

## Senate Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia

### RESPONSE PREPARED BY THE AUSTRALIAN INDIGENOUS ARCHAEOLOGIST'S ASSOCIATION (2020)

The members of the Australian Indigenous Archaeologist's Association (AIAA) welcome the opportunity to submit our comments to this Inquiry that has come about from the public outrage caused by the wanton destruction of the highly significant Indigenous heritage valued, Juukan Gorge Caves, of which the Puutu Kunti Kurrama and Pinikura (PKKP) peoples of the Pilbara region are the custodians.

As Australia's Indigenous Archaeologists, our members have long been speaking out against the 'dumbing down' of Australia's National, State and Territory Indigenous heritage legislation since the adoption of the EPBC Act in 1999. At the 2015 National Native Title Conference held in Port Douglas, AIAA Founding Chair (and the 2014 Sharon Sullivan National Heritage Award Recipient) Dave Johnston presented a lecture titled, "Addressing Australia's Indigenous Cultural Heritage Management Crisis: Stop the Destruction", where he stated,

*"Indigenous Australian's, are increasingly speaking out in anger and exasperation in attempting to exert our right to manage and protect our significant heritage sites and places in this era of deliberate weakening and 'dumbing down' of the nations' Indigenous cultural heritage site management policies and legislation. With no public debate nor adequate Indigenous consultations occurring in this era of Indigenous heritage policy and management erosion, the situation has become a national travesty, with Internationally recognised Indigenous core human rights issues, very much, at the fore.*

*This paper explores some key management issues that have become clearly identifiable in this national heritage crisis.*

*The paper also promotes base level Indigenous cultural heritage management considerations that could apply to a future National Indigenous Heritage Policy Charter – one based on internationally recognised best practice cultural heritage policies and one also adhering to the 'United Nations' Declaration on the Rights of Indigenous Peoples'. **Such a Charter would particularly need to recognise and respect the rights of Indigenous Australian's to speak for and protect our important heritage sites as well as to ensure economic aspirations don't cloud decision making regarding the protection of the nations' significant heritage**".*

*"Dave Johnston is an Indigenous archaeologist and Director of Aboriginal Archaeologists Australia and a Director of the Boon Wurrung Foundation. For over 20 years Dave has worked as the community appointed archaeologist for many Traditional Owner groups throughout Queensland, NSW, Victoria and the ACT. He is Chair of the Australian Indigenous Archaeologists Association a member of the AIATSIS Research Ethics Committee".*

(D.Johnston 2015, AIATSIS National Native Title Conference Paper Presented)

<https://vimeo.com/137902789>

Dave Johnston has presented on this theme, 'Our Australian Indigenous Heritage Management Crisis', on many occasions over the last two decades, it is an issue many of our members believe is an abuse of our human rights here in Australia.

In response to the Terms of Reference, the Australian Indigenous Archaeologists Association would like to include as part of our response, our public statement/letter about the tragic incident that has allowed the world to put a bright 'spotlight' on Australia finally, to gain a truthful glimpse of the reality of Australian Reconciliation in practice, our Australian Heritage Laws and Australia's treatment of its Indigenous peoples and our heritage.

### **Statement by the Australian Indigenous Archaeologists Association (5 June 2020)**

*"The act by Rio Tinto to blast Juukan Gorge, a millennia old archaeological site and an ancient place of sacred significance to the Puutu Kunti Kurrama and Pinikura (PKKP) peoples of the Pilbara region is condemned by the Australian Indigenous Archaeologists' Association (AIAA).*

*AIAA is concerned about the commitment of Rio Tinto to Australia's Reconciliation Process with Indigenous Australians. That the destruction was carried out during National Reconciliation Week is particularly sad, but the decision to do so on Australia's national day of Recognition of the Stolen Generations, 'Sorry Day', added insult to injury for the PKKP peoples and is an insult to all to Indigenous Australians. AIAA questions Rio Tinto's adherence to the International Council on Mining and Metals (ICMM) Indigenous peoples and mining good practice guide. Specifically, acting in good faith, free prior and informed consent, and the failure to protect a sacred site of the Puutu Kunti Kurrama and Pinikura.*

