



Military Memorials of National Significance Bill 2008

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Military Memorials of National Significance Bill 2008

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House: House of Representatives

Portfolio: Veterans' Affairs

Commencement: On the day on which it receives the Royal Assent

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the Bill is to provide a mechanism that will enable a memorial which is located outside the Australian Capital Territory (ACT) and meets specified criteria, to be recognised as a Military Memorial of National Significance.

Background

The current state of the law

The [National Memorials Ordinance 1928](#) (the *Ordinance*) was enacted under the *Seat of Government (Administration) Act 1910*.¹ The *Ordinance* formally established the National Memorials Committee with the Prime Minister as Chairman. The Committee's role is to consider and approve (or reject) submissions relating to the location and character of national memorials on 'national land' in the ACT.

Section 27 of the *Australian Capital Territory (Planning and Land Management) Act 1988* empowers the Minister² to declare specified areas of land in the ACT to be 'national land'

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1. After the Australian Capital Territory became a self-governing territory in 1988 a number of ordinances that relate to the operations of the Commonwealth were reserved as Commonwealth laws. This is one of them.
 2. Section 19A of the *Acts Interpretation Act 1901* states that if a provision of an Act refers to a Minister by using the expression "the Minister" without specifying which Minister is referred to then the reference is a reference to the Minister who administers the provision in respect of the relevant matter. In this case it is the Minister for Finance and Deregulation.

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in circumstances where the land is, or is intended to be, used by or on behalf of the Commonwealth.

The National Memorials Committee only examines proposed memorials on 'national land'. The Committee has no authority to consider proposed memorials which are located elsewhere. A memorial built on land which is not 'national land', may be referred to as being 'national' in character. However, under the current state of the law, it could not be officially recognised as having national significance in the same way that a memorial on 'national land' would.

Funding of national memorials

The *Ordinance*, and consequently the National Memorials Committee, does not govern the funding of national memorials which are not located on 'national land'.

Section 83 of Australia's *Constitution* provides that 'no money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law'. This means that the Commonwealth cannot authorise the funding of things such as national memorials, unless the Parliament has authorised the expenditure by an Act of Parliament. For example, the Australian War Memorial is established as a corporation by the *Australian War Memorial Act 1980* which sets out the functions of the Australian War Memorial and its governance. According to its Annual Report, the Australian War Memorial's primary funding is by way of government appropriation.³

Alternatively, funding may be available through programs such as the [*Commemoration of Historic Events and Famous Persons*](#) (CHEFP) grants program (sponsored by the Department of the Environment, Water, Heritage and the Arts). CHEFP is designed to commemorate people, events and places of national historical significance.

Eligible projects may include:

- the conservation of graves of people of national historic significance, and
- the construction and conservation of monuments, plaques and statues that commemorate people, events and places of national historical significance.

It is a modest program with many projects receiving around \$5000 each payable to eligible not-for-profit bodies that are legally incorporated in Australia and local government authorities.

3. Australian War Memorial, *Annual Report 2005-2006*, Canberra, September 2006, p. 89.

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Australian Ex-Prisoners of War Memorial in Ballarat

The [Australian Ex-Prisoners of War Memorial](#) (the Ballarat Memorial) was completed and dedicated on 6 February 2004. The names of more than 35,000 Australian Prisoners of War (POWs) are etched into a 130 meter long black granite wall in alphabetical order, grouped by conflict, commencing with the Boer War through to the Korean War.⁴

The monument, designed by sculptor Peter Blizzard, is intended to provide former POWs, their descendants, visitors and future generations with a reflective experience. However, although in its themes, character and execution it could be called ‘national’ it is not currently recognised as a ‘national memorial’.

Can a local memorial be a ‘national memorial’?

