

Problems with the Ordinance

Membership of the CNMC

- 2.1 Under the provisions of the Ordinance, the membership of the CNMC consists of:
- The Prime Minister
 - The Minister (currently the Minister for Regional Australia, Regional Development and Local Government)
 - The Leader of the Government in the Senate
 - The Leader of the Opposition in the Senate
 - The Leader of the Opposition in the House of Representatives
 - The Secretary of the Department (currently the Secretary of the Department of Regional Australia, Regional Development and Local Government)
 - An officer appointed by the Minister (currently the Secretary of the Department of Veterans Affairs; previously the Chief Executive of the National Capital Authority)
 - Two other members to be appointed by the Governor-General from amongst persons who are residents of the Australian Capital Territory (currently vacant, and probably never appointed).

Criticisms of current membership structure

- 2.2 There are two main criticisms of the CNMC in its current format. Firstly, the reliance upon parliamentary members with high level responsibilities

has meant that much of the work of the Committee has been delegated to officials. In conjunction with a lack of transparency and accountability in the way the CNMC has conducted its business, this has led to perceptions that the proceedings of the Committee have been dominated by non-elected officials, particularly the NCA. On evidence presented to the Committee, a number of recent decisions of the CNMC have been taken with a bare quorum, in the absence of most of the parliamentary members, and with officials forming the majority of those in attendance.¹

- 2.3 Secondly, despite almost universal agreement that ACT residents should be represented on the CNMC, as per the Ordinance, it would appear that such appointments have never been made, thus leaving ACT residents without an effective voice on the CNMC.

Functions of the CNMC

- 2.4 The functions of the CNMC are broadly those of assessing and approving proposals with regard to the nomenclature of divisions of the Territory, or the location or character of national memorials. With the advent of self government for the ACT in 1989, the nomenclature function is arguably moribund. Indeed, the Department of Regional Australia has recommended that consideration be given to whether the power to name public places and Territory divisions remains relevant.²
- 2.5 With regard to CNMC functions, the Ordinance provides that the Minister shall consider all matters referred to him by the Committee and shall furnish a report to the CNMC on all matters referred to the Minister by the Committee. In practical terms, this means that the Minister refers proposals for National Memorials undertaken by proponents with the assistance of the National Capital Authority, such referral carrying the implicit recommendation of support by the NCA.³ The Committee may approve, reject or recommend alterations to any proposal referred to it with regard to the nomenclature of divisions of the Territory, or the location or character of national memorials. Only determinations with

1 Lake War Memorials Forum, Submission no. 27, pp. 14–16, 47–8; Walter Burley Griffin Society, Canberra chapter, Submission no. 7, pp. 1–2.

2 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 22.

3 National Capital Authority, Submission no. 30, p. 8. In its submission, the NCA notes that ‘in advising the CNMC to approve the location and character of a proposed National Memorial, the NCA is, whether explicitly or by implication, indicating that it is willing to provide works approval under the PALM Act’.

regard to nomenclature are to be published and laid before Parliament, where they are subject to disallowance.

- 2.6 The Ordinance states that the Prime Minister shall be chair of the Committee; that meetings of the Committee shall be summoned by the Secretary of the Department (currently Department of Regional Australia); that three members shall form a quorum; and that the Governor-General shall appoint certain members at the pleasure of the Governor-General and may appoint a person to a vacant office.
- 2.7 Beyond that, the Ordinance is largely silent on how the CNMC shall conduct itself. There is no formal decision-making process by which the CNMC is bound; no requirement to publish any record of proceedings or decisions; no requirement for public consultation; no formal criteria or guidelines by which the CNMC is bound when assessing memorial proposals; no requirement to seek independent expert advice; and no reference to heritage impacts or how these should be assessed and addressed. There is also no formal mechanism for effective parliamentary oversight of the approvals process.
- 2.8 The consequence of this, in the view of a number of submitters and witnesses, is a substantial failing in the decision making process.
- 2.9 In its submission, the Canberra chapter of the Walter Burley Griffin Society made a number of observations about the administration of the National Memorials Ordinance and the performance of the CNMC:

Elementary principles and administrative law have been ignored, more or less, in the processes and proceedings of the CNMC. Careful study under FOI of documents released by the NCA and the Department of Regional Australia, Regional Development and Local Government reveal the story.

