

Reforming the process

- 3.1 The preceding chapters, highlighting the history and problems with the Ordinance, raise two possibilities for reform:
- the Ordinance could be retained, but with both the Ordinance and the Canberra National Memorials Committee being substantially modernised; or
 - the Ordinance could be repealed and the CNMC could be consigned to history. In its place, a new model of approving National Memorials could be adopted. The JSCNCET strongly prefers this option.
- 3.2 The JSCNCET notes that much of the evidence presented to it presumes the continued existence of the Ordinance and the CNMC in some form. Indeed, the terms of reference for the inquiry invite consideration in these terms rather than addressing more radical alternatives.
- 3.3 Nonetheless, the JSCNCET believes that much of the evidence presented for the reform of the approvals process for National Memorials could just as easily support a more radical change. The principles that would need to be included in any reform of existing arrangements apply equally to the Committee's preferred option for a new process.
- 3.4 Regardless of whether the Ordinance is retained or replaced, there are a number of features of the approvals process which demand reform. The evidence presented to the JSCNCET, outlined in Chapter 2, indicates that there are significant problems with the Ordinance and therefore the operation of the CNMC. These problems include:
- Lack of clarity and structure in decision making
 - Inadequate treatment of heritage issues

- Inadequate access to independent expert advice
- Lack of transparency in decision making processes
- Lack of effective parliamentary oversight
- Lack of public participation in decision making
- Inadequate definition of important issues, such as 'what is a National Memorial?'
- Lack of supporting documentation, such as plans and guidelines.

3.5 In this Chapter, the JSCNCET will look at the evidence focussed on the reform of the Ordinance and the CNMC, beginning with its membership, with a view to possible changes to the Ordinance, but also with a view to a moving beyond the Ordinance towards more comprehensive change.

Proposals for change

3.6 The membership of the Canberra National Memorials Committee is one of the key areas of the *National Memorials Ordinance 1928* requiring reform. As noted in the previous chapter, there is a widespread view that as currently constituted the CNMC cannot effectively carry out its responsibilities.

3.7 A number of schemes for changing the membership of the CNMC have been suggested in the evidence placed before the JSCNCET. There has been a focus on three main issues (which are not mutually exclusive):

- Increasing the effective presence of parliamentary representation
- Increasing the presence of people with history/heritage expertise
- Providing for ACT representation.

3.8 There is a consensus that parliamentary representation is important and that the ACT community should be represented on the CNMC in some way. Opinion is divided on the presence on the CNMC of expert opinion, whether there should be history/heritage experts or persons representing particular sections of the community (such as the military or veterans), or whether such advice is best sought externally.

3.9 In its submission, the Department of Regional Australia supported the current membership of the Committee as provided by the Ordinance,

stating that the 'bipartisan Committee, with senior Parliamentarians, appropriately reflects the national significance of national memorials'.¹

3.10 The submission recommended filling all positions on the CNMC as soon as possible, suggesting a range of possible ways to fill the positions currently reserved for ACT residents, including:

- Open selection based on written applications
- Nomination by the ACT Chief Minister
- Nomination of two Members of the ACT Legislative Assembly
- Appointment of two federal MHRs or Senators representing the ACT
- A combination of the above options.²

3.11 The Department's submission acknowledged the difficulties involved in senior parliamentarians attending CNMC meetings. It addressed the issue of non-participation of senior parliamentarians and officials by recommending a system of delegation:

The Department supports enabling Committee members to delegate their functions, including their voting rights...allowing Committee members to delegate their responsibilities would enable the Committee to meet face-to-face regularly and enable senior Parliamentarians to continue to contribute to the decision making process via their nominated delegate.

3.12 Delegations would be limited:

For example, ministers and shadow ministers may only delegate to other members of parliament or senators, and the Secretary of the Department may only delegate to a senior executive colleague.

3.13 An alternative proposal would be to specify 'certain Parliamentary Secretaries and Shadow Parliamentary Secretaries as Committee members', or to have members of the JSCNCET appointed to the CNMC while maintaining its bipartisan composition.³

3.14 As Chair of the Committee, the Prime Minister, rather than the Secretary of the Department, would be responsible for summoning meetings; and

1 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 13.

2 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, pp. 13-14.

3 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 14.

the responsible Minister would also have the role of Deputy Chair of the CNMC, with the power, if required, to summon meetings.⁴

3.15 Expert advice would come through the NCA, as the 'expert advisor', and from external advice sought as required.⁵

3.16 In its submission, the NCA also emphasised the importance of high level political leadership on the CNMC. The submission stated:

The Prime Minister, the responsible Minister, the Leader of the Opposition in the House of Representatives and the Leaders of the Government and Opposition in the Senate should all retain their places as members of the CNMC. The NCA also suggests the Secretary of the department with broad responsibility for the territories, currently the Department of Regional Australia, Regional Development and Local Government retain membership of the CNMC.⁶

3.17 The NCA suggested replacing the ACT members of the CNMC with a local MHR or Senator and a nominee of the ACT Government. It also suggested the appointment of the Chair of the JSCNCET and a representative of the NCA to the CNMC. This would combine effective parliamentary representation with planning expertise.⁷

3.18 Independent expert advice could be sought as required.⁸

3.19 These minimalist approaches to changing the membership of the CNMC do not take into account the frustration felt by other groups with the current arrangements, and particularly with the role of the NCA. In their submissions, the Walter Burley Griffin Society and the Lake War Memorials Forum documented recent failures in memorial planning processes, which they attributed to a lack of checks and balances on the role of the NCA; and the failure of the parliamentary members of the CNMC to play an effective role in the Committee's deliberations, effectively abdicating responsibility for decision making to the Minister and officials.⁹

4 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 15.

5 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 18.

6 National Capital Authority, Submission no. 30, p. 9.

7 National Capital Authority, Submission no. 30, p. 9.

8 National Capital Authority, Submission no. 30, p. 13.

9 Walter Burley Griffin Society, Management Committee, Submission no. 32, p. 16; Lake War Memorials Forum, Submission no. 27, pp. 20-2.

- 3.20 In its submission, the Canberra chapter of the Walter Burley Griffin Society proposed a substantial change in the membership of the CNMC to reflect the reality that senior parliamentarians would have little time to attend to the work of the Committee, and that both local representation and expert knowledge were essential to the work of the CNMC. The Society suggested the following membership structure for the CNMC:
- The Minister responsible for the Australian Capital Territory
 - Three Members of the House of Representatives
 - Three Senators
 - One or two residents of the ACT
 - One or two recognised authorities in Australian history from outside the ACT.¹⁰
- 3.21 In a separate submission, the Sydney-based Management Committee of the Walter Burley Griffin Society acknowledged the symbolic importance of the membership of the CNMC as originally conceived in the Ordinance. It also acknowledged that in recent years the CNMC had not functioned as intended. The submission argued that ‘ideally the CNMC should retain its political membership as established in 1928’, but that ‘as a return to these 1928 political arrangements appears unrealistic’ the membership recommended by the Society’s Canberra chapter was the best way forward.¹¹ In both cases, the role of the NCA was limited to providing advice to the CNMC and proponents ‘in strict accordance with the *Guidelines for Commemorative Works in the National Capital* and a Memorandum of Understanding with the proponent, posted as a public document.’¹²
- 3.22 In its submission, the Lake War Memorials Forum proposed three options for the make-up of the CNMC designed to achieve a membership ‘which is representative, interested, has access to expertise, and has time to devote to its business’ and which ‘should not be subject to capture by a single constituency’.¹³
- 3.23 Option A would provide a CNMC with a membership of five (quorum of four) consisting of:

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

11 Walter Burley Griffin Society, Management Committee, Submission no. 32, pp. 19–21.

12 Walter Burley Griffin Society, Management Committee, Submission no. 32, p. 16.

13 Lake War Memorials Forum, Submission no. 27, p. 17.

- The Minister (Chair of CNMC; departmental secretary as proxy)
 - Chair of JSCNCET (Deputy Chair of CNMC)
 - Another member of JSCNCET (elected by JSCNCET)
 - Two ACT residents (one nominated by the minister, one by the JSCNCET).
- 3.24 The focus in Option A is upon representativeness and political and community interest, with expertise drawn from outside. The JSCNCET would recommend that, if this option were adopted, the other member of the JSCNCET appointed to the CNMC be the Deputy Chair of the JSCNCET. This would ensure bi-partisan representation.
- 3.25 Option B would provide the CNMC with a membership of five (quorum of four) consisting of:
- The Chair of the Australian Council of National Trusts
 - The President of the Planning Institute of Australia
 - A representative of the Walter Burley Griffin Society
 - Two ACT residents (nominated by the community).
- 3.26 Option B focuses on expert knowledge and demonstrated interest in planning and heritage issues at the expense of political representation (which is currently often absent anyway).
- 3.27 Option C would provide a CNMC with a membership of six or seven (quorum of four) consisting of:
- The Minister (Chair of CNMC; departmental secretary as proxy)
 - Chair of JSCNCET (Deputy Chair of CNMC)
 - Another member of JSCNCET (elected by JSCNCET)
 - Two ACT residents (one nominated by the Minister, one by the JSCNCET)
 - Up to two temporary members with appropriate expertise, appointed by the Minister, for each memorial proposal.
- 3.28 Option C combines the strengths of Options A and B in a slightly larger committee.¹⁴

14 Lake War Memorials Forum, Submission no. 27, pp. 17–19.

- 3.29 A number of submissions called for CNMC membership which included expertise in history and heritage matters and/or expertise in aesthetics, design and planning.¹⁵ The National Gallery of Australia suggested that the deliberations of the CNMC would be 'enhanced if there was an opportunity for a suitably qualified person to comment on the merits of proposals from an aesthetic perspective'.¹⁶ The RSL called for the appointment of representatives of both current service personnel and veterans (not to the exclusion of other sectors of the community) to ensure that both could have input into memorials, particularly those associated with military service and service in war, a call echoed in the submission from the proponents of the Australian Peacekeeping Memorial Project.¹⁷

Committee conclusions

- 3.30 In the Committee's view there are five major issues surrounding the membership of the CNMC:
- The seniority of the parliamentary members of the Committee
 - Membership with relevant experience and expertise
 - Representation of the ACT community
 - Quorum requirements
 - The role of the NCA.
- 3.31 Traditionally, the status of the senior parliamentarians was seen as giving the CNMC a weight and national perspective fitting for something of such lasting national significance as National Memorials. As a matter of principle, this is a very attractive concept. However, as the senior parliamentarians appointed to the CNMC have not always been able to fulfil their role, much of the decision making has been left to officials. Whatever one may think of the results, this outcome is clearly the opposite of what was originally intended under the Ordinance.
- 3.32 In this regard, one option would be to follow the compromise solution suggested by the Department of Regional Australia. Keeping the senior parliamentarians on the CNMC, but allowing them to delegate their

15 Australian Historical Association, Submission no. 11, p. 3; Australian Garden History Society, Submission no. 12, p. 2; Dr Jane Lennon AM, Submission no. 15, pp. 1–2; Canberra & District Historical Society, Submission no. 31, p. 2.

16 National Gallery of Australia, Submission no. 38, p. 1.

17 Returned & Services League, Submission no. 22, p. 1; Australian Peacekeeping Memorial Project, Submission no. 37, p. 1.

responsibilities to other parliamentarians would allow some balance between maintaining the status of the CNMC while ensuring that the parliamentary members of the Committee are effectively engaged in its work. These delegates could be officially appointed to the CNMC with fixed terms of three years or until they cease to hold a seat in Parliament (whichever occurs first).

- 3.33 Yet there are other options for improving the level of parliamentary input into, and oversight of the, memorials approval process. The Washington model (see Chapter 4) gives direct congressional input in the first stage of a memorial's development by requiring the passing of legislation; and high level input from the Government and Congress, through the various Commissions associated with the process, through the remaining stages. Another option, raised in the evident presented during the inquiry, is for the direct involvement of the JSCNCET in the approvals process. This would also ensure direct parliamentary involvement and ensure a high level of bi-partisanship.
- 3.34 The bi-partisan nature of the CNMC is vital to its function. The JSCNCET believes that if the Ordinance is to be retained it should always reflect this bi-partisan principle, either explicitly in the appointments (naming of office holders) made under the Ordinance or in a statement of principle within the Ordinance.
- 3.35 The JSCNCET is also of the view that experts in history and heritage have an important place in the approvals process. As originally conceived, the CNMC had two such members. The presence of acknowledged national authorities could only improve the deliberations of the CNMC, giving a deeper perspective on the national and historical significance of any given National Memorial and its place within the history and landscape of the National Capital. Such members would also add weight or balance to advice from other sources. If the CNMC is to be retained, the JSCNCET would suggest the appointment of two nationally recognised authorities in the field of Australian history, with a view to seeking independent advice and public input from other sources as required.
- 3.36 Another option is suggested by the Washington model – the creation of an advisory committee made up of experts in the field of history, heritage and culture, who could provide expert advice to Parliament and the National Capital Authority on a range of issues surrounding any given proposal. This option will be further explored below.
- 3.37 The JSCNCET also believes that some level of representation for the ACT community is essential to any approvals process given the proximity of

ACT residents to the outcome. Whether the Ordinance is to be retained or ultimately scrapped, the JSCNCET recommends the immediate appointment of two ACT residents, as currently required under the Ordinance, to give voice to the local community. These residents should be people with knowledge of heritage matters. The Committee recommends the appointment of one ACT resident by the responsible Minister and, in order to allow the ACT Government some input, the nomination of a member of the ACT Heritage Council by the Chief Minister.

- 3.38 To provide security of tenure and thus ensure robust discussion of issues within the CNMC, the two expert members and the two ACT residents should be appointed for a fixed term of three years. The terms of the two expert members and the ACT members of the CNMC should be staggered to achieve continuity.
- 3.39 The role of the NCA in the memorials approval process will be vital, however that process is constructed. The JSCNCET notes that an essential difference between Canberra and Washington is that the NCA effectively performs all the functions of a diverse range of institutions under the Washington model (see Chapter 4). This places a great deal of responsibility upon the NCA; and upon other elements of any approvals process, particularly on parliamentary oversight. Striking a balance in the NCA's role as advisor, regulator and (effectively) proponent is essential to any approvals process.
- 3.40 Other aspects of the NCA's role will be discussed below, and its role in the JSCNCET's preferred model for memorials approvals will be explored in Chapter 4, but the JSCNCET is of the view that if the CNMC is to be retained, the NCA should become an 'expert advisor' to the CNMC, without voting rights. This would strike an effective balance between the role of the NCA as a proponent and regulator of National Memorials and the need for the CNMC to seek input from the NCA in its deliberations.
- 3.41 The JSCNCET notes that the two other official positions on the CNMC are anomalous, historical anachronisms based on changes to the membership of the CNMC in its early days. The JSCNCET supports the Secretary of the Department retaining a role in the deliberations of the CNMC, but only as an expert advisor and without voting rights. If the CNMC is to be retained, the position of 'an officer appointed by the Minister' should be abolished.
- 3.42 The JSCNCET would also support the responsible minister in the role of Deputy Chair of the CNMC, with coordinate powers to the Chair,

believing this would provide robust and flexible leadership for the CNMC.

