

Partnership Agreement with Australian Government and First Nations Heritage Protections Alliance on Indigenous Cultural Heritage



Australian Government



First Nations

HERITAGE PROTECTION
ALLIANCE

A PARTNERSHIP AGREEMENT

BETWEEN

The **Commonwealth of Australia** represented by:

The **Minister for the Environment, the Hon Sussan Ley MP** (represented by the Department of Agriculture, Water and the Environment (DAWE) for the purpose of the administration of this agreement)

AND

The **First Nations Heritage Protection Alliance (Alliance)**

(together “**the Parties**”)

PART 1: Preamble

1. The Parties begin by acknowledging the Traditional Owners of the lands and waters on which Australians live and work and pay respects to their Elders past, present and emerging.
2. The Parties also acknowledge the central place of Aboriginal and Torres Strait Islander Cultural Heritage in the identity and well-being of this country's First Peoples and indeed of all Australians.
3. Consistent with the National Agreement on Closing the Gap (Section 5) this Agreement is a commitment from both Parties to develop policy making and proposed future legislative reform options for consideration by the Minister for Environment, relating to the scope of this Agreement, which impacts on Aboriginal and Torres Strait Islander culture and heritage is done in full and genuine partnership with Aboriginal and Torres Strait Islander people.
4. The parties acknowledge that:
 - i. The purpose of this Agreement is to establish a Joint Working Group to develop advice on options to implement changes for modernising Aboriginal and Torres Strait Islander cultural heritage protections:
 - ii. The Alliance does not purport to represent all Aboriginal and Torres Strait Islander people or organisations.
 - iii. Advice will be sought from other interested and affected Aboriginal and Torres Strait Islander people and groups.
5. The tragic events at Juukan Gorge in Western Australia on 24 May 2020, illustrate that there is a compelling need to modernise Aboriginal and Torres Strait Islander Cultural Heritage protections across Australia.
6. The Parties acknowledge that there have been a number of reports directly or indirectly written about Aboriginal and Torres Strait Islander cultural heritage in the past 12 months, including the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)¹, the Interim² and Final Report from the Joint Standing Committee on Northern Australia's Inquiry into Juukan Gorge, and the development of the *Dhawura Ngilan* Vision and Standards.³

¹ Samuel, G (2020), *Independent Review of the EPBC Act- Final Report*, Department of Agriculture, Water and the Environment, Canberra.

² Joint Standing Committee on Northern Australia (2020), *Never Again: Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia- Interim Report*, Commonwealth of Australia, Canberra. And; (2021) the Final Report, *A Way Forward*.

³Heritage Chairs of Australia and New Zealand (2020), *DhawuraNgilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia*, Canberra.

7. The Parties acknowledge the above-mentioned reports (clause 6) have called for engagement with Aboriginal and Torres Strait Islander peoples and organisations as a basis for the modernisation of Aboriginal and Torres Strait Islander Cultural Heritage protections.
8. The Parties acknowledge that the ‘Modernisation of Aboriginal and Torres Strait Islander Cultural Heritage protections’ is an encompassing concept broader than just legislative reform. Modernisation includes, but is not limited to policy transformation, administrative improvement, the review and restructure of process, procedure and protocols and a response to the design and development of standards.
9. The Parties acknowledge the need to lift the standard of Aboriginal and Torres Strait Islander cultural heritage protection and agree this work can only occur sustainably as a result of a genuine partnership between the Australian Government and Aboriginal and Torres Strait Islander people.

PART 2: Term of this Agreement

10. This Agreement takes effect on **29 November 2021** and will continue for 12 months after that date unless extended, varied or terminated by the Parties in accordance with this Agreement.

PART 3: Outcomes

11. The outcomes of this Agreement are to:
 - i. Develop a partnership arrangement between Aboriginal and Torres Strait Islander people and the Commonwealth for modernisation of Aboriginal and Torres Strait Islander cultural heritage protections.
 - ii. The Parties recognise that adequate resourcing is needed to support the Alliance to be partners with governments in formal partnerships relating to the modernisation of Aboriginal and Torres Strait Islander cultural heritage protections.
 - iii. Consider existing legislation (particularly the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* and the EPBC Act (noting that the EPBC Act is subject to a staged reform process in response to the Samuel review), including relevant state and territory legislation, submissions, hearings, engagements, policies and processes relevant to cultural heritage protections to inform the development of options for the modernisation of Aboriginal and Torres Strait Islander cultural heritage protections.
 - iv. The Parties will engage with states and territories relating to the adequacy of relevant state and territory legislation.

