



ROYAL HISTORICAL SOCIETY OF VICTORIA INC.

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

Joint Standing Committee on Northern Australia
Parliament House
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The Royal Historical Society of Victoria (RHSV) is the peak body representing approximately 340 community historical societies throughout Victoria. It has been active on history and heritage issues since its formation in 1909. The RHSV Heritage Committee is accountable to the RHSV Council and has specific responsibility for preparing submissions and liaising with other relevant heritage bodies concerning the uses and preservation of heritage-protected buildings and sites. The committee encourages its affiliates to make submissions on relevant local as well as state heritage matters, and acts in support of their submissions.

The RHSV is affiliated with the Federation of Australian Historical Societies (FAHS). We strongly support the FAHS submission to this committee. This submission is thus a confirmation and elaboration of that support.

Like many Australians, both Indigenous and non-Indigenous, we were horrified to learn of the destruction of the 46,000 years old Juukan Gorge rock shelter site in Western Australia. This site was of significance not only to Indigenous Australians, but also to Australian cultural heritage in its proudest sense and indeed to the history and cultural heritage of the human species. The archaeological site was illustrative of Australia's possession of the world's longest surviving human culture, but tragically its destruction also illustrates how little this heritage has been recognised and valued. The RHSV strongly urges the committee to take a truly national approach and ensure that Indigenous heritage sites receive the same level of protection as non-Indigenous sites, in addition to ensuring that relevant Indigenous stakeholders views are taken fully into account.

The destruction of the Juukan Gorge shelter demonstrates profound failings in the legislative structures that are supposed to protect Australia's heritage. In the first instance, as the Hon. Sussan Ley, Minister for the Environment, has stressed, the failings were in state legislation (in this case WA). But they were also in the Commonwealth's Indigenous heritage protection, which should have been the backstop. Instead, the Commonwealth was missing in action.

The Interim Report for the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999, released yesterday, provides a useful analysis of the problems. It called for a ‘single source of truth’ for environmental data, ‘a quantum shift in the quality of information. We call on this committee to **recommend** that the Commonwealth begin preparations, pending the final report of the Review, to legislate the creation of an independent Commonwealth agency that will provide that ‘single source of truth.

The Review also called for ‘new, legally enforceable National Environmental Standards’. We call on this committee to **recommend** that the Commonwealth initiate the drafting of such standards, again pending the final report of the Review. The interim review does not elaborate such standards, but rather points to the need to work them out on a detailed, ‘granular’ basis. Only once the final report is published can this process begin.

We are therefore distressed that the Minister appears determined to legislate before the Review is completed and we call most urgently on this committee to **recommend** that the Commonwealth await the publication of the Review’s final report before beginning discussions on the shape of the new act.

Finally and most importantly, the Review called for ‘an independent compliance and enforcement regulator that is not subject to actual or implied political direction. It should be properly resourced and have a full toolkit of powers.’ This is crucial. We regret deeply therefore that the Minister appears to have dismissed this key recommendation and we call most urgently on this committee to **recommend** that the Commonwealth reconsider its position and accept this key recommendation of the committee it set up to review the EPBC Act.

The only sure way to provide the regulator recommended by the Review and to prevent failures in state legislation such as WA’s failure to prevent this wanton cultural destruction is to restore to the Australian Heritage Council the powers and authority held by the former Australian Heritage Commission and we call on this committee to **recommend** that the Commonwealth proceed on that basis.

As the Hon. Sussan Ley, Minister for the Environment, pointed out, the only way to involve the Commonwealth Minister for the Environment would have been if an application had been made under the Aboriginal and Torres Strait Islander Protection Act 1984. In another case where significant Aboriginal heritage is at risk, the Shenhua Watermark open-cut coalmine on the Liverpool Plains, the Minister refused an application for protection under the ATSIP Act. In a judgment rendered today, it was found that, under the Act, the Minister could give greater weight to non-Indigenous and non-cultural issues.

Both these failures point to the weakness of the current Commonwealth legislation and to the need not only for an independent regulator, as the Review found, but also for a proactive agency, like the former Australian Heritage Commission, charged with finding, inventorying and assessing Australia’s cultural heritage, both Indigenous and non-Indigenous. Again, we call on this committee to **recommend** that the Commonwealth proceed on that basis as it prepares to legislate in this area.

Yours,

(Professor) Charles Sowerwine,
Chair, Heritage Committee,
Royal Historical Society of Victoria,
22 July 2020.