritage Council Taskforces in isolation from feedback given during the public comment period.<sup>445</sup>

3.370. Mark Butz's submission likewise observed that community consultation was often only undertaken after decisions had been made:

I have been involved in a number of registration assessments that were handled in-house by the Heritage Unit, taking on all the actions of nominating and assessing, and only then consulting community interests after the work has been undertaken, rather than enabling community participation in the work.<sup>446</sup>

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<sup>443</sup> See, for example: Mr Eric Martin, Heritage Committee Member, Australian Institute of Architects (ACT Chapter), *Committee Hansard*, 16 May 2023, p 40; Mark Butz, *Submission 44*, p 3; Inner South Canberra Community Council, *Submission 49*, p 10.

<sup>444</sup> Mr Eric Martin, Heritage Committee Member, Australian Institute of Architects (ACT Chapter), *Committee Hansard*, 16 May 2023, p 40.

<sup>445</sup> Inner South Canberra Community Council, *Submission 49*, p 10.

<sup>446</sup> Mark Butz, *Submission 44*, p 3.

- 3.371. Mr Butz highlighted to the Committee the important difference between consultation and participation:

We need to sharpen our perception to recognise that ‘Consultation’ is essentially reactive, while ‘Participation’ is essentially creative (enabling contribution). Restrictive consultation does not build relationship, or collaboration, or a community on-side with management efforts.<sup>447</sup>

- 3.372. Mr Butz elaborated that genuine consultation could reduce conflict and resistance within the community and that wider consultation could lead to better outcomes:

... I have seen so many poor outcomes from selectively talking to people with something to say. I think we have to invest more in areas. We need to talk more widely. We need to ask more widely. We need to tap into what is out there. Even though it is going to take time, you are actually going to build a relationship. Making decisions in-house and in camera does not build a relationship ... it aggravates people; it inflames people; and it leads to opposition.

If there is not a partnership model or at least an openness model, a collaborative model, then you are building a recipe for conflict, because people care. The very nature of heritage is they care about it and they value it. So, if you are going to sweep their views aside, you are going to create conflict.<sup>448</sup>

### Committee comment

- 3.373. The Committee is of the view that the existing heritage policy and processes lack sufficient consultation and discussion, and that more opportunities should be provided to ensure greater engagement and involvement from the Canberra community. These conversations should be a two-way feedback process, and involve interested individuals, community groups, and relevant sectors such as construction and development.

#### Recommendation 33

The Committee recommends that the ACT Government ensure that the heritage system in the ACT include greater holistic engagement and consultation with the community, including engagement with interested individuals, community groups, and relevant sectors.

## Monitoring, compliance and enforcement

### Management of Government Heritage assets

- 3.374. The Committee received evidence on how government-owned heritage assets were managed.

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<sup>447</sup> Mark Butz, *Submission 44*, p 3.

<sup>448</sup> Mr Mark Butz, *Committee Hansard*, 16 May 2023, p 53.

- 3.375. In their submission, the OCSE was critical of the way in which government-owned heritage assets were currently managed:

ACT Heritage and the ACT Heritage Council appear to operate on an ‘all care and no responsibility’ model. Under current arrangements, management and preservation of heritage is the responsibility of the land manager. ACT Heritage is therefore responsible for setting management conditions but has no practical or financial role in the implementation of these conditions. Implementation of these management recommendations falls largely on other ACT Government areas, notably the Parks and Conservation Service (PCS) in EPSDD and City Services in TCCS. These agencies have next to no expert staff dedicated to heritage management, and heritage management is not their core business. This situation is likely to result in sub-optimal outcomes for both heritage and the land managers, as the responsible government areas may lack the resources, funding and in-house expertise to attend sufficiently to management of heritage matters.<sup>449</sup>

- 3.376. The OCSE argued that the creation of a function within the Heritage Unit to provide practical support and resources for heritage management could provide better on-ground outcomes and free up other ACT Government staff to focus on their own areas of expertise.<sup>450</sup>
- 3.377. Dr Ken Heffernan was of the view that ‘knowledge of maintenance needs of Government-owned and managed heritage places is needed in the ACT’, along with the preparation of maintenance schedules. He stated that this is needed to ‘retard deterioration and manage the risk of loss to disasters like fire and termites.’<sup>451</sup>
- 3.378. The Fire Brigade Historical Society of the ACT raised concerns with the guidelines of the Heritage Grants Program after an application for a heritage grant to address urgent repairs was unsuccessful as the building occupier, ACT Fire and Rescue, could not divert enough funds to meet the financial contribution required under the guidelines:

The rationale that Government agencies occupying heritage buildings, whose core business is not heritage preservation, should bear the responsibility and cost of preserving heritage buildings is not realistic. The ACT Government should recognise that preserving a heritage building is significantly more costly and complex than conventional maintenance.

In our experience, existing ACT Grant Guidelines, eligibility restrictions, and the quantum of funding available is inconsistent with strategic preservation of the ACT’s built heritage.<sup>452</sup>

- 3.379. Following this, the Fire Brigade Historical Society of the ACT applied successfully for a grant under the ACT Heritage Grant Emergency Fund, which did not require a contribution from

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<sup>449</sup> Office of the Commissioner for Sustainability and the Environment, *Submission 3*, p 4.

<sup>450</sup> Office of the Commissioner for Sustainability and the Environment, *Submission 3*, p 4.

<sup>451</sup> Dr Ken Heffernan, *Submission 5*, p 2.

<sup>452</sup> Fire Brigade Historical Society of the ACT, *Submission 24*, pp 2–3.



ACT Fire and Rescue. However, due to the time taken to obtain expert reports and Heritage Council approval, the cost of the works had increased since the original application, such that they will likely not be able to undertake the full scope of repairs originally envisaged.<sup>453</sup>

3.380. Ms Penelope Grist, Secretary of the Fire Brigade Historical Society of the ACT, advocated for the costs of managing and preserving ACT Government-owned heritage registered buildings be covered by the ACT Government.<sup>454</sup>

3.381. Mr Carter concurred, and called for asset management plans to be created for government-owned buildings:

In these instances, the ACT government is the owner. The owner is responsible for the property. End of story. What you need for these is an actual asset management plan for each facility. Just come up with a template type of document—it is not that hard—and then articulate exactly what the requirements are: why you want to maintain the thing in the first instance and what the requirements are to keep it up to whatever the required standard is. It is up to the owner to determine what that required standard is. You then have a plan for operational expenses and activities, and also for the maintenance at the same time.

Then you need to have a cyclical period of review of those plans. You set your period for that—five years, for argument’s sake—and then do an audit at that stage relative to your plan. For your own house, you know which rooms need painting, which holes need fixing in the roof or what have you. It is not rocket science; it is fairly basic.<sup>455</sup>

3.382. Ms Elizabeth Burness, Curator and Caretaker of the Tuggeranong Schoolhouse Museum – owned by ACT Property Group – suggested there be a central body to oversee and look after ACT Government-owned heritage registered properties.<sup>456</sup>

3.383. In response to questions from the Committee about heritage asset management, the Minister outlined that government-owned heritage assets are currently managed differently depending on what they are and where they sit.<sup>457</sup>

3.384. However, the Minister confirmed that the ACT Government is looking at compliance and enforcement matters, including the management of government-owned heritage assets, as part of its ongoing review.<sup>458</sup>

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<sup>453</sup> Fire Brigade Historical Society of the ACT, *Submission 24*, p 3.

<sup>454</sup> Ms Penelope Grist, Secretary, Fire Brigade Society of the ACT, *Committee Hansard*, 16 May 2023, pp 72, 76.

<sup>455</sup> Mr Graham Carter OAM, *Committee Hansard*, 16 May 2023, p 77.

<sup>456</sup> Ms Elizabeth Burness, Curator and Caretaker, Tuggeranong Schoolhouse Museum, *Committee Hansard*, 16 May 2023, p 73.

<sup>457</sup> Ms Rebecca Vassarotti MLA, Minister for Heritage, *Committee Hansard*, 16 May 2023, p 93.

<sup>458</sup> Ms Rebecca Vassarotti MLA, Minister for Heritage, *Committee Hansard*, 16 May 2023, pp 93, 94.

## Committee comment

- 3.385. The Committee is of the view that, as the custodian of many ACT heritage assets on behalf of the ACT community, the ACT Government needs to take a more active and coordinating role in the monitoring, management, and maintenance of ACT Government-owned heritage assets. This should include providing more stable and consistent forms of funding for the maintenance of these assets.

### Recommendation 34

The Committee recommends that the ACT Government consider recurrent or long-term funding to maintain and repair ACT Government heritage-listed facilities.

## Inconsistent monitoring and compliance

- 3.386. Several submissions raised issues of poor and inconsistent monitoring, compliance, and enforcement of heritage guidelines.
- 3.387. Hugh Dakin submitted that the existing enforcement of heritage legislation is ineffective, citing the construction of two carports on adjoining properties in the area covered by the Blandfordia 5 Garden City Heritage Precinct Code in Griffith. Despite warnings being communicated to the lessees to remove the structures, Mr Dakin observed that both structures were still remaining several months after.<sup>459</sup>
- 3.388. Reid Residents' Association also raised issues around decision-making with approvals being granted to DAs which the Reid Residents' Association viewed as being contrary to heritage requirements regarding streetscapes.<sup>460</sup>
- 3.389. Similar comments were made by the Inner South Canberra Community Council, which was of the view that the heritage guidelines are applied inconsistently within heritage precincts, and called for improved compliance and enforcement:

The Heritage Guidelines are applied inconsistently within heritage precincts. While some residents are required to strictly comply with heritage requirements, there is evidence that others are able to demolish much of the original built fabric with impunity. All residents buying into heritage precincts need to be aware of their responsibilities and be guided in ensuring they meet the mandatory requirements of the Heritage Register. Most importantly there need to be effective penalties for noncompliance including "naming and shaming."<sup>461</sup>

- 3.390. Mr Graham Mannall also highlighted the apparent inconsistency with how the Heritage Unit deals with applications:

One of the things that I have noticed in trying to build a new house in a heritage area is the inconsistency of the approach that the Heritage people take to each

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<sup>459</sup> Hugh Dakin, *Submission 18*, p 1.

<sup>460</sup> Reid Residents' Association, *Submission 48*, p 4.

<sup>461</sup> Inner South Canberra Community Council, *Submission 49*, pp 4–5.

application. What we experienced compared to what our other two neighbours, who also bought blocks at the same time, experienced were totally different.<sup>462</sup>

- 3.391. The lack of effective and consistent monitoring and compliance was also perceived by a number of submissions and witnesses, with some seeing the existing system as penalising those who try to work within the system, and not penalising those who flout it.<sup>463</sup>
- 3.392. During the public hearing, Mr Graham Mannall raised his concerns in regard to how the people who are trying to do the right thing by seeking approvals, are worse off than those who are bypassing the rules:

I have been told by several people—and this has been relayed to them by either their designers or their builders—that it is usually better not to ask for approval; ask for forgiveness afterwards ... there are a lot of people who just go and do this and there are no consequences. There is a balance that needs to be arrived at here, and I do not think that we have the balance quite right.<sup>464</sup>

There is no consistency about what they do. What would be really good is, for example, not needing to get approval if, say, you are putting your solar panels on a side roof or a rear one. If it faces a road, maybe that has to be looked at by the Heritage Council. You need to simplify it. At the end of the day, they are not going to do anything about the people who are just doing this. The only people who are being penalised are people like us who are trying to actually do the right thing. We end up getting frustrated, the cost increases, and there are delays, and for what benefit? I do not think we are getting that balance right at the moment.<sup>465</sup>

- 3.393. Greater Canberra also observed the apparent inconsistent application of heritage values on other modern infrastructure and appliances which, on face value, also appears at odds with an area or place's heritage values:

Heritage arrangements are also applied inconsistently in these areas and often punish potential new residents or existing residents who want to do the right thing like Mr Mannall. While new solar panels are not permitted, even on non-heritage homes, because of their potential effects on the heritage values of the heritage buildings around that home, the heritage council has not applied any restrictions to other modern infrastructure which appears at odds to the heritage values of an area.

