AUSTRALIAN ARCHAEOLOGICAL ASSOCIATION INCORPORATED

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Joint Standing Committee on Northern Australia
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Dear Commonwealth Parliament's Northern Australia Committee Members,

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

Thank you for the opportunity to make a submission to the Inquiry into the destruction of Aboriginal heritage sites at Juukan Gorge (as released on 11 June 2020). The Australian Archaeological Association Inc. is the largest archaeological organisation in Australia, representing a diverse membership of academic researchers, professionals, Traditional Custodians, students and others with an interest in archaeology.

This Australian Archaeological Association Inc. submission was prepared in collaboration with a range of stakeholders and colleagues, including Aboriginal Traditional Owners and Custodians, anthropologists and heritage managers, cultural heritage practitioners from both private and public sectors, as well as archaeologists and heritage specialists based at the University of Western Australia, Edith Cowan University, Flinders University, University of Southern Queensland, University of Melbourne, Griffith University and The University of Queensland.

All stakeholders and colleagues emphasise the need for national and state heritage legislation reform for greater clarity, certainty and site protection for Traditional Owners and Custodians, land-users and Regulators, and especially for the heritage itself.

Yours sincerely,

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President of the *Australian Archaeological Association*
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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

Submission prepared by the Australian Archaeological Association Inc.

Preamble

This submission is in four parts:

- A brief introduction.
- The Australian Archaeological Association responses to the Inquiry's Terms of Reference a) through e).
- Recommendations for Terms a) through e).
- The Australian Archaeological Association responses to the Inquiry's Terms of Reference f) through j).

Introduction

The loss of the significant Juukan Gorge rockshelters, despite new and compelling evidence from archaeological excavations conducted after the Section 18 permit to destroy was issued, highlights the need to reform the WA *Aboriginal Heritage Act, 1972*. It demonstrates the need to have robust heritage agreements between proponents and Aboriginal communities which are responsive to new information about the cultural significance of sites. There has been an increasing call from professional archaeologists and Aboriginal Representative Bodies to have a forum for heritage appeals which considers the values of heritage to Traditional Owners and Custodians, the State and wider considerations of significance such as that detailed in The Burra Charter. New evidence that may alter or add to cultural values and heritage significance should be able to be incorporated into agreements with communities and be reflected in the level of protection afforded by heritage law, including the opportunity to vary existing agreements if new data provide evidence of the need for a change to previous decisions about management. This would bring WA more into line with other States where up-to-date assessments of the significance of sites are used to make informed decisions about their protection and management. The early dates for occupation at Juukan, at 46,000 years ago, puts this site within the oldest bracket of dates for the human occupation of Australia's deserts and arid regions. This issue emphasises the need for the WA State Government to progress the newly proposed *Aboriginal Cultural Heritage Act 2020* for greater clarity, certainty and site protection for Traditional Owners, land-users, heritage practitioners, the Regulator, and for the heritage itself.

Despite Indigenous heritage issues being broadly similar across Australia, there are no clear and coherent nation-wide guidelines. Instead, widely different State and Territory legislation results in a total lack of consistency in terms of expectations or the application of methodologies for consultation, significance, impact assessment and/or protection. Recognising that commonalities of Indigenous heritage exist, in addition to the fact that Indigenous heritage is not confined within State borders, there is great scope for the Federal government to implement a national approach to heritage assessment and management. Such a standardised approach would streamline procedures and reduce the complexity involved when multi-jurisdictional proponents have projects in different states and must adopt vastly different assessment methodologies. Currently, WA heritage legislation (and that of many other states) has been reduced to facilitating development approvals rather than protecting and celebrating sites and cultural landscapes of cultural and historical significance. Much like environmental protection legislation, recognising heritage as an asset for investment rather than a constraint to development is the foundation of improved protections for Indigenous heritage.

The Australian Archaeological Association calls upon the Federal, State and Territory governments to implement a 'model act' approach to support the management of Indigenous heritage by the States and Territories. Here, Federal, State and Territory governments would successfully negotiate and create a standard approach, comparable to what has been achieved already with Occupational Health and Safety legislation in Australia. This model act approach would create a baseline of expectations, to which all members of the Federation agree to abide. States and Territories can then adopt additional measures or simply keep the baseline expectations.

