

Upper House Committees
Legislative Council - Parliament of NSW

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ACHAC supplementary submission to the Heritage Act review – Dhawura Ngilan statement

Dear Anthony,

As foreshadowed in my evidence to the Standing Committee (17 August 2021) I am providing the Committee with the Dhawura Ngilan vision statement.

Produced in September 2020 by the Heritage Chairs and Officials of Australia and New Zealand (HCOANZ), the Dhawura Ngilan vision statement puts forward *Best Practice Standards for Indigenous Cultural Heritage Management and Legislation*.

In the NSW Parliament (September 2020) Heritage Minister the Hon Don Harwin thanked HCOANZ for their “*outstanding work*” and described the vision statement as “*a potential map for achieving consistent outcomes across jurisdictions*”.

As a supplementary submission to the Committee, please also find attached a policy statement showing how ACHAC policy on ACH reform is aligned with the HCOANZ best practice standards.

In ACHAC’s view, the HCOANZ best practice standards for ACH legislation has direct application to the review of the Heritage Act, and to the finalisation of the ACH reforms.

Again, thank you for the opportunity to speak with the Standing Committee and we wish you all the best with your work.

Regards,



Glenda Chalker
Chair, Aboriginal Cultural Heritage Advisory Committee

30 August 2021

Dhawura Ngilan - Remembering Country - Dhawura Ngilan

How the Best Practice Standards of Dhawura Ngilan support the ACHAC Principles of ACH Reform

The Dhawura Ngilan Vision Statements

1. Aboriginal and Torres Strait Islander People are the Custodians of their heritage. It is protected and celebrated for its intrinsic worth, cultural benefits and the wellbeing of current and future generations of Australians.
2. Aboriginal and Torres Strait Islander heritage is acknowledged and valued as central to Australia's national heritage.
3. Aboriginal and Torres Strait Islander heritage is managed across jurisdictions according to community ownership in a way that unites, connects and aligns practice.
4. Aboriginal and Torres Strait Islander heritage is recognised for its global significance.

Dhawura Ngilan is a vision statement for Indigenous cultural heritage management produced in September 2020 by the Heritage Chairs and Officials of Australia and New Zealand (HCOANZ). The vision puts forward *Best Practice Standards for Indigenous Cultural Heritage Management and Legislation*.

Speaking in parliament in September 2020, heritage Minister the Hon Don Harwin MLC thanked HCOANZ for their "*outstanding work*" and described the vision statement as "*a potential map for achieving consistent outcomes across jurisdictions*".

HCOANZ Best Practice Standards

The following dot-points (in italics) are extracts from the Best Practice Standards taken from the Dhawura Ngilan Vision Statement. Where a Best Practice Standard (BPS) specifically supports an ACHAC principle, the ACHAC principle is noted beneath.

BPS 3: Basic Structures

- BPS 3 supports a model that "*prohibits any interference to Indigenous cultural heritage unless there is a statutory authorisation in place*".

BPS 4: Definitions

- *Likewise, intangible ICH not necessarily immediately connected to physical places must also be recognised in legislation. There are several examples in statutory definitions that are a useful illustration of these concepts. For example, the NSW draft Aboriginal Cultural Heritage Bill 2018 has the following definition:*

Section 4(1) Aboriginal cultural heritage is the living, traditional and historical practices, representations, expressions, beliefs, knowledge and skills (together with the associated

environment, landscapes, [laces, objects ancestral remains and materials) that Aboriginal people recognise as part of their cultural heritage and identity.

ACHAC Principle 2.c - Statutory definitions of ACH should explicitly include elements such as landscape, water and living Aboriginal culture

BPS 5: Incorporation of Principles of Self Determination

- *The key to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is the principle of self-determination. In the context of ICH, this principle requires that the affected Indigenous community itself should be the arbiter of the management of the ICH aspects of any proposal that will affect that heritage.*
- *Thus, in the crucial UNDRIP Article 32, reference is made to Indigenous Peoples acting through “their own representative organisations”.*
- *The identification of a legitimate “representative organisation” capable of exercising an Indigenous community’s rights and responsibilities with respect to ICH is a fundamental component in any comprehensive ICH legislation.*
- *It is for the Indigenous community to decide who represents them, consistent with Free, Prior, Informed Consent.*

ACHAC Principle 1 - The ACH model should strengthen self-determination and empower local Aboriginal communities.

ACHAC Principle 2 - the views expressed by Aboriginal communities in response to the 2018 ACH Bill should be incorporated as far as possible in current reform processes.

Note: ACHAC principle is consistent with the HCOANZ principle of Free, Informed, Prior Consent.

ACHAC Principle 2(e) - There should be a new, independent state-wide body governed by a board of Aboriginal people as a regulatory decision-making body

ACHAC Principle 2(f) - Local Panels: community-led, local decision making on ACH by Aboriginal people with recognised cultural authority

BPS 6: Process

Up-front Assessment

- *Decisions regarding ICH management cannot be left to be the last consecutive approval required in the assessment of a development proposal. Rather ICH considerations must be integrated as early as possible into the development proposal assessment time frames. This ensures both adequate time to consider a proposal and that ICH considerations are not perceived as the “last impediment” to development proposal approval.*
- *An example is s.52 of Victoria’s Aboriginal Heritage Act 2006, which states: “The decision maker must not grant a statutory authorisation unless a cultural heritage management plan is approved under this Part in respect of the activity”.*

ACHAC Principle 2(g) - Up-front assessment of ACH within the planning (development approval) system

BPS 7: Resourcing; participation

- *There must be an acceptance that Indigenous representative organisation engaging with proponents and assessing their proposals are performing a statutory function under the relevant jurisdictions project assessment and approval regime and must be adequately resourced to perform this function.*
- *The resources provided should extend to undertaking identification, protection, promotion, maintenance and intergenerational transmission and similar functions.*

ACHAC Principles 2(e) and 2(g)

(e) There should be a new, independent state-wide body governed by a board of Aboriginal people as a regulatory decision-making body

(g) Local Panels: community-led, local decision making on ACH by Aboriginal people with recognised cultural authority

Note: These two Aboriginal representative bodies (above) are proposed in the ACH Bill 2018 and widely supported by Aboriginal communities. The NSW government is entitled to seek a “less expensive” Bill, but any reduction of costs should not undermine the intent of Best Practice Standard 7.

BPS 8: Resourcing Compliance and enforcement

- *Affected Indigenous communities should be adequately empowered and resourced to undertake necessary compliance and enforcement functions.*
- *There must be a realisation that the structure of the ICH legislation is dependent on upon proponents understanding that interface with ICH without an authorisation, or a failure to comply with the terms of the authorisation, will result in a significant sanction.*
- *This understanding will only occur if there are sufficient resources allocated to enforcement regimes for these to constitute a real deterrence to non-compliance.*

ACHAC Principle 2(i) - Improved compliance and enforcement including penalties that provide a true deterrent.

Note: The above is proposed in the ACH Bill 2018. The NSW government is entitled to seek a “less expensive” Bill, but any reduction of costs should not undermine the intent of Best Practice Standards 7 and 8.

BPS 9: Ancestral remains

- *Wherever possible Indigenous Ancestral Remains identified in country should be left in country and these resting places protected as “Aboriginal or Torres strait Islander places”.*
- *Processes and protocols... must be built around this principle and adequate resources must be allocated to accommodate the effective implementation of these processes and protocols.*

Note: ACHAC principles don’t address Ancestral remains. However, the NSW government’s view that the ACH Bill 2018 is “too expensive” may not be consistent with the “adequate resources” requirement of BPS 9.

BPS 10: Secret and Sacred Objects

- *Some movable ICH (objects) will be considered secret or sacred by the Indigenous community of origin. It is inconceivable that ICH that is secret or sacred could ever have legitimately entered the realm of commercial transactions.*

- *As such, ICH legislative regimes must acknowledge that property in secret and scared objects can only legitimately vest in the community of origin of the object and deploy mechanisms to achieve the repatriation of these objects.*

ACHAC Principle 2d - There should be statutory acknowledgement that ACH is owned by Aboriginal people and not the Crown

BPS 11: National legislation and Intangible Indigenous Cultural Heritage

This BPS calls for recognition of intangible Indigenous Cultural Heritage and calls for Commonwealth legislation to take the lead in setting a national standard for the States and Territories.

ACHAC principles not addressed by HCOANZ principles

Only three ACHAC principles for ACH reform are not expressly supported by the HCOANZ principles:

- 2(c) ACH provisions should be removed from the National Parks and Wildlife Act*
- 2(d) There should be standalone legislation for ACH in NSW*
- 2(h) New, regulated ACH information management systems that are managed by Aboriginal people, and that have strong safeguards and protocols*

ACHAC supports these principles because they were strongly supported by Aboriginal communities through the 2017/18 consultations on ACH Reform. As such, these principles represent the Free, Prior Informed Consent of Aboriginal communities.

HCOANZ emphasises throughout the Dhawura Ngilan Vision Statement that Indigenous Cultural Heritage must be administrated in a way that conforms with Free, Prior Informed Consent, which is itself a requirement of the United National Declaration on the Rights of Indigenous Peoples (UNDRIP 2007).