3.43 If the Ordinance is retained, these proposals would give the CNMC the following membership:

- The Prime Minister (CNMC Chair; position delegated to another MHR)
- The Minister (Deputy Chair; currently the Minister for Regional Australia, Regional Development and Local Government)
- The Leader of the Government in the Senate (position delegated to another Senator)
- The Leader of the Opposition in the Senate (position delegated to another Senator)
- The Leader of the Opposition in the House of Representatives (position delegated to another MHR)
- Two members to be appointed by the responsible Minister for a term of three years from amongst persons who are recognized as authorities on Australian history
- Two other members to be appointed from amongst persons who are residents of the Australian Capital Territory, with acknowledged expertise in heritage matters, to be appointed by the responsible Minister for a term of three years, one to be a member of the ACT Heritage Council nominated by the ACT Chief Minister.

3.44 This Committee would be able to draw upon external expertise in social, cultural and military history, and advice from the services and veterans organisations, as outlined in paragraphs 3.124–3.126.

3.45 Expert advisers, without voting rights, would be:

- The Secretary of the Department (currently the Secretary of the Department of Regional Australia, Regional Development and Local Government; position delegated to another senior officer of the department)
- The Chief Executive of the National Capital Authority (position delegated to another senior officer of the NCA)

3.46 To ensure the effective working of the CNMC, effective parliamentary representation, and public confidence in its decisions, the quorum of the CNMC should be five, with a requirement that parliamentary members always make at least half the quorum. This sets a high standard, but the

significance and long-lasting impact of National Memorials demands nothing less.

Recommendation 2

- 3.47 **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.**

Decision-making processes

- 3.48 The decision-making processes of the CNMC have been identified as a critical area for reform.
- 3.49 In its submission, the Department of Regional Australia proposes greater flexibility in the working arrangements for meetings of the CNMC. Currently, the CNMC is required to make decisions face-to-face. The Department supports using new technologies such as telephone and video conference, and the CNMC making resolutions by correspondence.¹⁸
- 3.50 The Walter Burley Griffin Society opposes decision making 'on the papers, out of session'. The Society is concerned that this will dilute the involvement of parliamentary members of the CNMC and leave CNMC decision-making vulnerable to bureaucratic capture.¹⁹
- 3.51 The Department also supports amending quorum requirements to require a minimum number of parliamentarians to be present. Currently the quorum is three, with decisions requiring a simple majority of those present. As the Department notes:

18 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 17.

19 Walter Burley Griffin Society, Canberra chapter, Submission no. 7, p. 3.

It is currently possible under the Ordinance for the Committee to meet and make decisions with no Parliamentarians present. This is inconsistent with the senior and representative nature of the Committee's membership.²⁰

- 3.52 Such a proposal is also in keeping with other submissions to the inquiry, which recommend a more robust quorum and stronger parliamentary representation.²¹ The JSCNCET has already dealt with this issue (see above).

Secretariat

- 3.53 Until 2008, the vital role of secretariat to the CNMC was undertaken by the National Capital Authority. From 2008 to mid-2011, the secretariat was provided by the relevant government department (Attorney-General's, then Department of Regional Australia), during which the NCA had no official role on the CNMC. In mid-2011, the secretariat function was returned to the NCA.²²
- 3.54 A number of submitters and witnesses have argued against the secretariat function being returned to the NCA.
- 3.55 In its submission, the Canberra chapter of the Walter Burley Griffin Society argued that giving the secretariat role to the NCA was inappropriate given its role in the planning and approvals process – there was too much scope for conflicts of interest:

Recommendation 3 is that the Secretariat of the CNMC should be placed with the Department of the Minister responsible for the ACT. The NCA has too many conflicts of interest and there are no checks and balances in the governmental structure to control these conflicts. The NCA should not be, as at present, initiator or partner of project proposals, objective assessor and eventual approval body.²³

- 3.56 In its submission, the Lake War Memorials Forum also argued that the 'secretariat function for the CNMC should reside in the responsible

20 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 17.

21 Lake War Memorials Forum, Submission no. 27, pp. 17–19.

22 National Capital Authority, Submission no. 30, p. 7.

23 Walter Burley Griffin Society, Canberra chapter, Submission no. 7, p. 3.

Department, not in the NCA, as should the function of calling meetings of the CNMC'.²⁴ The Forum stated:

The NCA should be seen as an "institutionalised expert" and the potential manager of National Memorials and thus as having a conflict of interest in relation to decisions on them. It cannot successfully, or even ethically, play, simultaneously or successively, the roles of project initiator or partner, objective assessor, decision-maker and final custodian.

The NCA, if it were to be secretariat to the CNMC, would be the "gatekeeper" of the CNMC's business, giving the NCA a potentially powerful position.²⁵

- 3.57 In evidence before the Committee, the Department of Regional Australia argued that it believed the NCA was the most appropriate body to provide the secretariat function to the CNMC, given the NCA's experience in the role and expertise in planning matters.²⁶

Planning and Guidelines

- 3.58 The lack of mandatory guidelines or detailed plans for National Memorials is widely perceived as one of the weaknesses in the decision making process. The need for a more rigorous approach to planning and guidelines has been identified as an important reform.
- 3.59 In his submission, Air Marshal David Evans, a former Chairman of the NCA, noted that the current *Guidelines for Commemorative Works in the National Capital* had been ignored in the approvals for the proposed World War I and II Memorials, and called for those guidelines to be made mandatory. He stated:

Legally they are only guidelines. This of course is unsatisfactory. The idea that the Authority might ignore them was simply not anticipated. In retrospect, once accepted by the Authority the protocols should have been put to the Canberra National Memorials Committee for ratification and then included in the National Capital Plan. This should now be put in place.²⁷

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

25 Lake War Memorials Forum, Submission no. 27, p. 24.

26 Mr Julian Yates, First Assistant Secretary, Territories Division, Department of Regional Australia, Regional Development and Local Government, *Transcript of Evidence*, 14 October 2011, p. 10.

27 Air Marshal David Evans AC DSO AFC RAAF (Ret.), Submission no. 44, pp. 1-2.

3.60 In its submission, the Lake War Memorials Forum argued strongly for the creation of a Strategy for National Memorials, drawing upon the current *Guidelines for Commemorative Works in the National Capital*, which would be incorporated into the ordinance and provide *binding* criteria for a range of issues, including:

- aspects of Australian history and culture needing celebration, including what Australians want to commemorate and how commemoration can shape our view of ourselves and others' views of us;
- criteria defining a National Memorial, including the possibility of non-tangible memorials, such as scholarships, funds and other forms of commemoration not involving "bricks and mortar";
- consideration of whether proposed National Memorials will duplicate other memorials around Australia;
- planning aspects, including absorption capacity of central Canberra for memorials and commemorative structures, alternative sites outside central Canberra;
- protocols for dealing with memorials donated by other countries;
- circumstances under which privately proposed memorials are acceptable (including narrow guidelines for commercial confidentiality);
- funding arrangements for privately proposed memorials; and
- timing disciplines on projects.²⁸

3.61 In its submission, the National Capital Authority also proposed a significant strengthening of decision making processes, including:

- Reviewing the existing *Guidelines for Commemorative Works in the National Capital*, and submitting them for consideration by the CNMC
- Formalising the guidelines within a regulatory instrument
- Clarifying and documenting the relationship between works approval under the PALM Act and assessment under the EPBC Act and CNMC approvals, including moving works approvals and EPBC Act assessments forward
- Creating a National Memorials Master Plan, as part of the legislative instrument, providing stronger assessment criteria and more detailed siting options.²⁹

28 Lake War Memorials Forum, Submission no. 27, p. 23.

29 National Capital Authority, Submission no. 30, pp. 11–12, 14.

- 3.62 Part of this process is actually defining the term ‘National Memorial’. In its submission, the Department of Regional Australia stated:

Defining ‘national memorial’ in guidelines that support Committee [CNMC] decision making would reduce confusion about what proposals can properly be considered by the Committee as national memorials.³⁰

- 3.63 In its submission, the National Capital Authority defines National Memorials as ‘structures located on National Land that commemorate loss of life and personal sacrifice’.³¹

- 3.64 The NCA also argues for National Monuments to be included under the National Memorials Ordinance. National Monuments are defined as ‘physical structures that celebrate achievements of the Nation and/or Australians’.³² National Monuments are not currently covered by the Ordinance and therefore are not subject to scrutiny by the CNMC. National Monuments include the Centenary of Women’s Suffrage and Magna Carta Place.³³

- 3.65 The Draft Memorials Policy of the ACT Government also provides a definition of memorials:

An object established in memory of a person, organisation or an event. A memorial object may be a sculptural or other artistic work, fountain, seat or park bench, drinking fountain, or horticultural features such as a tree.³⁴

- 3.66 For Washington DC, the Commemorative Works Act defines the term ‘commemorative work’ as :

Any statue, monument, sculpture, memorial, plaque, inscription, or other structure or landscape feature, including a garden or memorial grove, designed to perpetuate in a permanent manner the memory of an individual, group, event or other significant element of American history, except that the term does not include

30 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 12.

31 National Capital Authority, Submission no. 30, p. 21.

32 National Capital Authority, Submission no. 30, p. 20.

33 National Capital Authority, Submission no. 30, p. 19.

34 ACT Government, *Draft Memorials Policy for land managed by Parks and City Services*, September 2003, p. 4.

any such item which is located within the interior of a structure or a structure which is primarily used for other purposes.³⁵

Improving transparency

3.67 Finally, a key element of the decision-making process is transparency. Lack of transparency in decision making has been one of the main criticisms directed at the CNMC.

3.68 In its submission, the Department of Regional Australia recommends improving the transparency of the decision-making processes of the CNMC by setting out the decision making process in publicly available guidelines and releasing records of Committee proceedings and decisions.³⁶

3.69 In its submission, the NCA has stated that:

While it is proper for the Australian Parliament, through the CNMC, to have sole responsibility for determining the commemorative purpose of a proposed National Memorial, there is an opportunity to increase community confidence in the decisions of the CNMC by improving transparency around its operations.³⁷

3.70 Possible ways of increasing transparency include:

- A public register of memorial proposals, including current status in the approvals process, the register to be published on a website maintained by the secretariat.
- Creation of a National Memorials Master Plan as an appendix to the National Capital Plan. This would build on the existing Guidelines.
- Publication of the agenda and proceedings of CNMC meetings.³⁸

Committee conclusions

3.71 The JSCNCET believes that the ultimate goal of its review of the Ordinance should be a more robust and transparent approvals process for National Memorials. To this end, the Committee has recommended a new

35 *Commemorative Works Act 1986*, s. 8902.

36 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 19.

37 National Capital Authority, Submission no. 30, p. 14.

38 National Capital Authority, Submission no. 30, p. 14.

model for the approval of National Memorials. To retain the Ordinance is to risk a process which is overly cumbersome or insufficiently transparent and robust, as new provisions are bolted onto old in an attempt to save an Ordinance that is arguably long past its time.

- 3.72 Nonetheless, the JSCNCET offers the following views as to possible reform of the current process, drawing on the evidence presented to the Committee.
- 3.73 The JSCNCET acknowledges the arguments supporting a more flexible approach to the deliberations of the CNMC, but is mindful that there is currently a strong public perception that flexibility equates to inadequate consideration of important issues. To restore public confidence in CNMC decision making, the process must be robust and transparent. Quorum requirements must ensure the attendance of at least half the CNMC and the participation of senior parliamentary members or their delegates, as discussed earlier. The proposed system of delegation should ensure sufficient flexibility in this matter.
- 3.74 The JSCNCET also supports the use of telephone and video conferencing to allow individual CNMC members to participate in meetings remotely, but opposes decisions made ‘on the papers’. Again, this will ensure the full and public participation of CNMC members in the work of the Committee.
- 3.75 With regard to the secretariat role, the JSCNCET is mindful of the criticism directed at the NCA for its role in the decision-making process of the CNMC in recent years. However, the JSCNCET agrees with the Department of Regional Australia that, given the NCA’s acknowledged expertise in planning matters, its experience in managing memorials projects, its statutory role in the management of the National Capital, and reforms to the NCA’s own public consultation processes, the NCA is the best location for the CNMC secretariat. This view is contingent, however, on the NCA not being a member of the CNMC, having instead the role of expert adviser, and publicly disclosing its interest in each memorial proposal. It is also contingent upon the NCA demonstrating that it is capable of fulfilling its role in an open and transparent approvals process. Should the proposed changes be adopted, the position should be reviewed after three years of operation.
- 3.76 The need for more robust planning and guidelines is another salient point brought out in the evidence before the JSCNCET. Moreover, these observations are relevant regardless of whether the Ordinance is reformed or replaced. The Committee is conscious of the Washington model (see

Chapter 4), with the strong guidelines set out in the *Commemorative Works Act 1986*, the clear definition of 'commemorative works', the planning framework established by the Museums and Memorials Master Plan, and the mapping of memorials that has been undertaken. All this allows for clarity in the decision making process, and greater transparency from the public point of view.

- 3.77 The JSCNCET therefore supports including the *Guidelines for Commemorative Works in the National Capital* as an Appendix to the *National Capital Plan*, thus giving them legal force, and renaming them as *Criteria for Commemorative Works in the National Capital* to reflect this legal status; the creation of a Memorials Master Plan, including the mapping of existing memorials and potential sites, to provide a detailed picture for decision-makers on what has been done and what can be done in the future; including a definition of 'memorials' or 'commemorative works' in the National Memorials Ordinance, based on that contained in the *Commemorative Works Act*; and, given the fundamental similarity in their nature and significance, including National Monuments within the scope of the *National Memorials Ordinance*. The JSCNCET notes that the definitions applied by the US or ACT Governments to memorials or commemorative works effectively encompasses monuments and memorials as defined by the NCA.
- 3.78 The JSCNCET is also of the view that the existing *Guidelines for Commemorative Works in the National Capital* should be revised in light of the recommendations in this report, and that the revised Criteria should be presented to the CNMC for approval.
- 3.79 The JSCNCET is also of the view that the Ordinance should exclude minor installations, such as plaques or individual trees, outside the Parliamentary Zone.
- 3.80 The JSCNCET is also strongly of the view that improving the transparency of the memorials approvals process is vital, regardless of whether the Ordinance is reformed or replaced. There should be a separate website where documentation regarding processes and decisions and memorial proposals are made publicly available. All decisions should be made according to publicly available guidelines which, if it is retained, should form a schedule to the Ordinance.
- 3.81 If the CNMC is retained, there should be a publicly available register of memorial proposals, including current status of each proposal, maintained by the secretariat and published on its website.

- 3.82 The agenda and proceedings of all CNMC meetings should be made publicly available and published on its website.
- 3.83 Decisions of the CNMC about each proposal should be made publicly available, and published on the CNMC website, together with reasons for approval, disallowance or amendment.
- 3.84 Supporting documentation, including independent expert advice, public submissions and reports of public consultations should be made publicly available and published on the CNMC website.
- 3.85 Maintenance of the CNMC website should be the responsibility of the secretariat.
- 3.86 Alternatively, if the CNMC is abolished, the NCA should still be responsible for making publicly available all documentation relating to the process, including a register of proposals (see Chapter 4).