Firstly, the CNMC would be convened routinely at short notice and with little guarantee that members would be available to attend or have time to examine agenda papers. Agendas would be indiscriminate and overloaded yet the Chairs would transact business in very short time for substantive discussion. Most regrettably, parliamentary representatives were rarely present and outnumbered by bureaucrats, including at two meetings the Secretary of the Department of Veterans Affairs.

Secondly, at least in the case of the World Wars I and II memorials (which were before the CNMC at five meetings), the agenda papers contained descriptions but no substantive analysis, assessments, alternatives, impact studies, policy guidelines or land

use and design framework. In the case of the War memorials, the NCA's agenda paper and the subsequent minutes of the relevant meetings contained just a one line, repetitive formulation: 'The proposals are consistent with the criteria contained within the Commemorative Guidelines.'

- 2.10 The Society's submission noted that this last assertion 'was, at best, misleading'.⁴ The JSCNCET observes that the *Guidelines* provide that 'a commemorative proposal must not duplicate the themes or subject matter of an existing commemorative site'.⁵ The *Guidelines* also provide that 'sites adjacent to the Rond Terraces serve as a transition from Anzac Parade and should be reserved for commemoration of non-military sacrifice, service and achievement in Australia, in times of peace'.⁶

- 2.11 The Society's submission was critical of the NCA:

The NCA has no in house heritage or historical expertise. In the case of the World Wars I and II memorials they sought preliminary advice from the Department of Environment, Water and Heritage, which was watered down by advice from a private consultant and essentially omitted from the eventual design competition documents.

Even more remarkably, the NCA seems to have no policies or strategies regarding memorials, guidelines and land use planning for memorials. They are ambivalent about their *Guidelines for Commemorative Works* and they have adopted no strategy for monitoring and assessing the prospective demands for memorials, the diminishing land bank for memorials and the criteria for location and site selection of memorials and alternative forms of commemoration.⁷

- 2.12 In his submission to the inquiry, prominent military historian Dr Peter Stanley also raised questions about the role of the NCA, highlighting the failures in process during the approval of the World War I and II Memorials proposed for the Rond Terraces. He stated.

My comments on the administration by the National Capital Authority (NCA) of the National Memorials Ordinance 1928 arise

4 Walter Burley Griffin Society, Canberra chapter, Submission no. 7, p. 2.

5 National Capital Authority, *Guidelines for Commemorative Works in the National Capital*, August 2002, p. 7.

6 National Capital Authority, *Guidelines for Commemorative Works in the National Capital*, August 2002, p. 13.

7 Walter Burley Griffin Society, Canberra chapter, Submission no. 7, pp. 2-3.

from my dismay at the way the ordinance has been used in the process of the NCA's approval and promotion of the proposed world wars memorials. I believe that the NCA's stewardship of the ordinance and its management of the Canberra National Memorials Committee has been seriously flawed – indeed, represents a disgraceful dereliction of its responsibilities.

- 2.13 In Dr Stanley's view, the CNMC had failed in its responsibilities at a range of levels and had become, in effect, an instrument of the NCA:

It is clear that the Canberra National Memorials Committee has in the case of the world wars memorials failed to operate effectively. It became evident, through documents obtained by the [Lake War Memorials] Forum through Freedom of Information requests, that the Committee had not only not included community representatives and had failed to consult as the ordinance envisaged, but that its deliberations had mostly not even included the political representation that it required in order to function properly. Rather than scrutinise and decide on NCA proposals, it has become a rubber stamp for the operation of the NCA's view of what should or should not proceed. My first recommendation therefore is that the present inquiry should ensure that the Committee operates at least as the 1928 ordinance stipulated.⁸

- 2.14 In its submission, the Management Committee of the Walter Burley Griffin Society observed that the problems associated with the World War I and II Memorials were not isolated to that proposal. Rather, this was one of a series of concerns connected with the administration of the Ordinance by the CNMC and NCA. The submission stated:

The CNMC has been managed, manipulated, and marginalised in the process of initiating and procuring National Memorials driven by the National Capital Authority.