Commentary and Recommendations

The Inquiry seeks responses to key issues outlined in the 10 Terms of Reference. Australian Archaeological Association responses to the Terms of Reference (a) through (e) are detailed below, followed by recommendations relating to Terms of Reference (a) through (e). These are then followed with Australian Archaeological Association responses to the Terms of Reference (f) through (j).

COMMENTARY ON TERMS OF REFERENCE (A) THROUGH (E)

(a) The operation of the *Aboriginal Heritage Act 1972* (WA) and approvals provided under the act

AAA response:

The destruction of the Juukan Gorge rockshelters is devasting to Puutu Kunti Kurrama and Pinikura people but, sadly, comes as no surprise to heritage professionals in WA. Indeed, comparable situations happen all too often, where Aboriginal sites having cultural significance to Traditional Owners, as well as scientific archaeological significance, are destroyed. The issues associated with the *Aboriginal Heritage Act 1972* (WA) are well known and the Act is currently under review (Bird and Rhoads 2020, Bird et al. 2020, Mitchell and Guilfoyle 2020)[1]. To this end, the AAA has already called upon the Western Australian regulators and industry leaders to work towards building a

[1] Bird, C. and Rhoads, J.W. 2020 *Crafting Country: Aboriginal archaeology in the Eastern Chichester Range, North-West Australia*. Sydney University Press.
Bird, C., Hook, F., and Rhoads J.W., 2020 Tracing pathways: writing archaeology in Nyiyaparli country. *Archaeology in Oceania* 55 (2):72-81
Mitchell, M.B. and Guilfoyle, D.R., 2020. The value of contemporary social significance in archaeological assessment and its implications for current legislative reform: a case study from the Esperance region, Western Australia. *Archaeology in Oceania* 55(2): 129-137.

stronger and fairer heritage protection framework for the State. This is an historically important opportunity to improve the recognition, respect and management of cultural heritage in Western Australia.

Archaeology in Western Australia is particularly vulnerable and inexplicably, is often perceived as something separate from Aboriginal sites and heritage places. This may be partially the reason that decision-making processes have persistently failed to incorporate adequate assessment of archaeology at Aboriginal sites in the early stage of the development process. Instead, proper investigation of sites that have the potential to be very significant in terms of their archaeology – both to Traditional Owners and the wider community – often only occurs as a condition of granting a Section 18 permit to use the land and destroy the site. Once a Section 18 permit is granted, there is no opportunity in the approvals process to allow re-evaluation of sites at which significant archaeological or other finds are subsequently made, such as at Juukan Gorge. In such cases, any decision to mitigate the destruction of significant sites is entirely at the discretion of, and dependent on, the goodwill of the developer.

Many more recent Aboriginal sites than those at Juukan Gorge are routinely destroyed with inadequate or no further investigation. It is important to recognise here that antiquity is far from the only significance value for heritage places and that Aboriginal sites may have multiple forms of significance for a multitude of reasons. The value of contemporary sites and heritage places, both to Traditional Owners and Custodians and the archaeological profession, is well documented in heritage and academic literature (e.g. Harrison and Schofield 2010; Harrison and Williamson (eds) 2004; Holtorf et al. 2009; McDonald and Coldrick 2020; Mitchell and Guilfoyle 2020; Ross et al. 2010)[2].

Section 18 of the WA *Aboriginal Heritage Act 1972* regulates the destruction of sites for certain uses of the land upon which they are located. The Aboriginal Cultural Material Committee (ACMC) assesses such sites and provides advice to the Minister about permitting their destruction and whether any conditions (such as 'salvage' excavations) should be placed. There is **no stipulation** that an appropriately qualified archaeologist form part of the ACMC. As such, several issues arise. One is the adequacy of the advice provided by the department to the ACMC. The ACMC relies on the expertise of departmental officers, who often have no professional qualifications in any field of heritage. Another is the adequacy of the documentation provided in support of the Section 18 application, which relies either on the expertise and professionalism of internal heritage officers within the proponent organisation or the expertise and professionalism of external consultants engaged to conduct the work. There is no mechanism to ensure that consultancy work is carried

