



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

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

## Submission Cover Sheet

Inquiry into ACT's heritage arrangements

**Submission Number: 025**

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The Secretary  
Standing Committee on Environment, Climate Change and Biodiversity  
ACT Legislative Assembly  
GPO Box 1020  
CANBERRA ACT 2601



Via Email: <LACommitteeECCB@parliament.act.gov.au>

**Re: Inquiry into the ACT's Heritage Arrangements—Submission by the Australasian Society for Historical Archaeology (ASHA)**

Dear Secretary,

Thank you for inviting the Australasian Society for Historical Archaeology (ASHA) to make a submission to the ACT Legislative Assembly's Standing Committee to its *Inquiry into the ACT's heritage arrangements*.

This submission is made on behalf of the members of the ASHA. Founded in 1970 to promote the study of historical archaeology in Australia, in 1991 the Society expanded to include New Zealand and the Asia-Pacific region, changing its name to the Australasian Society for Historical Archaeology. ASHA is an incorporated society run by members. Membership is open to all those who are interested in historical archaeology – academics, professional practitioners, students, and amateurs alike.

This submission responds to the individual Terms of Reference (TOR) for the Inquiry available on the Legislative Assembly website which are:

- a. the effectiveness and adequacy of the operations under the Heritage Act 2004 including First Nations heritage, and approvals provided under the Act;
- b. the effectiveness of the structure, administration, and operation of the ACT Heritage Council, including the adequacy of governance arrangements between the ACT Heritage Council and ACT Heritage Unit;
- c. the adequacy of resourcing for the ACT Heritage Unit;
- d. the operation of heritage legislation in other Australian jurisdictions;
- e. how the ACT's heritage arrangements might be improved to guarantee the ACT Heritage Council achieves its statutory functions; and
- f. any other related matters with respect to the ACT's heritage arrangements.

I trust this submission will be of interest to the Standing Committee. ASHA would be available to discuss any of our comments in more detail, if that would be of assistance.

Yours faithfully,

Anita Yousif  
**ASHA President**

## **ASHA's Submission to the Inquiry into the ACT's Heritage Arrangements**

### **a. the effectiveness and adequacy of the operations under the Heritage Act 2004 including First Nations heritage, and approvals provided under the Act**

The ACT *Heritage Act* 2004, includes a number of objectives including the recognition, registration and conservation of places and objects that have natural heritage significance, cultural heritage significance and of Aboriginal places and objects. These objectives are generally appropriate, have similarities to other legislation such as the Federal EPBC Act, and should be retained.

As noted above, ASHA has primary interest and expertise in Historical Archaeology and therefore will not be commenting in detail on matters related to Aboriginal Cultural Heritage issues. The ACT Heritage Act would benefit from updated terminology such as 'First Nations' heritage and 'Traditional Custodians'. ASHA considers that management of First Nations Cultural Heritage is best achieved by having appropriate experts and custodians involved. We also note that archaeology and archaeological evidence is a continuum from First Nations people and occupations into the era of Interaction with the Colonisers, and continuing into the historic period.

ASHA understands that approvals under the ACT Heritage Act have been delayed over recent years including for Statement of Heritage Effects and Conservation Management Plan documents, both of which may be approved under the Act (s76(2)(iv) and (s76(2)(vii)). 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.

The process and approval pathway to register a heritage place is lengthy and lacks rigor, despite the existence of the *Heritage Assessment Policy* (2018). Use of thematic histories may assist to provide a more consistent basis for heritage assessments. Commissioning and employment of an Archaeological Zoning Plan (AZP) for portions of the ACT would assist in recognition of specifically archaeological potential within those areas.

Additional comments regarding the management of Historical Archaeology and the Permit process follow where relevant below and are also included in the response to TOR (at the end of this submission).

**b. the effectiveness of the structure, administration, and operation of the ACT Heritage Council, including the adequacy of governance arrangements between the ACT Heritage Council and ACT Heritage Unit**

There should be a range of relevant, expert, professional heritage representation on an independent, expert Heritage Council (HC) and within the Heritage Unit (HU). This should include professional Historical Archaeology representation on the HC and an expert within the HU staff. It should not be optional expertise, but mandatory representation. The Head of the Heritage Unit needs to have professional expertise in heritage which should be a requirement of that position.