For example, there are no heritage restrictions on connections to the internet in those heritage homes, nor on the use of modern paving techniques on the road, or even on what vehicles are allowed to be parked on properties in heritage listed suburbs. Surely if solar panels detract from the heritage value of a home, then a

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<sup>462</sup> Mr Graham Mannall, *Committee Hansard*, 16 May 2023, pp 18.

<sup>463</sup> See, for example: Robert Yallop AM, *Submission 40*, p 2; Cuppacumbalong, *Submission 42*, p 2; Name withheld, *Submission 53*, p 1; Greater Canberra, *Submission 57*, p 11; Ms Anne Forrest, Deputy Chair, Inner South Canberra Community Council, *Committee Hansard*, 16 May 2023, p 85.

<sup>464</sup> Mr Graham Mannall, *Committee Hansard*, 16 May 2023, p 20.

<sup>465</sup> Mr Graham Mannall, *Committee Hansard*, 16 May 2023, p 21.

car manufactured after the completion of the heritage home, visible on the property, is equally as detrimental to the heritage value.<sup>466</sup>

- 3.394. Despite the existence of government subsidised and endorsed heritage experts in the form of the Heritage Advisory Service to provide advice and guidance, the application of the rules still appeared to be confusing to Ms Amy Blain:

We were going down to paint colours that are approved. The rules under heritage sometimes would not necessarily be easy to communicate until you start going into them. You get the people who advise you on it, like the heritage architects, who say, “You can do these things.” I found that the conversation we had with him was so helpful because he was working with us on how we could get the design but still meet—but then it confused me that the advice went to review and the answer was no...<sup>467</sup>

- 3.395. Duncan Marshall AM and Dr Michael Pearson AO indicated that the existing process of reviewing CMPs was ‘completely unreasonable and counterproductive.’ They were of the view that it ‘increases the impression that heritage is a burden on managers/owners who should be supported and encouraged in caring for heritage places, not effectively punished.’ They both endorsed abolishing the process.<sup>468</sup>
- 3.396. The Canberra Chapter of the Walter Burley Griffin Society was of the view that listing on the heritage register was pointless, unless planned and practical follow-up is undertaken by the ACT Government as to the management and care of heritage places and objects.<sup>469</sup>
- 3.397. The Canberra Chapter of the Walter Burley Griffin Society provided the example of the former Canberra City Garbage Incinerator, which was placed on the register in 2011 and is located within the Royal Canberra Golf Course. It is now used as a storage facility for the greenskeeper. They argue that since its listing, no follow-up has been conducted by the Heritage Council or ACT Government as to the maintenance of the building.<sup>470</sup>
- 3.398. Similar sentiments were expressed by Andrew Dibb, who argued that there should be some mechanism to compel owners of heritage sites to maintain them, or for the government to compulsorily acquire them if they are neglected, referencing the neglected state of the old bakery on Elouera Street in Braddon:

Heritage sites are listed because they’re significant to all of us, and their custodians, even if private owners, should have obligations that come with ownership. If they’re forced into expensive maintenance maybe it will make them put the site to productive use or seek it to someone who can use it. As a last resort it may be necessary for the government to have a legal means to seize the site and restore it, before putting it to use.<sup>471</sup>

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<sup>466</sup> Greater Canberra, *Submission 57*, pp 11–12.

<sup>467</sup> Ms Amy Blain, *Committee Hansard*, 16 May 2023, p 23.

<sup>468</sup> Duncan Marshall AM and Dr Michael Pearson AO, *Submission 1*, p 3.

<sup>469</sup> Walter Burley Griffin Society Canberra Chapter, *Submission 14*, pp 1, 3.

<sup>470</sup> Walter Burley Griffin Society Canberra Chapter, *Submission 14*, p 3.

<sup>471</sup> Andrew Dibb, *Submission 65*, p 3.

## Committee comment

- 3.399. The Committee is of the view that existing monitoring and compliance mechanisms appear to be ineffective and inconsistently applied, leading to a decline in public confidence in the ability for the heritage legislation to adequately protect the Territory's heritage.
- 3.400. In reviewing and reforming the ACT's heritage arrangements, consideration should be given to whether existing monitoring and compliance mechanisms, such as reviewing Conservation Management Plans, can be strengthened, streamlined, or applied in a more consistent manner.

### Recommendation 35

The Committee recommends that the ACT Government review the existing monitoring and compliance mechanisms in the *Heritage Act 2004* and associated subordinate legislation.

## Appeal rights

- 3.401. The EDO highlighted in their submission that there are limited avenues for seeking redress or enforcement of the Heritage Act.
- 3.402. While any person can apply to the ACT Supreme Court for a heritage order, they can only do so with the Court's leave, and the Court will only grant leave if satisfied the person first asked the Council to apply to the Court for an order and the Council failed to do so within a reasonable time, and it is in the public interest.<sup>472</sup>
- 3.403. Other than heritage orders, the EDO advised that there are no other avenues for third parties to seek enforcement, as people cannot bring an application for a heritage order in the ACAT and they cannot make complaints to the Heritage Council.<sup>473</sup>
- 3.404. The EDO argue that 'in the absence of an accessible civil enforcement mechanism, there is a risk that contraventions of the Heritage Act will not be identified and appropriately enforced.'<sup>474</sup> They also submitted that while the ACT provides for authorised officers to conduct enforcement activities, the Heritage Act lacks provisions for ongoing monitoring of compliance for heritage directions, repair damage directions, or heritage agreements.<sup>475</sup>
- 3.405. The EDO therefore suggested that the Heritage Act be amended to introduce a more accessible civil enforcement mechanism, such as allowing complaints to the Heritage Council, who could then consider them and take appropriate action.<sup>476</sup>
- 3.406. Australia ICOMOS also advocated for an expansion of appeal mechanisms in the Heritage Act, highlighting that reviewable decisions are currently limited to registrations, heritage directions, publication of restricted information, and discovery orders. This means that

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<sup>472</sup> Environmental Defenders Office, *Submission 28*, p 17.

<sup>473</sup> Environmental Defenders Office, *Submission 28*, p 17.

<sup>474</sup> Environmental Defenders Office, *Submission 28*, p 17.

<sup>475</sup> Environmental Defenders Office, *Submission 28*, p 17.

<sup>476</sup> Environmental Defenders Office, *Submission 28*, p 17.

other decisions, such as Statements of Heritage Effect application decisions, are not reviewable and the opportunity for applicants to practically appeal decisions is limited.<sup>477</sup>

- 3.407. Eric Martin & Associates Architects also advocated for Statements of Heritage Effect to become an appealable decision.<sup>478</sup>
- 3.408. The Australian Institute of Architects (ACT Chapter), National Trust of Australia (ACT), Professor Roz Hansen AM, and Dr Laura Dawes also identified a lack of avenues of appeal for the Heritage Council through ACAT, with no right of appeal directly to ACAT against DA decisions, instead only being able to join as a third party if the applicant chooses to appeal.<sup>479</sup>

#### Committee comment

- 3.409. The Committee is of the view that the existing appeal rights available in the Heritage Act and associated legislation such as the *Planning Act 2023* are extremely limited, and should be expanded to enable better compliance and enforcement of the Heritage Act and heritage guidelines.

#### Recommendation 36

The Committee recommends that the ACT Government explore avenues of appeal for the ACT Heritage Council through the ACT Civil and Administrative Tribunal.

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<sup>477</sup> Australia ICOMOS, *Submission 34*, p 2.

<sup>478</sup> Eric Martin & Associates, *Submission 13*, p 3.

<sup>479</sup> See, for example: Professor Roz Hansen AM, *Submission 4*, pp 1, 18; Dr Laura Dawes, *Submission 21*, p 5; National Trust of Australia (ACT), *Submission 38*, p 11; Australian Institute of Architects (ACT Chapter), *Submission 50*, p 1.

## 4. Conclusion

- 4.1. It is clear to the Committee that the ACT's heritage arrangements are no longer fit for purpose, having remained largely static since the enactment of the *Heritage Act 2004* almost twenty years ago.
- 4.2. The absence of both a strategy or vision for heritage and clearly defined governance arrangements has led to a lack of clarity on how the different parts of the heritage system are meant to interact and work together, impacting on the effectiveness of those arrangements in protecting and promoting the Territory's heritage scene.
- 4.3. Under-resourcing over time has impacted the ability of the Heritage Unit to effectively support the Heritage Council in the delivery of its core functions, and a failure to keep up to date with contemporary issues such as climate change and sustainability has also seen the Heritage Council and Heritage Unit fail to adapt policies and processes to address these significant matters.
- 4.4. The Committee is of the view that several aspects of the ACT's heritage arrangements require reviewing, updating, and strengthening. This process should aim to create a best practice system that ensures heritage in the ACT is respected, valued, and promoted for its unique characteristics and rich history.

### Recommendation 37

The Committee recommends that the ACT Government incorporate this report into the government's review and reform program for heritage in the ACT.

- 4.5. The Committee has made 37 recommendations in this report.