There has been considerable debate about whether the Ballarat Memorial is a ‘national memorial’ since the then Member for Ballarat, Mr Michael Ronaldson, announced in 1999 that the town would be the site of an Australian Ex-Prisoners of War Memorial. He stated then that the Memorial would have national status, though it would not be called a ‘national memorial’.⁵

In essence, the group which had been the driving force behind the project believed that the Ballarat Memorial was a ‘national memorial’ for the following reasons:

- Former Assistant Treasurer, Senator Rod Kemp, had referred to the memorial as a ‘national memorial to be erected in the City of Ballarat’ when he announced that gifts to the value of \$2 or more to the Australian Ex-Prisoners of War Memorial Fund would be tax deductible.⁶
- The project had received Commonwealth funding in the amount of \$200,000 prior to its completion,⁷ and further promises of funding were made during the election campaign of 2004 by both parties.⁸

4. There were no Australian prisoners of war in the Vietnam War.

5. Michael Ronaldson MP, *House Hansard*, 29 September 1999, p. 10980.

6. Senator the Hon. Rod Kemp, Assistant Treasurer, ‘*Deductibility of Gifts to the Australian Ex-Prisoners of War Memorial Fund*’, Press Release, Canberra, 20 October 1999.

7. Hon. Bruce Scott, Minister for Veterans’ Affairs, ‘*\$150,000 Federal Funds Boost for Ballarat PoW Memorial*’, Media Release, Canberra, 3 August 2001.

8. \$150,000 by Senator Mark Bishop, then Shadow Minister for Veterans’ Affairs on behalf of the ALP in a *Press Release* on 7 September 2004, and \$300,000 by then Treasurer Peter Costello on behalf of the Coalition in a *door stop interview* on 7 October 2004.

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- It was the first memorial to prisoners of war that specifically honoured all Australian POWs both living and dead from all conflicts. It was considered that it could not be a local memorial if it carried the names of POWs from all over Australia.⁹
- The only other memorial to POWs is the Changi Chapel which was not accessible to the public and was directed solely at POWs interned by the Japanese.¹⁰
- The project had the full support of the National Executive of the Ex-POW Association of Australia.¹¹

The arguments by the former Government against this proposition were as follows:

- The Ballarat Memorial would complement other major POW memorials, including the Government established memorials at Hellfire Pass in Thailand and Sandakan in Malaysia as well as the National Prisoner of War Memorial, Changi Chapel, which is located in the grounds of the Royal Military College, Duntroon, Canberra.¹²
- The law required all national monuments to be located in the ACT.¹³
- Whilst the Ballarat Memorial was ‘a worthy project’ it was ‘not a national project.’¹⁴

Basis of policy commitment

Mr Rudd, then opposition leader, promised in June 2007 that the Ballarat Memorial ‘would be recognised if Labor wins government’.¹⁵

The Hon. Alan Griffin, Minister for Veterans’ Affairs stated on 19 March 2008 that:

The Australian government will soon be able to deliver on its election commitment to recognise the Australian Ex-Prisoners of War Memorial in Ballarat as a memorial of national significance.

... It is fitting that Ballarat’s Australian Ex-Prisoners of War Memorial is the first memorial accorded national status under this new legislation.¹⁶

9. Lachlan Grant, ‘What makes a ‘National’ War Memorial? The Case of the Australian Ex-POWs Memorial’, *Public History Review*, Vol. 12, 2006, pp. 92-102 at p. 94.

10. *ibid.*, p. 94.

11. *ibid.*, p. 95.

12. Hon. Danna Vale, Minister for Veterans’ Affairs, ‘*Ballarat Ex-POW Memorial Fund Raising Reaches Goal*’, Media Release, Canberra, 11 October 2002.