Decision-making structure

- 3.87 The decision-making structure is as important as the process, and is also clearly in need of reform. Much of the following discussion is pertinent whether the Ordinance is reformed or replaced.
- 3.88 In its submission, the Department of Regional Australia has recommended establishing a two stage approvals process, allowing greater flexibility in meeting procedures, and strengthening administrative processes.³⁹
- 3.89 The two stage approvals process would involve a 'two-pass' assessment. In the first-pass assessment, the CNMC would consider the 'commemorative intent' of a proposed National Memorial, including its national significance and whether it meets the criteria specified in the guidelines for commemorative works.
- 3.90 The memorial proponent would then be required to prepare a more detailed proposal, undertaking mandatory public consultation, and environmental and heritage assessments, seeking planning advice and, if required, advice from the Department of Foreign Affairs and Trade.

39 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 15.

- 3.91 Following this, the Committee would undertake its second-pass assessment, considering the location and character of a proposed national memorial.
- 3.92 Having passed through the CNMC, memorial proposals would be subject to ministerial determinations under the Ordinance. Proponents would be responsible for delivery within the parameters agreed by the CNMC.⁴⁰
- 3.93 In its submission, the Department highlighted the advantages of this process:

The proposed 'two-pass' decision making process would ensure the Committee [CNMC] is provided with comprehensive proposals before ministerial determinations are made reserving sites for proposed national memorials. The 'two-pass' process could require national memorial proponents who have been granted first-pass approval to work closely with the NCA to develop a design competition brief, run a public design competition, identify possible locations, consult with ACT residents and arrange for an *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) assessment to take place before the proposal moves to the second-stage assessment.⁴¹

- 3.94 In its submission, the Walter Burley Griffin Society proposed a ten step process, including:

- (1) Project Initiation;
- (2) Determination of National Memorial Status and Commemorative Intent with respect to the Mandatory Criteria and Evaluation Criteria of the policy document, *Guidelines for Commemorative Works in the National Capital*;
- (3) Nomination of Alternative Sites;
- (4) Site Selection;
- (5) Approval of Budget and Business Plan for Construction, Maintenance and associated Infrastructure costs;
- (6) Selection of a Memorial Design through an open competitive process;

40 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, pp. 15–17.

41 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 17.

- (7) Validation of the selected Memorial Design against Commemorative Intent, Budget, Business Plan and Infrastructure costs;
- (8) Approval of the Memorial Design in accordance with the National Capital Plan;
- (9) Certification of Construction Documentation;
- (10) Monitoring of the Commemorative Role and Maintenance of the Memorial against the Commemorative Intent.⁴²

Committee conclusions

- 3.95 The JSCNCET supports a two stage approvals process for National Memorials, the first pass assessment focusing on commemorative intent, including its national significance and whether it meets the criteria specified in the Guidelines, and its financial viability. A basic financial model, identifying sources of funding, should be developed at this stage.
- 3.96 As already stated, with a view to ensuring that these Guidelines are applied consistently, the JSCNCET is of the opinion that the Guidelines should be given legal status. The JSCNCET is also of the view that the steps outlined in the submission of the Walter Burley Griffin Society would fit neatly into the two pass process.
- 3.97 Following this first pass assessment, the memorial proponent would undertake to develop a design competition brief (if necessary), run a public design competition (if necessary), and undertake detailed development of the proposal, including working with the NCA to:
 - Identify possible locations
 - Conduct mandatory public consultations
 - 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 (see below)
 - Develop the budget and business plan for funding construction, maintenance and associated infrastructure costs.

42 Walter Burley Griffin Society, Management Committee, Submission no. 32, p. 16.

- 3.98 The second pass assessment would focus on the location and character of the proposed National Memorial.
- 3.99 If the CNMC is retained, the proposal would then be subject to works approval by the NCA and a Ministerial determination subject to disallowance (see below).
- 3.100 At the first pass, the CNMC would publicise the proposal and seek public comment. It would also be required to seek independent expert advice. Both would be incorporated into the CNMC assessment of the commemorative intent of the proposed National Memorial.
- 3.101 At the second pass, the CNMC would again publicise the proposal and seek public comment. It would also be required to seek independent expert advice. Both would be incorporated into the CNMC assessment of the character and location of the proposed National Memorial.
- 3.102 If the Ordinance is replaced, then a similar process would occur, under the auspices of the JSCNCET and the NCA, as detailed in Chapter 4.

Heritage management

- 3.103 An important part of the decision making process and structure is the management of heritage issues. This has been one of the main concerns brought up in evidence surrounding the conception, character and location of memorials. Inevitably, in the National Capital, any new memorial will be inserted into a location with existing heritage values. The ability to identify and address these values effectively under existing approvals processes for National Memorials appears to be limited to assessments under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), which currently occurs *after* CNMC approval.
- 3.104 In its submission, the Department of Sustainability, Environment, Water, Population and Communities recommended giving explicit reference in the ordinance to the possible need for approvals to be obtained under the EPBC Act.⁴³ In evidence, the Department also suggested the potential benefits of moving the EPBC Act assessment process to an earlier stage in the overall approvals process for National Memorials, in effect giving the CNMC final approval for all National Memorials.⁴⁴

43 Department of Sustainability, Environment, Water, Population and Communities, Submission no. 34, p. 1.

44 Mr Peter Burnett, First Assistant Secretary, Heritage and Wildlife, Department of Sustainability, Environment, Water, Population and Communities, *Transcript of Evidence*, 21 September 2011, p. 2.

- 3.105 In its submission, the Australian Heritage Council recommended that ‘the Ordinance should take into account any necessary statutory compliance processes’. It also suggested that ‘it would be prudent to incorporate early consideration of potential impacts on places listed on the National Heritage List or Commonwealth Heritage List’.⁴⁵ The Department of Regional Australia also recommended this as part of the development of memorial proposals after the first pass and in preparation for the second pass.⁴⁶
- 3.106 In evidence before the Committee, Dr Dianne Firth, Acting Chair of the ACT Heritage Council noted that under ACT Government’s memorials policy, a memorial proposals ‘triggered immediately to the heritage unit and to council’ for heritage assessment. She noted that while a Heritage Management Plan was in place for the Parliament House Vista, this did not necessarily capture in fine detail the possible impacts of a particular proposal in a particular location. She told the Committee:
- This parliament house vista conservation management plan picks up the real significance of the axis. It picks up the importance of Commonwealth Park and Kings Park but it does not in fine detail pick up Rond Terraces. When it goes through it, it gives lists of compatible uses for these areas. It is generally a good document to give direction. For instance, if a proponent came with an idea that they wanted to have a specific memorial for World War I and World War II and the National Capital Authority offered them some sites, what should then come is a finer grain understanding of the significance of that localised space and how you can then develop an architectural brief.⁴⁷
- 3.107 Dr Firth emphasised that when it came to assessing the importance of heritage values, ‘when you come to a specific site there has to be a judgement applied to that specific site, so the values and how they are expressed through that site might take a different hierarchy’.⁴⁸
- 3.108 In its submission, the ACT Heritage Council argued that all memorial proposals should be subject to heritage impact assessments, and that such assessments should receive input from the Australian Heritage Council, and be released for public comment. The ACT Heritage Council was

45 Australian Heritage Council, Submission no. 29, p. 1.

46 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 17.