Dr Marisa Paterson MLA

Chair

20 October 2023

## Appendix A: Submissions

No.	Submission by	Received	Published
001	Duncan Marshall AM and Dr Michael Pearson AO	15/02/23	21/02/23
002	Colin Walters	20/02/23	28/02/23
003	Office of the Commissioner for Sustainability and the Environment	23/02/23	28/02/23
004	Professor Roz Hansen AM	27/02/23	07/03/23
005	Dr Ken Heffernan	27/02/23	07/03/23
006	Canberra and District Historical Society	01/03/23	07/03/23
006.1	Canberra and District Historical Society (attachments)	01/03/23	07/03/23
007	Kosciuszko Huts Association	02/03/23	07/03/23
008	Griffith Narrabundah Community Association	03/03/23	07/03/23
009	Pauline Downing	05/03/23	14/03/23
010	Confidential	07/03/23	14/03/23
011	Government of Western Australia	10/03/23	14/03/23
012	Graham Mannall	10/03/23	14/03/23
013	Eric Martin & Associates	16/03/23	04/04/23
014	Walter Burley Griffin Society, Canberra Chapter	16/03/23	04/04/23
015	Trevor Lipscombe and Tony Maple	16/03/23	04/04/23
016	Chris Carter	18/03/23	04/04/23
017	Stephen Driscoll	19/03/23	04/04/23
018	Hugh Dakin	19/03/23	04/04/23
019	ACT Government	22/03/23	04/04/23
020	Sarah Reid	23/03/23	04/04/23
021	Dr Laura Dawes	23/03/23	04/04/23
022	Icon Water	27/03/23	04/04/23
023	State Aboriginal Heritage Committee (SA)	27/03/23	04/04/23
024	Fire Brigade Historical Society of the ACT	28/03/23	04/04/23
025	Australasian Society for Historical Archaeology	28/03/23	04/04/23
026	Hall Heritage Centre	28/03/23	04/04/23
027	Dr Ann Kent	29/03/23	04/04/23
028	Environmental Defenders Office	30/03/23	04/04/23
029	Australian Garden History Society ACT Monaro Riverina Branch	30/03/23	04/04/23
030	Geoff Ashley	30/03/23	04/04/23



No.	Submission by	Received	Published
031	Manning Clark House	30/03/23	04/04/23
032	Tidbinbilla Pioneers Association	31/03/23	04/04/23
033	Mark and Beverley Francis	31/03/23	04/04/23
034	Australia ICOMOS	31/03/23	04/04/23
035	Tuggeranong Schoolhouse Museum	31/03/23	04/04/23
036	Jane Goffman	31/03/23	04/04/23
037	Margaret Henderson	31/03/23	04/04/23
038	National Trust of Australia (ACT)	31/03/23	04/04/23
039	Friends of Grasslands	31/03/23	04/04/23
040	Robert Yallop AM	31/03/23	04/04/23
041	North Canberra Community Council	31/03/23	04/04/23
042	Cuppacumbalong	31/03/23	04/04/23
043	ACT Human Rights Commission	31/03/23	04/04/23
044	Mark Butz	31/03/23	04/04/23
045	Dr Beatrice Bodart-Bailey	31/03/23	04/04/23
046	Confidential	31/03/23	04/04/23
047	Advocacy for Inclusion	31/03/23	04/04/23
048	Reid Residents' Association	31/03/23	04/04/23
049	Inner South Canberra Community Council	31/03/23	18/04/23
050	Australian Institute of Architects ACT Chapter	31/03/23	18/04/23
051	Planning Institute of Australia, ACT Division	31/03/23	18/04/23
052	Aboriginal Cultural Heritage Council, WA	31/03/23	02/05/23
053	Name withheld	31/03/23	18/04/23
054	Name withheld	31/03/23	18/04/23
055	Majura House	31/03/23	18/04/23
056	Mauro Aviles	31/03/23	18/04/23
057	Greater Canberra	31/03/23	18/04/23
058	Amy and Danny Blain	03/04/23	18/04/23
059	Graham Carter OAM	03/04/23	18/04/23
060	Anne Forrest	03/04/23	18/04/23
061	Heritage Council of WA	05/04/23	18/04/23
062	Victorian Aboriginal Heritage Council	17/04/23	23/05/23
063	Dr Shane West	09/12/23	02/05/23

No.	Submission by	Received	Published
064	Family History ACT	21/04/23	02/05/23
065	Andrew Dibb	03/05/23	23/05/23

# Appendix B: Witnesses

Tuesday, 16 May 2023

## ACT Heritage Council (interim)

- **Mr Duncan Marshall AM**, Chair

## Panel (first session)

- **Mr Nicholas Swain**, Secretary, Canberra and District Historical Society Inc.
- **Mr Gary Kent**, President, National Trust of Australia (ACT)

## Panel (second session)

- **Ms Amy Blain**
- **Mr Graham Mannall**
- **Ms Sarah Reid**

## Australasian Society for Historical Archaeology

- **Dr Siobhan Lavelle OAM**, National Executive Committee Member

## Australia ICOMOS/University of Canberra

- **Professor Tracy Ireland**, President of Australia ICOMOS and Professor of Cultural Heritage at the University of Canberra

## Panel (third session)

- **Ms Jane Cassidy**, ACT President, Australian Institute of Architects
- **Mr Eric Martin**, Director of Eric Martin & Associates, Member of the Australian Institute of Architects' National Heritage Committee, Member of the Australian Institute of Architects' ACT Chapter Heritage Committee
- **Mr Trevor Fitzpatrick**, President, Planning Institute of Australia, ACT Division
- **Mr Peter Johns**, Committee Member, Planning Institute of Australia, ACT Division

## Panel (fourth session)

- **Mr Mark Butz**, LearnScapes
- **Mr Geoff Ashley**, Ashley Built Heritage

## Advocacy for Inclusion

- **Mr Craig Wallace**, Head of Policy

## Greater Canberra

- **Mr Howard Maclean**, Convener

- **Mr Eben Leifer**, Deputy Convener

### Panel (fifth session)

- **Professor Nicholas Brown**, School of History, Australian National University / Manning Clark House Inc.
- **Ms Penelope Grist**, Secretary, Fire Brigade Historical Society of the ACT
- **Ms Elizabeth Burness**, Curator and Caretaker, Tuggeranong Schoolhouse Museum
- **Mr Graham Carter OAM**

### Panel (sixth session)

- **Ms Susanne Tongue**, Vice President, Griffith Narrabundah Community Association, and Council Member, Inner South Community Council
- **Mr Jochen Zeil**, Chair, North Canberra Community Council
- **Ms Anne Forrest**, Deputy Chair, Inner South Canberra Community Council
- **Ms Marianne Albury-Colless**, President, Reid Residents Association

### Environmental Defenders Office

- **Ms Melanie Montalban**, Managing Lawyer
- **Ms Frances Bradshaw**, Senior Solicitor

### Minister for Heritage

- **Ms Rebecca Vassarotti MLA**, Minister for Heritage
- **Mr Geoffrey Rutledge**, Deputy Director-General, Environment, Water and Emissions Reduction, Environment, Planning and Sustainable Development Directorate

## Appendix C: Questions Taken on Notice

### Questions Taken on Notice

No.	Date	Asked of	Subject	Response received
1	16/05/23	Professor Tracy Ireland	Burra Charter	31/05/23
2	16/05/23	Environmental Defenders Office	Intangible cultural heritage in the Victorian <i>Aboriginal Heritage Act</i>	30/05/23
3	16/05/23	Minister for Heritage	Heritage Unit FTE	24/05/23

# Appendix D: Summary of State and Territory Heritage Bodies

## Heritage Councils

### Main Act

Jurisdiction	Main Act
ACT	<i>Heritage Act 2004</i>
NSW	<i>Heritage Act 1977</i>
Vic	<i>Heritage Act 2017</i>
Qld	<i>Queensland Heritage Act 1992</i>
WA	<i>Heritage Act 2018</i>
SA	<i>Heritage Places Act 1993</i>
Tas	<i>Historic Cultural Heritage Act 1995</i>
NT	<i>Heritage Act 2011</i>

### Heritage Council

Jurisdiction	Formal name of Heritage Council
ACT	Australian Capital Territory Heritage Council <sup>480</sup>
NSW	Heritage Council of New South Wales <sup>481</sup>
Vic	Heritage Council supported by an Executive Director and Executive Officer <sup>482</sup>
Qld	Queensland Heritage Council <sup>483</sup>
WA	Heritage Council of Western Australia <sup>484</sup>
SA	South Australian Heritage Council <sup>485</sup>
Tas	Tasmanian Heritage Council <sup>486</sup>
NT	Heritage Council <sup>487</sup>

<sup>480</sup> *Heritage Act 2004* (ACT), s 16.

<sup>481</sup> *Heritage Act 1977* (NSW), s 7.

<sup>482</sup> *Heritage Act 2017* (Vic), ss 9, 18, 22.

<sup>483</sup> *Queensland Heritage Act 1992* (Qld), s 6.

<sup>484</sup> *Heritage Act 2018* (WA), s 11.

<sup>485</sup> *Heritage Places Act 1993* (SA), s 4.

<sup>486</sup> *Historic Cultural Heritage Act 1995* (Tas), s 5.

<sup>487</sup> *Heritage Act 2011* (NT), s 124.

## Council Membership

Jurisdiction	Council Membership
ACT	<p>11 members:</p> <ul style="list-style-type: none"> <li>• Conservator of Flora and Fauna, Chief Planner are <i>ex-officio</i> members, but not eligible to vote;</li> <li>• 3 members appointed by the Minister as public representatives from the community, Aboriginal community and property, owner, management, and development sector; and</li> <li>• 6 members appointed by the Minister as experts.<sup>488</sup></li> </ul>
NSW	<p>9 part-time members:</p> <ul style="list-style-type: none"> <li>• 8 appointed by Minister. Can be removed at any time by the Minister;</li> <li>• Secretary of Department of Planning, Industry and Environment is <i>ex-officio</i> member;</li> <li>• 1 member appointed as Chairperson;</li> <li>• 5 members must be persons who possess qualifications, knowledge and skills relating to certain fields listed in subsection 8(3);</li> <li>• 1 must be a person with knowledge, skills and qualifications relating to Aboriginal heritage;</li> <li>• 1 must be appointed from a panel of 3 persons nominated by the National Trust of Australia (NSW); and</li> <li>• Minister may appoint deputies of an appointed member.<sup>489</sup></li> </ul>
Vic	<p>10 members appointed by Governor-in-Council on recommendation of Minister:</p> <ul style="list-style-type: none"> <li>• 7 must have recognised skills or expertise in certain fields listed in paragraph 10(2)(a);</li> <li>• 1 must be appointed from a list of 3 names submission to the Minister by the National Trust of Australia (Vic);</li> <li>• 1 must be an Aboriginal person with experience or knowledge of cultural heritage; and</li> <li>• 1 must have a demonstrated understanding, expertise or interest in the State's heritage or management of heritage places.<sup>490</sup></li> </ul>
Qld	<p>12 members appointed by Governor-in-Council:</p> <ul style="list-style-type: none"> <li>• 1 from each of the following: National Trust of Australia (Queensland); LGAQ; Queensland Council of Unions; an organisation representing the interests of property owners and managers in Queensland; an organisation representing the interests of rural industries in Queensland; and</li> <li>• 7 with appropriate knowledge, expertise and interest in heritage conservation.<sup>491</sup></li> </ul>
WA	<p>Up to 9 members appointed by the Governor on nomination of the Minister.</p> <ul style="list-style-type: none"> <li>• The Minister must nominate for chairperson a person who has demonstrated knowledge, experience, skills or qualifications relevant to the position of chairperson;</li> <li>• The Minister must nominate for the 8 ordinary members persons who have demonstrated knowledge of or experience in heritage matters, or in one or more of the specified fields (archaeology, architecture, construction, engineering, governance, heritage conservation or interpretation, history, landscape architecture, local government, property ownership, development or marketing, urban and regional planning, Aboriginal Cultural Heritage, horticulture, tourism, law);</li> <li>• The Council may appoint any person with relevant specialised knowledge or experience to be a co-opted member for a period in relation to matters specified in the instrument of appointment; and</li> <li>• The CEO or a nominee of the CEO can attend any meeting of the Council and discussions but cannot vote.<sup>492</sup></li> </ul>
SA	<p>7 to 9 members appointed by the Minister:</p> <ul style="list-style-type: none"> <li>• 6 to 8 who have knowledge of or experience in history, archaeology, architecture, the natural sciences, heritage conservation, public administration, urban and regional planning or property development (or any combination of 2 or more of these fields), or some other relevant field;</li> <li>• 1 person with knowledge/experience in heritage conservation chosen from a panel of 3 submitted by the LGASA; and</li> </ul>

<sup>488</sup> *Heritage Act 2004* (ACT), s 17.