The result has been a series of politically embarrassing, time wasting and totally inappropriate decisions that have deflected attention and scarce resources from the main task at hand: the planning, design and management of the National Capital.

Three memorial ventures promoted by the NCA since 2001 demonstrate this failure of process: (1) the Centenary of Women's Suffrage Memorial, Federation Mall, 2002–2003 ('The Fan'); the Immigration Bridge proposal, West Basin, Lake Burley Griffin,

8 Dr Peter Stanley, Submission no. 9, pp. 1–2.

2002–2010; and the proposed World Wars I & II Memorials, Rond Terraces, 2005 to date.⁹

- 2.15 Giving evidence before the Committee, Professor James Weirick, President of the Walter Burley Griffin Society, raised the further issue of memorials being approved for construction regardless of the capacity of proponents to fund them. He stated:

The committee [CNMC] may need independent expert advice on the feasibility of a proponent's budget and business plan, a consideration that appears to have been ignored by the NCA in the support given to community groups seeking to build a \$30 million high—span bridge over Lake Burley Griffin or twin war memorials on the Rond Terraces, estimated to cost \$21 million, given that community groups in the past have struggled to raise sums in the order of \$1 million to \$2 million. Similarly, the committee may need independent expert advice to verify the NCA's estimates of associated infrastructure costs.¹⁰

- 2.16 In its submission, the Lake War Memorials Forum also presented a list of the perceived failings of the CNMC and the operation of the Ordinance:

- Proceedings of the CNMC probably flouted the provisions of the Ordinance.
- Key decisions seem to have been remade to remove defects.
- Key decisions were made on the basis of inadequate consideration of evidence.
- One key decision flouted the NCA's own mandatory guidelines.
- Deciding the location of the lakeside memorials separately from their "character" left key design decisions to middle level officials in cooperation with the memorials' proponents.
- One participant in key meetings had a conflict of interest.
- Public exposure of the proposed lakeside memorials was almost non-existent until the launch of the winning design in February 2009.
- Meetings were perfunctory and hurried.
- NCA records relating to key decisions cannot be found.¹¹

9 Walter Burley Griffin Society, Management Committee, Submission no. 32, pp. 9–10.

10 Professor James Weirick, Walter Burley Griffin Society, *Transcript of Evidence*, 14 September 2011, p. 3.

11 Lake War Memorials Forum, Submission no. 27, p. 5.

- 2.17 In evidence before the Committee, Dr David Stephens, representing the Lake War Memorials Forum, also highlighted the problem of funding, focussing on the World War I and II Memorials:

If you look at the papers, the original estimate of costs was \$6 million. Now, according to the NCA, it could be as much as \$25 million. Obviously that blow-out in cost is going to make it even harder to raise the money than it would have been if it was \$6 million. But the Canberra National Memorials Committee in 2010, knowing that the Memorials Development Committee were having trouble raising money, gave them three more years and said, 'If that is not enough, we will give you more after that.' That, to me, is a ludicrous use of power.¹²

- 2.18 Other problems raised in the evidence presented to the JSCNCET were:

- Lack of public consultation
- Lack of expertise on the CNMC
- The growing population of memorials
- Lack of an overall plan

- 2.19 In its submission, the Canberra & District Historical Society (CDHS) noted the lack of strategic planning and the increasing 'clutter' of memorials. The submission notes that 'current decisions are ad hoc and without future visions'. Nor, the Society notes, has there been any conversation with the community about what should be commemorated and in what ways:

The current impression the CDHS has is that the CNMC is reactive rather than proactive in taking up proposals for memorials in an ad hoc basis rather than having an overall vision of what work has been done.¹³

- 2.20 In her submission, Ms Juliet Ramsay, a member of the International Scientific Committee on Cultural Landscapes, questioned the proliferation of memorials in and around the Parliamentary Zone:

Central Canberra has rapidly become filled with memorials. It is questionable that Canberra needed a memorial to the Magna Carta. It is questionable that every Australian of the Year requires their own plinth memorial with an image, marching along the lake

12 Dr David Stephens, Lake War Memorials Forum, *Transcript of Evidence*, 14 September 2011, p. 12.

13 Canberra & District Historical Society, Submission no. 31, pp. 1, 3.

edge, which will lead to an ongoing accumulation of such memorials. The valuable landscape of the lake edge that is supposed to be [the] setting for national buildings is beginning to resemble a cemetery.¹⁴

- 2.21 In its submission, the Australian Historical Association (AHA) expressed concern about the process undertaken with regard to the approval of the World War I and II Memorials:

The AHA has in recent times been particularly concerned about the procedures governing the meetings and decision-making processes of the CNMC, in particular with regard to the approval of a proposal from a private company, calling itself the 'Memorials Development Committee', to build two new, very imposing 20 metre high war memorials on designated 'national land' on the shores of Lake Burley Griffin. It would seem from the Minutes and records of the National Capital Authority (NCA) and CNMC that although the 'location' of the proposed new war memorials was discussed and approved, as required of the CNMC under the Ordinance, their precise 'character' and the issue of duplication was not.

Whether the duplication involved in this proposal – the Australian War Memorial was itself conceived by CEW Bean and explicitly designed as a memorial to those who served in World Wars 1 and 2 – was known by the three members of the CNMC who decided the issue is not clear. The *Guidelines for Commemorative Works in the National Capital* explicitly state that: 'A commemorative proposal must not duplicate the themes or subject matter of an existing commemorative site'.¹⁵

- 2.22 The AHA was also concerned with the role of the National Capital Authority and the Department of Veterans Affairs in recent decisions, as well as the lack of appropriate expertise on the CNMC.¹⁶
- 2.23 The lack of transparency in decision making and lack of public consultation in the approvals process was a matter of almost universal concern. Even the National Capital Authority noted that 'NCA advice on whether to support a location and character and decisions of the CNMC

14 Ms Juliet Ramsay, Submission no. 4, p. 3.

15 Australian Historical Association, Submission no. 11, p. 2.

16 Australian Historical Association, Submission no. 11, p. 2.

about whether to approve a location and character is currently prepared without any community consultation or other public participation'.¹⁷

Committee conclusions

- 2.24 The current operation of the Ordinance and the Canberra National Memorials Committee is obviously the subject of considerable community concern – much of it, it appears, well justified. The National Memorials Ordinance is in much need of reform.
- 2.25 In particular, the JSCNCET believes that the membership of the CNMC must be reviewed to make it more effective and more representative.
- 2.26 The CNMC's decision-making process needs to be reformed and modernised. There needs to be greater scope for public and expert input into its deliberations. Its proceedings must be transparent and its decisions capable of being justified against known criteria. In this regard, a reform of the *Guidelines for Commemorative Works in the National Capital* is also justified, as is the creation of a memorials strategy or master plan.
- 2.27 There is considerable scope for improving the level of public participation in the memorials approval process – and in improving the level of parliamentary oversight.
- 2.28 The resolution of these issues will be explored in the following chapters. Chapter 3 will look at possible reform of the Ordinance and the CNMC. Chapter 4 will examine a more thoroughgoing overhaul of the process for approving National Memorials.

17 National Capital Authority, Submission no. 30, p. 8.