47 Dr Dianne Firth, ACT Heritage Council, *Transcript of Evidence*, 21 September 2011, p. 8.

48 Dr Dianne Firth, ACT Heritage Council, *Transcript of Evidence*, 21 September 2011, p. 10.

concerned that a conservation management plan (CMP) had not been prepared 'for such an important place as the Rond Terraces and endorsed by the Australian Heritage Council', and that a heritage impact assessment had not been prepared 'which addresses the impact of the proposed memorials on the significance established by a CMP'.⁴⁹

- 3.109 In her submission, Ms Rosemarie Willet of the Walter Burley Griffin Society, made similar points about the need for heritage assessment for each proposal to be made earlier in the process than is currently the case, and at a local scale. She stated:

National memorials are obviously intended for future generations as well as present Australians and overseas visitors. Whether or not they are listed in Heritage Registers, they are heritage places. It remains therefore to refer briefly to Reference Documents used in heritage practice, under specific heritage legislation and which can be requested under the EPBC Act. Such Reference Documents are the Conservation Management Plan (CMP) and the Heritage Impact Statement (HIS) which may warrant the input of a range of independent experts.

The CMP provides a full assessment of the place and, based on this assessment, ascribes the Statement of Significance; it is often the case that even when a CMP is done for a precinct, special places within the precinct merit their own CMP. The CMP can recommend opportunities for future directions and the consideration of options.⁵⁰

- 3.110 Speaking before the Committee, Ms Willett highlighted the problems that could occur if heritage management were not undertaken with sufficient thoroughness early in the approvals process, citing the example of the World War I and II Memorials on the Rond Terraces:

The EPBC Act often requires a heritage impact statement and there should be a conservation management plan made prior to a heritage impact statement so that the proposal can be discussed against the assessment, the significance that is ascribed from that assessment to a place, and can be assessed against opportunities, different recommendations that could be made in a conservation management plan. You will have noticed that I say that this should have happened to such an important place as the Rond Terraces, which is on the lake shore and which is on the land axis.

49 ACT Heritage Council, Submission no. 25, p. 4.

50 Ms Rosemarie Willett, Submission no. 33, p. 2.

Had a CMP been made for this place, I am sure that a lot of issues would have come forward to show that this place is very important in the conservation of Griffin's land axis, because the land axis is in fact an alignment. It is an alignment of natural monuments in our local landscape, and Mount Ainslie sets the definition of that land axis, which the NCDC took up using the width set by Griffin in his apices for the portal buildings and continuing across the lake for those government buildings that give you a full, uninterrupted vista of Parliament House. That would have come out in a conservation management plan, and then it would be seen that the war memorials on the Rond Terrace pinch that vista; they are closer in. In fact, they distract you from the full conical form of Mount Ainslie. In fact, they provide a central faux pas.⁵¹

Committee conclusions

- 3.111 The JSCNCET notes that, in the case of the World War I and II Memorials, perceived failures in heritage management were one of the central concerns raised by the community. It would appear that this is a case where a more thoroughgoing heritage assessment, based on detailed conservation management plans and heritage impact statements, would have alerted regulators to the significant heritage issues surrounding the proposed memorials *before* final approval was given by the CNMC. Given that heritage values are an inherent part of the landscape of Canberra, and certainly in the national areas where National Memorials are likely to be located, detailed heritage management planning should be an essential part of any proposal *before* it achieves final approval, regardless of the process followed. Given that the JSCNCET has already advocated the creation of a two pass assessment process, the Committee recommends that, as part of each memorial proposal, individual heritage assessments automatically be required as part of the approvals process, before second pass assessment, including where necessary the creation of site specific Conservation Management Plans and Heritage Impact Statements. Such provisions should be included in the Ordinance, if it is retained, or form part of the decision-making process outlined in Chapter 4 if the Ordinance is replaced.

51 Ms Rosemarie Willett, Walter Burley Griffin Society, *Transcript of Evidence*, 14 September 2011, pp. 7–8.

Recommendation 3

- 3.112 **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.**

CNMC and independent expert advice

- 3.113 The need to access independent expert advice will vary to some degree according to how the decision-making process for National Memorials is constituted, and from project to project. Different forms of expert advice may also be required for different facets of any given project. For example, in its submission, the Management Committee of the Walter Burley Griffin Society indicated that the focus of independent expert advice should be on the memorial proponent's budget and business plan.⁵²
- 3.114 In its submission, the Australian War Memorial recommended that, given its military history expertise, it would be 'sensible to seek not only the Memorial's advice when proposals are being considered, but also its views', when proposals for military memorials, especially along ANZAC Parade, were being considered.⁵³
- 3.115 The Canberra chapter of the Walter Burley Griffin Society highlighted the strengths of the American model, with its multi-stage approvals process with expert involvement at all stages:
- Particularly significant is the institutional integration with the US Commission of Fine Arts, the Architect of the Capitol and various heritage and land management agencies with responsibilities in the central symbolic areas of Washington. They represent routine sources of expertise.⁵⁴
- 3.116 The Society recommended that the ability of the CNMC to access independent expert advice be incorporated into the Ordinance. The submission also noted the desirability of creating an Office of Government

52 Walter Burley Griffin Society, Management Committee, Submission no. 32, p. 23.

53 Australian War Memorial, Submission no. 36, p. 2.

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

Architect and a reformed NCA with enhanced planning, engineering and heritage expertise.⁵⁵

- 3.117 The Ordinance is currently silent on the question of external advice to the CNMC, neither requiring it nor preventing it. Whether and how such advice is obtained is entirely at the discretion of the Committee.
- 3.118 In recent years, the NCA has been the principal source of expert advice to the CNMC on the location and character of proposed memorials, 'whether as a full member (up to 2008) or an invited adviser (2008-present)'.⁵⁶
- 3.119 In its submission, the NCA supported the CNMC seeking independent expert advice. The NCA noted that it 'is not, and does not claim to be, expert on all commemorative intents relevant to Memorials', and that 'there may be proposals from time-to-time where it will not be possible for the NCA (even with its expertise) to give definitive advice on a matter'.⁵⁷
- 3.120 The NCA recommended allowing the Chair of the CNMC to instruct the secretariat (the NCA) to obtain advice on any subject matter necessary for a decision to be made on a proposal, and that the Ordinance be amended to reflect this.⁵⁸
- 3.121 In its submission, the Department of Regional Australia supported the CNMC seeking independent expert advice 'when appropriate'. The Department recommended:
- Establishing decision making guidelines that recognise independent expert advice should be sought by the CNMC as required; and
 - Clarifying the role of the NCA in advising the Committee and appointing a representative from the NCA as an 'expert advisor' to the Committee.⁵⁹
- 3.122 On the role of the NCA, the Department stated:

The NCA has regularly been asked to provide expert advice to the committee [CNMC]. Given the NCA's statutory responsibility for the National Capital Plan and its role in the development and maintenance of national memorials, the NCA has provided the Committee with advice on the location and design of proposed

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

56 National Capital Authority, Submission no. 30, p. 7.

57 National Capital Authority, Submission no. 30, p. 13.

58 National Capital Authority, Submission no. 30, p. 13.

59 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 18.

national memorials. The Department supports a representative from the NCA being appointed as an 'expert advisor' to the Committee. However, to ensure there are no actual; or perceived conflicts of interest between the NCA's role in advising the Committee and its planning approval role, the 'expert advisor' should not have voting rights.⁶⁰

Committee conclusions

- 3.123 The JSCNCET notes that the question of the exercise of discretion in seeking independent expert advice, or rather failing to seek it, combined with the significant role the NCA has played in recent decisions, is one of the reasons for the current inquiry. If the Ordinance is reformed, the JSCNCET therefore supports the NCA being part of the CNMC in an expert advisory role, one source of advice amongst many (see above).
- 3.124 The JSCNCET notes that the need for independent expert advice was recognised in the original Ordinance, with its provision that two members of the CNMC be 'persons who are recognized as authorities on Australian history'. The JSCNCET has recognised the importance of this and proposed the restoration of this provision to the Ordinance (see above). However, the JSCNCET also recognises that each memorial proposal will have its unique concept, qualities and characteristics, and unique place within the Canberra landscape, all of which will require input from people with specialised expertise.
- 3.125 Several options for utilizing external expert advice are available. The widespread publication of the details of memorial proposals, combined with the opportunity for people to make submissions on such proposals, will elicit informed opinion. Moreover, those responsible for conducting the approvals process could specifically seek advice from acknowledged experts in particular fields and incorporate such advice into their deliberations. Certainly, the expertise of our national cultural institutions should be availed of, especially as it may often be the only expert advice readily available. The JSCNCET would argue that not only could this be done, but that it *should be required* in order to ensure that such advice is made available at the earliest opportunity.
- 3.126 A further possibility is the creation of a standing advisory committee, made up of recognised experts in a range of disciplines, including history, heritage, architecture and planning, representatives of veterans and the