<sup>489</sup> *Heritage Act 1977* (NSW), s 8.

<sup>490</sup> *Heritage Act 2017* (Vic), s 10.

<sup>491</sup> *Queensland Heritage Act 1992* (Qld), s 10.

<sup>492</sup> *Heritage Act 2018* (WA), ss 14, 15.

	<ul style="list-style-type: none"> <li>At least 1 must be a woman, and 1 must be a man.<sup>493</sup></li> </ul>
Tas	<p>15 persons appoint by the Minister:</p> <ul style="list-style-type: none"> <li>1 is the chairperson;</li> <li>1 is the Director of National Parks and Wildlife;</li> <li>4 are persons who have expertise in at least 4 of the areas of architecture, archaeology, engineering, history, planning and building surveying and 1 is nominated by the LGAT; and</li> <li>1 person each representing heritage conservation interests, community interests, the National Trust in Tasmania, the LGAT, building development industry, the mining industry with expertise in mining heritage, the Tasmanian Farmers and Graziers Association, the Tourism Council of Tasmania, the Tasmanian Council of Churches.<sup>494</sup></li> </ul>
NT	<p>10 members appointed by the Minister, and the CEO or the CEO's nominee:</p> <ul style="list-style-type: none"> <li>1 is a representative of the National Trust of Australia (Northern Territory);</li> <li>1 is a representative of the Aboriginal Areas Protection Authority;</li> <li>1 is a representative of an organisation representing the interests of local government;</li> <li>1 is a representative of an organisation representing the interests of land owners; and</li> <li>6 persons with expertise or experience relevant to the Act.<sup>495</sup></li> </ul>

## Council Members' Term of Office

Jurisdiction	Term of Office
ACT	3 years <sup>496</sup>
NSW	Up to 3 years, eligible for reappointment <sup>497</sup>
Vic	Up to 3 years, eligible for reappointment <sup>498</sup>
Qld	Up to 3 years, can serve 2 consecutive terms <sup>499</sup>
WA	Up to 5 years, eligible for reappointment <sup>500</sup>
SA	Up to 3 years, eligible for reappointment <sup>501</sup>
Tas	Up to 3 years, eligible for reappointment <sup>502</sup>
NT	3 years <sup>503</sup>

## Council Functions

Jurisdiction	Council functions
ACT	<ul style="list-style-type: none"> <li>Identify, assess, conserve, and promote places and objects in the ACT with natural and cultural heritage significance;</li> </ul>

<sup>493</sup> *Heritage Places Act 1993* (SA), s 5.

<sup>494</sup> *Historic Cultural Heritage Act 1995* (Tas), s 6.

<sup>495</sup> *Heritage Act 2011* (NT), s 128.

<sup>496</sup> *Heritage Act 2004* (ACT), s 17(5).

<sup>497</sup> *Heritage Act 1977* (NSW), Schedule 2, cl 2.

<sup>498</sup> *Heritage Act 2017* (Vic), Schedule 1, cl 2.

<sup>499</sup> *Queensland Heritage Act 1992* (Qld), ss 12, 13.

<sup>500</sup> *Heritage Regulations 2019* (WA), cl 6.

<sup>501</sup> *Heritage Places Act 1993* (SA), s 6(1).

<sup>502</sup> *Historic Cultural Heritage Act 1995* (Tas), Schedule 1, cl 1.

<sup>503</sup> *Heritage Act 2011* (NT), s 130.



	<ul style="list-style-type: none"> <li>• Encourage registration of heritage places and objects;</li> <li>• Work with the land planning and development system to achieve appropriate cultural conservation of the ACT's natural and cultural heritage places and objects, including Aboriginal places and objects;</li> <li>• Advise the Minister about issues affecting the management and promotion of heritage;</li> <li>• Encourage and assist in the appropriate management of heritage places and objects;</li> <li>• Encourage and provide public education about heritage places and objects;</li> <li>• Assist in the promotion of tourism in relation to heritage places and objects; and</li> <li>• Keep adequate records, and encourage others to keep adequate records, in relation to heritage places and objects.<sup>504</sup></li> </ul>
NSW	<ul style="list-style-type: none"> <li>• Make recommendations to the Minister with respect to functions of Minister under the Act;</li> <li>• Make recommendations to the Minister relating to items of environmental heritage;</li> <li>• Carry out investigations, research and inquiries relating to items of environmental heritage;</li> <li>• To arrange, and co-ordinate, research and inquiries relating to the matters referred to in paragraph (b);</li> <li>• To maintain the state heritage inventory/register;</li> <li>• To conduct community education concerning state's environmental heritage;</li> <li>• To exercise such other functions as conferred or imposed on it under this or any other Act or the regulations;</li> <li>• To make submissions to persons or bodies prepared under the <i>Environmental Planning and Assessment Act 1979</i> as they relate to environmental heritage; and</li> <li>• To provide opinions, statements or other information relating to the environmental heritage to persons or bodies if the Heritage Council considers it appropriate to do so.<sup>505</sup></li> </ul>
Vic	<ul style="list-style-type: none"> <li>• Advise the Minister on status of the state's cultural heritage resources and on steps to protect/conservate them;</li> <li>• Make and publish guidelines;</li> <li>• Promote public understanding of the state's cultural heritage;</li> <li>• Advise government departments, councils, etc. on matters relating to protection/conservation of the state's cultural heritage;</li> <li>• Liaise with other bodies responsible for matters relating to protection/conservation/ promotion of cultural heritage;</li> <li>• Include/remove places or objects in the heritage register;</li> <li>• Conduct reviews of decisions of the Executive Director in relation to nominations, permits, consents;</li> <li>• Develop, revise, publish assessment criteria for considering cultural heritage significance of places/objects and whether they should be on the heritage register;</li> <li>• Adopt and forward to the Minister world heritage Strategy Plans;</li> <li>• Determine criteria for assessing whether a place has archaeological value;</li> <li>• Advising the Minister administering the <i>Planning and Environment Act 1987</i> on proposed amendments to planning schemes which may affect protection/conservation of cultural heritage; and</li> <li>• Manage the heritage fund.<sup>506</sup></li> </ul>
Qld	<ul style="list-style-type: none"> <li>• Provide advice to the Minister about matters relating to Queensland's cultural heritage;</li> <li>• Encourage interest in and understanding of Queensland's cultural heritage;</li> <li>• Advise entities about conserving Queensland's cultural heritage;</li> <li>• Encourage appropriate management of places of cultural heritage significance;</li> <li>• Give advice to the planning chief executive about the effect that development proposed under a DA or change application may have on the cultural heritage significance of a state heritage place.<sup>507</sup></li> </ul>
WA	<ul style="list-style-type: none"> <li>• Assess and document places of cultural heritage significance in WA;</li> <li>• Advise the Minister on heritage matters and on the identification, conservation and protection of places of cultural heritage significance;</li> <li>• Provide guidance to public authorities on contemporary best practice for the identification and management of heritage assets;</li> <li>• Administer the register;</li> <li>• Provide or facilitate financial, technical and professional assistance and other conservation incentives;</li> </ul>

<sup>504</sup> *Heritage Act 2004* (ACT), s 18.

<sup>505</sup> *Heritage Act 1977* (NSW), s 21.

<sup>506</sup> *Heritage Act 2017* (Vic), s 11.

<sup>507</sup> *Queensland Heritage Act 1992* (Qld), s 8.

	<ul style="list-style-type: none"> <li>• If development or other proposals may affect a registered place, provide advice to decision-making authorities on ensuring a place's cultural heritage significance is preserved;</li> <li>• Endeavour to prevent the destruction, damage, deterioration or injudicious treatment of places that are of cultural heritage significance;</li> <li>• Undertake or provide for the conservation of places that are or may be of cultural heritage significance;</li> <li>• Acquire, own, conserve arrange for the conservation of, lease, manage and dispose of places that are or may be of cultural heritage significance;</li> <li>• Advise and assist local governments in identifying and conserving places that are or may be of cultural heritage significance;</li> <li>• Promote public awareness and knowledge in relation to WA's cultural heritage;</li> <li>• Provide and encourage education and training in relation to WA's cultural heritage;</li> <li>• Arrange and conduct research and investigations in relation to WA's cultural heritage;</li> <li>• Promote and assist in the management and maintenance of registered places;</li> <li>• Enter into heritage agreements and implement those agreements when in operation; and</li> <li>• Advise and assist the Minister and others in relation to heritage agreements.<sup>508</sup></li> </ul>
SA	<ul style="list-style-type: none"> <li>• Provide advice to the Minister;</li> <li>• Administer the South Australian Heritage Register;</li> <li>• Identify places, and related objects, of State heritage significance and enter them in the Register;</li> <li>• Identify areas of State heritage significance, and promote their establishment as State heritage Areas;</li> <li>• Initiate or support community awareness programs that promote public understanding and appreciation of the State's heritage; and</li> <li>• Promote the objects of the Act.<sup>509</sup></li> </ul>
Tas	<ul style="list-style-type: none"> <li>• Advise the Minister on matters relating to Tasmania's historic cultural heritage;</li> <li>• Work within the planning system to achieve the proper protection of Tasmania's historic cultural heritage;</li> <li>• Cooperate and collaborate with Federal, State and local authorities in the conservation of places of historic cultural heritage significance;</li> <li>• Encourage and assist in the proper management of places of historic cultural heritage significance;</li> <li>• Encourage public interest in, and understanding of, issues relevant to the conservation of Tasmania's historic cultural heritage;</li> <li>• Encourage and provide public education in respect of Tasmania's historic cultural heritage;</li> <li>• Assist in the promotion of tourism in respect of places of historic cultural heritage significance; and</li> <li>• Keep proper records, and encourage others to keep proper records, of places of historic cultural heritage significance.<sup>510</sup></li> </ul>
NT	<ul style="list-style-type: none"> <li>• Assess heritage significance of places and objects;</li> <li>• Recommend to the Minister the declaration of places/objects to be heritage places/objects;</li> <li>• Recommend to the Minister the revocation of the declaration for heritage places/objects;</li> <li>• Advise the Minister on the conservation, use and management of heritage places and object;</li> <li>• Advise the Minister about the carrying out of work on a heritage place or object and to decide applications for work approvals other than applications for major work;</li> <li>• Promote the public use and enjoyment of heritage places and objects in a way consistent with the conservation of the heritage significance of the places/objects;</li> <li>• Facilitate public education and programs about the territory's cultural and natural heritage;</li> <li>• Advise the Minister on financial incentives or concessions for heritage agreements;</li> <li>• Advise the Minister on matters affecting the Territory's Cultural and natural heritage.<sup>511</sup></li> </ul>

## Parent Department

Jurisdiction	Parent Department
ACT	Planning, Environment and Sustainable Development Directorate
NSW	Department of Planning and the Environment

<sup>508</sup> *Heritage Act 2018* (WA), s 17.

<sup>509</sup> *Heritage Places Act 1993* (SA), s 5A.

<sup>510</sup> *Historic Cultural Heritage Act 1995* (Tas), s 7.

<sup>511</sup> *Heritage Act 2011* (NT), s 125.

