17 June 2013

Dear Sir/Madam

Re: ACT Heritage Act Review

I am writing in relation to the ACT Government response to the review of the ACT Heritage Act, 2004. Australia ICOMOS welcomes the opportunity to respond to the Government's discussion statement on 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; also advising on the Intangible Cultural Heritage and Underwater Cultural Heritage Conventions. As members of an international NGO, we are part of a global professional network with more than 100 national committees.

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,

Michael Queale, M.ICOMOS Vice President Aust ICOMOS

Elizabeth Vines OAM, FRAIA, M.ICOMOS

President, Australia ICOMOS

General comments

Australia ICOMOS (AI) notes that the ACT Government has developed a range of responses to the heritage review that will have long term implications for the identification and protection of heritage in the ACT.

There are a number of initiatives that AI strongly supports that it considers will have strong benefits for the ACT's cultural heritage. The proposal to develop a five-year heritage strategy and a communications strategy are particularly supported. These initiatives may assist any perceptions that heritage is seen as an impediment rather than adding value to the community. Australia ICOMOS notes that the documents, such as the summary statement brochure and the Minister’s explanatory statement to the ACT Legislative Assembly, can be read in a way to imply that heritage is a barrier to progress, rather than a public benefit. We would urge that any such inferences be reviewed to better reflect the importance of heritage to the cultural life and community sustainability of the ACT.

Australia ICOMOS is pleased to see several proposed amendments that clarify and ease the identification, protection and management of heritage in the Australian Capital Territory. We also have some concerns, a few significant, also addressed below.

Positive Amendments

Australia ICOMOS applauds the following amendments, considered to be positive to heritage conservation in the ACT, as well as providing a more straightforward and administrative system:

Adoption of the HERCON significance criteria.

This is a commitment made by all jurisdictions in 2008, resulting in a more integrated heritage system across Australia, as well as with different levels of government—important in the ACT, given its complexity of territory and national land. We note that the heritage review recommended that the criteria not be specified in the legislation, but instead in regulations, allowing for readier update / change to significance criteria where found appropriate to better heritage conservation. This has not occurred. Australia ICOMOS urges reconsideration of incorporating the criteria in the legislation. We also advise that the addition of ‘in the ACT’ or ‘to the ACT’ in the text of the criteria should be the area of the territory, rather than for example the ‘history since the area became the ACT’, as might be narrowly interpreted. We also recommend that the legislation, or regulations, if the criteria are moved there, needs to include definitions of ‘the ACT community’ and ‘a cultural group’.

Monday, 17 June 2013
A range of administrative improvements

Australia ICOMOS considers these will make the administration of the legislation simpler and more sensible. These include:

- More transparency in the processes
- Amendments to statutory timeframes
- Access to relevant contacts such as owners and eligible appellants (assuming relevant confidentiality provisions are applied)
- Clarifications on appeals, although we are most concerned about the lack of capacity to appeal against a decision not to register, which goes against best practice

We also reinforce the ACT Government’s support for the Council’s continued practice of only accepting good quality nominations and dismissing nominations that are compromised. We would welcome the development of guidelines for the community to enable people to prepare quality nominations.

Better Integration with the Nature Conservation Act 1980 and Tree Protection Act 2005

Australia ICOMOS supports this, yet advises against any assumption that these statutes can be a substitute for heritage recognition under the Heritage Act, as appears to be suggested in the explanatory documents. The heritage significance criteria (HERCON) cover a wider range of values than the purely scientific aspects of the other two statutes.

Public Authority Responsibilities

Australia ICOMOS has supported the requirements of public authorities to identify and manage their heritage places and collections, and notes the changed reporting to tri-annual from annual. We recommend diligence in meeting this requirement, given past difficulties or delays by public authorities in meeting their obligations. In order to do so, we recommend arrangements with such authorities to foster their heritage conservation capacity.

Sustainability of Built Heritage

Australia ICOMOS also wishes to reinforce that heritage buildings are also part of a sustainable approach to the built estate: Conserving heritage buildings reduces energy usage associated with demolition, waste disposal and new construction, and promotes sustainable development by conserving the embodied energy in the existing buildings. Such positives are not mentioned in these documents, and it is hoped that the proposed heritage strategy and communications strategy include such messages in these opportunities to share the meaning and value of heritage with the wider Canberra community. Australia ICOMOS applauds the commitment to these strategies and urges that the appropriate resources are provided to implement them effectively. Such proactive leadership can only take place with sufficient resources for the Heritage Council / Unit beyond narrowly meeting its statutory obligations.

