



## **Australian Government**

### Australian Government Response to the Joint Standing Committee on the National Capital and External Territories report:

Etched in Stone?

Inquiry into the Administration of the *National Memorials  
Ordinance 1928*

APRIL 2019

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**AUSTRALIAN GOVERNMENT RESPONSE TO THE  
REPORT OF THE JOINT STANDING COMMITTEE ON NATIONAL CAPITAL  
AND EXTERNAL TERRITORIES  
INQUIRY INTO THE ADMINISTRATION OF THE  
*NATIONAL MEMORIALS ORDINANCE 1928***

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## **Preamble**

The Australian Government (the Government) welcomes the opportunity to respond to the report of the Joint Standing Committee on the National Capital and the External Territories' (JSCNCET) *Inquiry into the Administration of the National Memorials Ordinance 1928* (the Report), published in November 2011. The Government regrets the considerable delay in tabling this Response.

The Inquiry came about due to concerns that the *National Memorials Ordinance 1928* was no longer achieving what it was designed to do. The Inquiry examined the model for assessing and approving national memorials, including the decision making processes by the Canberra National Memorials Committee. The Report's 11 recommendations focus on improving governance and procedures for proposing new national memorials or monuments and the transition to a new decision-making model for future proposals. The recommendations also consider appropriate levels of parliamentary oversight and public participation in the decision making processes for the development of national memorials or monuments.

### *About the Ordinance*

The *National Memorials Ordinance 1928* (the Ordinance) provides for 'the location and character of national memorials and the nomenclature of divisions of public places in the Territory' as approved by the Canberra National Memorials Committee (the Committee).

### *Canberra National Memorials Committee*

The Committee was created in 1927 in response to a perceived need for high-level parliamentary consideration of the nomenclature of Canberra. In 1928, the Committee's role was extended to consideration of memorials and formalised in the Ordinance.

The Ordinance establishes the Committee. The members are:

- the Prime Minister;
- the Minister with responsibility for Territories;
- the Leader of the Government in the Senate;
- the Leader of the Opposition in the House of Representatives;
- the Leader of the Opposition in the Senate;

- the Secretary of the Department;
- an officer appointed by the Minister; and
- two residents of the Australian Capital Territory.

Historically, there have been issues with the Committee achieving a quorum with its high-level membership. This is compounded by the two ACT resident positions on the Committee being vacant since 1953.

#### *Government Responsibility for National Memorials*

The Minister for Territories is responsible for the Ordinance, which the Department of Infrastructure, Regional Development and Cities (the Department) administers on behalf of the Minister.

The National Capital Authority (NCA), established under the *Australian Capital Territory (Planning and Land Management) Act 1988*, is responsible for ensuring that Canberra and the Territory are planned and developed in accordance with their national significance. This includes maintaining public commemorative sites such as memorials and monuments.

#### *Heritage*

National memorials and monuments are by definition located on land owned by the Government and are therefore subject to the provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Department of the Environment and Energy administers the EPBC Act.

The EPBC Act provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places that are defined in the EPBC Act as matters of national environmental significance.

#### *The Government Response*

The Government considers administrative efficiency is best achieved by developing a strategy to provide a policy framework for the future management of national memorials, embedded in legislation through inclusion in the National Capital Plan.

The strategy will provide clarity, structure and transparency in the memorials decision-making process, as well as increasing public participation and providing for expert advice. The Government will take account of JSCNCET's recommendations in developing the strategy. It will also take the recommendations into account in developing an administrative framework for implementing the strategy, such as the desirability of providing for appropriate parliamentary scrutiny. In doing so, it will consult closely with the JSCNCET, NCA and other key stakeholders. This process will include consideration of whether to repeal, amend or retain the existing Ordinance.

## Recommendation 1

The JSCNCET recommends to the Minister for Regional Australia, Regional Development and Local Government that, rather than attempting to amend the *National Memorials Ordinance 1928*, the Ordinance be repealed and replaced with a new Commemorative Works Act, as proposed in chapter 4 of this report.

