



historycouncilnsw



Joint Standing Committee on Northern Australia

PO Box 6021

Parliament House

Canberra ACT 2600

By email to: jscna@aph.gov.au

The Senate has referred to the Joint Standing Committee on Northern Australia for inquiry and report “**The destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia**”.

The four state History Councils (New South Wales, South Australia, Victoria and Western Australia) welcome this opportunity to make a submission. The History Councils are the peak bodies for history in these states, with the shared objective of furthering historical literacy and awareness and inspiring public engagement with the past, their identity and the world today. The councils include representatives from cultural and educational institutions and heritage bodies; history teachers and curriculum advisors; academic and professional historians; and local, Indigenous, community and specialist history organisations. Our Value of History Statement may be consulted at: https://www.historycouncilvic.org.au/value_of_history

The terms of reference (a) to (e) of the Inquiry refer specifically to the issue of the destruction of the Juukan Caves. This has been the subject of widespread indignation and regret in Australia and internationally, and we urge the Inquiry to investigate the destruction closely through its terms of reference.

Our submission wishes to highlight and comment upon the other, broader terms of reference (f) to (i) on “the interaction of state indigenous heritage regulations with Commonwealth laws” and how this interaction might be “improved to guarantee the protection of culturally and historically significant sites” across the Commonwealth.

The Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act of 1984 was designed to enable the Commonwealth to intervene, preserve and protect areas and objects of particular significance to Aboriginal or Torres Strait Islander

peoples. There is parallel legislation, some of it passed earlier, in states and territories.

This legislation has been an important Australian expression of the international recognition of “patrimony” in the sense of the necessity of respecting and preserving cultural heritage in many forms, including objects, spaces and languages. *Our core concern is the lack of close alignment between Commonwealth and state and territory legislation and practice, which enables local exemptions from core heritage principles, often for short-term reasons.*

The Commonwealth of Australia has a special responsibility in this regard given the unique, at least 60,000-year-old heritage of extraordinarily rich and diverse Indigenous cultures on this continent. There are over 1,000 properties on the World Heritage List of properties recognised by the global community as having special significance or “Outstanding Universal Value”. Australia has 20 properties on the List, many of them recognising the unique value of Indigenous heritage.

The Commonwealth also has a special opportunity at this point. From 2017 to 2021 Australia is one of the 21 members of the UNESCO World Heritage Committee. It would be a powerful action if the Commonwealth of Australia were at this point to mark that membership by taking action to secure genuinely national protection of what UNESCO recognises as world heritage instead of permitting the continuing patchwork of state and territory legislation and practice.

The Commonwealth, under the Environment Protection and Biodiversity Conservation Act and the Aboriginal and Torres Strait Islander Heritage Protection Act, has the authority and power to ensure that the Department of Agriculture, Water and Environment in particular plays a more proactive role in protecting indigenous heritage.

The History Councils of Australia endorse the recommendations of the Federation of Australian Historical Associations, specifically:

1. That the Commonwealth, under powers given to it by the Environment Protection and Biodiversity Conservation Act and the Aboriginal and Torres Strait Islander Heritage Protection Act, ensures that the Department of Agriculture, Water and Environment play a more assertive and proactive role in protecting Indigenous heritage. Restoring to the Australian Heritage Council the powers and authority held by the former Australian Heritage Commission would be a very positive step.

2. That the Commonwealth legislate further to protect Indigenous heritage by making both companies and the individuals within companies responsible and liable for heritage protection, and that they be subject to financial and other judicial penalties if they fail in their civic and legislated duties.

The History Councils of Australia further recommend:

3. That the Commonwealth response to the Samuel review of the Commonwealth's Environment Protection legislation must include an independent compliance and enforcement regulator that is not subject to actual or implied political direction. Such a regulator must be appropriately resourced and have the powers necessary to enforce compliance with Commonwealth standards.

Respectfully submitted on behalf of the History Councils of Australia,

by

Emeritus Professor Peter McPhee AM FAHA FASSA
Chair, History Council of Victoria
chair@historycouncilvic.org.au

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