Dhawura Ngilan

(Remembering Country)

A vision for Aboriginal and Torres Strait Islander heritage in Australia

September 2020

Final

Date: 16/9/2020

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Pronunciation of Dhawura Ngilan

With the permission of senior Ngunnawal people¹, the name *Dhawura Ngilan* (Remembering Country) was given to this vision. Emphasis, or stress, is placed on the first syllable of each word: DHAwura NGIlan.

dh sounds like an English "d", but is made with the tongue touching the top front teeth.

a is the same as "ar" in English "far"

w is the same as in English "worry"

u in this word sounds like the "u" in English "supply"

r is like a Scottish rolled "r"

a is again the same as "ar" in English "far"

ng is the same as "ng" in English "sing"

i is the same as "i" in English "igloo"

l is the same as "l" in English "belong"

a is the same as "ar" in English "far"

n is the same as "n" in English "button"²

¹The Winanggaay Language Group and the United Ngunnawal Elders Council.

² Acknowledgement and thanks to Caroline Hughes, of the Australian Capital Territory's Aboriginal and Torres Strait Islander Elected Body, for providing this information.

Part One – Our Vision

Dhawura Ngilan (Remembering Country)

Aboriginal and Torres Strait Islander Heritage in Australia Developed by the Heritage Chairs of Australia and New Zealand

Dhawura Ngilan embodies the long-held aspirations of Aboriginal and Torres Strait Islander people for their heritage³. It has been developed by the Aboriginal and Torres Strait Islander Chairs as members of the Heritage Chairs of Australia and New Zealand. It is offered to inform policy, underpin legislative change and inspire action.

Vision

1. Aboriginal and Torres Strait Islander People are the Custodians of their heritage. It is protected and celebrated for its intrinsic worth, cultural benefits and the wellbeing of current and future generations of Australians.
2. Aboriginal and Torres Strait Islander Heritage is acknowledged and valued as central to Australia's national heritage.
3. Aboriginal and Torres Strait Islander Heritage is managed consistently across jurisdictions according to community ownership in a way that unites, connects and aligns practice
4. Aboriginal and Torres Strait Islander heritage is recognised for its global significance.

These aspirations are high level, designed to drive key areas of focus and create benchmarks for reporting.

³ See **Appendix 1**: The Barunga Statement: extracts relevant to heritage & **Appendix 5** – list of consultation and Indigenous endorsement

Connection to Country



© Namatjira Legacy Trust/Licensed by Viscopy, 2017 (to be licensed)⁴

Australia is home to the oldest continuous culture on earth. Sixty-five thousand years of uninterrupted heritage demonstrated by archaeological evidence, makes our continent unique in the world. However, Aboriginal and Torres Strait Islander people's view of heritage transcends time into what is widely described as the Dreaming, but better expressed in our many Australian languages through concepts such as Tjukurrpa⁵. As Wenten Rubuntja⁶, co-artist of the Barunga statement and a Board Member of the Aboriginal Sacred Areas Protection Authority⁷ described:

The country has got sacred sites, that stone, that mountain has got Dreaming and himself is sacred country. Not just free mountain. We sing that one – we got that song. Well, the song is the history of the country. [...] Albert Namatjira used whitefella's side of the story – he

⁴ Albert Namatjira, THE BEND OF THE TODD, HEAVITREE GAP, 1958

⁵ This is a word used by Anangu People

⁶ Wenten Rubuntja AM (1923-2005) was an Arrernte law man, artist, historian, Aboriginal statesman and Chairman of the Central Land Council. In 1988, Mr Rubuntja and Dr Galarrwuy Yunupingu presented the Burunga statement to the then Australian Prime Minister Bob Hawke.

⁷ The Aboriginal Sacred Areas Protection Authority is an independent statutory authority established under the Northern Territory Aboriginal Sacred Sites Act. It is responsible for overseeing the protection of Aboriginal sacred sites on land and sea across the whole of Australia's Northern Territory. For more information, visit:

<https://www.aapant.org.au/> (Accessed July 2020).

... painted landscape. He painted the Tywerrenge (Dreaming) side there as well. Namatjira used two laws.⁸

This sacred essence of places Mr Rubuntja describes is also present in sacred objects. In the Arrernte language Mr Rubuntja uses above, they are given the same name, indicating their sacred nature and connection to place.

In the historic Mabo Case, evidence was given that related how the Meriam People of the Torres Strait understand their connection to Country, land and waters, both in spiritual and practical terms. Henry Kabere testified that:

The Malo story is part of our traditional law. This is the same law as that written in the court book. Malo law applies to the land, to land owners, to caretakers, to gardens, to fish traps, to inheritance of land and to boundaries⁹.

This has been described as a 'person-land-ancestral inter-relationship'.¹⁰ It is a living connection between Aboriginal and Torres Strait Islander people today. Australia's landscape, waters, and seas, collectively referred to as 'country', are alive with a profusion of heritage places. Imbued with the essence of ancestral beings that created them, it is through these places that family descent and kinship connections flow. It is this connection that gives owners' rights, responsibilities and duties to country. This is often described as being a Traditional Owner or Native Title Holder. In this document we use the term Custodians. Often it is the *senior* Custodians who have the authority to speak for country in their role as repositories of knowledge about places.

Heritage is important to Aboriginal and Torres Strait Islander people, who have lived through colonisation over generations and continue to affirm their identity in the 21st century. Places of heritage significance can be found in urban areas, and built and contemporary features such as missions, protest routes and monuments. Aboriginal and Torres Strait Islander people may not have an ancestral connection to these places but their connection through lived experience is significant.

Heritage is precious to Aboriginal and Torres Strait Islander people and key to reaffirming Aboriginal and Torres Strait Islander identity into the twenty-first century and beyond. There has never been a better time to share this heritage with the Australian people. *Dhawura Ngilan* defines this vision and provides key areas of focus to collectively achieve it.

⁸ Rubuntja, W. cited in French, A. 'We've Got to Follow that Old Man's Tracks: Engaging with the Art of Albert Namatjira', in Perkins, H. and West, M. (2007). *One Sun One Moon: Aboriginal Art in Australia*. Art Gallery of New South Wales: Sydney. Page 159.

⁹ Keon-Cohen, Bryan. (2011). *Mabo in the Courts: Islander Tradition to Native Title: A Memoir*. Chancery Bold: North Melbourne, Victoria, Australia. Page 371.

¹⁰ Rumsey, A. (2001). Tracks, traces and links. In A. Rumsey and J. Weiner (eds), *Emplaced Myth: Space, Narrative, and Knowledge in Aboriginal Australia and Papua New Guinea*. Pages 19-42. Honolulu: University of Hawai'i Press.

BACKGROUND

In May 2018, membership of the Heritage Chairs and Officials of Australia and New Zealand (HCOANZ) was expanded to include Aboriginal and Torres Strait Islander Heritage Chairs¹¹. At their combined meeting in Darwin the expanded HCOANZ group issued the “Darwin Statement”,¹² which captured their intention to work together in advancing a shared approach to Australia’s cultural heritage. In October 2019, Aboriginal and Torres Strait Islander heritage chairs, board members and officials met in Canberra to discuss Indigenous heritage. A commitment was made to create a *vision* that would present a united voice for Indigenous Australians’ heritage aspirations for the next decade. This vision aims to prioritise Aboriginal and Torres Strait Islander cultures as our shared Australian history and heritage, which has the power to shape and guide our nations and people.

In acknowledgement of the people on whose country the meeting took place, and with the permission of senior Ngunnawal people¹³, the name *Dhawura Ngilan* was given to this vision. It reflects:

...the deeply emotional and spiritual connection to environment. It includes all aspects of life including our relationships to all within. All living beings and objects share the spirit of our ancestors and have kinship with us. A deeply emotional and spiritual connection which is the heart of country that ensured continual systems that were sustainable.

The Australian Heritage Council (AHC) hosted the meeting. Under its founding legislation¹⁴, the AHC brings together Aboriginal and Torres Strait Islander Heritage with all other Australian heritage as a central element of Australia's nationally significant heritage.

Dhawura Ngilan was directly inspired by Māori achievements and their vision document, [Tapuwae](#), meaning ‘sacred footprint’:

The Māori Heritage Council uses this term to symbolise the Māori heritage ‘footprints’ in the landscape. It is also used to communicate the idea that we can look back to where we have been as we move forward, taking more steps¹⁵.

¹¹ Under Australia’s federal system of government, local councils manage locally significant heritage, state and territory governments manage state and territory significant heritage and the Commonwealth Government manages national, Commonwealth and World heritage places. The Heritage Chairs and Officials of Australia and New Zealand (HCOANZ) is a group of representatives from each of the state, territory, Commonwealth and New Zealand governments, made up of the chairs of each jurisdiction’s heritage council and the government officials who support those councils. The Aboriginal and Torres Strait Islander Chairs are the Indigenous representatives from each government’s Indigenous cultural heritage advisory council.

¹² See **Appendix 2**: The Darwin Statement.

¹³ The Winanggaay Language Group and the United Ngunnawal Elders Council.

¹⁴ *Australian Heritage Council Act 2003* (Cth)

¹⁵ Māori Heritage Council. (January 2017). *Tapuwae: A Vision for Places of Maori Heritage Te Kōrero a te Kaunihera Māori o te Pouhere Taonga*. Heritage New Zealand Pouhere Taonga. Page 4.