60 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 19.

services, and representatives of organisations with a strong focus on Australian history and culture at a national level (such as the National Gallery of Australia, National Library, National Museum, National Archives, National Portrait Gallery, Museum of Australian Democracy, National Film and Sound Archive, National Maritime Museum, High Court of Australia, Australian War Memorial or the relevant Commonwealth Department). The role of this committee would be to write advisory reports on each memorial proposal at each of the two stages in its development, such reports to inform CNMC deliberations and to be made publicly available. This committee could be called the 'National Memorials Advisory Committee'. Regardless of how the approvals process is structured, the involvement of a standing advisory committee would prove useful and has been incorporated into the recommendations of the JSCNCET in the following chapter.

Parliamentary oversight

- 3.127 In its submission, the Department of Regional Australia notes that there is already some parliamentary oversight of proposed national memorials, including:
- JSCNCET oversight of the administration of the Ordinance
 - Appearance of Departmental and NCA officers at Senate Estimates and other hearings as required
 - The involvement of parliamentarians through the CNMC.
- 3.128 The Department has suggested that 'the JSCNCET could provide further Parliamentary oversight of national memorials by making recommendations to the Committee on the "commemorative intent" of memorials'.⁶¹
- 3.129 The Department also noted that the ministerial determinations regarding national memorials are not subject to tabling in Parliament or disallowance (unlike ministerial determinations about the nomenclature of divisions in the ACT). In the interests of consistency, the Department recommends that 'ministerial determinations under the Ordinance should not be required to be tabled as disallowable instruments'.⁶²

61 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 20.

62 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 20.

Committee conclusions

- 3.130 The JSCNCET notes that the Department's submission actually highlights the lack of any formal, and at times any, mechanisms for parliamentary oversight of proposals for National Memorials.
- 3.131 The JSCNCET is of the view that while the recommended changes to the Ordinance already cited will improve the transparency and accountability of the CNMC, and the effectiveness of its parliamentary membership, additional layers of parliamentary oversight are justified given recent controversies. The preferred option of the JSCNCET is for the Committee to become the principal instrument for parliamentary engagement in the approvals process for National Memorials, as set out in Chapter 4. This will allow for a much more intimate and effective level of parliamentary oversight of the approvals process.
- 3.132 On the other hand, if the Ordinance is to be retained, the JSCNCET would suggest that, as the parliamentary committee directly responsible for matters affecting the National Capital, it should be informed about and be able to comment upon all proposals for new National Memorials. The JSCNCET therefore would recommend that the CNMC provide it with regular reports of new memorial proposals and updates on the status and progress of existing proposals, and that the JSCNCET be formally briefed on all final determinations of the CNMC with regard to National Memorial proposals.
- 3.133 Moreover, the JSCNCET believes that all ministerial determinations regarding proposed National Memorials should be disallowable instruments, in line with the current provisions of the Ordinance, and that such determinations should not be laid before the Houses until after the JSCNCET has been formally briefed regarding such determinations. Approvals for National Memorials are not a matter for haste – careful deliberation is essential.

Public participation

- 3.134 The lack of opportunity for public participation in the approvals process for National Memorials is one of the critical shortcomings identified in the *National Memorials Ordinance 1928*. Currently, there is no public consultation regarding the location and character of proposed National Memorials. There is public consultation under the EPBC Act with regard to assessment of proposals, but these assessments are specific to the Act, and do not address commemorative intent, location and design *per se*.

3.135 In its submission, the Department of Regional Australia noted that:

Any consultation process adopted by the Committee [CNMC] should ensure that public consultation starts early in the development of a proposed national memorial, captures a diversity of interested stakeholders and provides stakeholders with sufficient time to respond to proposals.⁶³

3.136 The Department suggested that the CNMC adopt guidelines for a mandatory national public consultation process, specifying the stages at which national memorial proposals are subject to public consultation, including consultation with the ACT community on matters of particular relevance to ACT residents, and how such consultation will be advertised to make the public and stakeholders aware of the process. The Department recommended that the NCA undertake national consultation on proposed memorials.⁶⁴

3.137 In its submission, the National Capital Authority highlighted the need to balance national and local interests in public participation. The NCA believes that the elected representatives of the people in the Australian Parliament are best placed to judge the national interest regarding the commemorative intent of a memorial proposal, and has suggested three possible options:

- a direct motion in the Houses of Parliament seeking support for, or approval of, a proposed commemorative intent and new Memorial;
- referral of commemorative intent to the JSCNCET for consideration prior to referral to the CNMC; or
- weighting the membership of the CNMC in favour of Parliamentarians.⁶⁵

3.138 According to the NCA, once commemorative intent had been approved, the community, and especially the local community, should be able to express views on the location and character of proposed memorials before the CNMC reaches a final decision. ⁶⁶ The NCA would, as both secretariat and the agency responsible for works approval, undertake consultation with the community and incorporate an analysis of community views in

63 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 21.

64 Department of Regional Australia, Regional Development and Local Government, Submission no. 39, p. 21.

65 National Capital Authority, Submission no. 30, p. 16.

66 National Capital Authority, Submission no. 30, p. 16.

its advice to the CNMC prior to any decision about the location and/or character of a memorial proposal. The NCA would publish details of this consultation process in its *Commitment to Community Engagement*.⁶⁷

- 3.139 In its submission, the Lake War Memorials Forum called for ‘public participation to be possible at *every stage* of decision-making’ and ‘recognition of the *special need* for public participation in relation to decision-making on National Memorials, given the many facets of this work’, such as the need for community understanding, reflection of community values and the need to incorporate appropriate expertise.⁶⁸
- 3.140 In its submission, the Management Committee of the Walter Burley Griffin Society argued that each stage of the approvals process should follow the definition of ‘consultation’ in the NCA’s own consultation protocol, the *Commitment to Community Engagement*, which expresses a commitment to:
- Inform the community and stakeholders
 - Listen to the community and stakeholders
 - Acknowledge submissions
 - Consider submissions
 - Provide feedback on how submissions have contributed to decision-making.⁶⁹
- 3.141 The importance of meaningful public participation was emphasised in the evidence presented to the JSCNCET by Professor Janette Hartz-Karp, an authority in deliberative democracy from Curtin University. She noted the lack of

‘any clearly stated legislative or regulative format what one is obliged to do or even the precision or the delegation that is involved in terms of engaging the public. It would seem to me that one thing that could be done is to state much more clearly the level of obligation in terms of public participation, the legal commitment to do, so the bindingness of it, the level of precision, how much ambiguity can they have to ignore this or to take it on, and the level of delegation, what sort of authority would be

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

68 Lake War Memorials Forum, Submission no. 27, p. 34.

69 Walter Burley Griffin Society, Management Committee, Submission no. 32, pp. 7–8; National Capital Authority, *Commitment to Community Engagement*, August 2011, p. 6.

granted to any sort of third party arrangement to be able to do anything at all.⁷⁰

- 3.142 Professor Hartz-Karp highlighted the fact that all too often, public consultation processes were just ‘tick-box’ exercises:

