



Attachment A – Terms of Reference

MODERNISATION OF ABORIGINAL AND TORRES STRAIT ISLANDER CULTURAL HERITAGE PROTECTION

Joint Working Group (JWG)

TERMS OF REFERENCE

Purpose

1. This document sets out the Terms of Reference for the JWG to undertake work contemplated by the:
 - a. Partnership Agreement; and
 - b. Implementation Plan.
2. The background to the establishment of JWG is set out in the Partnership Agreement and Implementation Plan.

Primary Goal

3. Aboriginal and Torres Strait Islander cultural heritage is central to the identity and well-being of Aboriginal and Torres Strait Islander people and indeed, all Australians.
4. The primary goal of the JWG is to:
 - a. Lead a national consultation process on options to modernise Indigenous cultural heritage protections; and
 - b. Prepare an Options Report to be provided to the Minister for Environment.
5. The long-term goal of this process is to lift the standards of Aboriginal and Torres Strait Islander cultural heritage protections across Australia through a true and genuine partnership with Aboriginal and Torres Strait Islander peoples.
6. The JWG will also endeavour to work with other Commonwealth, state and territory agencies with portfolio responsibility for Indigenous cultural heritage and consider other pieces of legislation, as referenced in the Partnership Agreement.

National consultation process

7. The JWG will lead a national engagement process to undertake a deeper exploration of community views and opinions on cultural heritage protections, so as to inform the Options Report.



Goals for consultation

8. The JWG will work to ensure that it is, and is seen by participants to be, fair, transparent and open, and that those attending:
 - a. Know the purpose of consultations;
 - b. Are well informed to engage in the conversation;
 - c. Are confident to participate in the conversation;
 - d. Have their voices heard and a true representation of their voice is captured; and
 - e. Are confident their contributions are an important part of the decision-making process

Principles

9. Consultation will be undertaken in accordance with priority reforms set out in the National Agreement on Closing the Gap, particularly:
 - a. Priority Area One (formal partnerships and shared decision-making); and
 - b. Priority Reform Three (Transforming Government Organisations: Improving engagement with Aboriginal and Torres Strait Islander people).

Staged Approach

10. The national consultation process will take place in two stages, as set out in paragraphs 26 and 27 of the Implementation Plan. The deliverables from the two stages are:
 - a. Stage 1:
 - (i) A **Directions Report**, being a discussion paper summarising the findings and potential options arising from consultations; and
 - (ii) A **Policy Options Paper**, to be prepared by a consultant, in liaison with the IWG, developing the Directions Report into a paper outlining the various policy options for national consultation; and
 - b. Stage 2:
 - (i) An **Options Report**, setting out options for the modernisation of cultural heritage protections, taking into account the outcomes of the national consultation process, and the matters in paragraphs 12 to 14 below, it will be approved in accordance with paragraph 19 of the Implementation Plan and provided to the Minister of the Environment for her consideration.



Options Report

11. In developing options for modernising Aboriginal and Torres Strait Islander cultural heritage protections, the JWG must:
 - a. Seek to lift standards of cultural heritage protections so they align with community expectations and international legal norms.
 - b. Comprehensively consider opportunities that would ensure the efficiency and effectiveness of current protections for Aboriginal and Torres Strait Islander cultural heritage. Modernisation may include: legislative reform, policy transformation, administrative improvement, identification of resourcing deficiencies, the review and restructure of processes, procedures and protocols, response to and design and development of standards and communication products.
 - c. Consider existing functionalities presently in place in for cultural heritage protections and broadly evaluate the present operational functions.
 - d. Consider opportunities for reform within legislative arrangements held by the Minister for the Environment, including the:
 - (i) *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth);
 - (ii) *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
 - (iii) *Underwater Cultural Heritage Act 2018* (Cth); and
 - (iv) *Protection of Movable Cultural Heritage Act 1986* (Cth).
 - e. Consider other opportunities for reform, including within legislative arrangements not held by the Minister for the Environment, including the;
 - (i) *Native Title Act 1993* (Cth)
 - (ii) *Copyright Act 1968* (Cth); and
 - (iii) State and Territory cultural heritage protection legislation.
12. The JWG may also consider:
 - a. opportunities for policy transformation, development and implementation particularly in regards to recommendations made in the:
 - (i) Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 – Final report;
 - (ii) 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;



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- (iii) A Way Forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge; and
 - (iv) Dhawura Ngilan: A Vision for Aboriginal and Torres Strait Islander Heritage in Australia.
- b. the broader remit of the Department and other Government Departments to consider the improvement of processes, procedures and protocols in relation to Indigenous Cultural Heritage Protections.



Attachment B – Code of Conduct

MODERNISATION OF ABORIGINAL AND TORRES STRAIT ISLANDER CULTURAL HERITAGE PROTECTION

JOINT WORKING GROUP

CODE OF CONDUCT

Code of conduct

1. In the course of their duties, each Joint Working Group (JWG) member must:
 - a. behave honestly and with integrity
 - b. act with care and diligence
 - c. treat everyone with respect and courtesy, and without harassment
 - d. comply with all applicable Australian laws
 - e. subject to their obligations to consult broadly, and to provide information and material to the organisations they represent, maintain appropriate confidentiality of any information or material concerning any matter under consideration by the council
 - f. comply with confidentiality requirements set out in **Attachment D – Confidentiality Deed Poll**, and not make improper use of:
 - (i) inside information
 - (ii) the member's duties, status, power or authority to gain, or seek to gain, a benefit or advantage for the member or for any other person
 - g. disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with the work of the JWG (including for members of an officeholder's family)
 - h. use government resources in a proper manner
 - i. not accept gifts, hospitality or concessional travel
 - j. comply with any other conduct requirement prescribed by the Minister or the department
 - k. refrain from making or causing any comment or statement to any member of the media concerning any JWG business, or matter revealed to them through their participation in the JWG.