Aboriginal and Torres Strait Islander Australians' footsteps share a common path with the Māori people, who have thought deeply about their heritage. With their permission we have, on occasion, made their words our own. We pay respect to their leadership and the *mana*¹⁶ that resides in them.

¹⁶ Mana means great authority, presence, prestige in the Māori language

Part Two – Working together

Policy Context

Dhawura Ngilan is launched in the challenging and changing policy and legislative environment of 2020. The ten-year statutory review of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act)* is underway and the *Australian Heritage Strategy*, the Commonwealth's key heritage policy document, is under review after five years of operation. Both reviews present future opportunities for better outcomes.

Aboriginal and Torres Strait Islander Heritage is currently inadequately served by multiple pieces of national legislation including the *EPBC Act*¹⁷, the *Protection of Movable Cultural Heritage Act 1986 (Cth)*, the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*, and the *Underwater Cultural Heritage Act, 2018 (Cth)*. The heritage legislation of the states and territories is also at various stages of adequacy and review. Despite this uncertainty, HCOANZ will be working collectively and through partnerships, to deliver better outcomes for Aboriginal and Torres Strait Islander heritage.

Whilst *Dhawura Ngilan* refers to some aspects of moveable cultural heritage, we recognise that the Australian Museums and Galleries Association (AMaGM) has established a ten-year *Roadmap for Enhancing Indigenous Engagement in Museums and Galleries*. This roadmap outlines AMaGMs commitment to 'Increasing Indigenous Opportunity' and 'Two Way Caretaking of Cultural Material'¹⁸ and is the key guidance document here.

Dhawura Ngilan provides an opportunity for jurisdictions to collectively work with Aboriginal and Torres Strait Islander people to identify, protect, conserve, present and transmit for future generations the unique heritage of Australia. This vision identifies key areas of focus, which take the form of recommendations, to guide the actions of all Australian governments for the next decade.

It is expected that jurisdictions will develop implementation plans and associated targets to address the key areas of focus and will report on progress. It is hoped that this work will also inform the *State of the Environment Report 2021*. Ultimately our intention is that *Dhawura Ngilan* sits alongside the *Australian Heritage Strategy* and will be reviewed by Heritage Chairs in 2025 to assess progress.

Throughout the development of this vision it has been apparent there is immense goodwill and a genuine desire that it succeed. If the recommendations of *Dhawura Ngilan* are implemented, they will deliver significant and positive change for Australia's heritage.

¹⁷ Samuel, Graeme. (June 2020). *Interim Report: Independent Review of the EPBC Act*. Independent Statutory Review.

¹⁸ Australian Museums and Galleries Association. (2019). *First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries*. Available at: <https://www.amaga-indigenous.org.au/> (Accessed July 2020). Chapters 3 and 4.

Key areas of focus

Vision One

1. Aboriginal and Torres Strait Islander People are the Custodians of their heritage. It is protected and celebrated for its intrinsic worth, cultural benefits and the wellbeing of current and future generations of Australians.

In Australia the protection of Aboriginal and Torres Strait Islander heritage has been maintained over thousands of years by Aboriginal and Torres Strait Islander people. More recently, this protection has been augmented by legislation, policy, professional codes of conduct and Australian community appreciation and regard for our heritage places. Across Australia, legislative responsibility for its protection is divided along jurisdictional lines. This legislation is inconsistent and, in some instances, outdated and inadequate. Heritage lists and registers under this legislative framework, in some jurisdictions, are inequitable and are incomplete with places recognised for their Aboriginal and Torres Strait Islander value being underrepresented or highly selective, focussing on archaeological or historic sites. Furthermore, the resources and data available to monitor and report on the condition of Aboriginal and Torres Strait Islander heritage are inadequate. Further, Victoria is the only Australian jurisdiction to have legislation that specifically protects the intangible elements of Aboriginal and Torres Strait Islander heritage¹⁹. Aboriginal and Torres Strait Islander communities must be at the centre of a refreshed framework of protection.

We propose that the following should be key areas of focus to achieve this vision

Key areas of focus

- 1.1. All jurisdictions adopt and work towards achieving the *Best Practice Standards in Indigenous Cultural Heritage Management and Legislation* to ensure protection and management is consistently of the highest standard across jurisdictions

Aboriginal and Torres Strait Islander communities seek greater safeguards for their heritage through legislative reform. The Aboriginal and Torres Strait Islander Chairs developed the *Best Practice Standards in Indigenous Cultural Heritage Management and Legislation*²⁰ (the Standards) for guidance. The objective of the Standards is to facilitate Aboriginal and Torres Strait Islander Cultural Heritage legislation and policy across the country that is consistently of the highest

¹⁹ The *Aboriginal Heritage Act 2006* (VIC) pt 5(A) s 79B ss 1, 2 provides the following definition: (1) ...**Aboriginal intangible heritage** means any knowledge of or expression of Aboriginal tradition, other than Aboriginal cultural heritage, and includes oral traditions, performing arts, stories, rituals, festivals, social practices, craft, visual arts, and environmental and ecological knowledge, but does not include anything that is widely known to the public.

(2) *Aboriginal intangible heritage* also includes any intellectual creation or innovation based on or derived from anything referred to in subsection (1). Dhawura Ngilan has adopted and applied this definition in relation to Aboriginal and Torres Strait Islander intangible heritage.

²⁰ See **Appendix 3: Best Practice Standards in Indigenous Cultural Heritage Management and Legislation**.

standard. Central to achieving this objective is the obligation to ensure the Free, Prior and Informed Consent (FPIC)²¹ of Aboriginal and Torres Strait Islander Peoples with an interest in the heritage being protected, be it land or sea or intangible heritage, before the approval of any project that affects their Country and their cultural heritage. Consideration must also be given to legislation that relates to definitions of Aboriginal and Torres Strait Islanders Peoples' heritage, self-determination, process, ancestral remains, secret and sacred heritage, and intangible heritage.

The protection of intangible cultural heritage warrants particular focus. In Australia many of the issues were explored in the 1993 Federal Court case, and subsequent decision, which has come to be known as the Carpets Case²². A decision by Australia to ratify the *UNESCO Convention for the Safeguarding the Intangible Cultural Heritage 2003* would give significant momentum to addressing the ongoing issues in this space. If ratified, all relevant legislation would need to be aligned with the Convention.

1.2. Heritage Councils work with Aboriginal and Torres Strait Islander people to identify and protect heritage places and achieve better equity on statutory lists

Across Australia, heritage lists do not tell a comprehensive story of Australia's past. There is a need to bring balance to these lists by including more Aboriginal and Torres Strait Islander heritage. Not only will this contribute to protection and enhance opportunities for celebration, it will also enable a mature engagement with our shared heritage. Aboriginal and Torres Strait Islander people must be at the centre of this process and Free Prior and Informed Consent must be obtained from all relevant Custodians at the earliest stages of the process.

Heritage places are sources of Australian cultural identity and history, the tangible and intangible elements of these places and objects are inseparable. The identification, protection, celebration, preservation and conservation of Aboriginal and Torres Strait Islander heritage has the potential to enrich the broader community socially, culturally, spiritually and economically.

1.3. Prioritise the recording and digitisation of place based traditional knowledge including Songlines and place names which underpins Aboriginal and Torres Strait Islander heritage

The *Australian State of the Environment 2016* report identified Aboriginal and Torres Strait Islander heritage as being '...at risk from loss of knowledge and tradition'²³. This threat is real. Aboriginal and Torres Strait Islander heritage has been impacted by colonisation and its intangible knowledge

²¹ FPIC is a central component of the *United Nations Declaration on the Rights of Indigenous Peoples*, adopted on 13 September 2007. Available at: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf (Accessed July 2020).

²² *M*, Payunka, Marika & Others v Indofurn Pty Ltd 30 IPR 209* and see: Janke, T. (2003) *Minding Culture – Case Studies on Intellectual Property and Traditional Cultural Expressions*. World Intellectual Property Organisation. Available at: https://www.wipo.int/edocs/pubdocs/en/tk/781/wipo_pub_781.pdf (Assessed 4 September 2020).

²³ Mackay, R. (2016). 'Heritage: Key Findings'. In *Australia State of the Environment 2016*. Australian Government Department of the Environment and Energy: Canberra. Available at: <https://soe.environment.gov.au/theme/heritage/key-findings?year=96#key-finding-121756> (Accessed July 2020).

systems which are held in songlines and language are endangered²⁴. This knowledge is held by Elders and the community, and by recordings held by both Custodians, and research and collecting institutions. It is connected to heritage places and gives them meaning. The stories of the Ancestors told through song, dance, lore and art are at the heart of Aboriginal and Torres Strait Islander heritage. Jurisdictions must work together, and with, Aboriginal and Torres Strait Islander people and heritage councils to find solutions to this immediate issue. Unless this knowledge is recorded and digitised soon, it will be lost forever.

²⁴ The preservation and maintenance of Aboriginal and Torres Strait Islander languages is funded through the Indigenous Languages and Arts program and supported through community language centres. For more information, visit First Languages Australia at: <https://www.firstlanguages.org.au/> (Accessed July 2020).

