

# First Nations culture in the metaverse

## Discussion Paper

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## Opening Remarks from the Digital Law Association Ltd (DLA), Dr Vanessa Lee-Ah Mat and Bibi Barba

The metaverse belongs to all people. The best metaverse will reflect our diversity, the richness of all civilisations and cultures and the inherent dignity and the equal and inalienable rights of all members of the human family.

Now, at the infancy of the metaverse, there is an opportunity to build the foundations for an equitable metaverse, which respects the rights of all to be represented in its worlds.

First Nations Peoples need a seat at the metaverse table, as well as support to acquire and hold virtual land, to represent their culture and spirit.

Why start with First Nations ahead of other traditionally underrepresented groups? Why is there a need to advocate for the recognition, inclusion and respect of First Nations culture and perspectives in the metaverse?

- For over 65,000 years, First Nations peoples (of Australia) have been the custodians of, and have passed down the generations, past, present and future Knowledge of both the physical and spiritual world guided by Kinship (which comes from the Lore of Creation).
- Kinship is about having social responsibility to yourself, each other, and about inclusion within the physical and spiritual worlds.
- Virtual worlds will increasingly become a part of the 'land on which we meet' and this paper posits that the foundations of the metaverse should respectfully incorporate First Nations' Lore, particularly Kinship, as a means by which to welcome and support many traditionally underrepresented groups in society into and in the metaverse.
- First Nations' Knowledge, and the practices of Kinship, could ground the metaverse and gift it the cultural foundations to last through time.
- The foundations upon which the metaverse is built should incorporate learning from past mistakes in respect of First Nations Peoples, mistakes of disregard and contempt for their human rights that have resulted in barbarous acts which have outraged the conscience of humanity.
- The Digital Law Association's charitable purpose is to advance a fairer, more inclusive and democratic voice at the intersection of technology, law and policy. The DLA is also a signatory to the Uluru Statement from the Heart and is seeking to walk the path of reconciliation. In pursuing the DLA's charitable purpose and walking the path of reconciliation, the DLA has assisted with the production of this paper to share the voice of (Australian) First Nations' culture and Kinship, in light of the above and with the view that grounding the metaverse in Kinship principles may also provide a model to foster increased diversity and encourage the inclusion of many traditionally underrepresented groups within the metaverse.

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Dr Vanessa Lee-Ah Mat of the Yupungathi and Meriam Nations and Bibi Barba of the Darumbal – Biri Gubi – Gadigal – Yuin Nations, are in the process of operationalising an independent pilot project seeking to create a First Nations cultural embassy in the metaverse and are setting up an entity with First Nations ownership and governance to run the operations of the pilot project (including in the manner described in Appendix A to this Discussion Paper).

The DLA is not involved in any efforts to operationalise the cultural embassy concept and model, nor will the DLA accept donations of fiat currency or digital assets including virtual land. The DLA will have no oversight or governance role in the operationalisation of any cultural embassy pilot project. You are responsible for seeking your own independent professional legal advice before donating to any project that may arise as a result of the concepts discussed in this Discussion Paper.

Any individuals or organisations (including DAOs) seeking to collaborate with cultural brokers should do their own research. The DLA was provided with an opportunity to work with the cultural brokers that co-authored this discussion paper and did not publish a call for contributors or other cultural brokers to contribute to this Discussion Paper acknowledging the desire to produce the paper as a prompt for broader discussion of the issues canvassed and the cultural embassy concept. The DLA does not have a commercial relationship with the cultural brokers who are the co-authors of this Discussion Paper, nor will the DLA have a role in the cultural brokers' operationalisation of the cultural embassy project.

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### Respectful language notice

This paper has been prepared with significant input from Aboriginal and Torres Strait Islander people. The words 'Indigenous' and 'Aboriginal' are broad terms which were imposed on the First Peoples of Australia and other colonised places in the world. These were not words that First Peoples chose themselves.

In the first instance First Peoples of Australia are referred to as Aboriginal and Torres Strait Islander and then the terms First Peoples, First Nations and Indigenous are used interchangeably to represent Aboriginal and Torres Strait Islander peoples.

