

Submission to the JSCNCET Inquiry into the Administration of the National Memorials Ordinance 1928

Introduction

The current form of the National Memorials Ordinance 1928 (NMO) owes much to its original drafting. There have been some slight modifications made over the years but not to its essentials. Because the NMO has not been modernised to keep pace with changes in Australian Government administrative practices, significant problems have emerged in recent years. They remain unaddressed.

Today, the NMO represents the arrangements for the commissioning of national memorials in the national capital reflecting how the federal government operated, the character of the national capital and its population in the late 1920s.

At that time, there was little physical manifestation of the city of Canberra itself and no one could really see what the capital was going to look like. The part of the Commonwealth's administration responsible for the development of the national capital was a short-lived statutory authority soon to revert to departmental control¹ and the population was very small, the first public servants only began to arrive in any numbers in 1927. In addition, the Prime Minister was closely involved, and interested, in decisions about the new national capital and its financing.²

It is not surprising that a challenging and expensive memorial proposal that is too big - and, certainly, too ugly - to ignore, such as the Lake War Memorials, has exposed all the horrible shortcomings of the NMO.

What had previously flown under the radar, or in the case of memorials was largely hidden out of sight behind bushes or quietly dealt with by the National Capital Development Commission and its successors in the last 50 years, has been utterly exposed in the glare of sunlight on the "temptingly empty" shores of Lake Burley Griffin.³

Recommendations about the Ordinance

It should be redrafted as soon as possible and given priority on the legislative program. At the same time, a contemporary national memorials policy should be developed.⁴

¹ The Federal Capital Commission was abolished in 1930 and control over the national capital's planning and growth reverted to direct department control (among various departments) until the creation of the National Capital Development Commission in 1958.

² In contrast to the disinterest in and disdain for the national capital exhibited by most federal politicians, responsible Ministers and leaders of federal political parties post Menzies and certainly from the 1980s onwards.

³ Only physically "empty". The open spaces along the Lake Burley Griffin shoreline are heavy with meaning - and delight - and do not need to be cluttered up with edifices that become the cause of wanton disruption of the design's pivotal axes.

⁴ Along with the revision of the NCA's "Guidelines for Commemorative Works in the National Capital" now dating back to 2002.

The Canberra National Memorials Committee (CNMC) should be chaired by the head of the agency responsible for the national capital with membership consisting of the Secretary of the owning department, one other departmental or statutory authority officer who is close to the subject matter (to reduce the amount of briefing required and to significantly increase the amount of detailed, correct advice available to the Committee; not an SES officer who is not across the detail) and up to five ACT residents⁵, all of whom will have relevant expertise for example: design, art, landscape architecture, heritage, engineering and/or, most importantly, “an understanding of and an eye for Canberra’s history, landscape and aesthetics”.

The CNMC’s membership should be approved by the Minister of the relevant Department.

The increase in ACT residents proposed in this Submission reflects the increase in the Territory’s population since 1928.

Public hearings with submissions should be conducted by CNMC on all memorials, whether proposed by the Government or by the public, before and after the design stage. The results of public consultations should be reported to the responsible Minister together with recommendations about proceeding and/or desirable changes.

It is not necessary to include representation from the ACT Government because the area under the CNMC’s purview is National Land. The CNMC should, however, develop a way to effectively brief and cooperate with the ACT Government and keep it informed.⁶

The CNMC should be *advisory* only. All proposals, including funding for design, construction and maintenance⁷, should be approved by the Minister of the relevant department or statutory authority and subjected to normal Budget scrutiny processes.

The CNMC should have an identified and adequate budget as part of the Capital Works Program for the National Capital within the relevant Portfolio Budget, to enable it to employ expertise, commission studies, designs etc at will. Amounts under \$5m for the national capital should not be left to the owning Department/authority to find.⁸

⁵ ACT residents (how defined?), although ‘local’, are unlikely to have a mortgage on national memorials expertise or insight. This provision should be relaxed if other worthy candidates for membership of the NMC present themselves. The decision to be made is whether ACT residents are representing themselves, the local community or their skills on behalf of the whole population of the country whose capital it is.

⁶ To avoid duplication or competition; see also last section of this submission.

⁷ One of the problems with the NMO is that anyone can come along and propose a memorial as long as they can get approval (not difficult), a site (not difficult) and fund the construction (can be more difficult). All memorials should be funded by the Commonwealth to ensure proper scrutiny, oversight, efficiency and coordination among Commonwealth agencies, as for public works. Further, maintenance should be separately identified and funded.