Vision Two

2. Aboriginal and Torres Strait Islander heritage is acknowledged and valued as central to Australia's national heritage

Australia's Aboriginal and Torres Strait Islander heritage is at the heart of our national story and identity. Understanding this heritage from an Aboriginal and Torres Strait Islander perspective not only gives context to where we have been, where we are and where we would like to be as a nation, but *who* we are as a nation. Acknowledging the past within a heritage framework is a pathway for healing and enables a positive future to be forged. An increased consciousness and appreciation of Aboriginal and Torres Strait Islander heritage by all Australians will greatly assist in its retention, celebration and protection for future generations to enjoy and treasure.

We propose that the following be key areas of focus to achieve this vision.

Key areas of focus

2.1. Dual or sole naming of Aboriginal and Torres Strait Islander places is adopted across Australia

Place names carry cultural significance for Aboriginal and Torres Strait Islander people. By adopting dual naming or sole naming of places, Australians are provided with knowledge of their continents' deep heritage. It also brings the richness of Aboriginal and Torres Strait Islander languages into everyday use. There is also a need for greater understanding of the origin and meaning of Aboriginal and Torres Strait Islander place names that are currently in common usage.

The national policy [*Principles for the Use of Aboriginal and Torres Strait Islander Place Names*](#)²⁵ provides clear guidance on how Aboriginal and Torres Strait Islander names be embraced and the approach for implementing dual or sole naming. Heritage councils can play an active role in promoting these Principles. Heritage councils will form relationships with nomenclature authorities in their jurisdictions to implement this policy. Heritage councils also consider conducting inventories of Aboriginal and Torres Strait Islander names in their regions and adopting a policy of dual or sole naming for existing places on heritage lists.

2.2. Australia embraces truth telling about our heritage and our heritage lists reflect this truth

Australia's heritage narrative is one of survival and cultural achievement across thousands of years in a sometimes harsh and changing environment. It is also one of dispossession, aggression, violence and cultural assault. More recently Australia's narrative has been one of humanitarian but paternalistic policies giving way to heroic politics and national awakening as descendants of the nation's first peoples have used Australia's democratic institutions to claim recognition and rights.

²⁵ Permanent Committee on Place Names. (October 2016). *Principles for the Use of Aboriginal and Torres Strait Islander Place Names*. Intergovernmental Committee on Surveying and Mapping. Available at: https://www.icsm.gov.au/sites/default/files/consistent_place_names_principles.pdf (Accessed July 2020).

It is now time for Australia to adopt a process of Truth Telling²⁶ and ensure the truth is told about this past.

Particular attention should be paid to the appropriate preservation, protection and memorialisation of colonial and post-colonial frontier conflict and massacre sites, as we as a nation reconcile with our past. This is shared heritage. This must be reflected on our heritage lists. So too must the stories of political resistance and cultural resilience.

The Wave Hill Walk-Off Route is already included on the National Heritage List and tells the story of the Gurindji peoples' demands for equal wages and their rights to their traditional lands. There are many more stories like this across Australia; stories of resistance, resilience and contribution. There is an opportunity for Australian governments to seek out and support the telling of these stories.

2.3. Jurisdictions engage with opportunities in the Australian Curriculum to promote Aboriginal and Torres Strait Islander heritage in their region

Aboriginal and Torres Strait Islander histories and cultures are one of the three cross-curriculum priorities in the Australian Curriculum. The Australian Curriculum specifically aims to address the following need:

...that the Aboriginal and Torres Strait Islander Histories and Cultures cross-curriculum priority is designed for all students to engage in reconciliation, respect and recognition of the world's oldest continuous living cultures.²⁷

There is an opportunity for Heritage Councils to assist in the development of resources which enable the delivery of this priority in relation to Aboriginal and Torres Strait Islander heritage and truth telling.²⁸

2.4. Jurisdictions consider how to recognise and protect Culturally Significant Species

Australia has been a party to the United Nations Convention on Biological Diversity (CBD) since 1993 and recognises the role of Aboriginal and Torres Strait Islander people in the protection of biological diversity. *Australia's Strategy for Nature 2019-2030*²⁹ has shared goals and objectives for Australian biodiversity. It also makes specific reference to the importance of Aboriginal and Torres Strait Islander traditional ecological knowledge and stewardship of nature.

²⁶ See **Appendix 5**: What do we mean by "Truth Telling"?

²⁷ Australian Curriculum, Assessment and Reporting Authority (ACARA). (2018). *Aboriginal and Torres Strait Islander Histories and Cultures*. Available at: <https://australiancurriculum.edu.au/f-10-curriculum/cross-curriculum-priorities/aboriginal-and-torres-strait-islander-histories-and-cultures> (Accessed July 2020).

²⁸ For an example of content, see *Indigenous Knowledge Resources for Australian School Curricula Project*. Available at: <https://indigenouknowledge.unimelb.edu.au/curriculum#:~:text=The%20Aboriginal%20and%20Torres%20Strait,resources%20that%20incorporate%20Indigenous%20knowledge> (Accessed July 2020).

²⁹ Australia's Strategy for Nature 2019-2030, Commonwealth of Australia 2019. Available at: <https://www.australiasnaturehub.gov.au/> (Accessed September 2020)

Aboriginal and Torres Strait Islander people attribute tremendous spiritual, cultural or symbolic value to many animals, plants and ecological communities, a value that is critical in their identity and relationship with and adaptation to Country³⁰. In Victoria this includes Bunjil, the wedge tail eagle, and in the Northern Territory this includes Baru, the saltwater crocodile.

The protection of these cultural and spiritual assets is fundamentally important to maintaining Aboriginal and Torres Strait Islander culture and language. Recognition of Culturally Significant Species³¹ will contribute to the development of a more holistic perspective on biodiversity and ecosystems in Australia and provides all sectors of society with another avenue through which to emphasise the importance of species and communities to the state of the Australian environment³². Any potential listing or protection regimes should not impinge on any cultural practice of that species, including traditional take, sustainable use and other customary activities³³.

³⁰ Indigenous Reference Group of the National Environmental Science Program's Threatened Species Recovery Hub, submission to the 2020 Independent review of the EPBC Act

³¹ "There is no international unified definition for CSS, although it is synonymous with the concept of Culturally Defined Keystone Species ((CKS) (Cristancho and Vining, 2004) or Cultural Keystone Species (Garibaldi and Turner, 2004; Nuñez, and Simberloff, 2005), CSS can be described as species of exceptional significance to a culture or a people, and can be identified by their prevalence in language, cultural practices (e.g. ceremonies), traditions, diet, medicines, material items, and histories of a community": Indigenous Reference Group of the National Environmental Science Program's Threatened Species Recovery Hub, submission to the 2020 Independent review of the EPBC Act, <<https://epbcactreview.environment.gov.au/submissions>> at 2/9/2020

³² Ibid

³³ Indigenous Advisory Committee, submission to the 2020 Independent review of the EPBC Act, <<https://epbcactreview.environment.gov.au/submissions>> at 2/9/2020

Vision Three

3. Aboriginal and Torres Strait Islander heritage is managed consistently across jurisdictions according to community ownership in a way that unites, connects and aligns practice.

The Heritage Chairs and Officials of Australian and New Zealand is a valuable mechanism to provide national coordination, particularly for Aboriginal and Torres Strait Islander land and sea country that traverses multiple State and Territory borders. Aboriginal and Torres Strait Islander people have culturally significant sites and cultural materials across various jurisdictions and must negotiate multiple legislative frameworks. There is an opportunity for jurisdictions to improve processes and align practices to ensure Aboriginal and Torres Strait Islander heritage is protected, and that Aboriginal and Torres Strait Islander people have access to and control over their heritage.

We propose that the following should be key areas of focus to achieve this vision.

Key areas of focus

3.1. Jurisdictions work towards standardising heritage registers to support community access and scope the development of a national portal

At present South Australia, Queensland and Victoria separately use the same registry system to manage Aboriginal and Torres Strait Islander heritage called the Aboriginal Cultural Heritage Register and Information System, or ACHRIS, and share developments and improvements. There is an opportunity for other jurisdictions to adopt this system. This approach would enable Aboriginal and Torres Strait Islander people to search across jurisdictions and standardise data collection. It would also, in the longer term, facilitate a national portal, which would be extremely useful to Aboriginal and Torres Strait Islander communities³⁴.

3.2. Jurisdictions work together to recognise, protect and celebrate the significance of sites and stories that cross borders

Landscapes, sea country, intangible heritage and culturally significant species traverse State or Territory borders and are subject to different legislative frameworks and administrative requirements. Heritage Councils should work collaboratively to progress a priority nomination list to provide recognition and protection to these places.

³⁴ As discussed by Hilary du Cros in her research, which calls for a national database of Indigenous cultural heritage sites in Australia. See Whitlam Institute within Western Sydney University. (18 February 2019). *Media Release: New research calls for national database of Indigenous cultural heritage sites in Australia*. Available at: <https://www.whitlam.org/publications/2019/2/18/media-release-new-research-calls-for-national-database-of-indigenous-cultural-heritage-sites-in-australia> (Accessed July 2020).