[2] Harrison, R. and Schofield, J. 2010 *After modernity: archaeological approaches to the contemporary past*. Oxford University Press.
Harrison, R. and Williamson, C. (eds), 2004 *After Captain Cook: the archaeology of the recent indigenous past in Australia*. Rowman Altamira.
Holtorf, C., Piccini, A. and English Heritage 2009 *Contemporary archaeologies: excavating now*. Peter Lang.
McDonald, E.M. and Coldrick, B. 2020. Is it from the Dreaming or is it rubbish? The significance and meaning of stone artefacts and their sources to Aboriginal people in the Pilbara region of Western Australia. In Clooney, G., Gilhooly, B., Kelly, N., and Mallia-Guest, S (eds) *Cultures of Stone: and interdisciplinary approach to the materiality of stone*,), pp. 273-288. Leiden: Sidestone Press
Mitchell, M. and Guilfoyle, D. The value of contemporary social significance in archaeological assessment and its implications for current legislative reform: a case study from the Esperance region, Western Australia. *Archaeology in Oceania*. https://doi.org/10.1002/arco.5211
Ross, A., Prangnell, J. and Coghill, B., 2010. Archaeology, cultural landscapes, and Indigenous knowledge in Australian cultural heritage management legislation and practice. *Heritage Management* 3(1):73-96.

out by competent and qualified heritage professionals. Additionally, large companies may put constraints on the work carried out in their briefs.

It is therefore vital that the new legislation includes provisions for the mandatory and transparent assessment of all heritage places affected by development by those with the necessary expertise and experience in heritage assessment and management to do so. The Australian Archaeological Association recommends funding of the WA regulatory authority to appoint staff to peer review all heritage and archaeological assessments of sites, including consultant reports of site excavations and ethnographic reports, and to provide a physical repository of all heritage reports prepared and a register/database of reports that can be searched as an integral part of planning for heritage assessment.

(b) The consultation that Rio Tinto engaged in prior to the destruction of the caves with Indigenous peoples

AAA response:

AAA has no knowledge or evidence of the internal heritage practices/procedures conducted by Rio Tinto. Thus AAA is not able to offer any commentary on the specific consultation processes adopted by Rio Tinto with respect to the Juukan Gorge sites. Nevertheless, the following discussion outlines the best practice principles that should inform **any** consultation by development proponents operating anywhere in Australia. This discussion is based on international declarations and conventions regarding Indigenous cultural heritage to which the Australian government is a signatory and which the government has agreed to uphold.

The United Nations Declaration on the *Rights of Indigenous Peoples*, which was adopted by the General Assembly in 2007 and endorsed by the Australian government in 2009, states:

> (Article 8, Item 1) Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
>
> (Article 29, Item 1) Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

Currently in Western Australia, while land owners submitting a Section 18 application have the right of appeal against the Minister's decision to the Supreme Court (S.18(5)), Aboriginal people do not have this right of appeal. Furthermore, opposing a S.18 decision can only take place under administrative law, where challenges may only be raised regarding issues related to due process, and not to heritage value. This lack of rights of appeal for Aboriginal people contradicts both Article 8, Item 1 and Article 29, Item 1 of the United Nations Declaration on the Rights of Indigenous Peoples.

UNESCO's Convention Concerning the *Protection of the World Cultural and Natural Heritage 1972*, of which Australia was one of the States Parties, states:

> (Article 4) Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources […].

> (Article 6, Item 2) The States Parties undertake, in accordance with the provisions of this Convention, to give their help in the identification, protection, conservation and presentation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11 if the States on whose territory it is situated so request.

Therefore, the Australia government, as a States Party to the Convention, has an obligation to make credible and rigorous attempts to further our knowledge and understanding of cultural heritage sites, and in doing so ensuring any possible identification of such sites as per Article 4 and Article 6, Item 2 of the Convention. That is not to say that Juukan should have been advanced to that list through a nomination process, but rather that **one cannot advance or act upon knowledge that might lead to such a nomination, without adequate investigative and legislative procedures in place**. In the case of Juukan, the potential for such a nomination was effectively removed (the Section 18 was granted in 2013 and a 46,000-year-old date was obtained as part of salvage excavation in 2014 and yet no revision of the site's status was allowable).

This profoundly contravenes the spirit of the Convention Concerning the Protection of the World Cultural and Natural Heritage. There must be the capacity to update site status and relevant heritage assessments undertaken as part of the legislative process, should new information become known.