### Agreed in-part

The Government agrees that a new strategic framework is required for the management of national memorials. It does not agree that this requires new legislation, and instead proposes to develop a strategy that provides a policy framework for the future management of national memorials, and to give the strategy appropriate formal legislative status by incorporating it into the National Capital Plan. The National Capital Plan is established under the *Australian Capital Territory (Planning and Land Management) Act 1988*.

The strategy will at least supplement and may entirely replace the NCA's existing 'Guidelines for Commemorative Works in the National Capital', which have no formal status and as such lack full transparency. The NCA will review these detailed guidelines in the context of this government response. The strategy will also address nomenclature of major features on National Land in Canberra. It will apply to the entire ACT, thereby ensuring that any memorials with a national commemorative intent built on Territory Land that is managed by the ACT Government are subject to the same standards and expectations.

The Government will also review the Ordinance, which will co-exist with the strategy.

## Recommendation 2

The JSCNCET recommends to the Minister for Regional Australia, Regional Development and Local Government that, while new systems are put in place, residents of the Australian Capital Territory be immediately appointed to the Canberra National Memorials Committee, as required under the *National Memorials Ordinance 1928*; and that these persons have acknowledged expertise in heritage matters, with one to be a member of the ACT Heritage Council nominated by the ACT Chief Minister.

### Agreed in-principle

The Government will take account of the JSCNCET recommendations in developing an appropriate administrative framework for implementing the strategy. This will include addressing the membership and operations of the Committee as part of the review of the Ordinance, the desirability of provision for appropriate parliamentary scrutiny and access to relevant expertise. In doing so, it will consult closely with JSCNCET, the NCA and, as necessary, the Australian Capital Territory Government.

### **Recommendation 3**

The JSCNCET recommends that, as part of the decision-making process for National Memorials, each proposal for a National Memorial be required to undergo heritage assessment, prior to final approval, including the creation of site specific Conservation Management Plans and Heritage Impact Statements.

#### **Agreed in-part**

The Government proposes including heritage assessment criteria in the strategy. These criteria will contain provisions for heritage assessments, prior to final approval of memorials and national monuments.

Additionally, national memorials and monuments are, by definition, located on land owned by the Government and are therefore subject to the provisions of the *Environment Protection and Biodiversity Act 1999* (EPBC Act). Under the provisions of the EPBC Act, actions that will or are likely to have a significant impact on National or Commonwealth Heritage values of listed places or on the environment on Commonwealth land are required to be referred to the Department of the Environment and Energy for approval.

The Government does not consider that Conservation Management Plans are required for memorial proposals within a heritage listed place, as heritage values have already been determined through the formal heritage listing process.

### **Recommendation 4**

The JSCNCET recommends that the National Capital Authority's *Commitment to Community Engagement* be applied to the decision-making process for National Memorials, with the NCA to report publicly on the public consultation process undertaken with regard to each National Memorial proposal.

#### **Agreed**

The Government notes that the NCA has been reporting publicly on the public consultation processes undertaken with regard to each national memorial and monument proposal since 2011.

The Government notes that the NCA has introduced a number of reforms since the review of the NCA's *Commitment to Community Engagement* in 2011 to increase the openness and transparency of its operations. The NCA publishes the minutes and outcomes of its public consultations on its website and provides several other mechanisms for interested individuals and stakeholder groups to engage with the NCA on national memorial proposals. The *Australian Capital Territory (Planning and Land Management) Act 1988* obliges the NCA to consult widely in preparing the National Capital Plan.

## Recommendation 5

The JSCNCET recommends that proponents of memorials provide resources and funds to conduct public consultation processes as part of the assessment and approval process for new National Memorials.

### Noted

The Government is committed to ensuring public consultation as part of the part of the assessment and approval process for new national memorial proposals. Appropriate mechanisms for considering a proponent's capacity to pay for public consultation processes will be considered as part of the process of developing the strategy.