3.3. Heritage Councils support the establishment of a National Resting Place for unprovenanced Remains of Ancestors

Aboriginal and Torres Strait Islander people seek to secure the return of Ancestors held overseas. For those Ancestors returned from overseas who have no identified country (unprovenanced), the development of a National Resting Place is essential³⁵ to safely house these ancestors until they can be repatriated to their communities. A business case for the establishment of a National Resting Place has been developed and is being considered by the Australian Government. Efforts should be made to support this proposal.

3.4. The Australian Government should amend its policy on Indigenous Repatriation of cultural materials to align with current activity

The Australian Government currently funds the international repatriation of cultural materials through a program run by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)³⁶. This program fills a significant gap. The Commonwealth government policy on repatriation³⁷ now needs to be updated to reflect their support for this new program. Jurisdictions should work with AIATSIS and communities to support a co-ordinated approach to repatriation of culture heritage.

3.5. Jurisdictions work with Australian collecting institutions to return ancestors to Aboriginal and Torres Strait Islander communities in a coordinated way

Aboriginal and Torres Strait Islander people expect ancestors to be returned to their rightful place on Country. To achieve this, heritage agencies must work collaboratively to scope a plan to return ancestors held in Australian collections according to clan language or community groups in a staged process. Where communities wish to care for ancestors on Country, they must be empowered and resourced to do so. Research into collections which include ancestors is a first stage of the scoping process.

In the longer term, adoption of the *Standards* will also drive change in the repatriation of ancestors. An example of best practice in the management of ancestors can be seen in the Victorian *Aboriginal Heritage Act 2006*. (See Appendix 3 for the Standards).

³⁵ In November 2018, the *Joint Select Committee on Constitutional Recognition Final Report* recommends the Australian Government consider the establishment, in Canberra, of a National Resting Place for the remains of Aboriginal and Torres Strait ancestors which could be a place of commemoration, healing and reflection.

³⁶ See AIATSIS Return of Cultural Heritage Program <https://aiatsis.gov.au/research/research-themes/culture-and-heritage/return-cultural-heritage>

³⁷ Australian Government Department of Communications and the Arts. (2011, updated 2016). *Australian Government Policy on Indigenous Repatriation*. Available at: https://www.arts.gov.au/sites/default/files/australian-government-policy-on-indigenous-repatriation-august2011.pdf?acsf_files_redirect (Accessed July 2020).

3.6. The rights of Aboriginal and Torres Strait Islander people to access and repatriate secret sacred materials held in Australia, both by institutions and private collectors, must be recognised and prioritised

Heritage agencies must work collaboratively to scope a plan to return secret sacred materials held in Australian collections according to clan, language or community groups in a staged process. Where communities wish to care for materials on Country, they must be empowered and resourced to do so. Research into institutional collections would be a first stage.

Jurisdictions must work together to ban the sale and export of secret sacred material across all jurisdictions and ensure the repatriation to communities of origin.

3.7. Jurisdictions review the National Heritage Protocol Statement of Roles and Responsibilities to ensure it is fit for purpose

The Protocol is a key heritage governance document. It should be reviewed and updated to ensure our working arrangements are optimised.

Vision Four

4. Aboriginal and Torres Strait Islander heritage is recognised for its global significance.

Aboriginal and Torres Strait Islander people are the Custodians of the oldest continuous culture on earth. The significance of this heritage transcends Australia's national boundaries and tells a story which is relevant to all of humanity.

Aboriginal and Torres Strait Islander heritage tells a story of a deeply spiritual people connected through their culture to their environment. The age and resilience of Aboriginal and Torres Strait Islander culture alone demonstrates that all people everywhere can benefit from an understanding of their culture. Aboriginal and Torres Strait Islander heritage shows the story of human ingenuity and a deep and spiritual relationship with nature, a relationship that through the manipulation of ecological processes has led to the Australia we know today. Our World Heritage places listed for Aboriginal and Torres Strait Islander cultural values include Budj Bim Cultural Landscape, Kakadu, Uluru-Kata Tjuta and the Tasmanian Wilderness. An essential part of this vision is ensuring that a global audience hears and appreciates these stories.

We propose that the following should be key areas of focus to achieve this vision.

Key areas of focus

4.1. Heritage Chairs support increased focus on identifying and taking forward Aboriginal and Torres Strait Islander heritage places for inscription on the World Heritage List

Support for World Heritage listing is one way that Heritage Chairs can assist in achieving this vision. The path to World Heritage listing is long and complex. To achieve the goal requires the support of both state and territory heritage authorities as well as Commonwealth support. The Heritage Chairs commit to providing this support wherever possible and appropriate.

4.2. Heritage Councils support a significant Aboriginal and Torres Strait Islander engagement in the International Heritage space

There are also other international fora that provide opportunities to achieve this vision. These include the General Assembly of the International Council on Monuments and Sites, the International Union for the Conservation of Nature, and the International Indigenous Peoples' Forum on World Heritage. The Heritage Chairs also commit to support Aboriginal and Torres Strait Islander Peoples' voices being heard in these fora.

4.3. Australian heritage should be a global leader in the preservation, protection, celebration and promotion of Aboriginal and Torres Strait Islander heritage and the development of international partnerships to tell the rich global heritage narrative

Aboriginal and Torres Strait Islander Peoples' experience of colonisation is part of a global story of expansion, invasion and ongoing impacts on Indigenous Peoples and cultures. This is a shared story

with shared experiences, cutting across generations and international borders. Heritage Councils have an opportunity to work with Aboriginal and Torres Strait Islander people to identify the threads of this global story and determine an appropriate way to tell it.

Statutory Framework

Under current arrangements state and territory governments have the primary responsibility for the protection of Aboriginal and Torres Strait Islander heritage. This legislation provides protection for *types* of heritage whether it has been formally identified or not. Generally, the legislation will prohibit any interference with Aboriginal and Torres Strait Islander heritage that satisfies the statutory definition unless there is a statutory authorisation in place. Individual places may also be listed, for example in those cases where a place may be affected by development³⁸.

The Commonwealth is responsible for protecting Aboriginal and Torres Strait Islander heritage that is a component of a listed value of a World Heritage property or National Heritage place or that is situated on land and sea that is owned or managed by the Commonwealth. The Commonwealth shares responsibility with the states and territories for ensuring the protection of Aboriginal and Torres Strait Islander heritage regardless of its location.

In some jurisdictions Aboriginal and Torres Strait Islander heritage is dealt with by more than one piece of legislation. At the Commonwealth level Aboriginal and Torres Strait Islander heritage is dealt with or has potential for protection in several pieces of legislation. This includes the *Environment Protection and Biodiversity Conservation Act 1999*, the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, the *Protection of Movable Cultural Heritage Act 1986*, the *Aboriginal Land Rights (Northern Territory) Act 1976*, the *Native Title Act 1993*, and the *Underwater Cultural Heritage Act, 2018 (Cth)*.

It should be noted that whilst *Dhawura Ngilan* references legislation which is currently in force for the management of Aboriginal and Torres Strait Islander cultural heritage across jurisdictions, it is imperative that all legislation drafted into the future that may have impact on or is related to Aboriginal and Torres Strait Islander cultural heritage should follow a collaborative process with the Chairs. Furthermore, where possible, amendments to existing legislation that does not include references to Aboriginal and Torres Strait Islander heritage should be assessed. For example, while the *Underwater Cultural Heritage Act, 2018 (Cth)* could via Ministerial declaration protect Aboriginal and Torres Strait Islander heritage that is in Commonwealth waters³⁹, there is no specific reference made to Aboriginal and Torres Strait Islander Heritage. The *Best Practice Standards in Indigenous Cultural Heritage Management and Legislation* provide clear guidance on how these outcomes can be achieved.

There are also statutory Councils and Authorities in each state and territory and at the Commonwealth level which provide advice to governments on Aboriginal and Torres Strait Islander heritage-related matters.

³⁹ See *Underwater Cultural Heritage Act, 2018 (Cth)* ss 17(5)

Heritage Chairs and Officials of Australia and New Zealand

The Heritage Chairs and Officials of Australia and New Zealand (HCOANZ) is a bi-annual meeting of the Chair and Officials of statutory and administrative agencies responsible for heritage. It is comprised of the Chair of the Australian Heritage Council, Chairs of state and territory heritage councils, the Chairs from each Indigenous Heritage Council from every state and territory, and the manager or director of each associated government heritage agency. It includes similar representatives from Aotearoa New Zealand.

Appendices

Appendix 1 - The Barunga Statement – extracts relevant to heritage:

At seminal moments in our nation's history, Indigenous people have affirmed the intrinsic place of heritage alongside broader aspirations for recognition of first peoples. In 1988 on the 200th anniversary of the Australian state, the Barunga Statement was issued by the Northern and Central Land Council's. The Barunga Statement provides a framework for considering this vision in its assertion of rights:

- *to the protection of and control of access to our sacred sites, sacred objects, artefacts, designs, knowledge and works of art;*
- *to the return of the remains of our ancestors for burial in accordance with our traditions;*
- *to respect for and promotion of our Aboriginal identity, including the cultural, linguistic, religious and historical aspects*

Appendix 2 - The Darwin Statement

The Heritage Chairs and Officials of Australia and New Zealand came together for an historic meeting of cultural heritage leaders in Darwin on 22 May 2018.

