



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ENVIRONMENT, CLIMATE CHANGE AND BIODIVERSITY
Dr Marisa Paterson MLA (Chair), Ms Jo Clay MLA (Deputy Chair), Mr Ed Cocks MLA

Exhibit

Inquiry into ACT's heritage arrangements

Exhibit Number: 011

Date Authorised for Publication: 23 May 2023



Environmental Defenders Office

Inquiry into the ACT's heritage arrangements

Opening statement by Melanie Montalban, Managing Lawyer (ACT), Environmental Defenders Office Ltd

1. My name is Melanie Montalban. I am the Managing Lawyer of the ACT Practice of the Environmental Defenders Office. I am appearing at the hearing on 16 May 2023 along with my colleague Frances Bradshaw, who is a Senior Solicitor in the ACT Practice. We thank the Standing Committee for the opportunity to participate in the hearing for this Inquiry into the ACT's Heritage Arrangements.
2. The Environmental Defenders Office ('EDO') is a community legal centre that specialises in public interest environmental law. The ACT Practice falls within EDO's Healthy Environment and Justice Program ('HEJ Program'). The HEJ Program is founded on the principles of environmental justice and the human right to a clean, healthy and sustainable environment.
3. On 30 March 2023, EDO provided a submission to the Standing Committee in relation to this Inquiry. Our submission focuses on the provisions of the *Heritage Act 2004* (ACT) (**Heritage Act**) to the extent that they relate to First Nations cultural heritage.
4. Our submission identifies opportunities for reform of the Heritage Act that we consider may improve protection for First Nations cultural heritage in the ACT.
5. In identifying these opportunities, it is important to acknowledge that the EDO is not a First Nations organisation and therefore cannot speak on behalf of First Nations Peoples. Further, due to capacity and funding constraints, we have not consulted with First Nations Peoples in relation to our recommendations.
6. Consequently, the opportunities that we have identified for the ACT Government's consideration are suggestions that are consistent with human rights law, international best practice, and the ACT Government's *ACT Aboriginal and Torres Strait Islander Agreement 2019-2028*.
7. We encourage the ACT Government to ensure that any reforms to the Heritage Act that relate to First Nations cultural heritage are developed in consultation with First Nations Peoples, and that any such consultation is accessible and culturally appropriate. Consistent with recommendations 5 and 8 of our submission, First Nations Peoples should also be compensated for their time, energy and expertise when consulted during all law reform inquiries, including the present Inquiry.
8. Our submission makes 13 recommendations which broadly address the following matters:
 - a. the extent to which the Heritage Act protects intangible cultural heritage;

T +61 2 6230 6627

E canberra@edo.org.au

W edo.org.au

PO Box 1616, Canberra ACT 2601

ABN: 72002 880 864

- b. the extent to which the ACT Heritage Council's membership includes First Nations Peoples;
 - c. the extent to which the process for declaring entities as representative Aboriginal organisations (**RAOs**) and provisions regarding consultation with RAOs are consistent with the principles of self-determination and free, prior and informed consent;
 - d. the process for negotiating and consulting with First Nations Peoples in relation to, and the enforcement of, heritage agreements;
 - e. the lack of accessible civil enforcement mechanisms under the Heritage Act for non-compliance with the Act; and
 - f. the ability of people to seek review of registration and cancellation decisions in circumstances where they did not submit a comment within the public consultation period.
9. Although we ask the Standing Committee to have regard to all our recommendations, we draw the Standing Committee's attention to the following three recommendations in particular:
- a. **Recommendation 2:** The ACT Government should ensure that more than one First Nations person is elected to the ACT Heritage Council to represent 'the Aboriginal community'. Alternatively, consider amending the *Heritage Act 2004* to include provisions for the creation of a specialised body to consider, advise and decide on matters involving First Nations cultural heritage.
 - b. **Recommendation 3:** Amend the *Heritage Act 2004* to include clear processes that are consistent with the principle of self-determination for declaring entities as representative Aboriginal organisations.
 - c. **Recommendation 7:** The ACT Government should take steps to ensure that representative Aboriginal organisations have more agency in decisions that relate to their cultural heritage. This may include, for example, including provisions in the *Heritage Act 2004* that allow representative Aboriginal organisations to explicitly give, or withhold, their consent to proposed decisions under the Act.
10. I am happy to elaborate on any of our recommendations during our appearance at the hearing of this Inquiry.



Melanie Montalban
Managing Lawyer, ACT
Environmental Defenders Office Ltd

15 May 2023