(c) The sequence of events and decision-making process undertaken by Rio Tinto that led to the destruction

AAA response:

In 2005 Hamersley Iron (Rio Tinto Subsidiary) applied for approval to build the Brockman 4 mine. In 2008 the heritage consultancy Scarp Archaeology was engaged by Rio Tinto/Hamersley Iron to conduct exploratory excavations on the land of the newly operational Brockman 4 mine.

An executive summary of a 2008 unpublished report by Scarp Archaeology to Rio Tinto is available publicly on the ABC website (https://www.abc.net.au/news/2020-06-05/rio-tinto-knew-6-years-ago-about-46000yo-rock-caves-it-blasted/12319334). The executive summary states:

> BROCK-21 [Juukan rockshelter 2] is assessed as being of high archaeological significance. Our excavations have indicated that the deposit is of great antiquity and has the potential to be even older. … At this early stage of analysis we can definitively show that the BROCK-21 site is assessed with reference to Part 5a of the *Aboriginal Heritage Act (1972)* and in regard of s39 (2c), on the basis of both research potential and representativeness as being of high archaeological significance (Slack 2008: 123)

In 2013, Rio Tinto was granted consent under Section 18 of the *Aboriginal Heritage Act 1972* to destroy Juukan 1&2 as part of the expansion of the Brockman 4 mine. In 2014, 'salvage' excavations conducted by Scarp Archaeology provided further significant information about these sites. The sites were significant, not only in terms of their antiquity, but also with regard to the nature of the excavated materials and their significant cultural links to the Puutu Kunti Kurrama and Pinikura (PKKP) peoples. In particular, some of the objects recovered in these 'salvage' excavations connect living PKKP peoples to their ancestors in a very real and tangible way. The PKKP commenced discussions regarding preservation of these sites with Rio Tinto and thought they had a shared understanding with Rio Tinto that the sites would be protected. It seems, however, that internal processes at Rio Tinto failed and the sites were destroyed.

(d) The loss or damage to the Traditional Owners, Puutu, Kunti Kurrama and Pinikura peoples, from the destruction of the site

The Australian Archaeological Association understands that the loss of any heritage to the Puutu Kunti Kurrama people and the Pinikura Traditional Owners has caused deep sadness and dismay. The Australian Archaeological Association is not able to comment on the nature of the sense of loss in this particular instance, and it would be inappropriate for anyone other than these Traditional Owners and Custodians themselves to provide comment/response to this part of the submission.

(e) The heritage and preservation work that has been conducted at the site

AAA response: The initial excavations from 2008 are published in Slack et al. (2009)[3]. Slack et al. (2009: 33) argue that the two rockshelters, Juukan-1 and Juukan-2, "provide further substantiation of a regional antiquity of occupation of over 30,000 years, and compelling evidence that occupation persisted even during the height of the LGM (22,000–19,000 cal. yr BP)". Notably both sites provided "compelling evidence that occupation persisted" during the last ice age, a period of time that is frequently absent in Pilbara sites (2009: 33). This was an intense time of aridity in the region, with no monsoonal activity or summer rainfall occurring between 33, 000 and 20, 400 years ago (Slack et al. 2017)[4]. The rockshelters therefore represent an exceptional record for occupation of the Hamersley Range during this time.

Detailed stone artefact analyses from the 2014 'salvage' excavations of the Juukan-2 rockshelter were undertaken as part of doctoral research (Reynen 2018)[5]. The thesis also reports early dates of 46,000 years for Juukan-2 (Reynen 2018:153-157).

No other publications regarding analyses from the 2014 excavations are yet available. However, the unpublished, yet widely reported 4,000-year-old belt of plaited human hair demonstrates a genetic connection between the Traditional Owners and the contents of the site. This would appear to be of extraordinary significance, both to the Traditional Owners and Custodians and for the archaeological discipline.

[3] Slack et al. (2009) Aboriginal Settlement during the LGM at Brockman, Pilbara Region, Western Australia. *Archaeology in Oceania* Supplementary 44: 32-39.