⁸ The Commonwealth should maintain identified funds for development of the national capital as most works in the Parliamentary Zone, not proposed by Departments, will be under \$5m and unable to compete for new funding. Works over \$5m will be properly scrutinised if part of a portfolio budget bid, while those under \$5m will have a chance of being funded instead of tightly funded agencies being left to scratch around for money. An exception for budget bids under \$5m should be made for national capital funding to get things on a proper footing and avoid poor financial practices. That said, there is little to recommend filling up the Parliamentary Zone with unnecessary monuments. New memorials should be a rarity, undertaken sparingly – the bar should be set very high. Physical memorials in themselves do not make history or culture.

Memorial proposals nominated for funding will be subject to scrutiny through Senate Estimates and JSCNCET processes. This will be more effective than vague, general scrutiny by both Houses, disallowable instruments and the like.

The Prime Minister should be briefed annually on the CNMC's work/proposals⁹. Its work should be discussed with JSCNCET in regular briefings provided by the responsible department/statutory authority and reported on in the appropriate Annual Reports.

This would modernise the CNMC's structure and operations, make sure it is properly advised and provide for an approval process, including funding, in line with Commonwealth administration in the 21st century.

The key issue affecting the CNMC is to ensure that its members do not lack interest and persistently delegate their attendance as has occurred over many years. More suitable membership will overcome this problem.

Further, as the Committee will no doubt appreciate, having interested and knowledgeable members of the CNMC, correct, high standard briefing by public servants and making decisions that please most people most of the time are three quite different matters and cannot be guaranteed. However, as the Lake War Memorials Project has demonstrated, dealing with process inadequacies that *can* be improved will go a long way in addressing public objections to poor process and lack of transparency in the CNMC's present way of operating.

Transition Provisions

Until the new Ordinance is operative, all current proposals and approved memorials not under construction should be halted. Both should then be subject to the new approvals process that ensures properly informed decision-making and an adequate level of public participation.

Other Comments

While the Minister has referred very narrow terms of reference to the Committee, JSCNCET is urged frame its deliberations and recommendations about the NMO in a broader context:

- What is the purpose of national memorials? To what extent are they the creatures of the federal government which decides to build them and then funds them versus the 'democratic' principle of allowing any person or group of people to propose a memorial? (Today, the apparent constraint on non-government proponents of having to fund construction appears to act as *the* hurdle for doing away with "unworthy" or overly expensive propositions).
- Who decides what should be commemorated and how, the Parliament or the public? Referring particularly to controversies in the last 10 years over the Centenary of Suffrage memorial and the Immigration Bridge both of which were stopped, one through public objection to aesthetics, later redesigned and resited in a much less conspicuous location; the other not approved by the NCA after increasing public

⁹ Given the current inability of the two major parties to work cooperatively on any matter, there is no point in recommending a bi-partisan approach as envisaged in the current NMO and which does not work. The Opposition has members on JSCNCET and on Senate Estimates Committees.

rumblings about its suitability, safety, duplication with other memorials and aesthetics.

- Who is to be the final judge of the aesthetics? Referring to the amendments to the Inge King designed RAAF memorial on Anzac Parade. Why did these go ahead even with the artist's agreement?
- How does parliamentary scrutiny of "works" the Parliamentary Zone under the *Parliament Act 1974* dovetail with the NMO as is or as amended in the future? Should there be a role for the Public Works Committee?
- Should the nomenclature of public places function for the whole of the ACT have been retained by the Commonwealth?
- What are the practices for national memorials in other planned capital cities?
- Flow-on effects to the ACT Government's Memorials Policy (2005) that is heavily based on the NMO and includes some of its criteria in an updated form. The ACT policy requires proposers to also fund \$20m of public liability insurance during construction and pay for any damage; there is a review provision after 10 years to assess whether to continue a memorial; plant memorials become the property of and are maintained by the ACT Government. The detailed attention to the financial aspects of privately proposed memorials is noteworthy.
- The perennial land administration complexities in the national capital where memorials built before self-government on Commonwealth (National) Land, for example the Australians in the Spanish Civil War 1936-39 memorial and the National Jewish Fund memorial, both to be found in Lennox Gardens, are now *national* memorials on *Territory* Land.