*Finally, AIAA questions Rio Tinto's adherence to their own standards. In Rio Tinto's own Reconciliation Action Plan 2016-2019 they talk about Walking the Land Together, and how they will work with Traditional Owners to develop Cultural Heritage Management Plans. In their The Way We Work (2017) Rio Tinto asserts they will "Listen with respect and value the contributions of others."*

*Our Association stands in solidarity with the PKKP peoples and all Australians involved in protecting Indigenous cultural heritage. While Rio Tinto acted within the law of Western Australia, we call for reform of Western Australia's heritage protection laws.*

*The Indigenous People of West Australia should be the guiding voice and at the centre of this reform, so that meaningful change can occur.*

*We also call on the Australian Commonwealth Government to legislate minimum national standards (internationally recognised) for Indigenous heritage site assessment, management and protection.*

*This should include standards for the protection of both tangible and intangible aspects of our places within the cultural landscape.*

*We continue to recommend the establishment of an Australian Indigenous Heritage Commission to oversee and manage our valued sites and places. Australia's rich*

*Indigenous heritage and culture should be afforded the respect and protection that it deserves.*

(AIAA, 5 June 2020)

This reality, as the world is seeing and now shouting out against us, is both shameful and hurting Australia. It is time we ‘look after the needy and watch the greedy’ (Uncle Albert Mullet, Gunai/Kurnai Elder 1990 pers comm).

The AIAA recommends to the Commonwealth Government high level consultations (sponsored) between our association's members and Indigenous communities involved in heritage protection and government leaders to discuss heritage law and policies reforms in the same spirit it just collaborated with the Coalition of Peaks to agree on new targets.

Noting however, that the Coalition of Peaks does not mention heritage at all and this must change.

Our Australian Indigenous Archaeologists, have long served (over 3 decades) our Indigenous communities and acted voluntarily as the custodians of Australia’s Indigenous heritage where Governments have failed and our Indigenous communities have called on us for help.

The time has come for the Australian people to elect leaders and governments, who won’t sell or destroy our Australian history and heritage nor our ‘identity’, because of greed, self-indulgence or racism.

We remind the Inquiry of Australia’s obligation (as a signatory) to the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP). Specifically, when considering heritage law reform, the UNDRIP Articles:

**11:** ‘the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts’.

**13** ‘Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures’.

**25** ‘Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas’.

**31** ‘Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures’.

Finally, we recommend that EBPC be abolished and a new National Heritage Commission be established (that incorporates a National Indigenous Heritage Commission, Division) that maintains firstly a national responsibility for heritage and environmental management and

that also maintains a jurisdiction over the State and Territory Governments to ensure Internationally recognised standards for cultural and natural resource heritage management. Some of the key attributes needing to be considered include:

- maintaining internationally recognised minimum standards for Indigenous heritage site recording;
- ensuring internationally recognised minimum standards for cultural heritage significance value assessment (Social Significance Values; particularly Indigenous social significance values. also known as 'our Indigenous cultural values about a significant place or site);
- maintaining internationally recognised minimum standards for Indigenous Site management (which means adequate funding made available at the Commonwealth level and to all re-vamped State and Territory Heritage Agencies);
- maintaining internationally recognised minimum standards for auditing (invest properly and carry out compulsory and meaningful National (and State and Territory) State of the Environment Reporting to be completed every four years without fail;
- Reactivate and fund functional administration of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 ATSIHPA (Amended 1987). The history of the usage of this Act or lack of, by successive Commonwealth elected Governments tells the true history of Indigenous Heritage Site protection in this country since the introduction of the EPBC Act. It was no coincidence that the ATSIHPA was made redundant during the great mining boom of the last 20 years. **This deliberate failure to uphold the ATIHPA meant that the hundreds of Emergency Declaration applications by our Australian Indigenous Communities for emergency intervention by the Commonwealth Government to help protect increasing numbers of threats or destruction to our important heritage sites and places were never addressed and our heritage sites destroyed by the thousands, we estimate. A Royal Commission into this deliberate denial of our Australian Heritage and Human Rights by successive Governments should be investigated.**
- Heritage Reviews and reform should include engagement of many Indigenous communities and be carried out by a completely independent panel of recognised heritage experts set up by the Senate. This Heritage Review Panel should not include Government Public Servants, representatives of the mining industry nor Native Title Employee representatives, so as to ensure Indigenous people's coincidence in Australia's pending heritage reformation.

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