[4] Slack et al. (2017) Post-Last Glacial Maximum settlement of the West Angelas region in the inland Hamersley Plateau, Western Australia, *Australian Archaeology* 83(3): 127-142, DOI: 10.1080/03122417.2017.1404548

[5] Reynen, W. 2018 Rockshelters and human mobility during the Last Glacial Maximum in the Pilbara uplands, northwestern Australia. PhD thesis, University of Western Australia. Retrieved from: https://api.research-repository.uwa.edu.au/portalfiles/portal/42748564/THESIS_DOCTOR_OF_PHILOSOPHY_REYNEN_Wendy_Helena_2019.pdf

AAA RECOMMENDATIONS BASED ON TERMS OF REFERENCE (a) THROUGH (e):

There is clearly an urgent need for the WA State Government to progress the reforms to the Heritage Act for greater clarity, certainty and site protection for Traditional Owners, land-users, heritage professionals, and the Regulator, and for the heritage itself.

The Australian Archaeological Association strongly advocates that *significance assessment requirements* must be undertaken **prior** to final decisions relating to heritage management. This would allow archaeological investigations to be carried out in tandem with the ethnographic assessment, as part of the *site recording* stage. Currently, an archaeological investigation that is commissioned as a *condition of a Section 18 permit* functions only as a salvage operation. As we have argued, the outcome of the excavation cannot vary the Section 18 permit. Clearly, this is inadequate, as the destruction of Juukan Gorge and other heritage sites demonstrates.

The Australian Archaeological Association strongly advocates that the following principles guide the reforms to the *WA Aboriginal Heritage Act 1972*:

- An established forum in Western Australia for heritage appeals that considers the values of heritage to Traditional Owners/Custodians and the State and takes into account wider considerations of significance, including the Burra Charter and scientific/archaeological significance.
- All agreements governing heritage management are to be equitable, with improved processes for consultation with Traditional Owners/Custodians, including opportunities for involvement and rights of appeal.
- Mine planning consultation with Traditional Owners/Custodians must be a key feature in the development process, from early exploration through to mine closure. Consultation with Traditional Owners/Custodians regarding mine plans must take place well in advance of any work.
- A focus on cultural landscapes rather than individual sites, and a focus on cultural heritage management plans must inform decision-making.
- Future land-use agreements should allow for the incorporation of new knowledge of cultural significance and evidence, particularly in terms of long-term projects. Proponents must recognise new findings of significance and amend plans accordingly.
- All land-use agreements must recognise that significant archaeological heritage sites remain to be discovered at the time the agreement is negotiated. To this end, there must be improved protection of (future identified) archaeological sites and subsurface archaeological deposits.
- Improved oversight and monitoring of projects and the permit process by the regulator is essential.
- Time frames are required to guide initial investigations to an adequate standard and not as part of the conditions on the permit to destroy.
- Companies must support regional databases to streamline management of information. This will allow access to information held by parties other than the State or Traditional Owners/Custodians and reduce unnecessary and expensive duplication of surveys and assessment work. Currently, information about heritage may be held on the private databases of individual companies and are not available to assist in making informed decisions and

assessments. This also leads to cultural heritage professionals being restricted in the advice they can give to the Aboriginal Cultural Materials Committee on Section 18 applications.

- Establishment of mandatory best practice professional standards in cultural heritage management are required, and are to be overseen accordingly by the regulator.

COMMENTARY ON TERMS OF REFERENCE (F) THROUGH (J)

(f) The interaction of the state of Indigenous heritage regulations with Commonwealth laws

AAA response:

Currently there are limited options for interaction between Indigenous heritage regulations and Commonwealth law. In fact, most stakeholders (Indigenous, heritage professionals and proponents) are unaware of their obligations towards identifying interactions with Commonwealth law. Recognising that commonalities of Indigenous heritage exist in addition to the fact that Indigenous heritage does not recognise State boundaries, there is great scope for the Federal government to implement a national approach to this matter. A standardised approach would also address multi-jurisdictional proponents' concerns where currently projects in different states must adopt different assessment methodologies (this is commonly seen in cross-jurisdictional projects or proponents with projects in different jurisdictions e.g. resource extraction, urban redevelopment, linear infrastructure (transport, energy and water)).

