

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Military Memorials of National Significance Bill 2008

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Veterans' Affairs,
The Honourable Alan Griffin MP)

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MILITARY MEMORIALS OF NATIONAL SIGNIFICANCE BILL 2008

OUTLINE AND FINANCIAL IMPACT

Outline

The Bill will provide a mechanism to honour the Government's election commitment to declare the Australian Ex-Prisoners of War Memorial in Ballarat, to be a national memorial. National memorials are recognised under the *National Memorials Ordinance 1928* and are restricted to memorials within the Australian Capital Territory. This Bill will recognise the national significance of the Australian Ex-Prisoners of War Memorial in Ballarat and will enable, in the future, other memorials that meet specified criteria, to be recognised as a Military Memorial of National Significance.

Financial Impact

The Bill has no financial impact.

Military Memorials of National Significance Bill 2008

Preliminary

Short Title Clause 1 sets out how the Act is to be cited.

Commencement Clause 2 provides that the Act commences on the day on which it receives the Royal Assent.

Definitions Clause 3 defines terms used in the Act.

Part 2 – Declaration of Military Memorials of National Significance

Overview

The Bill will provide a mechanism to honour the Government's election commitment to declare the Australian Ex-Prisoners of War Memorial in Ballarat, to be a national memorial. National memorials are recognised under the *National Memorials Ordinance 1928* and are restricted to memorials within the Australian Capital Territory. This Bill will recognise the national significance of the Australian Ex-Prisoners of War Memorial in Ballarat and will enable, in the future, other memorials that meet specified criteria, to be recognised as a Military Memorial of National Significance.

Background

During the 2007 election campaign, the Australian Labor Party gave a commitment to declare the Australian Ex-Prisoners of War Memorial in Ballarat to be a national memorial. Legislation is considered the most appropriate method for achieving recognition for Military Memorials of National Significance.

The Bill will enable the Minister for Veterans' Affairs to declare, by notice published in the *Gazette*, a memorial to be a Military Memorial of National Significance. The Bill will also enable the Minister for Veterans' Affairs to revoke the declaration of a memorial as a Military Memorial of National Significance. The written approval of the Prime Minister is required before the Minister for Veterans' Affairs may publish a notice declaring or revoking a memorial as a Military Memorial of National Significance.

Explanation of the clauses

Subclause 4(1) provides that the Minister for Veterans' Affairs may, by notice published in the *Gazette*, declare a memorial to be a Military Memorial of National Significance if certain conditions are met. The conditions that must be met before a declaration as a Military Memorial of National Significance may be made are:

- an application must be made and the application must comply with the requirements set out in Clause 4;
- the Minister must be satisfied that the memorial meets the criteria specified in subclause 4(3); and
- the Prime Minister must have authorised, in writing, the making of the declaration.

Subclause 4(2) provides that an application for the declaration of the Australian Ex-Prisoners of War Memorial in Ballarat is not required. This is because the Government had made an election commitment to declare this memorial as a Military Memorial of National Significance. Furthermore, the Australian Ex-Prisoners of War

Memorial in Ballarat meets the criteria set out in subclause 4(3). Subject to the Prime Minister's agreement, the Australian Ex-Prisoners of War Memorial in Ballarat will be the first memorial to be declared a Military Memorial of National Significance under the Act.

Subclause 4(3) specifies the criteria that the Minister must be satisfied about before a declaration as a Military Memorial of National Significance can be made.

Paragraph 4(3)(a) specifies that a memorial must be of a scale, design and standard appropriate for a Military Memorial of National Significance. The memorial must also be dignified and symbolic in keeping with its purpose and standing as a war memorial;

Paragraph 4(3)(b) specifies that the memorial must commemorate Australian military involvement in a significant aspect of Australia's wartime history. It also specifies that the commemoration of the Australian military involvement in a significant aspect of Australia's wartime history must be the sole purpose of the memorial. This means that memorials in the form of, for example, roads, bridges, public swimming pools, halls or gates, are not eligible for declaration as a Military Memorial of National Significance.

Paragraph 4(3)(c) specifies that the memorial must have a major role in community commemorations.

Paragraph 4(3)(d) specifies that the memorial must observe Commonwealth flag protocols.

Paragraph 4(3)(e) specifies that the memorial must be owned or managed by a State or Northern Territory authority and that authority must be responsible for the ongoing maintenance of the memorial, including financial responsibility. The authority must also be responsible for any refurbishment of the memorial.

A *State or Northern Territory authority* is defined in clause 3 as:

- 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.