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1 Heritage Victoria Technical Leaflet: Heritage Buildings and Sustainability
Areas of Concern in Proposed Amendments

Australia ICOMOS has the following major concerns about the proposed changes to the ACT Heritage system:

Call-in Power

The proposed call-in power by the Minister goes against best practice for heritage conservation. A key element of this is to separate decisions about significance from decisions about future impacts. This is clearly outlined in the attached Burra Charter process. If mixed together, decisions may be based on considerations separate from expert assessment based on heritage significance criteria, potentially denying heritage significance when it clearly exists, or alternatively allocating significance when it is false. The Heritage Council is the appropriate technically expert body (with an emphasis on appointments based on heritage experience) to make decisions on heritage significance.

This proposed call-in amendment to the ACT heritage system circumvents the separation of the identification of significance and the recognition of heritage significance by heritage listing with management decisions. Denying a place, or object, recognition of its significance is not sound heritage conservation practice. Refusal to recognise heritage significance is at times based on the incorrect assumption that a registered heritage place is a barrier to future change. Instead, the significance of a place can guide later decisions about the place, including what changes occur. Frequently a heritage place can be included in future development with a benefit to both the heritage place and the added structures. However, the registration of a place as heritage, does not assume that it can always be kept, it simply recognises that it is heritage.

Proactive heritage identification ahead of land release

Australia ICOMOS regrets that the opportunity for a greater proactive approach has not been adopted in the ACT heritage system. Most notably ways forward to identify heritage—natural or cultural (Aboriginal or historic environments) ahead of possible changes, such as Greenfield developments, has not been adopted. Our submission in 2010 stressed that ‘Early assessment of heritage values in the land management process is crucial to successful heritage management.’ Such early identification, preferably prior to land release, should not be merely applied to archaeological surveys, currently limited to Aboriginal archaeological sites, but to all types of heritage and all potential values, whether tangible or intangible elements. Heritage identification methods have improved in the last two decades by taking a landscape approach that identifies all heritage values early. This enables proposed development changes to include heritage as positive enhancements of proposals which build on the unique ‘sense of place’ characteristic of an area. This is particularly important in Canberra, where a planned city lies over early settler places and their associated stories, as well as over millennia of Aboriginal occupation. It is important for Canberrans to carry forward a knowledge and greater sense of continuity and identity in the places they inhabit. Pooled funding can facilitate the practice of early identification of significance.

Aboriginal Heritage

Australia ICOMOS is pleased to see acknowledgement of the need for a greater role by the Aboriginal communities in decisions about their heritage. There is a strong need for the relevant representative Aboriginal bodies to be involved with all aspects of decisions about their heritage. Australia ICOMOS however notes that there is no acknowledgement of the

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2 See 2010 Heritage Review Recommendation 8, and Australia ICOMOS’ submission to Heritage Review of 14 May 2010
primacy of their views and role regarding their heritage.

Australia ICOMOS notes that all Aboriginal heritage is protected whether registered or not. Yet it is clear that the proposed amendments largely maintain the current system, which presupposes removal of Aboriginal heritage sites prior to development. The proposed system also maintains its narrow emphasis on archaeological approaches to Aboriginal heritage. This system has drawbacks recognised professionally for over a decade throughout Australia (eg Byrne et al 2001). It limits identification of Aboriginal heritage to a ‘prehistoric’ past, yet until now has not resulted in any considerably greater understanding of that past via scientific (archaeological) research. All the HERCON criteria apply as much to Aboriginal heritage as other cultural heritage and natural heritage. Australia ICOMOS recommends a greater appreciation of all significance criteria in Aboriginal heritage identification with the relevant community groups, rather than the current practice limited to ‘scientific’ (archaeological) or ‘cultural’. Australia ICOMOS also notes that such groups with an interest in a place can be many and varied and include heritage groups, and should be included also as those with a ‘real and vested interest’ in not only significance assessment but also in appeal provisions.

