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

TENTH ASSEMBLY

**Standing Committee on Environment, Climate Change and Biodiversity - Report No 9 -
Inquiry into ACT's heritage arrangements**

Government Response

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Introduction

The ACT Government welcomes the opportunity to respond to the Standing Committee on Environment, Climate Change and Biodiversity (Standing Committee) Inquiry into ACT's heritage arrangements. The government acknowledges the Standing Committee's work to identify options to enhance the ACT's heritage arrangements and that this work has occurred alongside the government's own review of heritage arrangements.

The government placed a high priority on its work to value, protect, care for, and celebrate the ACT's natural, cultural and Aboriginal heritage. As the city of Canberra continues to grow, there are real benefits to be gained from improving heritage governance, policies and systems to not just protect heritage but to recognise the benefits heritage brings to enriching the ACT's story. In addition, there is a need to focus on strengthening the determination by Traditional Custodians of Aboriginal cultural heritage to respect their cultural rights.

To improve heritage protection and more fully recognise its contribution to our city, the ACT Government is committed to a reform program for heritage in the ACT. This has seen several key initiatives delivered across 2023 including:

- the completion of the ACT Heritage jurisdictional review including public and targeted Aboriginal consultation to develop strategic reforms
- the review of heritage business systems, including the heritage database, which has seen a detailed statement of requirements developed that are undergoing market testing
- the appointment of an interim Heritage Council with a clear Statement of Expectations that is developing a strong partnership with ACT Heritage.

The ACT Heritage Jurisdictional Review was recently undertaken by consultants Stenning & Associates, with the aim 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. This review recommended 3 strategic reform themes being:

1. Establish ACT Aboriginal People as the determinants of their cultural heritage
2. Champion Heritage as a compelling and valued consideration in the planning and development of Canberra
3. Strengthen ACT heritage governance and administration.

In December 2022, the Standing Committee on Environment, Climate Change and Biodiversity (the Committee) established an Inquiry into ACT's heritage arrangements. The Committee provided thirty-seven recommendations spanning across the broad heritage framework.

The ACT Government notes the strong alignment of the Inquiry recommendations with the proposed reforms within the Heritage Jurisdictional Review. In particular, the need for a more cohesive governance and policy framework, improved roles and responsibilities and support for Aboriginal organisations.

The ACT Government sees benefit in using the Inquiry's report to inform the government's ongoing heritage reform program. As such the government will consider the Inquiry's report during the development of future ACT Heritage Business Plans. These Business Plans will focus on implementing the key recommendations from both the Inquiry and the ACT Heritage Jurisdictional Review. As this work is still in progress, many recommendations made by the Inquiry have been noted in the Government response.

Government Position on Recommendations

Recommendation 1

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

Government Response: EXISTING POLICY

The enhancement of governance arrangements for the management of the ACT's heritage is existing ACT Government policy. The government recently undertook an external jurisdictional review that specifically considered governance improvements and proposed several reforms.

From this work, clear strategic expectations have been established between the Minister for Heritage and the current ACT Heritage Council (the Council). The Council has been an active participant in the ACT Heritage Jurisdictional Review and has been working with the Environment, Planning and Sustainable Development Directorate (EPSDD) to support the current reform agenda.

Recommendation 2

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

Government Response: AGREED

The ACT Government recognises the benefit in developing an ACT Heritage Strategy and this action is a current priority within the Statement of Expectations for the Heritage Council. Such a strategy would set the vision, champion the value of heritage, recognise its diversity and need for long term protection, while celebrating our special places and the stories that underpin them.

The objectives of the Strategy will need to carefully consider resource implications and competing priorities of the government and progress these through future budget processes priorities.

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).

Government Response: EXISTING POLICY

The ACT Government will continue to ensure that the heritage reforms align with the recent planning reforms. The governance arrangements overseeing the heritage reform project have included input from the Planning Policy sections of EPSDD at each critical step to ensure this alignment.

Recommendation 4

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

Government Response: EXISTING POLICY

The recent Jurisdictional Review revealed that the ACT's underlying legislative arrangements for heritage recognition and management are consistent with contemporary Australian practice. The reform agenda does not seek to change the Council's role as an independent statutory body under the *Heritage Act 2004* (the Act). The Act is clear on the Council's functions.