The Heritage Chairs were joined by representatives of Aboriginal and Torres Strait Islander heritage from the Commonwealth, States and Territories and have taken the opportunity to work together in advancing a shared approach to Australia's cultural heritage.

This was welcomed by Heritage New Zealand Pouhere Taonga.

The group agreed to implement best practice cultural heritage principles including:

- Sharing the comprehensive Australian heritage story
- Inclusion and engagement with Aboriginal and Torres Strait Islander people
- Co-operation and collaboration

The Chairs acknowledged the critical importance of recording and sharing the stories of Aboriginal and Torres Strait Islander cultural heritage.

Appendix 3 – Best Practice Standards

Best Practice Standards in Indigenous Cultural Heritage Management and Legislation

Outline

- 1. Background**
- 2. Basic Principles**
- 3. Best Practice Standard – Basic Structures**
- 4. Best Practice Standard – Definitions**
- 5. Best Practice Standard – Incorporation of Principles of Self Determination**
- 6. Best Practice Standard – Process**
- 7. Best Practice Standard – Resourcing; participation**
- 8. Best Practice Standard – Resourcing; compliance and enforcement**
- 9. Best Practice Standard – Indigenous Ancestral Remains**
- 10. Best Practice Standard - Secret and Sacred Objects**
- 11. National Legislation and Intangible Indigenous Cultural Heritage**

Annexure – Extracted Articles from the UN Declaration on the Rights of Indigenous Peoples

1. Background

In Australia legislative responsibility for the protection, promotion and management of Indigenous Cultural Heritage is divided between the states and territories and the Commonwealth. This division has long been the foundation of aspirations to ensure consistency across jurisdictions while also ensuring that the level of protection of Indigenous Cultural Heritage (ICH) and the level of control over our cultural heritage enjoyed by Australia’s First Peoples, is of the highest standard.

In May 2018 the Heritage Chairs and Officials of Australia and New Zealand adopted the “Darwin Statement”. Under the Darwin Statement the members of the HCOANZ agreed to implement best practice cultural heritage principles including the inclusion and engagement of Aboriginal and Torres Strait Islander Peoples. As part of the HCOANZ commitment to implementing the principles of the Darwin Statement, over 2019 and 2020 both in Australia and Aotearoa/New Zealand, HCOANZ engaged particularly with Indigenous Heritage Chairs and Officials and with many Indigenous organisations and leaders.

As a result of this engagement, the HCOANZ Indigenous Chairs group developed these *Best Practice Standards for Indigenous Cultural Heritage Legislation* (Standards). These Standards have been drafted by the Indigenous Chairs and officials who form part of the broader HCOANZ and brought forward by the Indigenous Chairs to HCOANZ. The objective of the Standards is to achieve the aspirations identified above; that is *to facilitate ICH Legislation and policy across the country that is consistently of the highest standards.*

2. Basic Principles

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly on 13 September 2007. The Commonwealth Government announced its support for the declaration in 2009. The UNDRIP does not impose new international legal obligations on states. Rather, it restates existing international legal obligations but framed in the specific context of Indigenous Peoples. The UNDRIP is widely understood by the world's Indigenous Peoples as articulating the minimum standards for the survival, dignity, security and well-being of Indigenous Peoples worldwide. Acceptance of the UNDRIP obligations is increasingly a requirement of the processes of many multi-national agencies and organisations. The International Finance Corporation, the Equator Principles, the International Council of Mines and Metals and the UN Guiding Principles on Business and Human Rights are merely some examples of this general acceptance.

A number of the provisions of UNDRIP directly address issues associated with the enjoyment, management and protection of ICH. Articles 11, 12, 13, 18, 19 and 31 are examples of this. A number of other provisions of UNDRIP indirectly impact upon ICH. Provisions of UNDRIP that recognise the obligation to ensure the Free Prior and Informed Consent of affected Indigenous Peoples before the approval of any project that affects Indigenous Peoples' lands or the resources therein (particularly Article 32) are an example of this as is Article 40 dealing with dispute resolution. The relevant provisions of UNDRIP are attached as an annexure to this statement.

As a foundational principle, Australia's Indigenous Peoples are entitled to expect that Indigenous Cultural Heritage legislation will uphold the international legal norms contained in the UNDRIP.

The rights set out in UNDRIP are also recognised in a range of domestic legislation such as the *Human Rights Act 2019* (Qld) and the *Charter of Human Rights and Responsibilities 2006* (Vic.). This principle is already applied in practice in a number of jurisdictions in Australia such as NT and VIC, where administrative, regulatory and decision-making structures related to Aboriginal heritage are under the practical control of Aboriginal people.

While the UNDRIP provides the foundational principles that all ICH legislation should uphold, the Declaration is not a comprehensive code or model legislation that addresses all matters that need to be included in ICH legislation. Therefore, the following Standards have been developed by the HCOANZ to identify some of these additional matters under the following headings: Definitions; Basic Structures; Indigenous Self-Determination; Process; Resourcing; Indigenous Ancestral Remains; Secret and Sacred ICH; Frontier Conflict Sites; and, National Intangible ICH Legislation.

3. Best Practice Standard – Basic Structures

There are two basic models utilised in ICH legislation. The first prohibits harm to ICH only when there is a particular declaration in force in the place where the ICH is located. The second prohibits any interference to ICH that satisfies the statutory definition *unless* there is a statutory authorisation in place. The second model is by far the most effective and most ICH legislation operates on this basis, but this is not universally the case. There are examples, at both a state and Commonwealth level, of legislation that operates on the basis that ICH is only protected subsequent to some form of Ministerial declaration. ICH legislation structured only in this fashion cannot be seen as adequate. However, for the 'prohibition of harm unless authorised' model to be effective there must be a comprehensive definition of ICH. This matter is considered in the following section of these Standards. Many of the following sections consider the appropriate structures and processes around the authorisation to interfere with ICH so defined.

4. Best Practice Standard – Definitions

ICH is at the heart of all Australian Heritage and should be celebrated by all Australians as the foundation of Australia's unique cultural heritage. However more than anything else ICH is the living phenomenon connecting Traditional Owners' culture today with the lives of our ancestors. In legislation, this connection is described in the definitions of key terms such as "Aboriginal or Torres Strait Islander cultural heritage" or "Aboriginal and Torres Strait Islander place". These definitions should recognise that an essential role of ICH is to recognise and support the *living* connection between Indigenous Peoples today, our ancestors and our lands. It is crucial that definitions of ICH within legislation should recognise the role of "tradition" as it is understood *today* in the definition of what is ICH.

In similar fashion, ICH legislation must comprehend that, while physical artefacts provide an important ongoing physical representation of Indigenous Peoples' connection to their country over time, definitions of the manifestations of ICH must also comprehend the importance of the *intangible* aspects of physical places. It is in this way that a physical landscape can be properly understood as a living place inhabited by our ancestors and creators. Likewise, intangible ICH not necessarily immediately connected to physical places must also be recognised in legislation.

There are several examples in statutory definitions that are a useful illustration of these concepts. For example, the NSW draft *Aboriginal Cultural Heritage Bill 2018* has the following definition:

Section 4(1) ...**Aboriginal cultural heritage** is the living, traditional and historical practices, representations, expressions, beliefs, knowledge and skills (together with the associated environment, landscapes, places, objects, ancestral remains and materials) that Aboriginal people recognise as part of their cultural heritage and identity.

The *Aboriginal Heritage Act 2006* (Vic.) (AHA) has the following definitions:

(AHA s 4) Aboriginal cultural heritage means Aboriginal places, Aboriginal objects and Aboriginal ancestral remains;

(AHA s 5) What is an Aboriginal place?

- (1) For the purposes of this Act, an Aboriginal place is an area in Victoria or the coastal waters of Victoria that is of cultural heritage significance to Aboriginal people generally or of a particular community or group of Aboriginal people in Victoria.
- (2) For the purposes of subsection (1), **area** includes any one or more of the following—
 - (a) an area of land;
 - (b) an expanse of water;
 - (c) a natural feature, formation or landscape;
 - (d) an archaeological site, feature or deposit;
 - (e) the area immediately surrounding anything referred to in paragraphs (c) and (d), to the extent that it cannot be separated from the thing without diminishing or destroying the cultural heritage significance attached to the thing by Aboriginal people;
 - (f) land set aside for the purpose of enabling Aboriginal ancestral remains to be re-interred or otherwise deposited on a permanent basis;
 - (g) a building or structure.

Aboriginal tradition means—

- (a) *the body of traditions, knowledge, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people; and*
- (b) *any such traditions, knowledge, observances, customs or beliefs relating to particular persons, areas, objects or relationships;*

The *Northern Territory Aboriginal Sacred Sites Act 1989* utilises the following definitions of “Aboriginal Tradition” and “Sacred Site”⁴⁰

Aboriginal tradition means the body of traditions, observances, customs and beliefs of Aboriginals or of a community or group of Aboriginals, and includes those traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships.

sacred site means a site that is sacred to Aboriginals or is otherwise of significance according to Aboriginal tradition, and includes any land that, under a law of the Northern Territory, is declared to be sacred to Aboriginals or of significance according to Aboriginal tradition.