2. I **accept** this JWG membership Code of Conduct:

Signed:

Date:

Print Name:



Attachment C – Conflict of interest declaration

MODERNISATION OF ABORIGINAL AND TORRES STRAIT ISLANDER CULTURAL HERITAGE PROTECTION

JOINT WORKING GROUP

Conflict of interest declaration

For the purposes of this declaration, **conflict of interest** means that in your role as a member of the Joint Working Group (JWG), your duty conflicts or may conflict with:

- your personal interests or those of an immediate relative or an organisation with which you have a direct pecuniary or non-pecuniary involvement; or
- your duty to any third party.

A conflict of interest may occur where a JWG member or their immediate relative, or an organisation with which a member had direct pecuniary or non-pecuniary involvement, has a personal stake or strong interest in the outcomes of JWG deliberations leading to advice or recommendations to the Minister or the department.

Personal Declaration

1. I declare that, to the best of my knowledge at the time of making this declaration, I have no conflict of interest or potential conflict of interest (other than those which I have disclosed below) in undertaking the services associated with my role as a JWG member.
2. I advise that to the best of my knowledge my private, business and financial interests, including taxation affairs, would not conflict with my public duties or otherwise cause embarrassment to myself or to the Australian Government during my term of appointment.
3. I undertake that, if I become aware of any conflict of interest or potential conflict of interest during my appointment, I will notify the JWG in writing, immediately.
4. I acknowledge and agree that, if I notify of a conflict of interest or potential conflict of interest during my appointment, I may be excluded from further participation in a meeting of the JWG.



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5. I declare any known or potential conflicts that may exist:

DETAILS OF CONFLICT(S) OF INTEREST

Signed:

Date:

Print name:



Attachment D – Confidentiality Deed Poll

MODERNISATION OF ABORIGINAL AND TORRES STRAIT ISLANDER CULTURAL HERITAGE PROTECTION

JOINT WORKING GROUP

Confidentiality Deed Poll

JWG Member name:

Date:

TO THE COMMONWEALTH OF AUSTRALIA:

Background

1. I, [Full Name], am appointed to the Joint Working Group (JWG) which is a body of Indigenous cultural heritage experts established by the *Department of Agriculture, Water and the Environment*. The JWG is an advisory body on Indigenous cultural heritage matters and plays a key role in assessment, advice and policy formulation and support of major heritage programs.
2. I acknowledge that I may receive Confidential Information in connection with the activities I will carry out as a member of the JWG.
3. I acknowledge that, if I use or disclose the confidential information in breach of this deed poll, the Commonwealth or third parties may suffer loss for which damages may not be an adequate remedy.

Agreed terms

Definitions

4. In this deed poll, confidential information means all information, documents and data stored by any means and made available to me by the Commonwealth and that:
 - a. is, by its nature, confidential;
 - b. is marked or treated by the Commonwealth or a third party as confidential; or
 - c. I know or ought reasonably to know is confidential.

Undertaking

5. I agree and undertake:
 - a. to keep the confidential information confidential;
 - b. only to use the confidential information for the purpose of my role as a member of the JWG; and



- c. to notify the IWG immediately if I become aware that any of the Confidential Information:
 - (i) has been used, copied or disclosed in breach of this deed poll; or
 - (ii) is required to be disclosed by law.

Exceptions

6. The obligations of confidentiality set out in this deed poll do not apply to Confidential Information that is:
 - a. in the public domain or known by me before I receive it from the Commonwealth or a third party in connection with the activities of the working group (unless it is in the public domain or known by me as a result of a breach of confidence);
 - b. required to be disclosed by law; or
 - c. is disclosed to any member, or any person engaged or employed by a member of the First Nations Heritage Protection Alliance.

Return or destruction of Confidential Information

7. I agree that if:
 - a. I am asked by the Commonwealth to return or destroy any or all copies of Confidential Information; or
 - b. I breach any provision of this deed poll,then I must immediately:
 - c. stop using, copying or disclosing the confidential information; and
 - d. comply with the Commonwealth's request to return or destroy any or all copies of the Confidential Information.

Privacy

8. I agree, in fulfilling my obligations under this deed poll, to:
 - a. not to do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of an Australian Privacy Principle; and
 - b. comply with any directions, guidelines, determinations or recommendations referred to or given by the Commonwealth, to the extent that they are consistent with the Australian Privacy Principles.
9. I agree to notify the Commonwealth immediately if I become aware of a breach or possible breach of any of my obligations under clause 8.



10. In clause 8, 'Australian Privacy Principle' has the same meaning as it has in the *Privacy Act 1988 (Cth)*.

Indemnity

11. I agree to indemnify the Commonwealth against all liability, loss and damage the Commonwealth may sustain or incur, directly or indirectly, as a result of any breach by me of this deed poll or any related obligation of confidentiality.

Waiver

12. I agree that the Commonwealth does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy by the Commonwealth does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy by the Commonwealth must be in writing and signed by the Commonwealth.

Applicable law

13. This deed poll is governed by the laws of the Australian Capital Territory. All courts of the Australian Capital Territory have non-exclusive jurisdiction in relation to this deed poll and any matter arising under or in relation to it.

Period of confidentiality

14. I agree that my obligations under this deed poll continue for a period of three (3) years from the date of this Deed and that my obligations will survive the termination or expiry of my appointment to the JWG.

EXECUTED as a deed poll.

Signed, sealed and delivered by:

in the presence of:

 Signature of JWG Member

 Signature of witness

XXX

XXX

 Name of JWG Member (print)

 Name of witness (print)

 Date

 Date