However, the Council and ACT Heritage have agreed to explore opportunities to improve transparency in relation to decision making.

Recommendation 5 & 6

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.

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.

Government Response: NOTED

The ACT Government notes the committee's comment about a perceived lack of weight given to Council advice by the Territory Planning Authority but does not agree with the perception. Embedded in the new *Planning Act 2023*, the Territory Planning Authority must in the notice of decision for a Development Application (DA) acknowledge the advice of a referral entity (including the Council) and where the authority did not follow the advice, provide reasons why.

The notice of decision for a DA is made available on the public register. The merit of mirroring provisions in the *Heritage Act 2004* to achieve the same outcome requires further consideration.

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.

Government Response: NOTED

The ACT Government supports the role of the Council being proactive but does not consider amendments to the Act are required for this to be achieved. Within the Act, the functions of Council include:

- to advise the Minister about issues affecting the management and promotion of heritage;
- to encourage public interest in, and understanding of, issues relevant to the conservation of heritage places and objects;
- to encourage and provide public education about heritage places and objects; and
- to assist in the promotion of tourism in relation to heritage places and objects.

The ACT Government will continue to explore opportunities to work with Council to enhance the current engagement and promotional programs for heritage in the ACT.

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.

Government Response: NOTED

The ACT Government supports amendments to the Act that provide the Minister for Heritage increased flexibility in the appointment of new Council members however, expertise should continue to focus on the identification and conservation of heritage values in the first instance.

Consideration of other matters occur post identification of heritage values and are better addressed through the adoption of sound policy written in consultation with industry experts.

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.

Government Response: NOTED

The ACT Government has committed to examining the governance framework of the new ACT planning system and the key statutory positions and decision-making roles within it to ensure it represents good governance and is fit for purpose. Given that the Chief Planner is a key statutory position, this role as an ex-officio member of the Council will be considered as part of the existing governance review.

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.

Government Response: NOTED

The ACT Government notes that strengthening the heritage framework to deal with an increased volume of applications and advice may not necessarily result in the need for increased Council meetings. Allowing the Council to focus on strategic policy to guide ACT Heritage would align with approaches of larger jurisdictions.

The ACT Government notes that additional funding to support a strengthened heritage framework would need to be considered through future ACT budgets, alongside other government priorities.

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.

Government Response: AGREED IN PRINCIPLE

The ACT Government supports the clarification of roles and responsibilities between the Council and ACT Heritage however considers this is more appropriately addressed through strengthened policy and procedures.

In addition, the ACT Government will continue working towards an improved governance framework that clearly establishes the services to be provided by EPSDD to support the Council's operations and describe how they will work together and how it will be resourced. Such an approach will improve the clarity of roles and responsibilities between the Council and ACT Heritage.

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.

Government Response: NOTED

The ACT Government continues to work with the Council to ensure that effective delegations are in place. Under the Act, the Council determines the functions delegated to EPSDD and as such the Council will have oversight of any changes to delegations. It is noted that an improved policy framework would support changes to delegation as this allows the Council to provide increased strategic guidance to ACT Heritage.

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.

Government Response: EXISTING POLICY

The ACT Government recognises the importance of ACT Heritage engaging widely with stakeholders to champion heritage in the planning and development of Canberra and fostering improved understanding and appreciation of its contribution to a sense of place. ACT Heritage will continue to place a high priority on early engagement and collaboration with other areas of EPSDD and government agencies.

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.

Government Response: NOTED

The ACT Government notes the intent of the Act is to identify and conserve heritage values. However, as the Council implements this responsibility, it does so while working within a broader economic and planning context.

The potential for tension between competing elements, as identified by the committee, including social and economic costs, heritage conservation and pursuing development are well considered in the current planning legislative settings, and as has been noted in response to recommendations 5 and 6. Opportunities to improve the policy framework for the management of heritage will be explored as such action could provide improved 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.

Government Response: NOTED

The ACT Government recognises the benefits of supporting the Council with the development of a strengthened suite of public policy and guidance material for heritage owners, managers and the community regarding the decision-making principles and processes. Such a policy framework could improve information and processes for low-impact modifications to heritage registered properties. While some progress can be made through existing resources, funding to support more substantial policy development needs to be considered through future ACT budgets, alongside other government priorities.