Vic	Department of Transport and Planning
Qld	Department of Environment and Science
WA	Department of Planning, Lands and Heritage
SA	Department for Environment and Water
Tas	Department of Natural Resources and the Environment
NT	Department of Territory Families, Housing and Communities

## Power for Council to delegate powers and functions

Jurisdiction	Delegation and sub-committee powers
ACT	<p>The Council may delegate its functions under this Act or another ACT law to the Director-General of EPSDD.<sup>512</sup></p> <p>The Director-General may sub-delegate a function delegated to them.<sup>513</sup></p> <p>The power to create sub-committees is not specified in the <i>Heritage Act 2004</i>.</p>
NSW	<p>The Council may establish committees to assist it with the exercise of its functions.<sup>514</sup></p>
Vic	<p>The Heritage Council can create committees and delegate functions to them.<sup>515</sup></p> <p>The Heritage Council can also delegate certain functions to the Executive Director or Executive Officer.<sup>516</sup></p> <p>The Executive Director may delegate to an officer or employee the Executive Director's functions, duties or powers under the Act.<sup>517</sup></p>
Qld	<p>Queensland Heritage Council may delegate its functions to a member, a committee of the Council or appropriately qualified Public Service officer.<sup>518</sup></p>
WA	<p>The Heritage Council of WA may delegate by resolution to a person any function of the council.<sup>519</sup></p> <p>The Council may establish committees to assist it in the performance of its functions.<sup>520</sup></p>
SA	<p>The Council must establish committees required by the regulations, and may establish other committees as it thinks fit.<sup>521</sup></p> <p>The Council may delegate most powers or functions to a member of committee of the Council, an officer, or any other person or body.<sup>522</sup></p> <p>The Council may not delegate the power or function to confirm a provisional entry in the register, decide not to confirm a provisional entry, or to remove or alter an entry in the register relating to a State Heritage Place.<sup>523</sup></p>

<sup>512</sup> *Heritage Act 2004* (ACT), s 121.

<sup>513</sup> *Public Sector Management Act 1994* (ACT), s 20.

<sup>514</sup> *Heritage Act 1977* (NSW), s 21A.

<sup>515</sup> *Heritage Act 2017* (Vic), s 13.

<sup>516</sup> *Heritage Act 2017* (Vic), s 15.

<sup>517</sup> *Heritage Act 2017* (Vic), s 20.

<sup>518</sup> *Queensland Heritage Act 1992* (Qld), s 9.

<sup>519</sup> *Heritage Act 2018* (WA), s 19.

<sup>520</sup> *Heritage Regulations 2019* (WA), cl 25.

<sup>521</sup> *Heritage Places Act 1993* (SA), s 7A.

<sup>522</sup> *Heritage Places Act 1993* (SA), s 8(1).

<sup>523</sup> *Heritage Places Act 1993* (SA), s 8(3).

Tas	<p>The Council may delegate to planning authority or any other person most of its functions.<sup>524</sup></p> <p>The Council may establish any committee to assist in the performance and exercise of its functions and powers.<sup>525</sup></p>
NT	<p>The Council may delegate any of its powers and functions to the CEO.<sup>526</sup></p>

<sup>524</sup> *Historic Cultural Heritage Act 1995* (Tas), s 9.

<sup>525</sup> *Historic Cultural Heritage Act 1995* (Tas), s 10.

<sup>526</sup> *Heritage Act 2011* (NT), s 127.

# Aboriginal Heritage Councils

## Main Act

Jurisdiction	Stand-alone legislation	Main legislation
ACT	No	<i>Heritage Act 2004</i>
NSW	No	<i>National Parks and Wildlife Act 1979</i>
Vic	Yes	<i>Aboriginal Heritage Act 2006</i>
Qld	Yes	<i>Aboriginal Cultural Heritage Act 2003; Torres Strait Islander Cultural Heritage Act 2003</i>
WA	Yes	<i>Aboriginal Cultural Heritage Act 2021</i> (Note: the <i>Aboriginal Cultural Heritage Act 2021</i> is to be repealed, and WA will revert back to the former <i>Aboriginal Heritage Act 1972</i> , with amendments)
SA	Yes	<i>Aboriginal Heritage Act 1988</i>
Tas	Yes	<i>Aboriginal Heritage Act 1975</i>
NT	Yes	<i>Sacred Sites Act 1989; Aboriginal Land Rights (Northern Territory) Act 1976</i> (Cth)

## Heritage Committee/Council

Jurisdiction	Indigenous Heritage Committee or Council
ACT	No
NSW	Aboriginal Cultural Heritage Advisory Committee <sup>527</sup>
Vic	Aboriginal Heritage Council <sup>528</sup>
Qld	None, but Minister may establish advisory Committees <sup>529</sup>
WA	Aboriginal Cultural Heritage Council <sup>530</sup>
SA	Aboriginal Heritage Committee <sup>531</sup>
Tas	Aboriginal Heritage Council <sup>532</sup>
NT	Aboriginal Areas Protection Authority <sup>533</sup>

<sup>527</sup> *National Parks and Wildlife Act 1974*, s27(1).

<sup>528</sup> *Aboriginal Heritage Act 2006* (Vic), s 130.

<sup>529</sup> See, for example: *Aboriginal Cultural Heritage Act 2003* (Qld), s 154; *Torres Strait Islander Cultural Heritage Act 2003* (Qld), s 154.

<sup>530</sup> *Aboriginal Cultural Heritage Act 2021* (WA), s 20.

<sup>531</sup> *Aboriginal Heritage Act 1988* (SA), s 7(1).

<sup>532</sup> *Aboriginal Heritage Act 1975* (Tas), s 3(1).

<sup>533</sup> *Northern Territory Aboriginal Sacred Sites Act 1989* (NT), s 5.

## Committee/Council Membership

Jurisdiction	Membership
ACT	Not applicable.
NSW	<p>13 Aboriginal members appointed by the Minister:</p> <ul style="list-style-type: none"><li>• 1 nominated by NSW Aboriginal Land Council;</li><li>• 1 nominated by NSW Heritage Council;</li><li>• 1 nominated by NTSCORP;</li><li>• 10 from nominee of Aboriginal elders, NT holders, or Aboriginal owners listed on the register under the Aboriginal Land Rights Act; and</li><li>• Members must be involved in cultural heritage matters in their local communities and have an understanding of cultural heritage management issues.</li></ul> <p>The Secretary of the Department is an <i>ex-officio</i> member.<sup>534</sup></p>
Vic	11 members appointed by the Minister, who must be traditional owners of an area in Victoria, resident in the state and having relevant experience or knowledge of Aboriginal Cultural Heritage in Victoria. <sup>535</sup>
Qld	Membership of an advisory committee is as determined by the Minister. <sup>536</sup>
WA	<p>6 to 11 members appointed by the Minister.</p> <p>2 must be appointed to be chairpersons, 1 for men's business and 1 for women's business.</p> <p>The other 4 to 9 appointees must have knowledge, skills and experience the Minister considers appropriate to enable them to effectively perform the functions of the Council.</p> <p>The majority of members must be Aboriginal.<sup>537</sup></p>
SA	<p>The Committee consists of Aboriginal people, and must have equal numbers of men and women.</p> <p>The Committee can have as many members 'as is practicable.'<sup>538</sup></p>
Tas	<p>Consists of 10 members appointed by the Governor on recommendation of the Minister, on such terms and conditions as the Minister considers appropriate.</p> <p>All members are to be Aboriginal persons.<sup>539</sup></p>
NT	<p>12 members appointed by the Administrator.</p> <p>10 must be custodians of sacred sites appointed from panels of 10 men and 10 women nominated by Land Councils.<sup>540</sup></p>

## Committee/Council Members' Term of Office

Jurisdiction	Term of Office
ACT	Not applicable
NSW	Up to 3 years, eligible for reappointment <sup>541</sup>

<sup>534</sup> *National Parks and Wildlife Act 1974*, schedule 9, cl 1.

<sup>535</sup> *Aboriginal Heritage Act 2006* (Vic), s 131.

<sup>536</sup> See, for example: *Aboriginal Cultural Heritage Act 2003* (Qld), s 154; *Torres Strait Islander Cultural Heritage Act 2003* (Qld), s 154.

<sup>537</sup> *Aboriginal Cultural Heritage Act 2021* (WA), s 21.

<sup>538</sup> *Aboriginal Heritage Act 1988* (SA), s 7.

<sup>539</sup> *Aboriginal Heritage Act 1975* (Tas), s 4.

<sup>540</sup> *Northern Territory Aboriginal Sacred Sites Act 1989* (NT), ss 6(1)–6(3).

<sup>541</sup> *National Parks and Wildlife Act 1974* (NSW), Schedule 9, cl 2.

Vic	Up to 3 years, eligible for reappointment <sup>542</sup>
Qld	On conditions decided by the Minister <sup>543</sup>
WA	Up to 5 years, eligible for reappointment <sup>544</sup>
SA	On such terms and conditions as the Minister considers appropriate <sup>545</sup>
Tas	On such terms and conditions as the Minister considers appropriate <sup>546</sup>
NT	3 years, eligible for reappointment <sup>547</sup>

## Committee/Council Functions

Jurisdiction	Functions
ACT	Not applicable.
NSW	The functions of the Committee are to advise the Minister and the Secretary on any matter relating to the identification, assessment and management of Aboriginal cultural heritage, including providing strategic advice on the plan of management and the heritage impact permit process, whether or not the matter has been referred to the Committee by the Minister or the Secretary. <sup>548</sup>
Vic	<p>The functions of the Aboriginal Heritage Council are:</p> <ul style="list-style-type: none"> <li>• To be the central coordinating body responsible for the overseeing, monitoring, managing, reporting and returning of Aboriginal ancestral remains in Victoria;</li> <li>• To advise the Minister in relation to the protection of Aboriginal cultural heritage in Victoria, including advising the Minister about: <ul style="list-style-type: none"> <li>○ the cultural heritage significance of any Aboriginal ancestral remains or Aboriginal place or object;</li> <li>○ measures for the effective protection and management of Aboriginal cultural heritage in Victoria, including the management of culturally sensitive information relating to that heritage;</li> <li>○ measures to promote the role of Aboriginal people in the protection and management of Aboriginal cultural heritage and in the administration of this Act;</li> <li>○ the standards of knowledge, experience, conduct and practice required of persons engaged in research into Aboriginal cultural heritage;</li> <li>○ the training and appointment of authorised officers under this Act;</li> <li>○ any other matters referred to the Council by the Minister;</li> </ul> </li> <li>• At the Minister's request, to advise and make recommendations to the Minister on the exercise of his or her powers under this Act, including advising the Minister about: <ul style="list-style-type: none"> <li>○ the application of interim or ongoing protection declarations;</li> <li>○ a proposal by the Minister to require a cultural heritage management plan to be prepared;</li> <li>○ whether a cultural heritage audit is necessary;</li> <li>○ whether the compulsory acquisition of land is appropriate in any particular case;</li> <li>○ any other matter relating to the exercise of his or her powers under this Act that the Minister requests the Council to consider;</li> </ul> </li> <li>• To advise the Secretary: <ul style="list-style-type: none"> <li>○ on measures to establish appropriate standards and guidelines for the payment to registered Aboriginal parties of fees for doing anything referred to in section 60;</li> <li>○ at the Secretary's request, on the exercise of his or her powers under this Act in relation to cultural heritage permits, cultural heritage management plans and cultural heritage agreements;</li> </ul> </li> </ul>

<sup>542</sup> *Aboriginal Heritage Act 2006* (Vic), s 131(4).