## Recommendation 6

The JSCNCET, recommends that the National Capital Authority review its *Commitment to Community Engagement* to reflect the principles of deliberative democracy, and that it design and report upon public consultation processes for each National Memorial in accordance with these principles.

### Agreed

The Government is committed to effective nationwide public consultation and will take full account of this in developing an appropriate administrative framework for implementing the strategy. As noted in the response to Recommendation 4, the NCA has reported on public consultation processes for each national memorial proposal considered since 2011. The NCA has introduced a number of reforms to increase the openness and transparency of its operations.

The NCA's *Commitment to Community Engagement* is intended to be reviewed and updated every two years, or whenever a material change to the planning arrangements occurs. The current *Commitment to Community Engagement* was released in August 2015 with a further review currently underway.

## Recommendation 7

The JSCNCET recommends that the proposed Memorials Master Plan incorporate provisions for establishing a wider range of subjects for commemoration with a view to funding them through a combination of private and government subscription.

### Agreed in-principle

The Government agrees that there should be a mechanism with the scope to commemorate the range of values, aspirations, concepts, liberties and achievements that reflect the diversity of Australian history and culture.

The strategy will help ensure that future decisions for the management of memorials maintain appropriate standards that do not erode the national significance of existing memorials and monuments. This will assist the decision maker and proponent by providing greater transparency and certainty in memorial development.

Appropriate mechanisms to support requests for memorials, including funding from private and government sources, will be considered as part of the process of developing the strategy.

## Recommendation 8

The JSCNCET recommends to the Australian Government that the Government consider the ongoing funding of a national commemoration programme, with a particular focus on memorials that are unlikely to be built without government support.

### Noted

The Government considers it appropriate that funding decisions for national memorials be made on case-by-case basis to ensure that they are made in accordance with budget settings and Government priorities.

Funding considerations will form a key component of the strategy.

## Recommendation 9

The JSCNCET recommends that the *National Memorials Ordinance 1928* be repealed and replaced with an Australian Commemorative Works Act, based on the United States model. This Act would provide for a two-pass assessment process for National Memorials, the first pass focused on commemorative intent, the second pass on character and location; and that:

- At the first pass, a motion be introduced to Parliament to approve the commemorative intent of a proposed National Memorial.
- Following the introduction of the motion, the proposal be referred to the JSCNCET for consideration and report, based on the following approvals:
  - the memorial proposal be referred to the National Memorials Advisory Committee—a Committee made up of history and heritage experts, with one ACT Government representative, chaired by the National Capital Authority—to ensure that it complied with the *Criteria for Commemorative Works in the National Capital*
  - the National Capital Authority assess the proponent’s budget for the design, construction and maintenance of the proposed National Memorial, and capacity to finance the proposal.
- Once approved by the National Memorials Advisory Committee, and with financial arrangements certified by the National Capital Authority, the JSCNCET would report upon the proposal. The motion would proceed at the pleasure of Parliament, and if passed, the commemorative intent of the proposed National Memorial would be approved.
- Following passage of the motion establishing the commemorative intent of the proposed National Memorial, responsibility for identifying a location for the memorial and initiating a process for its design would pass to the National Capital Authority. This would require memorial proponents to develop a design completion brief and run a public design competition (if necessary); and undertake, in conjunction with the National Capital Authority, the following tasks:
  - Identify possible locations

- Conduct mandatory public consultations
- Seek independent expert advice
- Seek planning advice from relevant authorities and, if required, advice from relevant government agencies
- Have assessments made under the *Environment Protection and Biodiversity Conservation Act 1999*
- Develop draft conservation management plans and/or heritage impact statements for proposed sites, if required
- Develop the budget and business plan for construction, maintenance and associated infrastructure costs.
- At the second pass, assessing design and location, the proposal would be referred to the Joint Standing Committee on the National Capital and External Territories for consideration and approval on behalf of the Parliament. If required, the Committee would be able to invite submissions from the public and undertake public hearings.
- Second pass approval by the JSCNCET would provide the final approval for the proposed National Memorial.
- Commemorative works, as defined by the Act, could be initiated by the Commonwealth or ACT Governments.