The aim should be to have an independent HC able to provide heritage advice. Currently the Act refers to member of the HC having expertise from a range of skill sets (s17). There is a requirement for six (6) people appointed by the Minister as experts across particular fields (s17 (1) (d) and s17 (4)). Eleven areas of expertise are listed.

ASHA recommends that Heritage Council appointees be clearly identified against a stated primary skill set. ASHA notes that it may be the case that a secondary skill set might also bring more expertise to the Council. For example, someone familiar with the history of the ACT might also have knowledge of museum practice or archaeology. Those appointed as the 'Public' members might also bring certain skills with them. Clear identification of skills would assist the Heritage Council and the community to be fully aware of the expertise available and identify gaps in expertise that may be addressed through targeted recruitment.

Currently the Act also appoints two positions on the HC from the Conservator of Flora and Fauna and the Chief Planning Executive. If these ex-officio positions are continued to provide advice on the views of other ACT Departments, they certainly should not be voting positions. ASHA notes that in NSW many of the former ex-officio positions on the NSW Heritage Council were removed when the NSW Act was amended.

ASHA recommends that the legislation is amended to say that the majority of the members of the HC (at least two thirds) must have demonstrable heritage expertise from a reasonable range of skills.

ASHA suggests it may be appropriate for the key secretariat and business functions that support the ACT HC to also be identified in the ACT Heritage Act.

It is desirable that the ACT Heritage Act provides increased clarity of the legislative basis, role and

responsibility of the Heritage Council with more support and regular meetings (as happens in other Australian jurisdictions). Review of the website indicates that there are a number of established policies and procedures with various 'required documents' not all of which are mandated by the current legislation. The links between such documents, good heritage practice, and outcomes required by the legislation, should be made clearer.

### **c. the adequacy of resourcing for the ACT Heritage Unit**

Currently, the ACT HU operates in a resource constrained environment. It is desirable that the overall number of staff is increased and to ensure that those employed have a range of expertise in heritage and archaeological conservation, management, policy development and environmental sustainability. 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.

ASHA understands that one current criticism of the ACT HU is that it can be process driven, lacking flexibility, using outdated thematic and other typologies, and lacking strategic drive or direction.

The ACT HU needs to be able to address heritage beyond the only currently listed items. There should be capacity to be proactive rather than reactive. Consideration should be given to a "Gap Analysis" of the existing Heritage Register or future study projects which might identify new, significant places, provide a comparative context to improve assessments, or aid conservation work. If staff lack capacity to undertake strategic work, consideration could be given to completing some of this work through future consultancies.

The HU needs to be consistently professional in assisting and advising on Historical Archaeology matters. 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.

The Historical Archaeology Excavation Permit system, currently managed by the HC, should be easily accessible, professionally appropriate, ethical and comparable to that in other jurisdictions. There are currently no fact sheets available for download that specifically address questions such as What Is Archaeology?, Why Is Archaeology Important? How does the Archaeological Permit Process Work?

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.

An important initiative would be an ongoing communication program informing the community of HU and HC activities, projects, programs and opportunities that includes Historical Archaeology. Consideration should be given to (jointly?) publishing selected/model projects, and/or Canberra and Museum and Art Gallery exhibitions, to raise awareness and provide greater accessibility to otherwise 'grey literature' including Historical Archaeology reports. Two very successful programs currently operate in NSW based on the contents of Heritage NSW's library and another based at Sydney University.

There should be a positive messaging program to reduce adverse impacts on archaeological places, or potential such places, such as related to unfortunate site disturbance activities (eg: bottle collecting, metal-detecting and similar). Advice on these adverse activities should be included in the ACT Heritage Guidelines.

Also important would be an internal annual communication program across other areas of the ACT Government, particularly within the Environment, Planning and Sustainable Development Directorate, and Parks and Conservation, that need to be aware (or more aware) of their responsibilities regarding heritage, especially Historical Archaeology places. Heritage NSW has run annual events for other Government departments for many years, allowing communication about requirements or best practice, with collaboration and feedback from other agencies and their heritage officers.

The free ACT Heritage Adviser service, when the need is identified, should have access to Historical Archaeology advice. The Heritage Guidelines need to be reviewed and appropriately supplemented with Historical Archaeology information to ensure this area of heritage is more adequately covered.

ASHA recommends that resourcing for the HC and HU be significantly increased to address the matters noted above but also to allow for proactive work.

#### **d. the operation of heritage legislation in other Australian jurisdictions**

Federal and state governments in Australia periodically review and amend their legislation. The current Inquiry is therefore an important and welcome action being taken by the ACT Government.