## 1.0 THE NEXT FRONTIER: THE METAVERSE

### 1.1 What is the metaverse?

Author Neal Stephenson is credited with coining the term “*metaverse*” in his science fiction novel ‘*Snow Crash*’, published in 1992 in which he predicted user-controlled avatars who met in virtual reality environments.

Essentially, the metaverse is a digital space that blends virtual and/or augmented reality with permanent virtual spaces. Users ‘live’ in this digital universe, a hyper-real alternative world to live and interact in, and ownership of aspects of the metaverse is increasingly sought after.

A virtual land grab is underway, as digital real estate, represented by non-fungible tokens (NFTs) are being bought and sold for millions of dollars.<sup>1</sup> Tokens.com, a Canadian investment firm in late 2021 purchased a digital plot of land for nearly \$2.5 million in cryptocurrency.<sup>2</sup> There is money to be made (and lost) and the big tech companies are clamouring for market dominance, including Microsoft and Meta, Qualcomm, Nvidia, Valve, Epic, HTC and Apple.<sup>3</sup>

A key question that emerges from this situation is: Who will be represented in ‘this new verse’ or in the ‘many verses’? Will there be diverse representation? Will all voices be heard in the metaverse? Is there an opportunity to create worlds grounded in the connection First Nations peoples have with their land and environment before the injustices of colonisation, dispossession of their lands and loss of resources causes a loss of culture, spiritual traditions, histories and philosophies?

In addition to these questions, there are issues in the metaverse that are emerging particularly concerns around NFTs like permitting (rather than countering) IP infringement, environmental concerns in terms of reliance on certain energy-intensive blockchains without requiring or mandating renewable energy or energy grid resilience, unlicensed and improper conduct and crime and money laundering.<sup>4</sup>

As the metaverse is arguably only at its very beginning, society is only beginning to grapple with the issues that the metaverse can give rise to. However, there is a real opportunity to respond to some of these issues, and impact the metaverse, from its inception rather than needing to bolt on imperfect fixes later.

<sup>1</sup> Chris DiLella and Andrea Day, ‘Investors are paying millions for virtual land in the metaverse’, *Tech Drivers CNBC*, 12 January 2022, <https://www.cnbc.com/2022/01/12/investors-are-paying-millions-for-virtual-land-in-the-metaverse.html>. See also, Cathy Hackl, ‘Making Money In The Metaverse’, *Forbes*, 15 March 2021, <https://www.forbes.com/sites/cathyhackl/2021/03/15/making-money-in-the-metaverse/?sh=b51f3923b432>.

<sup>2</sup> Nelson Aguilar, ‘Someone just bought virtual land for \$2.5 million’, *Cnet Money*, 24 November 2011, <https://www.cnet.com/personal-finance/someone-just-bought-virtual-land-for-2-5m/>.

<sup>3</sup> Andrew Morse and Scott Stein, ‘The metaverse is just getting started: Here’s what you need to know’, *Cnet Tech*, 21 January 2022, <https://www.cnet.com/tech/services-and-software/the-metaverse-is-everywhere-heres-what-you-need-to-know/>.

<sup>4</sup> Adam Greenfield, ‘Non-fungible tokens aren’t a harmless digital fad – they’re a disaster for our planet’, 29 May 2021, <https://www.theguardian.com/commentisfree/2021/may/29/non-fungible-tokens-digital-fad-planet-nfts-artists-fossil-fuels>;

Schuyler Moore, ‘Law In The Metaverse’, *Forbes*, 22 December 2021, <https://www.forbes.com/sites/schuylermoore/2021/12/22/law-in-the-metaverse/?sh=5292fd9f45d1>; Valentina Di Liscia, ‘Artists Say Plagiarized NFTs Are Plaguing Their Community’, *Hyperallegic*, 28 December 2021, <https://hyperallegic.com/702309/artists-say-plagiarized-nfts-are-plaguing-their-community/>;

Doron Pely, ‘The Dark Side of the Metaverse’, *USC Price Safe Communities Institute*, 17 January 2022, <https://sci.usc.edu/2022/01/17/the-dark-side-of-the-metaverse/>; Pin Lean Lau, ‘The metaverse: three legal issues we need to address’, *The Conversation*, 2 February 2022, <https://theconversation.com/the-metaverse-three-legal-issues-we-need-to-address-175891>.