### **Agreed in-part**

The Government agrees that a new mechanism for assessing and approving national memorials is required. As outlined in the response to Recommendation 1, the Government does not agree that new legislation is required to improve the clarity and transparency of the memorials approvals process but agrees that a new mechanism for assessing national memorials should be developed and implemented in consultation with stakeholders.

## **Recommendation 10**

The JSCNCET further recommends that the proposed Commemorative Works Act:

- Define a ‘commemorative work’, encompassing both National Memorials and National Monuments as currently defined.
- Establish a National Memorials Advisory Committee, consisting of recognised experts in a range of disciplines, including history, heritage, architecture and planning; representatives of veterans, the services and relevant Commonwealth Departments; representatives of organisations with a strong focus on Australian history and culture at a national level; one representative of the ACT Government, appointed on the recommendation of the ACT Chief Minister; and chaired by a representative of the National Capital Authority. Membership to vary depending on the nature of the proposed National Memorial.
- Include the *Criteria for Commemorative Works in the National Capital* as a schedule to the Act.
- Include a Memorials Master Plan, including a map of existing memorials and potential sites for new memorials in accordance with the Criteria, as a schedule to the Act.

- Require the National Capital Authority to maintain a register (published on a specific National Memorials website) of all National Memorial proposals, including their current status, and all relevant decisions and approvals, along with all supporting documentation, including:
  - Independent expert advice
  - Public submission
  - Reports of public consultations
- Define responsibilities of proponents in meeting design, construction and maintenance costs, including providing ten per cent of the overall costs towards ongoing maintenance of the new National Memorial.
- Prohibit the appearance of donor names or names of relatives on or near National Memorials and National Monuments, except where the specific object of the commemoration—its commemorative intent—is individuals, families or groups that have been found to be worthy subjects of commemoration.
- Exclude minor commemorative works, such as plaques or individual trees outside the Parliamentary Zone, from its operation.

### **Agreed in-part**

The Government notes the importance of providing clear, consistent information for decision-makers, proponents of national memorials and monuments and members of the community. As noted in the response to other recommendations, it will consider the views of the JSCNCET in development and implementation of the strategy and of appropriate administrative arrangements for their implementation.

This will include provision for: appropriate parliamentary scrutiny; public consultation; terminology for memorials arrangements; access to expert advice and guidance on matters to be considered in the assessment of memorials proposals by decision-makers; the use of guidelines and criteria in the decision-making process; arrangements for registering memorials; defining responsibilities of relevant parties; parameters for any display of names on memorials; and arrangements for handling minor commemorative works.

## **Recommendation 11**

The JSCNCET recommends to the Minister for Regional Australia, Regional Development and Local Government that the current approved National Memorial proposals stand for the life of their current site reservations, but that these site reservations not be extended beyond their current terms.

### **Agreed**

The Government agrees that changes to the administrative arrangements for assessing and approving proposals for national memorials should apply only to new memorial or monument proposals.

How any revised arrangements will apply to new and existing memorials and the effect of the arrangements on existing memorials will be considered in developing the strategy in consultation with stakeholders.

Any current site reservations will remain in place until their expiration. Should construction fail to occur during the site reservation timeframe the proponents are able to submit a proposal for the memorial or monument again. The proposal would be considered under the administrative arrangements in place at the time of the new submission.

## Appendix A: Acronyms and Abbreviations

ACT	Australian Capital Territory
Committee	Canberra National Memorials Committee
Criteria	<i>Criteria for Commemorative Works in the National Capital</i>
Strategy	Policy framework for management of national memorials
EPBC Act	<i>Environmental Protection and Biodiversity Conservation Act 1999</i>
JSCNCET	Joint Standing Committee on the National Capital and External Territories
Minister	Minister responsible for Territories
NCA	National Capital Authority
Ordinance	<i>National Memorials Ordinance 1928</i>
Report	Report on the <i>Inquiry into the Administration of the National Memorials Ordinance 1928</i>