<sup>543</sup> See, for example: *Aboriginal Cultural Heritage Act 2003* (Qld), s 154; *Torres Strait Islander Cultural Heritage Act 2003* (Qld), s 154.

<sup>544</sup> *Aboriginal Cultural Heritage Regulations 2022* (WA), cl 6.

<sup>545</sup> *Aboriginal Heritage Act 1988* (SA), s 7.

<sup>546</sup> *Aboriginal Heritage Act 1975* (Tas), s 4(1)(b).

<sup>547</sup> *Northern Territory Aboriginal Sacred Sites Act 1989* (NT), s 6(4).

<sup>548</sup> *National Parks and Wildlife Act 1974* (NSW), s 28.

	<ul style="list-style-type: none"> <li>• To receive and determine applications for the registration of Aboriginal parties under Part 10;</li> <li>• To consider for approval proposed cultural heritage management plans for which the Secretary is the sponsor, in the circumstances set out in section 66;</li> <li>• To promote public awareness and understanding of Aboriginal cultural heritage in Victoria;</li> <li>• To report to the Minister annually on the performance of its functions, including a summary of any reports received by the Council from registered Aboriginal parties;</li> <li>• To advise the Minister administering the <i>Planning and Environment Act 1987</i> on proposed amendments to planning schemes which may affect the protection, management or conservation of places or objects of Aboriginal cultural heritage significance;</li> <li>• To oversee and monitor the system of reporting and returning Aboriginal ancestral remains and secret or sacred objects;</li> <li>• To advise the Secretary on cultural heritage permits and cultural heritage management plans related to Aboriginal ancestral remains in areas without a registered Aboriginal party;</li> <li>• To perform functions under this Act in relation to cultural heritage permits, including the granting of permits;</li> <li>• To manage the Aboriginal Cultural Heritage Fund;</li> <li>• To provide advice regarding Aboriginal cultural heritage, including to the Minister and the Secretary;</li> <li>• To manage, oversee and supervise the operations of registered Aboriginal parties;</li> <li>• To promote and facilitate research into the Aboriginal cultural heritage of Victoria;</li> <li>• To nominate information about Aboriginal ancestral remains, Aboriginal secret or sacred objects and Aboriginal places and objects to be restricted information on the Register;</li> <li>• To publish policy guidelines consistent with the functions of the Council;</li> <li>• To report to the Minister every 5 years on the state of Victoria's Aboriginal cultural heritage; and</li> <li>• To carry out any other functions conferred on the Council under this Act.<sup>549</sup></li> </ul>
Qld	Not applicable.
WA	<p>The functions of the Aboriginal Cultural Heritage Council are to:</p> <ul style="list-style-type: none"> <li>• Promoting public awareness, understanding and appreciation of Aboriginal cultural heritage in the State;</li> <li>• Promoting the role of Aboriginal people in: <ul style="list-style-type: none"> <li>◦ the recognition, protection, conservation and preservation of Aboriginal cultural heritage; and</li> <li>◦ the management of activities that may harm Aboriginal cultural heritage; and</li> <li>◦ the administration of this Act;</li> </ul> </li> <li>• Proactively assisting in the recognition, protection, conservation, preservation and management of Aboriginal cultural heritage, including, if relevant, by developing guidance materials;</li> <li>• Functions under Division 3 Subdivision 2 in relation to the designation of persons as local ACH services for different areas of the State;</li> <li>• Providing advice, and taking appropriate action, under Part 3 in relation to Aboriginal ancestral remains and secret or sacred objects;</li> <li>• Making decisions under Part 6 in relation to ACH permits and ACH management plans;</li> <li>• Making recommendations relating to prohibition orders and remediation orders under Part 7;</li> <li>• Making decisions relating to the endorsement of ACH protection agreements under Part 8;</li> <li>• Establishing and maintaining the ACH Directory under Part 9;</li> <li>• Providing advice to the Minister as described in subsection (2);</li> <li>• Other functions conferred on the ACH Council under this Act; and</li> <li>• Other functions, if any, prescribed for the purposes of this paragraph.<sup>550</sup></li> </ul>
SA	<p>The functions of the Aboriginal Heritage Committee are to:</p> <ul style="list-style-type: none"> <li>• To advise the Minister, either on its own initiative or at the request of the Minister, with respect to: <ul style="list-style-type: none"> <li>◦ the making of entries in the central archives and the removal of any such entry;</li> <li>◦ measures that should, in the Committee's opinion, be taken for the protection or preservation of Aboriginal sites, objects or remains;</li> <li>◦ the appointment of suitable persons as inspectors for the purposes of this Act;</li> <li>◦ Aboriginal heritage agreements;</li> <li>◦ any other matter related to the administration or operation of this Act or to the protection or preservation of the Aboriginal heritage; and</li> </ul> </li> <li>• to carry out any other function assigned to the Committee by this Act or by the Minister.<sup>551</sup></li> </ul>

<sup>549</sup> *Aboriginal Heritage Act 2006* (Vic), s 132.

<sup>550</sup> *Aboriginal Cultural Heritage Act 2021* (WA), s 21(1).

<sup>551</sup> *Aboriginal Heritage Act 1988* (SA), s 8.



Tas	<p>The functions of the Aboriginal Heritage Council are to:</p> <ul style="list-style-type: none"> <li>• Make recommendations to the Minister on any matter in respect of which this Act provides for its making recommendations to him;</li> <li>• Advise, and make written recommendations to, the Minister in relation to any object, site or place alleged to be a relic under this Act;</li> <li>• Advise, and make recommendations to, the Minister on such other matters in relation to the administration of this Act as it thinks fit;</li> <li>• Make recommendations to the Director on any matter in respect of which this Act provides for its making recommendations to him; and</li> <li>• If requested by the Director, advise, and make recommendations to, him in respect of any other matter relating to the exercise of his functions under this Act.<sup>552</sup></li> </ul>
NT	<p>The functions of the Aboriginal Areas Protection Authority are to:</p> <ul style="list-style-type: none"> <li>• To facilitate discussions between custodians of sacred sites and persons performing or proposing to perform work on or use land comprised in or in the vicinity of a sacred site, with a view to their agreeing on an appropriate means of sites avoidance and protection of sacred sites;</li> <li>• To carry out research and keep records necessary to enable it to efficiently carry out its functions;</li> <li>• To establish such committees (including executive and regional committees), consisting of such members and other persons, as are necessary to enable it to carry out its functions;</li> <li>• To establish and maintain a register to be known as the Register of Sacred Sites and such other registers and records as required by or under this Act;</li> <li>• To examine and evaluate applications made under sections 19B and 27;</li> <li>• After considering an application under section 19B, and in accordance with Division 1 of Part III, to issue or refuse to issue an Authority Certificate;</li> <li>• To make available for public inspection the Register and records of all agreements, certificates and refusals except to the extent that such availability would disclose sensitive commercial information or matters required by Aboriginal tradition to be kept secret;</li> <li>• To make such recommendations to the Minister on the administration of this Act as it thinks fit;</li> <li>• To perform such other functions as are imposed on it by or under this or any other Act, or as directed by the Minister; and</li> <li>• To enforce the Act.<sup>553</sup></li> </ul>

## Parent Department

Jurisdiction	Parent Department
ACT	Not applicable
NSW	Department of Planning and Environment
Vic	Department of Premier and Cabinet
Qld	Not applicable
WA	Department of Lands, Planning and Heritage
SA	Attorney-General's Department
Tas	Department of Premier and Cabinet
NT	Department of Premier and Cabinet

<sup>552</sup> *Aboriginal Heritage Act 1975* (Tas), s 3(2).

<sup>553</sup> *Northern Territory Aboriginal Sacred Sites Act 1989* (NT), s 10.

## Power for Committee/Council to delegate powers and functions

Jurisdiction	Power to delegate
ACT	Not applicable.
NSW	Not specified in the legislation.
Vic	The Council may delegate by instrument any of its powers or functions to the Secretary or a member of the Council, or a Council Advisory Committee. The Council may not delegate its power of delegation. <sup>554</sup>
Qld	Not applicable.
WA	The Council may delegate a power or duty, other than a power or duty specified by the Act as not being able to be delegated. <sup>555</sup>
SA	Not specified in the legislation.
Tas	Not specified in the legislation.
NT	The Authority may, by resolution, delegate to the Chairman, a member or members of a committee of the Authority, the Chief Executive Officer or a person employed by the Authority any of its powers and functions under this Act, other than this power of delegation. <sup>556</sup>

## Local Aboriginal Heritage Bodies

Jurisdiction	Local Aboriginal Heritage Bodies
ACT	The Minister may appoint Representative Aboriginal Organisations (RAOs). <sup>557</sup>
NSW	No.
Vic	RAPs (Registered Aboriginal Parties) are determined by the Council to be a RAP for an area. <sup>558</sup> Applicants to be a RAP must be a corporation registered under the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth). <sup>559</sup>
Qld	Cultural Heritage Bodies, being corporations approved by the Minister for registration as the Cultural Heritage Body for an area. <sup>560</sup> Aboriginal or Torres Strait Islander parties are the registered Native Title claimant or holder for an area, or a previously registered native title claimant. <sup>561</sup>
WA	The Act allows the Aboriginal Cultural Heritage Council to designate persons or organisations (regional corporations, Registered Native Title Bodies Corporate, a <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> corporation or a <i>Corporations Act 2001</i> (Cth) corporation) as the Local Aboriginal Cultural Heritage Service (LACHS) for an area of the state. <sup>562</sup>

<sup>554</sup> *Aboriginal Heritage Act 2006* (Vic), s 132A.

<sup>555</sup> *Aboriginal Cultural Heritage Act 2021* (WA), s 24.

<sup>556</sup> *Northern Territory Aboriginal Sacred Sites Act 1989* (NT), s 19.

<sup>557</sup> *Heritage Act 2004* (ACT), s 14.

<sup>558</sup> *Aboriginal Heritage Act 2006* (Vic), s 151.

<sup>559</sup> *Aboriginal Heritage Act 2006* (Vic), s 150(2).

<sup>560</sup> See, for example: *Aboriginal Cultural Heritage Act 2003* (Qld), s 36; *Torres Strait Islander Cultural Heritage Act 2003* (Qld), s 36.

<sup>561</sup> See, for example: *Aboriginal Cultural Heritage Act 2003* (Qld), s 35; *Torres Strait Islander Cultural Heritage Act 2003* (Qld), s 35.

<sup>562</sup> *Aboriginal Cultural Heritage Act 2021* (WA), ss 34, 36, 37, 40.

