



ACT Sunsetting Legislation Team
Department of Infrastructure, Transport,
Regional Development and Communications

28 February 2022

NATIONAL MEMORIALS, PUBLIC PLACES AND TERRITORIAL DIVISIONS ORDINANCE

This submission is in response to the advertisement in The Canberra Times of 19 February 2022 requesting comments on an Exposure Draft for a new ACT National Memorials Ordinance. We wish to register our disappointment in the extremely tight deadline given to the public in which to comment. Deadlines such as this severely limit the capacity of community organisations, such as ours, to be able to comment in depth on what might be quite significant and complex changes.

The Lake Burley Griffing Guardians has demonstrated a strong interest in the design and location of public memorials and public places around the Lake over a number of years and we would have expected to be involved in consultations over the new Draft Ordinance.

We were informed by a member of the Department of Infrastructure that no significant changes were being made in this Exposure Draft. They said that in preparing this Draft they had focused on updating the language and making the changes required to take account of the ACT being granted self-government. In comparing the Exposure Draft with the current National Memorials Ordinance it appears that this is the approach which has been adopted in general. This seems to represent the first phase of a process that needs to be clarified. It appears that any more substantive changes to the Ordinance will be made following 1 April 2022.

The Guardians would like to be consulted on any significant proposed changes to this updated Ordinance.

We note that the Government's April 2019 response to the Parliamentary Committee report called for "a new mechanism, membership for two ACT residents, public participation, expert advice, transparency, policy framework and Parliamentary accountability: or at least a strategy for transition to a new model, including a replacement statute".

The Exposure Draft Ordinance 2022 in its current form does not adequately address the need for a new mechanism, public participation, expert advice, transparency, policy framework and Parliamentary accountability or a strategy to a new model, including a replacement statute. Perhaps these will be addressed in the next phase.

As the Walter Burley Griffin Society has outlined in its submission the mechanism outlined in the Exposure Draft seems to be an inadequate mechanism for handling the growing workload and conflicting demands in a rapidly growing city. Will this be addressed in the next phase of updating this Ordinance and if so, what is the timetable for this revision of the Ordinance?

The granting of self-government to the ACT has led to a dual planning system which has led to a much more complicated dual planning system that is producing poor outcomes.

Expertise: The Exposure Draft Committee structure does not ensure that it has the range of expertise available to ensure well-informed decision making. The Committee comprises five politicians, the Secretary, a person appointed by the Minister, and two ACT residents, all of whom may or may not have relevant expertise. This could be strengthened by requiring that the person appointed by the Minister and at least one of the ACT residents have relevant expertise. Consideration should also be given to the creation of an advisory committee of qualified people.

Under the current Ordinance the Secretary of the Department is a member of the Committee. In the Exposure Draft the Committee includes provision for “the Secretary” but it is not clear if this is the Secretary of the Department or someone else. This needs to be clarified.

Period of Office Members of Committee: We noted that under the current Ordinance there is no time limit on the terms of Committee members appointed by the Minister or Governor General. Under the Exposure draft those appointed by the Minister or Governor General have a term of three years. We support this change.

Committee Quorum: We note that three members are required for a quorum. This seems to be a very small number for a quorum considering the potentially controversial nature of many decisions. We suggest that the consideration be given to expanding the quorum to five members.

Ministerial determinations relating to nomenclature of divisions of the Territory or the location or character of national memorials in the Territory: Under the existing Ordinance these determinations must be published in the Gazette. If there is an objection to this determination the Minister must refer it to the Committee. The Committee considers the objection and then makes a determination which also must be published in the Gazette. In the Exposure Draft it appears that Ministerial determinations do not have to be published in the Gazette and nor do the Committee determinations in relation to any objections. If this is the case why has this requirement to publish determinations in the Gazette been dropped? Publishing determinations in the Gazette appears to be important for transparency. Please clarify.

Administration. The Ordinance is to be administered by the NCA which will also provide Secretariat support to the Committee. We question whether the NCA has the relevant expertise and staffing resources to effectively carry out this role.

The Government needs to recognise the important role of the NMC and ensure that it is strongly supported and expertly managed to ensure that Canberra can continue to develop into a great Capital.

This Exposure Draft does not address the concerns raised in the Government's April 2019 response to the Parliamentary Committee Report. More work is required to address those concerns particularly the development of a strategy for transition to a new model, including a replacement statute.

This submission can be made public.

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