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (ATSHIPA) adopts a similar definition of “Aboriginal tradition:”⁴¹

...the body of traditions, observances, customs and beliefs of Aboriginals generally or of a particular community or group of Aboriginals, and includes any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships.

The term “area” is defined to include a “site” and a “significant Aboriginal area” is relevantly defined to mean “an area of particular significance to Aboriginals in accordance with Aboriginal tradition”. The term “significant Aboriginal object” is defined in similar terms. ATSHIPA subsections 3(2) and 3(3) provide the definitions of “injury” or “desecration” which also acknowledge that these acts should be determined by how Aboriginal or Torres Strait Islander people *today* perceive them. They are in the following terms:

- (2) *For the purposes of this Act, an area or object shall be taken to be injured or desecrated if:*
 - (a) *in the case of an area:*
 - (i) *it is used or treated in a manner inconsistent with Aboriginal tradition;*
 - (ii) *by reason of anything done in, on or near the area, the use or significance of the area in accordance with Aboriginal tradition is adversely affected; or*
 - (iii) *passage through or over, or entry upon, the area by any person occurs in a manner inconsistent with Aboriginal tradition; or*
 - (b) *in the case of an object—it is used or treated in a manner inconsistent with Aboriginal tradition;*

and references in this Act to injury or desecration shall be construed accordingly.

⁴⁰ These definitions are contained in s 4 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

⁴¹ Noting that Aboriginal is defined to include Torres Strait Islander – ATSHIPA s 3(1).

At times case law may have given an over emphasis to the historical components of tradition.⁴² However, the essential aspect of the definitions provided, all of which were developed in consultation with Traditional Owners, is that the central lynchpin is how Traditional Owners *today* perceive their cultural heritage which is the crucial issue.

A similar issue arises in the context of intangible ICH. The only example of a legislative definition of intangible ICH in Australia is in s 5 of the Victorian AHA which (relevantly) provides:

(1) ...Aboriginal intangible heritage means any knowledge of or expression of Aboriginal tradition, other than Aboriginal cultural heritage, and includes oral traditions, performing arts, stories, rituals, festivals, social practices, craft, visual arts, and environmental and ecological knowledge, but does not include anything that is widely known to the public.

(2) Aboriginal intangible heritage also includes any intellectual creation or innovation based on or derived from anything referred to in subsection.

This definition then also adopts the key definition of “tradition” with its reliance on a contemporary Traditional Owner understanding of its content.

5. Best Practice Standard – Incorporation of Principles of Self Determination

The key to UNDRIP is the principle of self-determination. In the context of ICH, this principle requires that the affected Indigenous Community *itself* should be the ultimate arbiter of the management of the ICH aspects any proposal that will affect that heritage.

Application of the UNDRIP is, in a practical sense, dependent upon the ability of the affected Indigenous Peoples to act collectively and independently. Thus, in the crucial UNDRIP Article 32, reference is made to Indigenous Peoples acting through “their own representative organisations”. The identification of a legitimate “representative organisation” capable of exercising an Indigenous community’s rights and responsibilities with respect to their ICH is a fundamental component in any comprehensive ICH legislation. It is for the Indigenous community to decide who represents them, consistent with FPIC.

In the context of ICH in Australia, the rigorous processes associated with the appointment of Prescribed Bodies Corporate (PBCs) under the *Native Title Act 1993* (Cth) can ensure that such organisations, where they exist, satisfy the definition of “representative organisations” under UNDRIP. In Victoria, the *Aboriginal Heritage Act 2006* provides for the legal recognition of Traditional Owner corporations with responsibilities for managing and protecting the cultural heritage of the Traditional Owners they represent. Further, in the Northern Territory, the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) provides the Land Councils a statutory function to assist Traditional Owners to protect their sacred sites, both on and off Aboriginal land.

Thus, where an organisation that is representative of Traditional Owners exists, Indigenous cultural heritage legislation should vest in that organisation control of the management of the Indigenous cultural heritage aspects of any proposal that will impact upon the Indigenous cultural heritage of those Traditional Owners.

⁴² *Chapman v Luminis Pty Ltd (No 5)* [2001] FCA 1106.

Where such an organisation does not yet exist, it may be that there are Traditional Owner organisations that can be legitimately characterised as “representative organisations”. The Commonwealth Indigenous cultural heritage legislative regime should consider including mechanisms for the identification and appointment of such organisations to undertake this role. In areas where no PBC or other organisation representative of Traditional Owners has been established, a Native Title Representative Body may have authority to perform this role or, alternatively, to serve as the accountable Indigenous structure as discussed below.

Thus, where a PBC exists, it would be expected that ICH legislation would vest in that PBC control of the management of the ICH aspects of any proposal that will impact upon the ICH of the PBC’s native title holders.

Greater difficulty arises where a “representative organisation does not yet exist. ICH legislation should include mechanisms for the identification and appointment of an organisation that can genuinely be accepted as the “representative organisation” of the affected Indigenous community to undertake this role.

6. Best Practice Standard – Process

The role of ICH in the process of consideration of development proposals in a jurisdiction is important. So, too, is the process of consideration of the management of ICH in the context of a specific proposal. A central component of the principle of Free, Prior and Informed Consent under UNDRIP is that the affected Indigenous community has adequate information and adequate time to consider that information in making any decision that may affect their ICH. This fact impacts upon two aspects of a jurisdiction’s development proposal consideration process. First, decisions regarding ICH management cannot be left to be the last consecutive approval required in the assessment of a development proposal. Rather, ICH consideration must be integrated as early as possible into development proposal assessment time frames. This ensures both adequate time to consider a proposal and that ICH considerations are not perceived as the “last impediment” to development proposal approval. This principle is already incorporated into many existing government policies. The Commonwealth Government’s “*Engage Early - Guidance for proponents on best practice Indigenous engagement for environmental assessments under the Environment Protection and Biodiversity Conservation Act 1999 (Cth)*” and *Ask First – A guide to respecting Indigenous heritage places and values* are examples of such policies.

This temporal integration of process should also strive to ensure that consideration of ICH is included as a first component in other development proposal approval regimes such as town planning, environmental assessment and National Heritage considerations. An example is section 52 of Victoria’s *Aboriginal Heritage Act 2006*, which states:

“The decision maker must not grant a statutory authorisation for the activity unless a cultural heritage management plan is approved under this Part in respect of the activity.”

This structural barrier ensures that land development activity must address Aboriginal cultural heritage impacts before development can begin. It is critical that Aboriginal cultural heritage assessment occurs early, and that all the relevant information about the heritage to be impacted is known, to facilitate prior and informed consent.

The second component is that, consistent with the principles of UNDRIP, the ultimate decision regarding whether interference with ICH is acceptable or not, must rest with the affected Indigenous community. However, a jurisdiction’s ICH regime can maximise the likelihood of consent to a

development proposal being granted if the management regime within ICH legislation identifies interference with ICH as the last resort in regime that requires identification, recognition, conservation and protection as preferable approaches to the management of ICH.

A third component of the process around an effective ICH regime is of such importance as to warrant separate attention. This is the matter of resourcing. There are two aspects of this component: participation and enforcement.

7. Best Practice Standard – Resourcing; participation

First, there must be acceptance that the Indigenous representative organisation engaging with proponents and assessing their proposals are performing a statutory function under the relevant jurisdiction's project assessment and approval regime and must be adequately resourced to perform this function. An Indigenous representative organisation undertaking these functions should not be forced to subsidise these statutory obligations from their own resources. The resources provided should extend to undertaking identification, protection, promotion, maintenance and intergenerational transmission and similar functions. Desirably the undertaking of these statutory obligations should facilitate opportunities for the Indigenous representative organisation involved to develop its independent economic activities.

8. Best Practice Standard – Resourcing Compliance and enforcement

The second but existential aspect of the processes attached to ICH legislation is the regime around compliance and enforcement. In turn there are three issues in relation to this aspect. First, wherever possible, affected Indigenous communities should be adequately empowered and resourced to undertake necessary compliance and enforcement functions. Second though, is the realisation that the structure of ICH legislation is dependent upon proponents understanding that interference with ICH without an authorisation or a failure to comply with the terms of the authorisation *will* result in a significant sanction. This is true whatever organisation or agency is undertaking compliance and enforcement functions. This understanding by proponents will only occur if there are sufficient resources allocated to enforcement regimes for these to constitute a real deterrent to non-compliance. Third, there is a need to ensure there is national consistency in both the structure and penalty regime of ICH offence provisions. The severity of penalties needs to ensure the effective operation of the legislative regime.

9. Best Practice Standard – Indigenous Ancestral Remains

The presence of Indigenous Ancestral Remains (IAR) in country is the clearest and most poignant illustration of an Indigenous People's ongoing association with their traditional lands. As such IAR are an aspect of ICH of such importance as to warrant particular attention in these best practice standards. The issue of IAR are specifically addressed in UNDRIP Article 12.

The fundamental principle applicable to this area is that, *wherever possible*, IAR identified in country should be left in country and these resting places protected as "Aboriginal or Torres Strait Islander places" (howsoever described) in the legislation. Processes and protocols with agencies involved with the management of IAR must be built around this principle and adequate resources must be allocated to accommodate the effective implementation of these processes and protocols. Implementation of these measures may require review and amendment of other legislation (for example coronial) and processes.