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.

Government Response: NOTED

The ACT Government notes the intent of the Act is to identify and conserve heritage values. However, as the Council implements this responsibility, it does so while working within the planning system. Consideration of all interested values, such as climate change and economic value, are addressed through the planning processes and approvals which the Council is required to work within.

The Government notes the Council's current priority for the review of the guidelines for solar panel installation.

Recommendation 17

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

Government Response: NOTED

The ACT Government recognises the potential benefits from making policy and legislative changes to support improved accessibility to public heritage sites. However, this work will have to be undertaken in close consultation with heritage property owners, managers and the Council to balance competing interests. Progressing this recommendation will be considered against future priorities of the Council and the government.

Recommendation 18 & 19

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

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.

Government Response: NOTED

The ACT Government supports community sector heritage through the ACT Heritage Grants program, including to a number of community organisations such as the National Trust, the Canberra and Region Festival and Canberra Tracks heritage interpretation. The Government sees benefits from continuing to support these partnerships through existing resources, many of which come together through the Festival.

The Government will continue to work with community organisations to progress key heritage initiatives while maintaining a review of grant proposals that considers merit, efficacy, and value for money. However, an expanded grants program would need to be considered through future ACT budgets, alongside other government priorities.

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.

Government Response: NOTED

Strengthening the clarity of legislation to recognise tangible and intangible heritage is a policy issue worthy of further exploration.

The ACT Government recognises and supports the Committee's focus on Aboriginal heritage, but sees advantages in expanding this recognition to a broader range of heritage. The government notes that the existing Act includes Aboriginal tradition which does provide for intangible heritage, however enhancing this provision could be undertaken as part of broader legislative reforms.

Such action will be considered as part of future Heritage Business Plan and will be prioritised reforms.

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.

Government Response: AGREED IN PRINCIPLE

The ACT Government recognises the significant workload and conflicting pressures on the existing RAOs and always endeavours to use to time of the RAOs wisely. The government always seeks to reimburse the RAOs for their engagement and advice to directorates.

The government recognises that several interactions with RAOs are undertaken directly by proponents. The government encourages these proponents to remunerate the RAOs for this engagement.

Recommendation 22

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

Government Response: EXISTING GOVERNMENT POLICY

The ACT Government continues to engage with RAOs and the Aboriginal community to identify opportunities to better support their applications for heritage grants. The Grants program has long sought to support RAOs and broader Aboriginal community's to access grants and will continue to do so.

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.

Government Response: NOTED

The ACT Government is committed to strengthening and supporting the engagement of RAOs in decisions regarding Aboriginal cultural heritage and building their capacity to participate in the recognition, conservation and management.

The ACT Government notes the current Council's priority to hold 'culturally safe' meetings with RAOs. The ACT Government also notes the need for ongoing consultation with the RAOs and Ngunnawal community to consider broader reforms that would strengthen the determination by the Aboriginal community in relation to their cultural heritage.

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.

Government Response: NOTED

The ACT Government is committed to improving information accessibility through the upgrade to the heritage database which will include controls around the management of information pertaining to Aboriginal cultural heritage.

The ACT Government, in accordance with the Act, will be guided by RAOs regarding release of information pertaining to Aboriginal cultural heritage and any restrictions or sensitivities.

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.

Government Response: NOTED

The ACT Government notes the benefits of continuing to work with the Aboriginal community to establish appropriate governance arrangements to strengthen how they determine the management of cultural artefacts under the Act.

In relation to consultants, the ACT Government recognises that situations where artefacts require movement in emergencies are rare and therefore does not see the need for legislative change. In such emergencies ACT Heritage can assist and arrange the appropriate consultation with Aboriginal representatives.

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.

Government Response: NOTED

The ACT Government continues to monitor and support the workloads of the Aboriginal Taskforce to engage with RAOs and Traditional Custodians. However, should more transformation actions be proposed that strengthen determination by the Aboriginal community of Aboriginal cultural heritage recognition, conservation and management, additional resources may need to be considered through future ACT budget processes.

Recommendation 27 & 28

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.

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.

