
The Parliament of the Commonwealth of Australia

Etched in Stone?

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

Joint Standing Committee on the National Capital and External Territories

November 2011
Canberra

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Foreword

The commemoration of nationally significant events from our past is important. How we undertake such commemoration reflects on our identity and our aspirations. National memorials are particularly significant, because they reflect upon the past and identity of the nation as a whole. The National Capital is, in a sense, an act of commemoration. Its landscape, the names of its suburbs and streets, its public places and buildings, and its monuments and memorials, all reflect upon Australia as a nation, its past and its aspirations for the future.

The significance of Canberra, and the places within it, is what gave us the *National Memorials Ordinance 1928*, and the Canberra National Memorials Committee. The Ordinance and the CNMC were designed to give the Government a bipartisan mechanism by which enduring symbols, whether place names or memorials, could be scrutinised and endorsed in a way which reflected the nation as a whole.

The JSCNCET inquiry into the Ordinance has come about because of concerns that the Ordinance was no longer achieving what it was designed to do; and the evidence presented to the Committee has shown beyond doubt that the Ordinance is, at best, in much need of drastic reform and, at worst, in need of replacement.

After careful inquiry and consideration, the JSCNCET has come to the view that the Ordinance, a product of its time, should be replaced. There are more modern and sophisticated models for assessing and approving National Memorials. The Committee was impressed by the Washington model, which provides a comprehensive and sophisticated mechanism for assessing and approving commemorative works. While this model would be difficult to replicate in full in Canberra, the Committee believes its essence can be captured and incorporated into legislation reflecting local conditions.

The Committee has proposed the enactment of an Australian Commemorative Works Act to provide a comprehensive framework for defining commemorative

works, establish binding criteria for assessment and approval, and assure effective public participation in, and parliamentary oversight of, the approvals process. Commemorative works would be assessed at two stages, first for their 'commemorative intent', then, once this had been approved, for design and location. At the heart of the process would be the JSCNCET, which would provide the final assessment at both stages of the process on behalf of the Parliament.

As part of the inquiry, the JSCNCET has also had to consider how any changes to the approvals process would impact upon current proposals. This has been a difficult issue to address. The evidence presented to the Committee indicates that the approvals process has not operated as it should with regard to any of the proposals, and produced a highly contentious and flawed outcome with regard to one proposal in particular. This was not the fault of the proponents, who in all cases have engaged in the process in good faith. The Committee has recommended, therefore, that current approvals be allowed to stand, but only for the duration of current site leases. If the proposed memorials are truly viable, they will progress in the time available; if not, then it is probably fitting that they pass quietly into history themselves.

I would like to thank all those who have contributed to the inquiry through their appearances before the Committee and their submissions. There has been some lively discourse on a range of issues, and it has all been beneficial to the Committee's deliberations upon what has proved an intricate issue. I would also like to thank my Committee colleagues for their constructive, bipartisan, input into the inquiry and its outcome, and the secretariat for their efforts throughout the inquiry process.

Senator Louise Pratt
Chair



Membership of the Committee

Chair	Senator Louise Pratt	
Deputy Chair	Mr Luke Simpkins MP	
Members	The Hon Dick Adams MP	Senator Judith Adams
	Ms Gai Brodtmann MP	Senator Trish Crossin
	Dr Andrew Leigh MP	Senator Gary Humphries
	Mr Patrick Secker MP	Senator Stephen Parry
	The Hon Peter Slipper MP	

Committee Secretariat

Secretary	Mr Peter Stephens
Inquiry Secretary	Dr William Pender



Terms of reference

The Committee was asked by the Hon Simon Crean, Minister for Regional Australia, Regional Development and Local Government:

1. To inquire into, and report on:
 - The administration of the National Memorials Ordinance 1928 (the Ordinance), with particular reference on:
 - The membership of the Canberra National Memorials Committee (CNMC);
 - The process for decision-making by the CNMC;
 - Mechanisms for the CNMC to seek independent, expert advice; and
 - Opportunities for improving transparency in the administration of the Ordinance.
 - The appropriate level of parliamentary oversight for proposed National Memorials.
 - The appropriate level of public participation in the development of proposed National Memorials.
2. If changes to current arrangements are recommended, inquire into and report on transition provisions for current proposals for memorials which have not yet been constructed.