So the big challenge for you is how you would create it, or how you could create the situation where we get innovation and we have what I began to call ‘authentic deliberation’ or ‘authentic public deliberation’, where people really understand that there are real options, that their collective intelligence is really needed in order to help government or any governing organisation to determine what the best option might be, and that this is a real civic opportunity to be able to do that.⁷¹

- 3.143 Professor Hartz-Karp emphasised that an effective process must be representative, deliberative and have influence over outcomes.⁷² With regard to the memorials approval process, she proposed an overseeing committee, which would determine the need and extent for public consultation with regard to each proposal:

One of the ways to do that, as I see it, that you may have is to have some sort of overseeing committee. This is not an advisory committee in the way that we currently know it but much more the notion of being an honest broker in the process. What that overseeing committee would be doing, I would think, would be to take a look at proposals that come forward, work out whether or not this is a significantly large or small issue – in other words, is it likely to have big or small impacts – and determine the extent of deliberation.⁷³

Committee conclusions

- 3.144 Public participation in the processes of approving National Memorials is critical to successful outcomes. National Memorials are enduring national symbols. They must reflect the views and aspirations of the Australian community. The CNMC was originally formulated to give a national perspective through the participation of senior parliamentarians, and this

70 Professor Janette Hartz-Karp, *Transcript of Evidence*, 14 October 2011, p. 15.

71 Professor Janette Hartz-Karp, *Transcript of Evidence*, 14 October 2011, p. 15.

72 Professor Janette Hartz-Karp, *Transcript of Evidence*, 14 October 2011, pp. 15–16.

73 Professor Janette Hartz-Karp, *Transcript of Evidence*, 14 October 2011, p. 15.

is certainly important. But the views of ordinary citizens and those able to bring some degree of relevant expertise are also vital to the process.

- 3.145 The JSCNCET is of the view that, at the bare minimum, public participation should involve public access to information about memorial proposals and deliberations upon these proposals (see the above section on Transparency). But it should also involve direct input through the medium of submissions and possibly public hearings at each of the two stages of the process outlined above, dealing firstly with commemorative intent, and secondly with location and design.
- 3.146 Given the probable role of the National Capital Authority in the process, it would be helpful if its own *Commitment to Community Engagement* was extended to the work of the memorials approvals, whether under the auspices of the CNMC or under the JSCNCET's preferred model.

Recommendation 4

- 3.147 **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.**

- 3.148 Moreover, the JSCNCET is of the view that each proponent of a National Memorial should be under an explicit obligation to organise and fund public consultation processes, in conjunction with the National Capital Authority, as part of its bid to design and construct a new National Memorial.

Recommendation 5

- 3.149 **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.**
- 3.150 The JSCNCET is also attracted to the application of the concepts of deliberative democracy to the public consultation process. While the

Committee would question whether an elaborate public consultation process would be applicable to every proposal, the Committee endorses the principle of deliberative democracy in the case of major proposals. The Committee believes consultation and community involvement should reflect the values and commemorative needs of the entire Australian community. The NCA's *Commitment to Community Engagement* could be modified to reflect the principles of deliberative democracy, incorporating innovative and more representative forms of public participation. The NCA would design, and publicly stating its reasons for, a public consultation process at each stage of any given memorial proposal.

Recommendation 6

- 3.151 **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.**

Other key issues

Funding memorials

- 3.152 The JSCNCET is very interested in the way memorials are funded under the Washington model. This requires that ongoing maintenance be paid for in the first instance by proponents contributing ten per cent of construction costs towards ongoing maintenance. As in Washington, completed memorials in Canberra become the property and responsibility of the government, through the National Capital Authority. In response to questions put by the Committee the NCA advised:

The NCA would support placing an obligation on proponents to provide some funding toward the maintenance. However, this may not be a long term option. The NCA has in one instance (the National Police Memorial) retained funds (\$50,000) for post construction maintenance. This funding has since been expended and the NCA now maintains the memorial without receiving additional funding.

A longer term financially sustainable model would be a modest automatic increase in the NCA's base funding to align with the completion of new assets (such as memorials and artworks).⁷⁴

- 3.153 The JSCNCET agrees that the NCA should receive funding adequate to maintain its responsibilities with regard to the maintenance of memorials, especially as the number increases over time. However, the Committee also believes that memorial proponents should contribute to this maintenance along the lines of the Washington model. The JSCNCET is of the view that such funding arrangements should be applied whether the Ordinance is reformed or replaced (see Chapter 4).

Donor names

- 3.154 The JSCNCET supports the practice in the Washington model regarding donor names. Under the *Commemorative Works Act 1986*, donor names cannot appear on memorials or memorial sites. Mr Acosta explained:

I think the intent is that these are memorials that speak to the American people, that they are ultimately a completed piece of art that has to stand the test of time. I think many sponsors actually agree with that and they don't necessarily seek to have their names put on a donor wall or have some other sort of recognition. So to the extent that these are special, that they are unique and that, at the end of the day, they are contributions back to the public manages expectations with respect to how private members are celebrated or recognised.⁷⁵

- 3.155 The rules applying to this matter in Canberra are less prescriptive. The names of donors have appeared on National Memorials, acknowledging their contribution to the design and construction of the memorial. However, as the National Capital Authority explained to the Committee, 'the controls over recognition have been pretty strict':

There are a number of monuments and memorials where significant contributions have been recognised in basically modest plaques somewhere in the precinct of the memorial.⁷⁶

74 National Capital Authority, Submission no. 30.1, p. 1.

75 Mr Marcel Acosta, Executive Director, National Capital Planning Commission, *Transcript of Evidence*, 12 October 2011, p. 5.

76 Mr Andrew Smith, Chief Planner, National Capital Authority, *Transcript of Evidence*, 14 October 2011, p. 5.

- 3.156 The JSCNCET is of the view that the prohibition on donor names enforced under the Washington model should also be applied to National Memorials and National Monuments in Canberra (See Chapter 4).

Process for nomination of unfunded memorials

- 3.157 The JSCNCET is concerned that the need to find private sponsorship for memorial proposals may disadvantage potential sponsors of new memorials and significantly restrict the development of new memorials to a range of high profile issues. The JSCNCET believes that as part of the development of the Memorials Master Plan, consideration should be given to the funding of a wider range of subjects for commemoration with a view to funding them through a combination of private and government subscription.
- 3.158 Despite occasional public statements to the contrary, Australia's national capital, by comparison with other international capitals, has a modest commemorative fabric. This has occurred for a range of well-documented historical, cultural, social and political reasons.
- 3.159 This Report provides a model for a transparent approval process to be applied to national commemoration. However, the Government must also be mindful of the need for a working mechanism that is capable of generating worthy projects for consideration.
- 3.160 Noting the cultural stance outlined in the *Guidelines for Commemorative Works in the National Capital*, the committee believes it is desirable that the capital should be host to a broader expression of Australia's diverse cultural and historical fabric. As the Central National Area Design Study, *Looking to the Future*, put it: 'It is not too outlandish to regard the capital as a symbol of the ideals, dreams, aspirations, achievements, culture and history of the nation'.⁷⁷
- 3.161 Such commemorative diversity will only be achieved in the medium-term with an ongoing, tangible, Government commitment – a commitment inviting the Australian community to initiate bold new expressions of national commemoration in their national capital.
- 3.162 In part this is a resource question, but the Committee notes that numerous precedents exist for active Government interest in, and financing of, significant national commemoration. Rather than a program of one-off funding (which naturally results in the projects supported by vocal

77 National Capital Planning Authority, *Looking to the Future, Central National Area Design Study* 1995, Canberra, 1995.

interest groups), the Government should consider the ongoing funding of a national commemoration program, with a particular focus on memorials that are unlikely to be built without government support.

Recommendation 7

- 3.163 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.

Recommendation 8

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