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Investors say WA Aboriginal Cultural Heritage Bill won’t prevent another Juukan Gorge

A number of large Australian investor and business groups have expressed serious concerns that the WA Aboriginal Cultural Heritage Bill 2021 tabled on Tuesday 16 November will fail to make a meaningful change in cultural heritage protection and is insufficient for protecting the invaluable cultural heritage of Australia’s First Nations people and our nation.

The Dhawura Ngilan Business and Investor Initiative - led by the First Nations Heritage Protection Alliance in partnership with Global Compact Network Australia (GCNA), and the Responsible Investment Association Australasia (RIAA) – together with the Australian Council of Superannuation Investors (ACSI) – have expressed strong criticism with the Bill which passed the Lower House yesterday.

"It is critical that any new heritage protection legislation takes on board the lessons learned from the tragic destruction of the Juukan Gorge, so that such harm doesn’t occur again. This Bill falls far short of providing that confidence,” said Cath Brokenborough, Executive Lead, First Nations engagement, Lendlease and Chair of the Dhawura Ngilan Business and Investor Initiative.

"In the wake of Juukan Gorge, investors have stated unequivocally that businesses and legislators need to ensure comprehensive protection of cultural heritage. Upon review of this Bill, we remain concerned that this protection has not been sufficiently strengthened, and investors will continue to see Western Australia as having elevated risks of the type seen in the tragic destruction of Juukan Gorge” said RIAA CEO Simon O’Connor.

“This Bill risks further damage to Australia’s great cultural assets, to the rights of First Nations peoples, as well as to the value of our investments in the companies and assets to which our members are directing capital. This risk has the potential to lead to a higher cost of capital for businesses operating in WA.” added O’Connor.

“First Nations Australians’ rights, under the UN Declaration on the Rights of Indigenous Peoples, must be protected with the proposed new laws, especially the principle of Free, Prior and Informed Consent (FPIC). Australia is home to the world’s oldest, continuous living culture. For more than 65,000 years, Aboriginal and Torres Strait Islander peoples have cared for this country, its land and sea. Governments and businesses must respect this culture” said Kylie Porter, Executive Director of the GCNA.

“The material financial risks and uncertainty that can arise from poor company engagement with First Nations Peoples and lack of protection of cultural heritage are a concern for investors. While long-term investors expect companies to go beyond mere compliance with minimum standards, the legislative framework provides a critical baseline. It is therefore crucial to make sure the law is robust and provides increased assurance that risks will be adequately managed and mitigated.” said CEO of the Australian Council of Superannuation Investors (ACSI), Louise Davidson.

There has been widespread First Nations representatives’ criticism of the process by which the Bill was developed and tabled: a reflection that the WA Bill was not co-designed with Aboriginal and Torres Strait Islander peoples. The Dhawura Ngilan Business and Investor Initiative has requested that, in line with the Juukan Gorge inquiry recommendations, legislation must be developed through a process of co-design with Aboriginal and Torres Strait Islander peoples.
“First Nations people, along with business and investors, are anticipating that any amendments to heritage protection legislation in Australia will only strengthen First Nations peoples’ rights, consistent with our international obligations such as under the UNDRIP. Greater protections and improved standards are ultimately to the benefit of all, especially our future generations that do not yet have a voice. Very disappointingly, this is not case,” said Rodney Carter, Victorian Aboriginal Heritage Council and Group CEO of the Dja Dja Wurrung Clans Aboriginal Corporation and Steering Committee member of the Initiative.

The Dhawura Ngilan Business and Investor Initiative also supports the Juukan Gorge inquiry recommendation that new legislation should set out heritage protections consistent with relevant international law (UNDRIP) and the Dhawura Ngilan: A Vision for Aboriginal and Torres Strait Islander Heritage in Australia, and is concerned the Bill falls short of both these standards.

INVESTOR QUOTES

Regnan - Susheela Peres da Cosa, Head of Advisory
“Since Juukan Gorge drew their attention, global investors who are increasingly sensitive to such issues will be looking for whether Western Australia’s response properly prioritises human rights in cultural heritage. This Bill is unlikely to meet their expectations.”

HESTA – Mary Delahunty, Head of Impact
“The tragic destruction at Juukan Gorge clearly demonstrated the systemic risk to investors of inadequate cultural heritage legislation and poor partnership practices with Indigenous communities that occur all too frequently across the mining sector. A strong legal framework is vital to provide investors greater certainty.”

“The current Bill has been widely criticised by First Nations’ leaders, peak bodies and Native Title and cultural heritage specialists which deeply concerns us as long-term investors.”

“Several aspects of the Bill were watered down from the published draft in 2020. Of particular concern is the treatment of appeal rights that further entrench power imbalances between First Nations communities and mining companies.”

“There is emerging consensus among representatives of First Nations peoples and the Responsible Investment industry that this version of the WA Bill sets the bar below international standards and will not prevent another Juukan Gorge. This confirms the importance of the findings of the Parliamentary Inquiry into the destruction of Juukan Gorge, that there is an urgent need to establish a consistent national legal framework for greater oversight.”

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ABOUT DHAWURA NGILAN BUSINESS AND INVESTOR INITIATIVE

• The Dhawura Ngilan Business and Investor Initiative is led by the First Nations Heritage Protection Alliance, in partnership with Global Compact Network Australia (GCNA) and the Responsible Investment Association Australasia (RIAA)
• The Dhawura Ngilan Business and Investor Initiative ensures that principles co-designed with First Nations Peoples are incorporated in business, investor and government practices.
• The enterprise aims to build partnerships and deliver resources to enable investors and business to engage with First Nations Peoples more respectfully and effectively, and support heritage protection that upholds the human rights of First Peoples to self-determination and free, prior and informed consent (FPIC).
• The Dhawura Ngilan Business and Investor Initiative will develop co-designed processes and tools to support businesses and investors to properly engage with First Nations Peoples.
• It aims to work collectively with Aboriginal and Torres Strait Islander people to promote the identification, protection, conservation, and sharing of the unique heritage of Australia with future generations.
• We plan to launch our tools for businesses and investors in mid-2022.
• This ground-breaking partnership seeks to leverage the influence of businesses and investors in calling for improved cultural heritage legislation, and improve the way in which heritage protection is addressed within these sectors.

ABOUT ACSI

• Established in 2001, ACSI exists to provide a strong voice on financially material environmental, social and governance (ESG) issues. Its members include 34 Australian and international asset owners and institutional investors with over $1 trillion in funds under management.