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Review of the Heritage Act 2004
Community Engagement and Communications
GPO Box 158
Civic ACT 2601
by email: communityengagement@act.gov.au

14th May 2010

Dear Sir/Madam,

Re: Heritage Act 2004 Review

Thank you for inviting Australia ICOMOS to make a submission to the review of the *ACT Heritage Act, 2004*. Australia ICOMOS welcomes the timely review and evaluation of the effectiveness of heritage legislation, as a key mechanism for continuous improvement in the protection and management of Australia's cultural and natural heritage.

Australia ICOMOS, Australia's leading non-government professional organisation for cultural heritage, is the Australian national committee of the International Council on Monuments and Sites. This is a non-government professional/expert organisation primarily concerned with the philosophy, terminology, methodology and techniques of cultural heritage conservation. Internationally, ICOMOS works closely with UNESCO, and acts as UNESCO's principal advisor on cultural aspects of the operation of the World Heritage Convention. As members of an international NGO, we are part of a global professional network.

Australia ICOMOS has a key role in contributing to heritage conservation philosophy, methods and standards of practice in Australia. Our members are professionally qualified and experienced practitioners from a wide range of disciplines, working in all facets of the understanding and protection of Australia's cultural heritage places, at all levels of government and in the private sector. We regularly provide feedback and advice on heritage policy and philosophy to the Australian Government, as well as to State and Territory governments.

In general terms, Australia ICOMOS strongly advocates that all heritage legislation should embody the principles and procedures of the Australia ICOMOS Burra Charter 1999. Our detailed comments on the issues raised in the discussion paper are attached.

We would be happy to provide further input or advice, or to have continuing involvement in your review process. Please do not hesitate to contact me in this regard.

Yours sincerely,

Dr Susan McIntyre-Tamwoy
President, Australia ICOMOS



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Australia ICOMOS Submission on the Review of the *ACT Heritage Act 2004*, Discussion Paper, March 2010.

1. Objectives of the Act

We are concerned about resourcing levels for the administration of the Act, and its consequent ability to meet its objectives for heritage protection. We are aware of a backlog of nominations and of concerns about the availability of expertise to assess potential heritage impacts on listed places/objects subject to Development Applications. Resourcing is obviously key to the effective administration of the act, but so too is the efficient deployment of the available resources. It appears that currently the backlog of nominations under the Act dominates the work of the Heritage unit, and perhaps impedes the development of policy and procedures which could improve outcomes for heritage management more broadly.

2. Statutory Role of the ACT Heritage Council

- *Composition of the Heritage Council*
While a balance of community and other stakeholder representation on the Heritage Council is very important, the bulk of the load of issues in the ACT is in cultural heritage and greater expertise in this area is essential.
- *Independence of the Heritage Council*
The Heritage Council should remain an independent body.

3. Nomination/Assessment Process

The assessment of nominations should follow the Burra Charter process, where the assessment of heritage significance must be undertaken first, to provide a clear understanding of heritage significance, prior to making decisions on how the significance of the place can be best managed. It is quite acceptable to include a costs and benefits assessment in relation to heritage management decisions, but it is unacceptable in terms of ICOMOS doctrine and heritage conservation philosophy generally, to allow management issues to muddy the processes of heritage assessment and the production of a rigorous and robust understanding of cultural significance.

- *Backlog of Nominations*
A one-off effort/project to clear the current backlog of nominations should be undertaken, followed by the implementation of a more streamlined assessment process, designed to avoid the assessment of nominations dominating the resources available for heritage in the ACT. Places nominated with professional input and which address the heritage assessment criteria and Burra Charter principles, should be accepted with minimum scrutiny.
- *Places of Local/Territory Significance*
The threshold for listing on the ACT Heritage should be considered as equivalent to the threshold for local significance in NSW and other states. Thresholds of significance are generally used to help spread the load of heritage management and administration between different tiers of government, a consideration which doesn't appear to be relevant in the ACT. Listings on the ACT Heritage Register could, however, indicate whether the heritage assessment found a place or object to be of

significance to the local area, to the Territory or region, or to the nation, if it is considered that the identification of these thresholds would assist in the ongoing management of the place.

A process needs to be developed to ensure protection of ACT heritage no matter where it is in the ACT. A bi-lateral agreement or memorandum of understanding between the territory and the commonwealth is required to ensure adequate heritage protection of the territory's heritage which is located on national land.

- **HERCON Criteria**

Adoption of the HERCON criteria is strongly supported. The ACT's current heritage criteria are out of step with other jurisdictions, difficult to use, and may act as an impediment to the registration/listing process.

4. Aboriginal and European Archaeological Heritage

The Act should provide for the protection of Aboriginal and non-Aboriginal archaeological heritage through nomination and listing and through the need for prior assessment of the heritage values of areas proposed for development. Aboriginal cultural heritage should not be seen to be subsumed within archaeological heritage. The Act should support the right of Aboriginal people to determine the cultural significance of Aboriginal cultural heritage.

Any processes developed to consult with Aboriginal communities on matters of cultural heritage should be developed with the full participation of Aboriginal communities.

Aboriginal consultation processes should then be supported materially by the ACT government.

5 Land Planning and Development

- Should archaeological assessments be undertaken by Government prior to releasing land to developers?

Early assessment of heritage values in the land management process is crucial to successful heritage management. In addition, regional assessment of heritage significance, prior to the finalisation of planning decisions, provides better heritage outcomes for the community. This is especially true for archaeological assessments, where a regional landscape approach provides solid data on the comparative significance of individual sites, better research outcomes and more appropriate opportunities for community consultation and involvement.

Further, better information and guidelines for undertaking heritage assessment early in the planning stages for land management needs to be developed and promoted throughout the ACT government and private sector.

6. Heritage Guidelines

Heritage Guidelines are general and while they may be suitable for residential conservation areas, they may not be appropriate to deal with the individual significance of individual places. It is considered that research on the effectiveness of Heritage Guidelines should be conducted, in order to determine their utility in a range of scenarios.

9. Heritage and Public Authorities

Public authorities should be encouraged to integrate heritage management into regular asset management routines. Public authorities should receive recognition and incentives for opening heritage assets to the public and undertaking good heritage management.

11. Relationship to other Legislation

The relationship between the *Planning and Development Act 2007* and the *Heritage Act* should be strengthened through policies and procedures, as well as through cross referencing within the legislation.