

Friday, 2 October 2020

Caves destruction illustrates need for review and reform of Commonwealth legislation

The systemic failure of Australia's Commonwealth, State and Territory legislation to protect cultural heritage, has been exemplified by the incident that occurred at the Juukan Gorge, according to the Law Council of Australia.

Appearing before the Joint Standing Committee on Northern Australia, Law Council President, Ms Pauline Wright, Mr Tony McAvoy SC (Indigenous Legal Issues Committee), Mr Greg McIntyre SC (Executive Member and representative on the Australian Environment and Planning Law Group) and Ms Robyn Glindemann (Australian Environment and Planning Law Group), called on the government to substantially review and reform the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) to provide effective, standalone protection to First Nations cultural heritage.

The Law Council also supports the development of national principles to guide reforms across all jurisdictions.

"There exists a failure in the laws across the country, to understand the importance and connection to land and waters within First Nations cultures," Ms Wright said.

"Nor do the laws acknowledge the definitive change in the recognition of land rights that occurred due to the *Mabo* decision."

"Traditional Owners must have a voice in administering and managing their own cultural heritage sites." Ms Wright said.

"While certain jurisdictions provide examples of better practice, other existing cultural heritage protection regimes have severe limitations, including the lack of a systemic process to ensure appropriate First Nations representation or meaningful engagement."

"This includes the ability for the Traditional Owners to seek a review of a decision," Ms Wright said.

"There exists a critical need for reform to be conducted in a coordinated manner. It makes sense for the Commonwealth Government to take a leading role, working with the State and Territories, to develop national principles in consultation with Traditional Owners and their representative bodies," Ms Wright said.

"Law reforms would then be benchmarked against these principles. This would ensure laws across all Australian jurisdictions meet certain thresholds that incorporate important principles such as self-determination and free, prior and informed consent."

"The recently convened Ministerial Indigenous Heritage Roundtable provides a strong starting point for such a process, which can be built upon." Ms Wright said.

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