## 1.2 Laying the foundations for an equitable and diversely represented metaverse

There is a window of opportunity to build the foundations of an equitable metaverse, starting with respect and recognition of First Nations peoples.

By taking early action to incorporate First Nation peoples and their rights into the early formation of the metaverse, society can be supported to move in the direction of recognising the importance of First Nations culture and healing past cultural and economic injustices. Such early action could help ground the metaverse in the rich spiritual history of the people that have been here since the beginning of time and may foster the building of mutual respect and recognition of the inherent rights and sovereignty of First Nations people to represent their history, culture and spiritual traditions in the digital realm.

The simple fact is that 30 years after *Mabo* (a significant decision by the High Court of Australia recognising Australian First Nation peoples' rights to their land), the common law, legal actions and statutory regimes are still trying to rectify historic injustices using the ineffectual tools of English property law.

By acting early and amplifying successes globally, First Nations peoples and supporters may be able to speed up the process in which they can have a voice and a hand in virtual land and metaverse co-design and ownership. Support and co-design are the symbolism and effort required to signal to First Nations peoples that the metaverse can be a safe space to participate and thrive in and in which to contribute.

One of the foundations of an equitable metaverse could be a Cultural Embassy which exists virtually in each major metaverse platform and physically with a team of people coordinating the Embassy's national and international efforts. A cultural embassy would provide a place to receive capital to acquire virtual land and digital assets, to receive donations of virtual land and digital assets, and from which to engage and coordinate human efforts around the cultural embassy's cause. We recognise that the cultural embassy model proposed in this paper may not be appropriate for all cultures.

People may find connection, healing and guidance from First Nations peoples' culture and meeting places, which is important now more than ever as people risk losing themselves in immersive metaverse experiences.

It is First Nations' culture that continues to stand today *"on the frontlines of global movements fighting for a more just relationship between humanity and the land"*.<sup>1</sup> Through Australian First Nations' Kinship and cultural principles, there is opportunity to ground the metaverse with equitable foundations that support Australian First Nations' peoples, other First Nations' cultures as well as greater diversity and inclusion.

## 1.3 Focus on First Nations Peoples of Australia

Aboriginal and Torres Strait Islander peoples are the First Peoples of Australia, with over 65,000 years of continuous history and connection with its land, water and air. They represent the world's oldest living cultures.

Since colonisation, Aboriginal and Torres Strait Islander people have suffered injustices as a result of dispossession of their lands, territories, theft of natural resources and destruction of their culture. The denial of Australia's First Peoples' access to tribal lands and practising of cultural and spiritual traditions has resulted in gross inequities and inequalities. The United Nations in 2007 recognised that this is the commonality shared by many Indigenous peoples and that there was an urgent need to respect and promote the inherent rights of Indigenous peoples. The United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**) was adopted by the General Assembly on Thursday, 13 September 2007, providing a framework of minimum standards for the survival, dignity and well-being for Indigenous Peoples or as referred to within this document as First Nations peoples.

The United Nations Declaration articulated that Indigenous peoples have the right to practise and revitalise their cultural traditions and customs, including the right to maintain, protect and develop the past, present and future manifestations of their cultures. They have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions including the right to maintain, control, protect and develop their intellectual property (Articles 11 and 31).<sup>5</sup>

Australia, Canada, New Zealand and the United States voted against UNDRIP.

Two years later, on 3 April 2009, the Australian Government made a formal statement of support for the Declaration. UNDRIP has not yet been adopted into domestic law in Australia.

June Oscar AO, Aboriginal and Torres Strait Islander Social Justice Commissioner wrote in the Canberra Times that:<sup>6</sup>

*On July 24, 2017, almost a decade after the adoption of the declaration by the UN General Assembly, Australia put forward an ultimately successful bid for a seat on the Human Rights Council for a three-year term. In this statement, the Australian government pledged to "support the Declaration on the Rights of Indigenous Peoples in both word and deed, including the promotion of the declaration's principles through national engagement", which would "draw connections between national activity and the principles of the declaration".*

*While the declaration was mentioned only once up to 2017, and only once again since, in any of our prime ministers' Closing the Gap reports, it is pleasing to see that with the*

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<sup>5</sup> **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.*

**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.*

<sup>6</sup> June Oscar AO, 'Incorporating UNDRIP into Australian law would kickstart important progress', published in the Canberra Times on 13 September 2021, reproduced in the Australian Human Rights Commission website, <https://humanrights.gov.au/about/news/opinions/incorporating-undrip-australian-law-would-kickstart-important-progress>.