13. Meaghan Shaw, ‘Split over Ballarat POW site’, *The Age*, 28 June 2007, p. 12.

14. Lachlan Grant, *op. cit.*, p. 94.

15. M. Shaw, ‘Split over Ballarat POW site’, *The Age*, 28 June 2007, p. 12.

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The question of funding

This Bill delivers on Labor's promise that the Ballarat Memorial will become a 'Military Memorial of National Significance'. However, whilst formal recognition will bring with it greater status, of greater concern to those concerned with the Ballarat Memorial is the issue of formal, on-going, Commonwealth funding.¹⁷

The debate about the continued funding of the Ballarat Memorial commenced shortly after its opening in February 2004. It was sparked by the Ballarat City Council's request for an extra \$500,000 from the Federal Government towards upkeep and maintenance.¹⁸

The former Government was unwilling to make a commitment to the funding for the Ballarat Memorial, despite claims that the local community was 'desperate for funding for ongoing maintenance and security issues [in relation to the Ballarat Memorial].'¹⁹

This Bill does not, of itself, deliver a guarantee of funding.

Financial implications

According to the Explanatory Memorandum, the Bill has no financial impact.²⁰

However, it should be noted that the Government has provided \$160,000 in Federal Government funding to help preserve the Ballarat Memorial.²¹ The funding was said to 'fulfil the Government's commitment to recognising the memorial's significance and would help fund memorial maintenance over the next four years.'²²

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16. Hon. Alan Griffin, Minister for Veterans' Affairs, '*Ballarat Ex-POW Memorial First to Benefit from New Legislation*', Press Release, Canberra, 19 March 2008.
 17. Megan Doherty, 'Monumental stoush in shaky territory', *Canberra Times*, 6 February 2007, p. 12.
 18. Lachlan Grant, op. cit., p. 94.
 19. Transcript of interview between the Hon, John Howard, Prime Minister and Kathy Bedford, ABC Regional Victoria, 20 April 2004.
 20. Explanatory Memorandum, p. ii.
 21. This amount appears in the [Portfolio Additional Estimates Statements 2007-08](#) under Veterans' Commemorative Activities at p.22.
 22. Hon Alan Griffin Minister for Veterans' Affairs, '*Minister Announces \$160,000 for Ex-POW Memorial in Ballarat*', Media Release, 3 February 2008.

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Main provisions

Part 2 of the Bill relates to the declaration of Military Memorials of National Significance.

Subclause 4(3) sets out the criteria for determining whether a memorial is a Military Memorial of National Significance as follows:

- The scale, design and standard of the memorial is appropriate for the memorial to be considered ‘nationally significant’ and the memorial is appropriately dignified and symbolic: **paragraph 4(3)(a)**.
- The sole purpose of the memorial is to commemorate Australia’s military involvement in a significant aspect of Australia’s wartime history: **paragraph 4(3)(b)**.²³
- The memorial has a major role in community commemorations: **paragraph 4(3)(c)**.
- Commonwealth flag [protocols](#) are observed in relation to the memorial: **paragraph 4(3)(d)**.²⁴
- The memorial is owned or managed by a ‘State or Northern Territory authority’ that has responsibility (including financial responsibility) for the ongoing maintenance of the memorial, and for any refurbishments: **paragraph 4(3)(e)**. **Clause 3** defines the term ‘State or Northern Territory authority’ being :
 - a State or the Northern Territory or
 - a local government body, or other authority, established by or under a law of a State or the Northern Territory.²⁵
- It complies with applicable planning, construction and related requirements: **paragraph 4(3)(f)**.
- The memorial is on public land within a State or the Northern Territory: **paragraph 4(3)(g)**.
- It is publicly accessible and there is no entry fee: **paragraph 4(3)(h)**. According to the Explanatory Memorandum, the memorial is to be accessible on a daily basis with

23. Memorials in the form of roads, bridges, public swimming pools, halls or gates would not be declared a ‘Military Memorial of National Significance’ because they also serve another purpose. Explanatory Memorandum, p. 2.

24. These include rules about flying the flag (including flag raising ceremonies), the order of precedence of the Australian flag in relation to other national flags, the circumstances in which the flag can be flown at half mast, and the use of the flag at funerals.