It has been noted above that other jurisdictions address and articulate the role of the Heritage Council and/or Heritage Agency slightly differently from the ACT.

The ACT could consider a similar governance structure to Victoria, where the Heritage Council is an independent statutory body, and 'Heritage Victoria' administers the Heritage Act. These two bodies maintain their independence to allow the Heritage Council's decision making and quasi-judicial roles.

In NSW the Heritage Council has 'delegated' some functions to staff within Heritage NSW in order that day to day processing of routine approvals can be more efficient. Key matters of strong Public Interest and Major Projects which would materially affect Listed places, are usually considered by the Heritage Council rather than under delegation. The ACT could consider a similar arrangement.

An important difference between the ACT and elsewhere, is that there is no management of

heritage of local rather than Territory level significance. This misses an important opportunity for protection and management of significant places and sites valued by the local community.

Heritage places are not, at present, assessable for the Heritage Register at both a local and ACT significance level as the present interpretation of the Heritage Act unfortunately does not allow for that lower, local significance place to be formally recognised.

ASHA recommends the ACT Heritage Act is updated to include the level of Local significance in-line with other jurisdictions, such as NSW or Victoria (which also have Local Councils to assist in managing this tier of significant place).

In the case of NSW, the State government heritage agency (Heritage NSW) manages the Historical Archaeology of both State and Local significance through the current Excavation Permit System. Conditions of approval for issued Permits usually require outputs such as Final reports or Interpretation at significant sites that are excavated in order to provide an outcome for the community. NSW has Standard Conditions for its Excavation Permits.

**e. how the ACT's heritage arrangements might be improved to guarantee the ACT Heritage Council achieves its statutory functions**

The most effective heritage management usually requires Government and political support for the benefits of conserving cultural (historic and Aboriginal) and environmental (natural and ecological) significant places. Strong support usually leads to better resourcing which in turn produces better quality outcomes.

ASHA recommends that as part of the current Inquiry an effort should be made to examine at least some of the other Australian jurisdictions and to assess the ACT Heritage Act against other states and the National Heritage Strategy. There is always a need to keep up with best practice elsewhere.

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. See those of other Australian jurisdictions for a better standard of publicly available material on places assessed and Registered, and comparative searching on/across place descriptors.

The ACT Heritage Library utility for heritage, including HA, comparative assessments and research could be improved with links to the ACT Archive. 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.

**f. any other related matters with respect to the ACT's heritage arrangements.**

Review of the ACT Heritage Register by ASHA found there were relatively few places listed for Historical Archaeology. Hence the "Gap Analysis" project suggested earlier. Nevertheless, it is clear that some ACT Heritage Places will possess a Historical Archaeology component and this may contribute to the significance of the place.

Are heritage places with an Historical Archaeology component/object nominations encouraged? The Heritage Guidelines should be used to make this apparent against the Criteria (especially Criterion (c)). Currently the way Criterion (c) is described it refers to *'potential to yield information'* but also to the need for *'some form of evidence of real, proven or established potential, such as might derive from expert testing or professional examination'*. (ACT Heritage Assessment Policy March 2018, p.18)

A factor in granting Registration or an Excavation Application (Permit) under the Act will be the place's identified significance. What triggers this assessment, when is it important and how is it done for Historical Archaeology components in the ACT? The Sections of the Act dealing with archaeology Applications (Permits) are unclear, referring to *'work at a near a registered place or object'* (Part 10B, s61E). This implies Registration is necessary before a Permit is required. NSW has a very different approach with the 'relics' provisions protecting all significant Historical Archaeology, whether registered or not. NSW and Victoria also have a range of Historical Archaeology specific Guidance documents. The ACT does have a guideline about Reporting which sets out a number of key documents at different stages (*Cultural Heritage Reporting Policy*, 2015).

Given that the HC has been dissolved and an Interim Council is yet to be appointed, it is unclear to ASHA how the submitted Excavation Applications/Permits are assessed for suitability and 'justification' particularly in regard to the matters set out in s61E (2) (iv) (v) and s61F of the Act.

The overall Excavation Application/Permit process, including, potentially critical, community engagement, requires clarification, development of more coherent policy, and publication either as a new or expanded document or in the ACT Heritage Guidelines or as Fact Sheets.

Consideration could be given to formation of an Advisory Panel or Expert Working Group if that would be helpful to assist the process.