Government Response: NOTED

The ACT Government continues to explore opportunities for improving capacity within ACT Heritage to deliver its support functions and meet community expectations.

The government is progressing planning on resource and strategic workforce planning activities to build on the professional skills and qualifications already within ACT Heritage and to determine the workforce capabilities and capacities needed to accomplish the immediate and long-term business requirements.

Should additional resource needs be identified, this may be considered as part of future ACT budget processes.

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.

Government Response: NOTED

The ACT Government recognises the need to upgrade the heritage database including the heritage register and website components of the system and this commitment is included in the current Parliamentary and Governing Agreement for the 10th Legislative Assembly. The government has provided additional resourcing for ACT Heritage through the provision of the 2023-24 initiative *Implementing the first stage of heritage reforms (\$1,172,000)*, of which a major portion is allocated to undertaking the planning for the upgrade to the heritage database. Earlier initiative funding has also been provided to commence work on this project.

ACT Heritage has completed the discovery phase for the heritage database upgrade. The ACT Government will consider requests for additional resourcing to implement the proposed system upgrades for ACT Heritage as part of the 2024-25 budget process.

Recommendation 30

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

Government Response: NOTED

Digitisation is an efficient and effective way of providing remote access to the cultural assets of the ACT collected and preserved in the ACT Heritage Library. Digitisation provides equity of access to cultural materials by removing mobility, geographical and time-based barriers for all researchers. In line with the ACT Government's Wellbeing domains, access to information and publications about our community builds a sense of identity and belonging for Canberrans.

By digitising an item to preservation standard, attaching an access copy to the library catalogue, and preserving both the original item and the digital surrogate, the material is both preserved and available for ongoing access. Digitisation also enables ongoing access to materials originally created on obsolete and non-supported media, such as film, audio and video cassette and floppy discs.

Further investment in the digitisation of records at the ACT Heritage Library will be considered alongside other priorities, subject to available budget funding.

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.

Government Response: NOTED

The ACT Government recognises the benefits of supporting Council with progressing the development of a strengthened suite of public policy and guidance material for heritage owners, managers and the community regarding the decision-making principles and processes. Such a policy framework could improve information on excavation permits.

While some progress can be made through existing resources, additional enhancements to support more substantial policy development will need to be considered through future ACT budget processing and alongside other government priorities.

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*

Government Response: NOTED

The ACT Government provided funding in the 2023-24 budget to support the review of heritage systems. ACT Heritage is progressing this budget initiative and developing the requirements for upgraded systems that would include improved case management.

However, funding for the implementation of early engagement and systems reforms including case management would need to be considered through a future ACT budget process.

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.

Government Response: NOTED

The ACT Government supports the need for improved engagement and will explore opportunities to the development of a Stakeholder Engagement and Communications Plan for heritage. Such a plan would be developed in collaboration with Council to improve holistic engagement.

Recommendation 34

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

Government Response: NOTED

The ACT Government recognises the benefits that government owned heritage registered facilities provide to the community.

The ACT Government agencies responsible for the management of assets receive funding for asset management. Any additional funding for the maintenance and repair of such facilities would need to be considered through future ACT budgets, alongside other government priorities.

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.

Government Response: NOTED

The ACT Government supports the need to improve public confidence in monitoring and compliance mechanisms relating to heritage places and objects, and is exploring possibilities to improving its policy and capacity.

The development of a monitoring and compliance policy would assist with supporting monitoring and compliance under the Act, however such action would need to be prioritised in accordance with the broader policy needs to support the ACT's heritage.

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.

Government Response: NOTED

The ACT Government notes that development approvals that involve the Council as a referral body are reviewable under the *Planning Act 2023*.

Appealable decisions under the *Heritage Act 2004* were reviewed and amendments made as part of the Heritage Amendment Bill 2013. The Government is committed to improving compliance and enforcement with the Act, including heritage guidelines, through a strengthened policy framework and enhanced capacity.

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.

Government Response: AGREED

The ACT Government sees benefit with the Inquiry's report informing the heritage reform program. As such, the government will consider the Inquiry's report during the development of future ACT Heritage Business Plans. These Business Plans will focus on implementing recommendations from both the Inquiry and the ACT Heritage Jurisdictional Review as resources allow.