25. Note that the Australian Capital Territory (ACT) is excluded because national memorials in the ACT are already covered by the *National Memorials Ordinance 1928*.

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the possible exception of certain public holidays such as Christmas Day and Good Friday.²⁶

- The memorial must be completed and functioning as a memorial at the time that the application is lodged: **paragraph 4(3)(i)**.
- It is not associated with a commercial function that conflicts with its commemorative purpose: **paragraph 4(3)(j)**. According to the Explanatory Memorandum, this does not preclude a memorial which is associated with a commercial endeavour, such as a bookshop or café as long as the commercial endeavour is ancillary to the memorial.²⁷

Subclause 4(1) provides that the Minister²⁸ may, by notice published in the Gazette, declare a memorial to be a ‘Military Memorial of National Significance’ if the above criteria are met. In addition:

- an appropriate application for the memorial to be so declared has been made and
- the Prime Minister has agreed in writing to the making of the declaration.²⁹

Under **subclause 4(4)** neither the notice published in the Gazette nor the written agreement by the Prime Minister are legislative instruments within the meaning of the *Legislative Instruments Act 2003*. They will not, therefore, be put before the Parliament and will not be subject to disallowance.

Clause 5 provides that the Minister may approve, in writing, an alteration to a ‘Military Memorial of National Significance’ provided that:

- an appropriate application has been made and
- the Minister is satisfied that the memorial will continue to meet the criteria set out in subclause 4(3).

Subclause 5(2) provides that the Minister’s written approval is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. It will not, therefore, be put before the Parliament and will not be subject to disallowance.

Clause 6 provides that the Minister may, subject to agreement in writing by the Prime Minister, revoke a declaration that a memorial is a ‘Military Memorial of National Significance’ in circumstances where:

26. Explanatory Memorandum, p. 3.

27. *ibid*.

28. The reference to the Minister means the Minister for Veteran’s Affairs.

29. This requirement for Prime Ministerial agreement is consistent with the role of the Prime Minister as the Chairperson of the National Memorials Committee.

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- the Minister is satisfied that the memorial does not meet the criteria in subclause 4(3) or
- an alteration has been made to the memorial since the declaration was made and the Minister has not approved the alteration under clause 5.

The revocation is made by notice published in the Gazette. In that case according to **subclause 6(2)**, neither the notice, nor the written agreement of the Prime Minister, are legislative instruments within the meaning of the *Legislative Instruments Act 2003*. They will not, therefore, be put before the Parliament and will not be subject to disallowance.

Subclause 7(1) provides that an application may be made for a memorial to be declared to be a Military Memorial of National Significance or for approval of an alteration to such a memorial. The application must be in accordance with the relevant regulations: **subclause 7(3)**.

Part 3 of the Bill contains miscellaneous provisions.

Clause 9 provides that the Commonwealth does not have any responsibility, whether financial or otherwise, for a memorial merely because it has been declared a 'Military Memorial of National Significance' under clause 4.

Clause 10 provides that the Governor-General may make regulations which will give effect to the contents of the Bill, for example, in relation to the content and form of applications for declaration.

Concluding comments

The Explanatory Memorandum states that the Bill will provide a mechanism to honour the Government's election commitment to declare the Ballarat Memorial to be a national memorial.³⁰ Certainly, **subclause 4(2)** of the Bill which provides that no formal application for declaration needs to be provided in respect of the Ballarat Memorial is recognition of this commitment.

However, the contents of both **paragraph 4(3)(e)** and **clause 9** should be noted. Both of those clauses indicate that the Commonwealth denies responsibility, financial or otherwise, for a memorial which has been declared (or is seeking to declared) a 'Military Memorial of National Significance'.

As already stated, the Government has delivered funding for maintenance of the Ballarat Memorial for the next four years. However the Bill is silent on the issue of further funding thereafter.

30. Explanatory Memorandum, p. 5.

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