(g) the effectiveness and adequacy of state and federal laws in relation to Aboriginal and Torres Strait Islander cultural heritage in each of the Australian jurisdictions

AAA response:

Despite Indigenous heritage issues being broadly similar across Australia, there are no clear and coherent nation-wide guidelines. Instead, widely different State and Territory legislation results in a total lack of consistency in terms of expectations or the application of methodologies for consultation, significance, impact assessment and/or protection. Legislation ranges from robust and proactive Acts that recognise the rights of Aboriginal Parties (Victorian *Aboriginal Heritage Act 2006*), to the ineffective and cumbersome (Queensland *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003*). In Queensland, for example, ineffective legislation results in situations where it is unknown what heritage has, or is being, negatively affected.

There are four main issues affecting the majority of Aboriginal and Torres Strait Islander heritage legislation within Australia:

1) Lack of recognition of modern planning requirements

Most legislation predates the current modern era of planning legislation and our understanding of impact assessments (Figures 1 & 2). Of the current Acts in Australia, only those acts in force in Victoria, ACT and the Northern Territory have been developed with links to relevant planning regimes, or are framed within the context of modern impact assessment processes. Key issues with out-of-date legislation include inadequate assessments and poor management outcomes. These factors can create risk and uncertainty for proponents when additional information is disclosed that conflicts with the proposed management strategy (as in the case of Juukan Gorge). This can lead to the need for additional assessment, or reputational damage and financial/legal consequences.

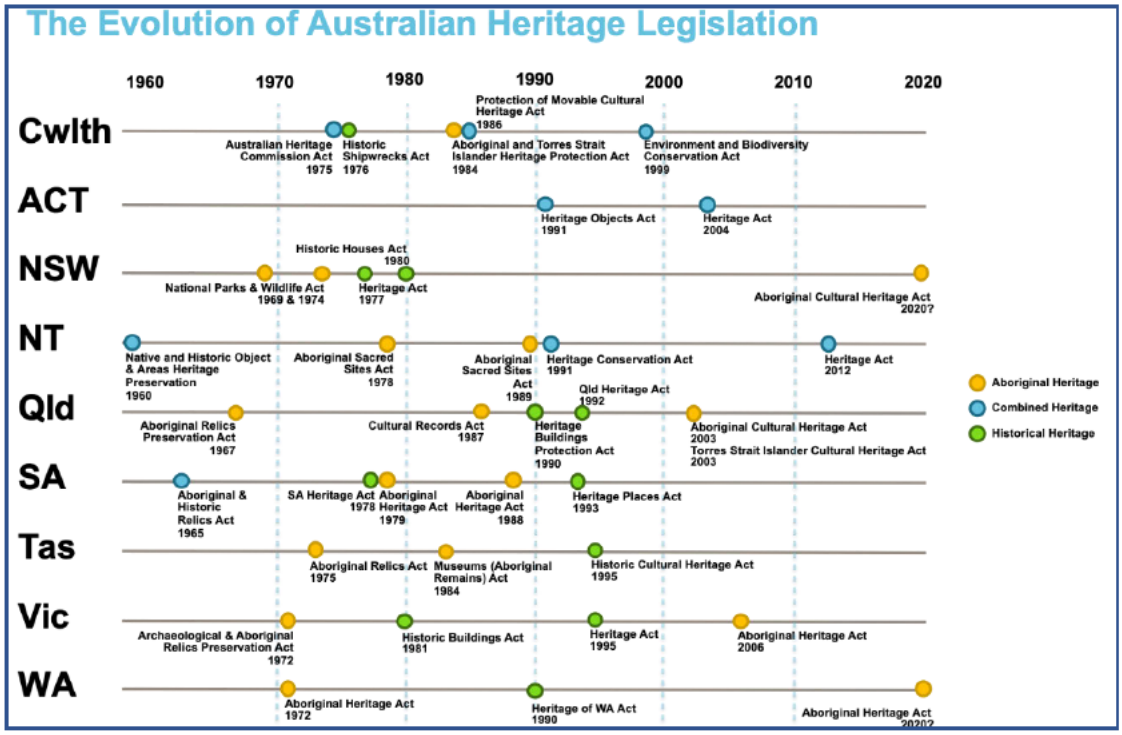

Figure 1. A time line of Australia's heritage legislation, indicating various state or territory Acts relating to Aboriginal heritage only, historical heritage only, or combined Aboriginal and historical heritage.