The Australian Capital Territory (ACT) is excluded from this Act because national memorials in the ACT are approved under the *National Memorials Ordinance 1928*. The Ordinance applies only to National Land within the ACT. The Ordinance cannot apply to memorials located outside the ACT and this Act cannot apply to memorials located in the ACT.

Paragraph 4(3)(f) specifies that the memorial must comply with applicable planning, construction and related requirements.

Paragraph 4(3)(g) specifies that the memorial must be located on public land within a State or the Northern Territory. The ACT is excluded from this Act because national memorials in the ACT are approved under the *National Memorials*

Ordinance 1928. The Ordinance applies only to National Land within the ACT. The Ordinance cannot apply to memorials located outside the ACT and this Act cannot apply to memorials located in the ACT.

Paragraph 4(3)(h) specifies that the memorial must be publicly accessible and entry must be free. This requires that the memorial be accessible to the public on a daily basis, with the possible exception of certain public holidays such as Christmas Day and Good Friday. Voluntary donations may be accepted by the memorial; however any requirement that entry is dependent on, for example, gold coin donation, is not acceptable.

Paragraph 4(3)(i) specifies that the construction of the memorial must be completed and the memorial must be functioning as a memorial.

Paragraph 4(3)(j) specifies that the memorial must not be associated with a commercial function that conflicts with its commemorative purpose. This does not necessarily preclude the association of a commercial endeavour with the memorial, such as a book shop or café; however, the commercial endeavour must not conflict with the ethos of the memorial and must be clearly ancillary to the memorial.

Subclause 4(4) provides that a notice published in the *Gazette* under subclause 4(1) of this Act, is not a legislative instrument. Subclause 4(4) also provides that an agreement by the Prime Minister under paragraph 4(1)(c) of this Act, is not a legislative instrument.

The instruments referred to in subclause 4(4) are not legislative instruments within the meaning of the *Legislative Instruments Act 2003*. This subclause is merely declaratory of the law and is not an exemption from the *Legislative Instruments Act 2003*.

Clause 5 provides that the approval of the Minister for Veterans' Affairs is required for an alteration to a memorial that the Minister has declared to be a Military Memorial of National Significance. Failure to obtain this approval may jeopardise the status of the memorial as a Military Memorial of National Significance.

The Minister may, in writing, approve an alteration to a memorial that the Minister has declared to be a Military Memorial of National Significance. Before the Minister may make such an approval, an application for the approval of the alteration must be made in accordance with clause 7 and the Minister must be satisfied that the memorial will still meet the criteria in subclause 4(3) if the alteration is made.

Subclause 5(2) makes it clear that an approval under subclause 5(1) is not a legislative instrument. The instrument referred to in subclause 5(1) is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. This subclause is merely declaratory of the law and is not an exemption from the *Legislative Instruments Act 2003*.

Clause 6 provides that, subject to the written agreement of the Prime Minister, the Minister may, by notice published in the *Gazette*, revoke a declaration made under clause (4) for the following reasons. The first reason for revocation is if the Minister is no longer satisfied that the memorial meets the criteria specified in subclause 4(3).

The second reason for revocation is if the memorial has been altered since being declared a Military Memorial of National Significance and that alteration was not approved by the Minister.

Subclause 6(2) makes it clear that a revocation made by the Minister under subclause 6(1) is not a legislative instrument. The instrument referred to in subclause 6(1) is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. This subclause is merely declaratory of the law and is not an exemption from the *Legislative Instruments Act 2003*.

Clause 7 requires that an application be made in relation to a request for a memorial to be declared a Military Memorial of National Significance. An application is also required for the approval of an alteration to a memorial that has been declared, by the Minister, to be a Military Memorial of National Significance. The application must be made by the State or Northern Territory authority that owns or manages the memorial. The application must be lodged in accordance with the requirements set out in the regulations. It is envisaged that the regulations will require the application to be lodged with the ACT Office of the Department of Veterans' Affairs.

Clause 8 provides that the Minister for Veterans' Affairs may, for the purpose of making a decision about an application for declaration under this Act, consult any such persons or bodies that the Minister considers it is appropriate to consult.

Part 3 - Miscellaneous

Clause 9 makes it clear that the Commonwealth does not have any responsibility, financial or otherwise, for a memorial merely because a declaration has been made under clause 4 declaring the memorial to be a Military Memorial of National Significance. Furthermore, the Commonwealth is not liable to provide funding, ongoing or otherwise, for any purpose whatsoever for a memorial that has been declared a Military Memorial of National Significance.

Clause 10 provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed. The Governor-General may also make regulations prescribing matters necessary or convenient to the prescribed for carrying out or giving effect to this Act.

Commencement

Clause 2 provides that this Act commences on the day it receives Royal Assent.