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List of abbreviations

ACT	Australian Capital Territory
AHA	Australian Historical Association
CDHS	Canberra & District Historical Society
CFA	Commission of Fine Arts
CMP	Conservation Management Plan
CNMC	Canberra National Memorials Committee
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
FOI	Freedom of Information
JSCNCET	Joint Standing Committee on the National Capital and External Territories
HIS	Heritage Impact Statement
MHR	Member of the House of Representatives
NCA	National Capital Authority
NCMAC	National Capital Memorials Advisory Commission
NCPC	National Capital Planning Commission
NMAC	National Memorials Advisory Committee

PALM Act *Australian Capital Territory (Planning and Land Management) Act*
1988



List of recommendations

1 *National Memorials Ordinance 1928*

Recommendation 1

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

3 Reforming the process

Recommendation 2

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

Recommendation 3

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

Recommendation 4

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

Recommendation 5

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

Recommendation 6

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

Recommendation 7

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

Recommendation 8

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.

4 The New Model**Recommendation 9**

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

- At the first pass, a motion be introduced to Parliament to approve the commemorative intent of a proposed National Memorial.

■ Following the introduction of the motion, the proposal be referred to the JSCNCET for consideration and report, based on the following approvals:

⇒ the memorial proposal be referred to the National Memorials Advisory Committee – a Committee made up of history and heritage experts, with one ACT Government representative, chaired by the National Capital Authority – to ensure that it complied with the *Criteria for Commemorative Works in the National Capital*

⇒ the National Capital Authority assess the proponent's budget for the design, construction and maintenance of the proposed National Memorial, and capacity to finance the proposal.

■ Once approved by the National Memorials Advisory Committee, and with financial arrangements certified by the National Capital Authority, the JSCNCET would report upon the proposal. The motion would proceed at the pleasure of Parliament, and if passed, the commemorative intent of the proposed National Memorial would be approved.

■ Following passage of the motion establishing the commemorative intent of the proposed National Memorial, responsibility for identifying a location for the memorial and initiating a process for its design would pass to the National Capital Authority. This would require memorial proponents to develop a design completion brief and run a public design competition (if necessary); and undertake, in conjunction with the National Capital Authority, the following tasks:

⇒ Identify possible locations

⇒ Conduct mandatory public consultations

⇒ Seek independent expert advice

⇒ Seek planning advice from relevant authorities and, if required, advice from relevant government agencies

⇒ Have assessments made under the *Environment Protection and Biodiversity Conservation Act 1999*

⇒ Develop draft conservation management plans and/or heritage impact statements for proposed sites, if required

⇒ Develop the budget and business plan for construction, maintenance and associated infrastructure costs.

- At the second pass, assessing design and location, the proposal would be referred to the Joint Standing Committee on the National Capital and External Territories for consideration and approval on behalf of the Parliament. If required, the Committee would be able to invite submissions from the public and undertake public hearings.
- Second pass approval by the JSCNCET would provide the final approval for the proposed National Memorial.
- Commemorative works, as defined by the Act, could be initiated by the Commonwealth or ACT Governments.

Recommendation 10

The JSCNCET further recommends that the proposed Commemorative Works Act:

- Define a 'commemorative work', encompassing both National Memorials and National Monuments as currently defined.
- Establish a National Memorials Advisory Committee, consisting of recognised experts in a range of disciplines, including history, heritage, architecture and planning; representatives of veterans, the services and relevant Commonwealth Departments; representatives of organisations with a strong focus on Australian history and culture at a national level; one representative of the ACT Government, appointed on the recommendation of the ACT Chief Minister; and chaired by a representative of the National Capital Authority. Membership to vary depending on the nature of the proposed National Memorial.
- Include the *Criteria for Commemorative Works in the National Capital* as a schedule to the Act.
- Include a Memorials Master Plan, including a map of existing memorials and potential sites for new memorials in accordance with the Criteria, as a schedule to the Act.
- Require the National Capital Authority to maintain a register (published on a specific National Memorials website) of all National Memorial proposals, including their current status, and all relevant decisions and approvals, along with all supporting documentation, including:
 - ⇒ Independent expert advice
 - ⇒ Public submission
 - ⇒ Reports of public consultations

- Define responsibilities of proponents in meeting design, construction and maintenance costs, including providing ten per cent of the overall costs towards ongoing maintenance of the new National Memorial.
- Prohibit the appearance of donor names or names of relatives on or near National Memorials and National Monuments, except where the specific object of the commemoration – its commemorative intent – is individuals, families or groups that have been found to be worthy subjects of commemoration.
- Exclude minor commemorative works, such as plaques or individual trees outside the Parliamentary Zone, from its operation.

5 Transitional Arrangements for Current Proposals

Recommendation 11

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

