



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

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

Inquiry into ACT's heritage arrangements

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Submission to the Inquiry into the ACT's heritage arrangements

Hon David Templeman MLA, Minister for Heritage, Western Australia

Hon Dr Tony Buti MLA, Minister for Aboriginal Affairs, Western Australia

The Committee has invited the Western Australian Government to provide a submission to its Inquiry and sought responses in four identified areas relating to governance. These are noted and responses provided below.

Q. What findings were made by the Western Australian Government as part of the separate reviews of the *Heritage of Western Australia Act 1990* and *Aboriginal Heritage Act 1972* in relation to the governance and operations of Heritage Council of Western Australia and the former Aboriginal Cultural Material Committee, respectively?

A. The review of the *Heritage of Western Australia Act 1990* (Heritage Act 1990) was an evolutionary process to reset some of the issues that had arisen in the implementation of the legislation since it was first approved, and to respond to increased expectations of the Western Australian people for the protection of heritage places. The role and operation of the Heritage Council of Western Australia (HCWA) had not been raised as a significant concern and changes in governance and operations were minimal.

In the review of the *Aboriginal Heritage Act 1972* (AHA) it was recognised that the premise of convening a central body to determine whether a site holds cultural significance to Aboriginal people is fundamentally flawed. The role given to members of the Aboriginal Cultural Materials Committee (ACMC) was noted as contrary to the understanding that 'no one can speak for another person's Country'. The stated requirements for ACMC membership were also challenged as not culturally appropriate, noting that the only stipulated position was an anthropologist. There was no requirement for Aboriginal representation, gender balance or regional representation, despite the expectation that the ACMC was required to form opinions on any Aboriginal cultural heritage matter brought before it.

The review also noted that the role of the ACMC was restricted to an operational process and lacked a mandate for advocacy, education and promotion of Aboriginal cultural heritage, making it inconsistent with the role of the HCWA under the Heritage Act.

Lack of transparency in the decision-making process was also flagged as a concern, particularly when paired with the lengthy timeframes of progressing

material through the APMC. Responses such as publication of meeting minutes were proposed to assist in addressing concerns.

Q. What changes and improvements, if any, were made to the governance arrangements of the Heritage Council in response to the review findings when drafting the *Heritage Act 2018*?

A. Under the Heritage Act 1990, the HCWA included a nominee of the National Trust and persons appointed to represent specific interests. These roles were removed in favour of a stated requirement for 'balanced membership' and nomination of specific areas of knowledge or experience that, in addition to knowledge of heritage matters, would qualify a person for membership.

Provision was made for greater transparency and timeliness of HCWA decisions, with statutory deadlines set for key matters such as preliminary determination of a nomination for the State Register of Heritage Places and responding to referral of proposals relating to heritage places. Key recommendations of the HCWA submitted to the Minister for Heritage for determination are required to be published along with the Minister's response.

As noted, revision of HCWA governance was not a key intention of the review and changes were modest.

Q. What changes and improvements, if any, were made to the governance arrangements of the new Aboriginal Cultural Heritage Council in response to the review findings when drafting the new *Aboriginal Cultural Heritage Act 2021* (ACH Act)?

A. It should be noted that the role of the Aboriginal Cultural Heritage Council (ACHC) is substantially different from that required of the APMC, with the review responding to each of the areas of concern raised around the operation of the legislation and its advisory board.

The ACHC is constituted with two co-Chairs (one male and one female) with traditional rights in respect of women's and men's business. The remaining ACHC is a further four to nine members demonstrating knowledge, skills and experience to perform the functions of the ACHC. The ACHC should, as far as is practicable, be a majority of Aboriginal people and of a balance of gender.

The functions and powers of the ACHC are now more aligned with those of the HCWA in respect of their ability to promote public awareness and understanding of cultural heritage, but also extend to promoting the role of Aboriginal people in the recognition and conservation of Aboriginal cultural heritage.

Transparency of decision-making is assisted through the requirement for public notice for ACHC recommendations to the Minister for Aboriginal Affairs on key matters, such as the declaration of a protected area. A decision of the Minister to determine a matter contrary to the recommendation must also be published.

For matters of general business, the ACHC has established its own governance processes and policies as guided by the legislation, the WA Public Sector Commission and current best practice.

Q. What the relationship and governance arrangements between the Heritage Council and Aboriginal Cultural Heritage Council and the Department of Lands, Planning and Heritage looks like in WA's heritage landscape, including the division of roles and responsibilities?

A. With minor variations in approach, legislation provides that the nominated Department must provide staff and facilities, and other assistance, as reasonably required for the respective Council to perform its functions. In relation to the ACH Act it is the responsibility of the Minister for Aboriginal Affairs to ensure that the ACHC is provided with sufficient resources.

The allocation of budget to the Department of Planning, Lands and Heritage follows the standard annual budget process, with potential for the Department to identify and request variations to meet anticipated expenditure.

The HCWA is defined as a separate entity in the budget process and maintains a small operational budget, with the greater part of its allocation being reserved for its conservation grants program.

Funding for ACHC allowances and expenditure is currently allocated to the Department for distribution.

The operational elements of the Heritage Act are primarily executed by the Department under delegation from HCWA, guided by strategy and policy positions determined by HCWA. To assist in clarification of roles and responsibilities, HCWA and the Department have agreed on a Service Charter, which sets out the expectations and commitments of each party.

The ACHC is still in its formative stage and yet to take on the operational functions that will be required of it under the ACH Act. It will be open to the ACHC to determine with the Department what powers to delegate and how these should be exercised, as well as discussion of any written agreement on delivery of services.

On a practical basis the Department is the employing authority for all staff engaged in work supporting its heritage boards, and delivers core functions relating to finance, legal advice, human resources, and facilities.

The Western Australian Government would like to conclude its submission by noting the significant role played by cultural heritage in establishing a sense of place, community and identity. Negotiating outcomes in which cultural heritage can be recognised and respected is one of the challenges faced by our Department and Councils on a daily basis. It is incumbent on each State Government to provide well-considered and well-constructed legislation and other arrangements to support this process. We wish the Committee every success in its endeavours.