SA	RARBs (Recognised Aboriginal Representative Bodies) are Registered Native Title Body Corporates approved by the Committee. There can only be 1 RARB per area, object, site or remains. <sup>563</sup>
Tas	No.
NT	Land Councils are appointed under the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> (Cth) and have certain functions relating to Aboriginal heritage. <sup>564</sup>

## Local Aboriginal Heritage Body Functions

Jurisdiction	Functions
ACT	<p>The functions of RAOs are:</p> <ul style="list-style-type: none"> <li>To be consulted by the Heritage Council with respect to: <ul style="list-style-type: none"> <li>decisions to provisionally register an Aboriginal place, or object;<sup>565</sup></li> <li>decisions to make heritage guidelines relating to an Aboriginal place or object;<sup>566</sup></li> <li>decisions to cancel registration of an Aboriginal place or object;<sup>567</sup></li> <li>assessing the heritage significance of an Aboriginal place or object;<sup>568</sup></li> <li>decisions to declare particular information about the location or nature of an Aboriginal place or object to be restricted information;<sup>569</sup></li> </ul> </li> <li>To be consulted by the Minister with respect to a decision to declare a place to be a repository for Aboriginal objects;<sup>570</sup> and</li> <li>To provide advice to the Conservator of Flora and Fauna with respect to a tree protection notice relating to an Aboriginal tree or a tree that forms part of an Aboriginal place.<sup>571</sup></li> </ul>
NSW	Not applicable.
Vic	<p>The functions of RAPs are:</p> <ul style="list-style-type: none"> <li>To act as a primary source of advice and knowledge for the Minister, Secretary and Council on matters relating to Aboriginal places located in or Aboriginal objects originating from the area for which the party is registered;</li> <li>To advise the Minister regarding, and to negotiate, the return of Aboriginal cultural heritage that relates to the area for which the party is registered;</li> <li>To consider and advise on applications for cultural heritage permits;</li> <li>To evaluate and approve or refuse to approve cultural heritage management plans that relate to the area for which the party is registered;</li> <li>To enter into cultural heritage agreements;</li> <li>To apply for interim and ongoing protection declarations;</li> <li>To provide general advice regarding Aboriginal cultural heritage relating to the area for which the party is registered;</li> <li>To perform functions under this Act in relation to cultural heritage management plans, cultural heritage permits, cultural heritage agreements, preliminary Aboriginal heritage tests, Aboriginal cultural heritage land management agreements and Aboriginal intangible heritage agreements;</li> <li>To perform functions under this Act in relation to cultural heritage permits, including the granting of permits;</li> </ul>

<sup>563</sup> *Aboriginal Heritage Act 1988* (SA), s 19B.

<sup>564</sup> *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), s 21.

<sup>565</sup> *Heritage Act 2004* (ACT), s 31.

<sup>566</sup> *Heritage Act 2004* (ACT), s 26(5).

<sup>567</sup> *Heritage Act 2004* (ACT), s 45.

<sup>568</sup> *Heritage Act 2004* (ACT), s 53.

<sup>569</sup> *Heritage Act 2004* (ACT), s 54(3).

<sup>570</sup> *Heritage Act 2004* (ACT), s 53B.

<sup>571</sup> *Heritage Act 2004* (ACT), s 61B(1)(b).

	<ul style="list-style-type: none"> <li>To advise the Minister administering the Planning and Environment Act 1987 on proposed amendments to planning schemes which may affect the protection, management or conservation of places or objects of Aboriginal cultural heritage significance;</li> <li>To report to the Council annually on the performance of its functions under this Act, including any fees and charges paid to or imposed by the party in respect of the year;</li> <li>To nominate information about Aboriginal cultural heritage to be restricted information on the Register; and</li> <li>To carry out any other functions conferred on registered Aboriginal parties by or under this Act.<sup>572</sup></li> </ul>
Qld	<p>The function of an Aboriginal cultural heritage body for an area is to identify, for the benefit of a person who needs to know under this Act, the Aboriginal parties for the area or for a particular part of the area.<sup>573</sup></p> <p>Aboriginal or Torres Strait Islander Parties are parties involved in the assessment and management of cultural heritage.<sup>574</sup></p>
WA	<p>For the purpose of the management of activities that may harm Aboriginal cultural heritage located in the area under Part 6, a LACHS' functions are:</p> <ul style="list-style-type: none"> <li>to engage and negotiate, as is appropriate, with: <ul style="list-style-type: none"> <li>proponents carrying out, or intending to carry out, activities in the area; and</li> <li>native title parties and knowledge holders for the area, or a part of the area;</li> </ul> </li> <li>to make, or to facilitate the making of, ACH management plans in respect of the area;</li> <li>to provide advice to proponents carrying out, or intending to carry out, activities in the area about whether Aboriginal cultural heritage is located in the area and the characteristics of Aboriginal cultural heritage located in the area;</li> <li>to provide information to the ACH Council about Aboriginal cultural heritage located in the area to assist the Council to perform its functions under this Act, and to improve the accuracy of the ACH Directory;</li> <li>to make submissions, and provide information, to the Council about proposals for activities to be carried out in the area and the management of those activities so as to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activities;</li> <li>to engage, as appropriate, with other local ACH services, native title parties and knowledge holders about Aboriginal cultural heritage that extends beyond the geographic boundaries of the area;</li> <li>to undertake, either directly or indirectly, on-ground identification, maintenance, conservation and preservation of Aboriginal cultural heritage located in the area;</li> <li>to report to the Council about matters related to the provision of local ACH service functions as required by the regulations;</li> <li>to undertake, either directly or indirectly, any activity in relation to protecting, preserving, conserving or managing Aboriginal cultural heritage, agreed under an approved or authorised ACH management plan to be a function of the person designated as the local ACH service for the purposes of this paragraph; and</li> <li>other functions, if any, prescribed for the purposes of this paragraph.<sup>575</sup></li> </ul>
SA	<p>The functions of Recognised Aboriginal Representative Body (RARBs) are to:</p> <ul style="list-style-type: none"> <li>Advise the Minister in relation to matters affecting Aboriginal heritage in respect of the area for which the Recognised Aboriginal Representative Body is appointed; and</li> <li>Carry out other functions assigned to the Recognised Aboriginal Representative Body under any other Act or by the Minister;<sup>576</sup> and</li> <li>Negotiate and entering into a local heritage agreement with applicants with respect to an area, site, object or remains.<sup>577</sup></li> </ul>
Tas	Not applicable.
NT	<p>The function of Land Councils under the <i>Northern Territory Sacred Sites Act</i> is to Nominate persons to be members to Aboriginal Areas Protection Authority.<sup>578</sup></p>

<sup>572</sup> *Aboriginal Heritage Act 2006* (Vic), s 148.

<sup>573</sup> See, for example: *Aboriginal Cultural Heritage Act 2003* (Qld), s 37; *Torres Strait Islander Cultural Heritage Act 2003* (Qld), s 37.

<sup>574</sup> See, for example: *Aboriginal Cultural Heritage Act 2003* (Qld), ss 53, 102, 104, 105; *Torres Strait Islander Cultural Heritage Act 2003* (Qld), ss 53, 102, 104, 105.

<sup>575</sup> *Aboriginal Cultural Heritage Act 2021* (WA), s 48.

<sup>576</sup> *Aboriginal Heritage Act 1988* (SA), s 19D.

<sup>577</sup> *Aboriginal Heritage Act 1988* (SA), s 19H.

<sup>578</sup> *Northern Territory Aboriginal Sacred Sites Act 1989* (NT), ss 6(2), 6(5), 6(6).

Under the *Aboriginal Land Rights (Northern Territory) Act*, Land Councils have the following heritage-related functions:

- Assisting Aboriginals in the taking of measures likely to assist in the protection of sacred sites on land (whether or not Aboriginal land) in the area of the Land Council;<sup>579</sup>
- consult with traditional Aboriginal owners of, and other Aboriginals interested in, Aboriginal land in the area of the Land Council with respect to any proposal relating to the use of that land;<sup>580</sup> and
- Grant exploration licenses for mining.<sup>581</sup>

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<sup>579</sup> *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), s 23(1)(ba).

<sup>580</sup> *Aboriginal Land Rights (Northern Territory) Act 1976*, s 23(1)(c).

<sup>581</sup> *Aboriginal Land Rights (Northern Territory) Act 1976*, s 40(a).

## Appendix E: Dissenting report by Mr Ed Cocks MLA

### Inquiry into ACT's heritage arrangements Dissenting Report by Ed Cocks MLA

#### Reason for Dissent

While a number of recommendations of the main committee report have merit, taken as a whole it provides little substantive direction for the Government to correct course, and it does not fully contend with a number of the underlying strategic issues and tensions in the ACT's Heritage system.

Furthermore, the main report is based on the notion that tinkering around the edges will be sufficient to repair an outdated system which became deeply dysfunctional, resulting in unprecedented steps against those working in the system.

There is a risk that, without strong direction and a willingness to take clear decisions, the Government will continue largely as it has since 2016. It is not tenable that the last 7 years of strategic indecision and neglect be allowed to stretch to a decade or more.

There is also a risk, particularly in the context of the current planning reforms, and the impending review of the heritage system undertaken by the same Directorate, that the main report could be seen as endorsing unfettered development over heritage considerations. As one person put it:

*"I have seen in my long career in heritage dozens of reviews of heritage, and they are almost always viewed with great concern by the heritage community, because governments are often more about unravelling heritage in some way or easing the path for other activities rather than a kind of full-throated, genuine embrace of heritage issues"*

Despite the weight given to what could be termed the "development at all costs" perspective in the main report, the preponderance of evidence and opinion presented to the inquiry suggests that an effective heritage system ought to be focussed, first and foremost on the preservation of heritage and its inherent value. This cannot be achieved by injecting an increasing number of competing, non-heritage considerations into the system.

I therefore consider it important to dissent from the main report and present an alternative perspective on the problems in the Heritage system, and how they could be addressed.

Ed Cocks MLA

## Summary

Throughout the conduct of this Inquiry, it has become clear that the ACT Heritage system is not, and has for some time not been, operating as it ought. There are clear failings and weaknesses at both the strategic and operational levels, and as a system it seems to be neither adequately protecting the Territory's heritage, nor enabling reasonable development of and improvements to properties where heritage is a consideration.

There are also clear deficiencies in respect of Aboriginal heritage, local heritage, and other more specialist heritage areas.

Furthermore, it seems clear that for a long time, there has been no shared understanding of the objectives, responsibilities, and standards for heritage management between those in the Council, those in the Directorate, and the Minister. The backlog of issues requiring resolution reached an unmanageable level before the Minister dismissed the previous council and subsequently appointed an interim council.

As the Committee heard throughout this inquiry, the ACT's heritage legislation, systems, and structures have been largely neglected, and it is impossible to understand the current state without understanding that 20 year record of neglect, which culminated in the Minister's unprecedented dismissal of the Heritage Council.

Prior to the Minister's action, the ACT Heritage system was last elevated to policy prominence in 2016 with the release of a discussion paper intended to inform development of an ACT Heritage Strategy. Before that, the last major development appears to have been the original establishment of the heritage act around 20 years ago.

In considering the future direction of the heritage arrangements in our Territory, it is also important to understand that heritage protections inevitably contend with conflicting interests, and in particular with unfettered development and densification. However, many modern approaches to heritage seem to balance and even integrate these interests, driving creative solutions and increasing the likelihood of heritage preservation.

This dissenting report makes recommendations intended to support the modernisation of the ACT's Heritage System based on a strategic approach to system level reform.