The second fundamental principle in regard to IAR is that their management is the right and duty of the Indigenous community of origin of the ancestor in question. Again, processes, protocols and resources must be incorporated within an IAR regime to accommodate this principle. So too must the principle of self-determination; such that where there is no possible alternative to the relocation of IAR, this relocation takes place in accordance with the wishes of the affected community. Attention also needs to be paid to the care of IAR where no Indigenous community of origin can be immediately identified.

A further issue that arises with regard to IAR is the definitional one. Existing legislation in various jurisdictions provides various examples of definitions of IAR. The Victorian AHA provides one of the most comprehensive and yet workable definition. The relevant provision (in s 4) is as follows:

Aboriginal ancestral remains means the whole or part of the bodily remains of an Aboriginal person but does not include—

(a) a body, or the remains of a body, buried in a public cemetery that is still used for the interment of human remains; or

(b) an object made from human hair or from any other bodily material that is not readily recognisable as being bodily material; or

(c) any human tissue—

(i) dealt with or to be dealt with in accordance with the **Human Tissue Act 1982** or any other law of a State, a Territory or the Commonwealth relating to medical treatment or the use of human tissue; or

(ii) otherwise lawfully removed from an Aboriginal person;

The Victorian definition was adapted from the very similar definition in ATSHIPA. (Although note in ATSHIPA Aboriginal ancestral remains are managed within the regime applicable to Aboriginal objects). The Victorian definition provides an important precedent in the development of appropriate definitions. However, in each jurisdiction consultation with Traditional Owners must always take place to ensure that local views around matters such as appropriate care of material containing human hair and other human components are incorporated.⁴³

Finally, the IAR regime included within ICH legislation must provide an effective regime for the expeditious return to the affected communities of IAR held in institutional and other “collections”. Wherever possible such provisions should have extra-jurisdictional application.

10. Best Practice Standard - Secret and Sacred Objects

Some movable ICH (objects) will be considered secret or sacred by the Indigenous community of origin. It is inconceivable that ICH that is secret or sacred could ever have legitimately entered the realm of commercial transactions. It is for this reason that in addition to the relevant provisions of UNDRIP a body of internal law has developed around this topic. The 1970 *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import Export and Transfer of Ownership of Cultural Property* as too is the 1995 *UNIDROIT Convention on the Return of Stolen or Illegally Exported Cultural Objects*.⁴⁴

⁴³ For example, in the Victoria legislation this material is likely to be considered a “sacred object”.

⁴⁴ Opened for signature 24 June 1995, 34 ILM 1322 (1995) (entered into force 1 July 1998).

As such, ICH legislative regimes must acknowledge that property in secret and sacred objects can only legitimately vest in the community of origin of the object and deploy mechanisms to achieve the repatriation of these objects. This vesting must occur irrespective of the identity of the organisation or individual currently in possession of these objects. In addition, resources to facilitate the repatriation of objects must be provided to support the operation of these provisions.⁴⁵ The ICH regime must acknowledge the role of Indigenous tradition as understood today in the definition of secret or sacred for these purposes. The Victorian AHA (s 4) provides a further example that incorporates the earlier definition of Aboriginal tradition:

sacred means sacred according to Aboriginal tradition;

secret means secret according to Aboriginal tradition;

The (practically) similar definition of significant Aboriginal object in ATSHIPA has been noted above.

Further, ICH legislative regimes regarding regulation of the trade in movable ICH must incorporate mechanisms to prohibit trade in secret or sacred objects and to allow a potentially affected community to determine the status of an object proposed to be traded. To be effective these mechanisms must be nationally uniform or supported by Commonwealth legislation or both.

11. National Legislation and Intangible Indigenous Cultural Heritage

Intangible ICH can exist independently of the association of this ICH with particular lands. The management, protection and promotion of this form of cultural heritage can provide particular challenges in a legislative context. This noted, the importance of this manifestation of ICH is indicated by the number of international instruments, in addition to UNDRIP,⁴⁶ that address this topic. The 2003 *UNESCO Convention for the Safeguarding of the Intangible Heritage*⁴⁷, the *Convention of Biological Diversity*,⁴⁸ and (to some extent) the 1996 *WIPO Performances and Phonograms Treaty*⁴⁹ are examples of this international attention. Regrettably Australia is not yet a party to the first of these instruments. Becoming so would demonstrate a concrete commitment to the protection and preservation of intangible heritage, Indigenous and non-Indigenous.

The Indigenous Chairs recommend that HCOANZ state its belief that it is desirable that this form of ICH be recognised and protected by Indigenous communities for their benefit and that of the broader community, and that HCOANZ congratulate those jurisdictions that have established regimes for the recognition and protection of intangible ICH. However, the Indigenous Chairs also acknowledge that, given the constitutional arrangements in Australia, it is desirable that measures in this respect are supported by Commonwealth legislation, and recommend that the HCOANZ states its support for the development of national legislation in regard to the recognition and protection of intangible ICH.

⁴⁵ The Museum & Galleries Association “*Roadmap for Enhancing Indigenous Engagement in Museums and Galleries*” provides a useful foundation for the practical implementation of the process of vesting ownership of objects in their communities of origin.

⁴⁶ See Articles 11,12,13,14 and 31.

⁴⁷ 2003 *UNESCO Convention for the Safeguarding of the Intangible Heritage* Opened for signature 17 October 2003, 2368 UNTS 3 (entered into force on 20 April 2006).

⁴⁸ *Convention on Biological Diversity* of 5 June 1992 (1760 U.N.T.S. 69).

⁴⁹ Signed 20 December 1996, TRT/WPPT/001 (entered into force 20 May 2002) Articles 5–10.

Cultural Heritage Relevant Provisions of UNDRIP

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs (emphasis added).

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including 14 those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect 16 their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 31

1. 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, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources (emphasis added).

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Appendix 4 –Truth Telling

Australia and New Zealand's contact history, like that of many colonial countries, is one of intense conflict, displacement and trauma for Indigenous Peoples. Truth telling about the history of colonisation and its impacts today should be shared as part of the comprehensive Australian and New Zealand heritage story. Aboriginal, Torres Strait Islander and Māori Peoples have oral histories, songs, art and dance that depict often untold and unrecognised perspectives of colonial history. In line with the principles of United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP), we support Indigenous Peoples to share the stories they want to tell, in the ways they want to tell them.

Australian and New Zealand governments are moving to prioritise recognition of the trauma and discrimination faced by Indigenous Peoples today and in the past. There is still much to learn, however, about culturally sensitive recognition and acceptance of the stories of First Peoples. In addition, jurisdictions differ in their approaches to recognition, protection and interpretation of contact history. Through truth telling, we hope to ensure Australians can be proud of their Indigenous heritage and see it as part of Australian culture. It is not about dwelling on the past, but about reflecting and moving forward into a more positive future.

Telling the truth means recognising the loss of life and land that has affected all of Australia's Indigenous Peoples. Recent mapping of massacre sites, for example, does not tell the whole story of this loss. The maps only mark places where six or more people were killed, when in fact there were countless other aspects of displacement, loss, active resistance and death outside of massacres that were equally destructive.

Telling the truth means framing these histories in ways that recognise Indigenous perspectives. Indigenous Peoples remain traumatised by the difficulty of finding evidence for historically documented massacres and other destructive acts. There are many more events, however, that exist in the memories of Indigenous Peoples that are today without documentation. It is important to consider Indigenous ways to memorialise all the truths of Australia's past through culturally sensitive approaches and creative interpretation. Memorialisation itself should be considered sensitively. There is great diversity amongst Aboriginal and Torres Strait Islander Peoples, as demonstrated by the more than 250 different language groups spread across Australia. Each group's experience of colonial contact is different, and each group discusses and represents it in variety of ways.

Telling the truth about Indigenous history is the foundation for a full understanding on the basis of which all Australians can come together in acknowledgement of a shared past and a shared future.

Appendix 5 – Endorsements and Consultation by Organisation

Add endorsements received and consultation undertaken

Endorsed by:

- Australian Heritage Council (confirmed)
- National Native Title Council (confirmed) and First Nations Heritage Protection Alliance (pending), which combined represent every major Aboriginal Land Council and Native Title body in Australia
- Indigenous Advisory Committee (confirmed)
- Threatened Species Scientific Committee (pending)

Welcomed and Supported by:

- Heritage Council of NSW
- Aboriginal Cultural Heritage Advisory Committee (NSW)
- ACT Heritage Council
- Victorian Heritage Council
- Victorian Aboriginal Heritage Council
- Queensland Heritage Council
- Department of Aboriginal and Torres Strait Islander Partnerships (Queensland) (responsible for administering Indigenous cultural heritage Acts)
- Tasmanian Heritage Council
- Aboriginal Heritage Council (Tasmania)
- SA Heritage Council
- State Aboriginal Heritage Committee (SA)

Consulted with:

- Kimberley Aboriginal Law and Culture Centre
- Parks Australia
- Great Barrier Reef Marine Park Authority
- Department of Infrastructure, Transport, Regional Development and Communications; Office for the Arts
- National Museum of Australia