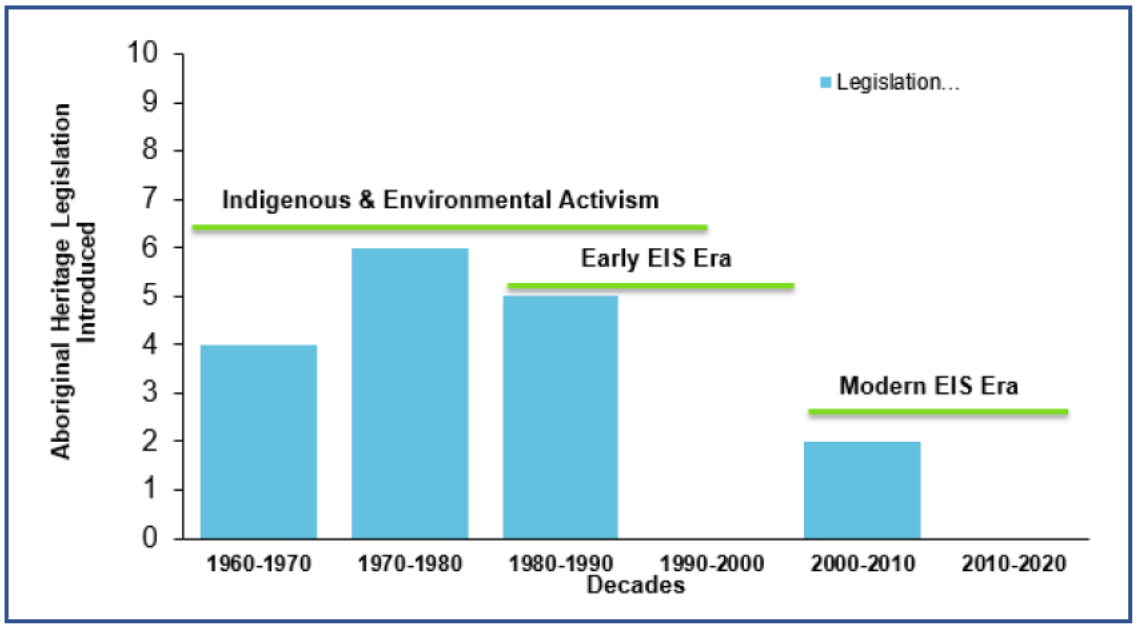

Figure 2. Aboriginal Heritage Legislation is largely outdated, with most acts introduced between 1960 and 1990.

2) Decision-making responsibilities are best managed as a partnership between Government and Indigenous Parties

Indigenous heritage can only properly be managed when authorised Indigenous Parties have been recognised by Government and proponents as being crucial partners in the decision-making process for heritage management. With that recognition also comes great responsibility to ensure a transparent process that aligns closely with the relevant Planning Act and impact assessment

norms. In this regard the Victorian model, which incorporates an Aboriginal Heritage Council with powers to appoint Registered Aboriginal Parties (RAPs) based on representativeness and capability, has demonstrated a robust and accountable system of Aboriginal heritage management through 13 years of operation. In Victoria, RAPs are delegated authority by the State to represent State interests and must abide by a proscribed process. This is in contrast with most other States and Territories where the responsibilities of Indigenous Parties are unclear or interpreted differently by different stakeholders.

3) Standardised heritage assessment and reporting methodologies

The various Australian jurisdictions dictate a range of widely differing methodologies ranging from both archaeological and anthropological studies required in Victoria to no formal reporting requirements in Queensland. A standardised assessment and reporting process would create a fairer and more transparent process for all stakeholders: Indigenous, government and proponents. It would also serve to weed out unscrupulous heritage consultants who may lack the basic qualifications required to undertake Indigenous heritage assessments. Embedding a peer review process into all modern heritage management regimes would ensure that procedures are followed correctly. The establishment of a physical repository, in every State, of all heritage reports prepared for any land-modification activity, along with a register/database of reports that can be searched as an integral part of planning for heritage assessment, would also ensure a well-informed basis upon which new heritage assessments can be considered.