Key issues identified during the inquiry included:

### *Poor Strategy and Systems*

- A lack of strategic direction and guidance which translated into an unwillingness to take hard decisions;
- A lack of clarity of purpose, and shared understanding of the functions of the Heritage Council, the Heritage Unit, and the heritage system in general.
- An outdated legislative framework that is no longer fit for purpose.

### *Operational issues and dysfunction*

- Poor transparency and openness in the heritage system, which was described during the hearings as operating as a bureaucratic “black box”, with no clear accountabilities, and no clear standards for many decisions.
- Low predictability regarding decisions of the Council and the Unit, and little feedback on the reasons for particular decisions.
- Poor consultation and barriers to the involvement of stakeholders.
- The development of dysfunctional relationships both between individuals, and between
- A perceived culture of protection, whereby it appears likely that the Directorate valued protection of Ministers and the Government above the independent operation of the Council and the ACT’s heritage system.
- Structurally entrenched conflicts of interest within the heritage system, including through the subordination of the heritage function to the planning function and development priorities of the Government.
- Chronic under-resourcing of administrative staff and functions of the heritage system which are likely to have contributed to

### *Heritage Council Dismissal*

The Committee launched this inquiry on 5 December 2022 following advice from, and subsequent announcement by the Minister on 29 November 2022 that all members of the ACT Heritage Council were to be dismissed.

It was not the intent the Committee to examine the Minister’s handling of issues within the ACT Heritage System. And it has, from the outset of this inquiry, been the Committee’s intention to take a productive, and forward-looking approach to improving the ACT Heritage system, and to contribute to a reform process that would prevent such deep dysfunction and poor relationships emerging in the future.

However, the Minister’s statements and advice to this Committee were central to the decision to undertake this inquiry, and it is important to understand the extent of the Minister’s engagement with the Committee prior to the inquiry’s announcement.

Despite the Minister’s initial statement to the Assembly that she was “*consulting with the Assembly’s Standing Committee on Environment, Climate Change and Biodiversity about her potential decision in response to the review*”, the Minister’s engagement was limited to briefing the Committee on her intended approach. At no time was there any indication to the Committee that the Minister was considering any course of action other than the dismissal of the Heritage Council. The dismissal of the Heritage Council was entirely the Minister’s decision, and it had been made prior to discussions with the Committee.



Such extreme action was unprecedented, and with the Minister announcing she had lost confidence in the Council, the Committee was concerned about the possibility of deeper issues in the ACT's heritage system.

It is also notable that the Minister has declined to provide the Committee with the full unredacted report that led to the Council's dismissal. In the absence of that information, it has been significantly more difficult for the Committee to understand the Minister's decision, and to formulate helpful recommendations to support the effective operation of the Heritage system, and prevent the emergence of similar dysfunction into the future.

Indeed, the decision to withhold the report from public release, from the Committee, and from the interim Chair of the Council mirrors one of the most commonly discussed concerns with the ACT's heritage system during this inquiry. Specifically that:

*"decision-making appears to occur in some sort of a black box, so that the general public and other concerned organisations have no idea how that decision has been arrived at." (Ms Forrest)*

It also echoes concerns that the Directorate's relationship with the Heritage Council seems to be driven by concerns about the potential to embarrass or upset the Government.

*"...Part of that touches on things like undeclared tensions, for example, in the relationship between council and the branch over an activist council wanting to do something which might upset the government."*

It is the view of this MLA, that an independent statutory body such as the Heritage Council should be empowered to fulfil its role without fear that it will be shut down for potentially upsetting the Government.

It also remains my considered view that the Minister's persistence in withholding the full report which triggered both the unprecedented dismissal of the entire Council and a large scale internal review and reform process for the ACT's Heritage arrangements risks undermining the opportunity to fix the system. The Minister should reconsider this decision and release the report in full, with minimal redactions only where absolutely necessary to protect the privacy of the individuals impacted.

#### DISSENTING RECOMMENDATION 1:

THAT THE MINISTER RELEASE THE 2022 REPORT ON THE REVIEW OF THE ACT HERITAGE COUNCIL WITH REDACTIONS ONLY WHERE ABSOLUTELY NECESSARY TO PROTECT INDIVIDUALS' PRIVACY.

## Strategic Directions and Legislative Framework

The heritage system operates in a complex environment with stakeholders across multiple Government, private sector, and third sector organisations. It has close interactions with the planning and development system, and there is often potential for conflicting interests to arise with other policy areas and perspectives; such as accessibility, safety, and sustainability.

However, an effective heritage system should, first and foremost, be designed around protecting heritage. It should not be subservient to development, and should not be corrupted by integration of competing interests.

It is notable that the main committee report provided significant weight to the views of the Greater Canberra submission, which essentially argued for unfettered development at the expense of heritage. This submission argued for the wholesale eradication of heritage areas in favour of what Greater Canberra considers a better use of the land. This perspective was not supported by other submissions, and was a polar opposite view compared with that expressed by the great majority of witnesses and submissions.

Similarly, the main report has taken the view that specific expertise regarding sustainability should be integrated within the heritage system. This perspective is largely based on the experience of a limited number of submissions that described experiences of delays, indecision, and what they felt were unreasonable decisions regarding straightforward property improvements such as the installation of solar panels.

These are legitimate problems within the heritage system. However, the corruption of the system by further introducing competing interests and tensions is unlikely to appropriately address these issues. It is likely that the development of clear guidelines and standards for straightforward improvements to a property would be sufficient to achieve the desired outcome, while maintaining a clear demarcation between heritage and other policy issues.

Many witnesses expressed concerns, during hearings, that heritage was being placed in a subservient position to development, and that the Government's planning legislation increased that risk. Some witnesses pointed out that this risk was further exacerbated by the inclusion of the Government's official in charge of the Government's development and infill agenda as a member of the Council. Notwithstanding the potential value of understanding the government's development objectives, witnesses observed that there seems to be a conflict of interest inherent in the two roles.

Ultimately, however, the tension between heritage and other policy areas is a question of strategic positioning and strategic direction for the ACT Government. It is essential that everyone involved in the heritage system has a clear understanding of the objectives and operation of the heritage system in the ACT. That is best expressed through a formal strategy, which should be delivered before any subsequent change to the ACT's legislative framework for heritage.

## DISSENTING RECOMMENDATION 2:

THAT THE GOVERNMENT DEVELOP A HERITAGE STRATEGY FOR THE ACT, BY JULY 2024, SPECIFYING:

- The strategic objectives of heritage management in the ACT;
- The structures required to support those objectives;
- Clear, defined processes for consideration of matters by the Heritage Council, including preparation of material by officials.

In respect to the heritage legislative framework, the committee heard extensive evidence regarding areas which are no longer fit for purpose, and it was clearly put to the Committee that, notwithstanding some views to the contrary, the legislation is now so far out of date , and requires so many changes and improvements, that it would make sense to repeal the current legislation and replace it with a new, modern and fit for purpose Heritage Act.

This case became increasingly compelling as the range of issues requiring legislative change was explored.

It is my considered view that the best chance to establish a new and effective heritage system in the ACT is through this repeal and replace approach. This would enable clarity regarding decision making and powers, as well as supporting a more open, and engaged heritage system.

### DISSENTING RECOMMENDATION 3:

THAT THE ACT GOVERNMENT REPEAL AND REPLACE THE HERITAGE ACT WITH A MODERN, FIT FOR PURPOSE ACT AND REGULATIONS, INFORMED BY CONSIDERATION OF EXAMPLES AND LESSONS FROM OTHER STATES, WHICH INCLUDES:

- A requirement for the Minister to develop, publish, and regularly review an ACT Heritage Strategy, developed with advice and input from the Council.
- Recognition of the intrinsic relationship and tension between heritage and development.
- Establishment of a fully independent, professional Heritage Council, supported by a dedicated secretariat.
- Confirmation of the Heritage Council as the decision making body for Heritage Matters, with the Minister maintaining the power to overrule decisions in exceptional circumstances.
- Recognition of the existing heritage council “taskforce” on Aboriginal heritage as dedicated Sub Committee. The role of the sub-committee would be to provide advice to the Heritage Council on matters related to Aboriginal heritage, and the chair of the Sub-Committee would also be a member of the Council, responsible for advocating the views of the Sub-Committee.
- an appropriate mechanism for the establishment of clear timeframes and standards for the assessment of heritage applications
- Integration with other ACT legislation, including legislation related to planning, development, and building.

#### Operations and public trust

Throughout the inquiry, stakeholders, including community groups, heritage advocacy groups, and development interests, reported feeling unheard, and there was a strong sense that once an application was submitted, it existed in a bureaucratic “black box” with little understanding of how a decision would be made and poor consistency between applications.

In testimony regarding the tensions with the development system, concerns were also raised about the culture of the bureaucracy, and a perception that under current arrangements, the Heritage Unit is effectively required to support the heritage unit while it exists under a governance structure which reports to the chief planner.

*“One of the things that has come to mind in reflecting on the recent past is the difficulty the branch may have in dealing with two masters: the council on the one hand, and EPSDD, the government and the minister on the other hand.”*

Evidence also reflected on the extended timeframes to receive responses from the heritage unit, and the inability to contact heritage staff, and a sense that the heritage system operates without influence from external experts.

Each of these concerns appears to have been exacerbated by divergent understanding of roles, powers and reporting lines between the Heritage Council, and the Unit, chronic under-resourcing of the heritage function, and a lack of independence for Heritage Council functions.

Delays in the Heritage System have a flow-on impact, with costs to society, businesses, particularly with respect to the impact on planning, development, and construction. It is also important to recognise that these impacts can act contrary to heritage objectives themselves, including by reducing certainty and increasing the expense of maintenance and improvement activities.

It seems likely that appropriately resourcing the administrative functions of the heritage system, and releasing them from within EPSDD, would improve the effectiveness and cost effectiveness of the system. This would be further supported by increasing engagement with the system.

#### DISSENTING RECOMMENDATION 4:

THAT THE GOVERNMENT ESTABLISH AN INDEPENDENT OFFICE FOR HERITAGE WITH ADEQUATE RESOURCING TO:

- Support the secretariat needs of the Council and its sub-committees and taskforces.
- Undertake all administrative functions required for the effective operation of the heritage system.

#### DISSENTING RECOMMENDATION 5:

THAT THE GOVERNMENT STRENGTHEN THE HERITAGE SYSTEM BY PROVIDING OPPORTUNITIES FOR CONVERSATION AROUND APPLICATIONS, INCLUDING INVOLVEMENT OF COMMUNITIES, INTERESTED INDIVIDUALS, EXPERTS AND OTHER STAKEHOLDERS IN CONSIDERATION OF SPECIFIC APPLICATIONS.

It is also notable that the costs of maintaining and living with or operating on a heritage property are largely born by the leaseholder in the ACT. This effectively operates as a penalty which discourages individuals and businesses from purchasing these leases. There is an opportunity to reduce this burden and encourage appropriate treatment of and care for these properties through conditional rates relief.

#### DISSENTING RECOMMENDATION 6:

THAT THE GOVERNMENT PROVIDE CONDITIONAL RATES RELIEF TO OWNERS OF HERITAGE LISTED RESIDENTIAL PROPERTIES, IN RECOGNITION OF THE SIGNIFICANTLY INCREASED RESPONSIBILITIES AND COSTS THAT ACCRUE FOR THESE BUILDINGS.