- v. The Parties will develop an implementation plan to undertake a national engagement process for the purpose of this Agreement which will include consideration of:
 - a) Terms of Reference
 - b) Governance and reporting
 - c) Scope
 - d) Timeframes
 - e) Resourcing.

- vi. DAWE and the Alliance will identify options for progressing the modernisation of Aboriginal and Torres Strait Islander cultural heritage protections to the Minister for the Environment for consideration:
 - a) Options will be provided to the Minister for the Environment following engagement with the parties to this Agreement and other organisations and individuals as agreed by the Parties.
 - b) The Parties will also provide options to the Minister for the Environment on the timing and scope for a further Ministerial Roundtable (noting that the first Ministerial roundtable was held on 21 September 2020).
 - c) To avoid doubt, the Parties will provide options jointly to the Minister in connection with work under this Agreement. The parties acknowledge that the Alliance may make representations separately to the Minister in the usual manner.

PART 4: Operational Structures – Joint Working Group

12. The Parties agree to establish a Joint Working Group (JWG) to achieve the outcomes of this Agreement with nominees from each of the parties
- i. If agreed by the Parties, other organisations may be invited to participate in JWG meetings as contributors or observers, including key stakeholders.
 - ii. The JWG will comprise of a maximum of 6 members - 3 nominees from each Party. The JWG will be co-chaired by one nominee from each Party.
 - iii. The JWG shall seek to meet jointly with the Minister for the Environment (virtually or in person) on no less than four occasions in each 12-month period but may meet more frequently.

- iv. The function of the JWG shall be to develop proposals for the consideration of the Parties designed to achieve the outcomes of this Agreement set out in Part 3 above.
- v. Administrative support for the JWG shall be provided by the IWG.
- vi. Decisions of the JWG will be on the basis of consensus. Consensus decision-making requires agreement on an option or course(s) of action. (To avoid doubt, this clause does not limit the ordinary responsibilities of DAWE, including to provide advice to the Australian Government.)

PART 5: Governance

Amendments to this agreement

- 13. The Agreement may be amended at any time by agreement in writing by all the Parties.
- 14. Schedules to this Agreement may be added or amended at any time by agreement in writing of all Parties. Any Schedule forms part of the Agreement.

Administration of this Agreement

- 15. The Parties will share responsibility for the administration of this Agreement.

Dispute Resolution

- 16. The Parties will endeavour in the spirit of co-operation, good faith, and mutual trust to resolve any difficulties or misunderstandings with respect to this Agreement.
- 17. If there is a dispute the Parties will, in the first instance, seek to resolve the dispute between senior representatives of each Party.
- 18. Any Party may terminate their participation in this Agreement at any time by notifying all the other Party in writing, following best endeavours to first resolve any matters with the other Party in accordance with clause 17.

Status of this Agreement

- 19. The Parties do not intend any of the provisions of this Agreement to be legally enforceable. However, this does not lessen the Parties' commitment to this Agreement. All Parties are committed to implementing this Agreement to its fullest.

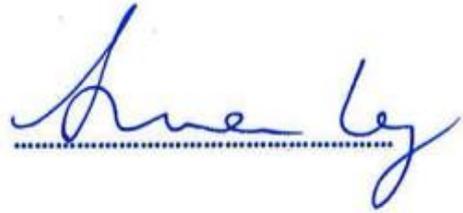
Publication of this Agreement

- 20. This Agreement will be published on www.environment.gov.au and remain there for the life of this Agreement. Both Parties are committed to communicate updates on the initial consultation phase and the process towards the modernisation of cultural heritage protections.

EXECUTION PAGE

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**The Hon Sussan Ley MP,
Minister for the Environment**



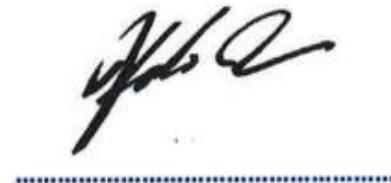
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**Anne Dennis,
Co-Chair
First Nations Heritage Protection Alliance**



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**Kado Muir,
Co-Chair
First Nations Heritage Protection Alliance**



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