4) Site Databases

Proper protection of heritage can only be undertaken with the use of spatially aware modern databases (focusing on heritage landscapes) and the abandonment of the centroid approach to heritage sites (dots on maps). Despite years of heritage impact assessments, an all-too frequent assumption is that a heritage site is represented by a single datapoint in a landscape. This can lead to initial planning to avoid the centroid, when in fact the site may extend for hundreds of metres.

(h) How Aboriginal and Torres Strait Islander cultural heritage laws might be improved to guarantee the protection of culturally and historically significant sites

AAA response: Legislation to protect heritage sites should be primarily for that purpose. However, it must also recognise that it is not isolated from the planning process or environmental impact assessments. Currently, WA heritage legislation (and that of many other States) has become an instrument for facilitating development approvals rather than for protecting and celebrating sites of cultural and historic significance. Much like environmental protection legislation, recognising heritage as an asset for investment rather than a constraint to development is the foundation of improved protections for Indigenous heritage.

Steps that will lead to improved heritage outcomes include:

- Links with relevant Planning Acts and environmental impact assessment standards
- Planning triggers for undertaking mandatory (and potentially expensive) heritage assessments
- Identifying high impact activities versus low impact and exempt activities (e.g. existing farming practices)
- Implementation of standards of site recording (tangible and intangible) and assessments (Desktop, Standard/Survey and Complex/Excavation)
- Qualification requirements for heritage specialists

- Requirements for peer review by regulators or their delegates (in the case of Registered Aboriginal Parties in Victoria)
- Effective use of regulations to support legislation
- Standardised heritage registers for sites, landscapes, and reports
- Mandatory timeframes for regulator assessment of heritage reports (28 days etc)
- Dispute mechanisms for both Indigenous parties and proponents

In addition to this, a minimum level of resources should be committed and directed towards such essential activities as: management and conservation of heritage places; public education; research that might underpin and inform sound decision-making (regional assessments); management of basic information; and monitoring of compliance with existing legislation.

(i) Opportunities to improve Indigenous heritage protection through the Environment Protection and Biodiversity Conservation Act 1999

AAA response:

The EPBC Act 1999 is not the appropriate piece of legislation to improve Indigenous heritage protection. The EPBC Act covers the protection of World, National and Commonwealth listed heritage places in addition to managing actions by the Commonwealth on items of heritage value. Instead the Australian Archaeological Association recommends that reforms to improve the national approach to Indigenous heritage management should be made to the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the ATSIHP Act).

The ATSIHP Act is considered the appropriate vehicle for developing a 'model act' to support the management of Indigenous heritage by the States and Territories. An effective example of this sort of approach is provided in the successful negotiation by the Australian Federal, State and Territory governments in creating a standard approach to Occupational Health and Safety legislation. The model act approach creates a baseline of expectations which all members of the Federation agree to abide by. States and Territories can then adopt additional measures or simply keep the base.

If a proposed model act reform of heritage protection legislation is undertaken, it should, at a minimum, include:

- The role and responsibilities for Indigenous stakeholders, governments and proponents;
- Recognition of Indigenous stakeholders;
- Consultation requirements with Indigenous stakeholders;
- Recording and assessment standards;
- Minimum technical qualifications for heritage specialists;
- Heritage register standards;
- Compliance requirements; and
- Fees and penalties

Penalties however, should not simply be monetarily based. Destruction of sites for their resources may be highly lucrative and can be worth the cost of a fine to the proponent. Instead, penalties should include provision for suspension of licence and the creation of ongoing obligations by the proponent to support or fund future heritage work.

More broadly, consideration should be given to the Victorian (and the proposed NSW) approach, whereby an Aboriginal Heritage Council is established, tasked with establishing a Registered Aboriginal Party system.

(j) Any other related matters

AAA response:

Necessary qualifications and skills experience of heritage advisors: Currently, there are no legislated National Professional Standards for archaeologists working in Australia. In collaboration with members, the Australian Archaeological Association developed national benchmarking statements for archaeology degrees in Australia (Beck and Clarke 2008), which will be relaunched as a second edition in 2020. Developed with the input of a national team, the document clearly describes the knowledge, understanding and skills that an archaeology graduate is expected to have upon completion of a four-year honours degree – the common industry minimum standard. The Australian Archaeological Association recommends implementation of the National Benchmarks across the tertiary education sector to ensure that archaeologists are entering the workforce with an appropriate level of training.