Australia ICOMOS notes that in the Amendment Bill, the reference to ‘excavation’ (Cl 61E, 61F) does not refer to ‘archaeological excavation’, and recommends that ‘archaeological’ be added for clarification. Archaeological excavation is a scientific process, which demands also research questions, for otherwise it has no purpose, other than ‘salvage’. The application of a permit ‘implies’ perhaps a research agenda, but it does not specify it, and it is recommended that this be added.

Such research questions are important for otherwise excavation and the removal of artefacts, for any removal of physical manifestations of heritage, including Aboriginal heritage, such as by archaeological excavation is nonetheless destructive, and the proposed amendments do not acknowledge this. Such destructive removal without follow-up analysis and research to add to knowledge of the past is incomplete and largely useless. Long term storage of excavation materials implies future analysis and research, but it is very difficult to ascertain any answers to the past unless done within a short timeframe after excavation. No resources are available in the current ACT heritage system for such analysis; such are needed as an integral part of the excavation process. The Amendment Bill’s clauses on ‘statement of effect’ need to acknowledge this.

Australia ICOMOS notes that the amendments to the definition of Aboriginal heritage ‘refer to the physical and historical attributes of an Aboriginal place or object, rather than an assumed significance by Aboriginal people’ [our emphasis]. The reason for this amendment is not clear, as it dismisses attachments, associations, connections to place or object, that are recognised as ‘social value’ (HERCON criterion g) and therefore of heritage significance. This needs correction, as it discounts an important aspect of Aboriginal connection to their past and present Country.

The issues raised in this sub-section are also an argument for early heritage identification in Greenfield areas, in order than planning can include and accommodate such past and present layers of meanings of place within the new land use. It is important both for Aboriginal heritage and cultural heritage more generally that the past almost 200 years of European settlement and the resultant contact and interaction with Indigenous Australians is also identified, recorded and assessed for heritage significance prior to land development. This and the use of the entire range of the HERCON criteria will enable the Aboriginal community to share their sense of Country in the heritage identification process. Early collaborative

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3 Byrne, Denis, Helen Brayshaw, Tracy Ireland 2001 Social significance: a discussion paper, Cultural Heritage Division, New South Wales National Parks and Wildlife Service.
identification of all values, off and on field, is practiced in protected areas of the ACT, and can be applied also prior to land release.

**Intangible cultural heritage**

Australia ICOMOS is concerned that ‘intangible cultural heritage’ has been relegated to ‘interpretive signs and festival events’. Intangible heritage is an integral part of cultural heritage, whether a natural feature of built structure, identifiable under HERCON criterion g.

UNESCO has chosen to recognise intangible heritage separately from other heritage,\(^4\) but is otherwise internationally considered inseparable from place. UNESCO defines this aspect of heritage in the Convention for the Safeguarding of Intangible Cultural Heritage 2003 Convention (Article 2(1)): ‘intangible cultural heritage’ means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This includes story, song, dance, craft, including traditional building practice, and ongoing use.

Therefore, Australia ICOMOS encourages including a reference to intangible cultural heritage in the legislation, as well as a greater effort in the ACT Heritage system to identify this aspect of heritage against the significance criterion acknowledging ‘social value’ (HERCON criterion g). We also suggest including intangible heritage in the heritage and communications strategies, and a program to focus on this aspect of heritage value with the Canberra community.

**Heritage Precincts**

Australia ICOMOS notes that the review made various recommendations regarding the many heritage precincts entered in the ACT Heritage Register, particularly those listed for their Garden City values. Both heritage experts and the Canberra community are concerned about the incremental negative impact on these historic areas of Canberra including in some cases substantial demolition, not in keeping with current conservation guidelines. However, the Government response does not address this matter. Australia ICOMOS urges the Government to resource the recommended audit by the Heritage Council and the ACT Planning and Land Authority to undertaken an ‘audit of approved development applications within residential heritage precincts to ascertain the extent and causes of substantial demolition’\(^5\), as well as promoting good quality conservation management plans for such precincts.

\(^4\) For example, the Convention Concerning the Protection of the World Cultural and Natural Heritage 1972 (World Heritage Convention)

\(^5\) Recommendation 93 of 2010 Review of ACT Heritage Act 2004
Burra Charter Process

(Australia ICOMOS Burra Charter 1999)