*new Partnership Agreement on Closing the Gap coming into force, the declaration is covered in detail in some state Closing the Gap Implementation Plans.*

...

*This is a welcome development, but it is merely a starting point. While all four countries who voted against the declaration in 2007 have been more or less inert with respect to implementation over the past decade, this is now changing rapidly.*

*Incorporating UNDRIP into the structures of this nation - its laws, policies and institutions - would be a strong commitment from all Australian governments to working in genuine partnership with First Nations people to respond to our needs and aspirations.*

As the statement highlights, progress has been slow and, in many instances, unsatisfactory in scope and effect. The early formation of the metaverse is a watershed moment that offers an opportunity to try and prevent the same inequities of the physical world from occurring all over again in the metaverse.

## 1.4 The problems

The lack of diversity and equal access are finding new forms of expression in the way that largely undiversified capital is being invested at rapid pace to acquire ownership of the metaverse.

Nation States like Barbados already have embassies through which they can be represented in the metaverse,<sup>7</sup> but First Nations' peoples around the world do not have the infrastructure or a central point from which to negotiate, coordinate capital and participate.

Virtual land that 'mirrors' the earth is being sold without acknowledgement or consent from existing land or Native Title owners.<sup>8</sup> These projects do not appear to have implemented any clear measures to ensure equitable and diverse ownership of the metaverse other than a corporate-controlled metaverse by virtue of corporates and sovereign governments acquiring ownership of virtual land projects because they have the structure and means to do so swiftly.

Virtual land that is being created as part of imaginary worlds is also being sold with neither recognition of the cultural significance that ownership of land entails for First Nations peoples, nor acknowledgement of the spiritual connection that exists between a person, the virtual land and their participation in it.

Past and current approaches to preserving the culture, community and connection with the land of First Nations peoples, through heritage protection and claims for Native Title and Aboriginal Land Rights have been often well intentioned but inadequate. Appendix B examines the traditional legal trajectory (and failures) of these land claims, to enable society

<sup>7</sup> Andrew Thurman, 'Barbados to Become First Sovereign Nation With an Embassy in the Metaverse' published on CoinDesk on 15 November 2021, <https://www.coindesk.com/business/2021/11/15/barbados-to-become-first-sovereign-nation-with-an-embassy-in-the-metaverse/>.

<sup>8</sup> Decrypt Staff, 'Next Earth Brings the Real World into the Metaverse', sponsored post by Next Earth, 24 January 2022, <https://decrypt.co/90915/next-earth-brings-the-real-world-into-the-metaverse>.

to understand the importance of land custodianship and First Nations representation in the metaverse, and why this needs to take place now.

Virtual land is being created as a basis for privileged and best access for virtual games, work, leisure and learning environments. The 'virtual land grab' is on with companies and venture capital firms buying plots of virtual land ahead of the possible but largely unknown commercial opportunities and without any recognition or strategy to ensure equitable ownership of land. Play to earn (P2E) gaming and immersive metaverse experiences present a new paradigm of digital living, which more than ever may have something to learn and benefit from rich Indigenous culture about identity and Kinship.

## 1.6 Cultural significance of ownership of land

As stated above, virtual land is being created as part of imaginary worlds and is also being sold with neither recognition of the cultural significance that ownership of land entails for First Nations Peoples, nor acknowledgement of the spiritual connection that exists between a person, the virtual land and their participation in it.

Ownership grants access and guarantees a seat at the table. Based on history, land ownership promotes recognition and representation on a number of societal and policy issues. The 'virtual land grab' currently underway in the metaverse has the potential of manifesting as increased exclusion of First Nations' Peoples and traditionally underrepresented groups.

Worlds are being created on platforms in this digital space where the social connection is not grounded in any of the history and culture of First Nations peoples, or of diversity and inclusion more broadly. This paper seeks to change that using the lens of Kinship through First Nations culture.

Australia is made up of many different and distinct Aboriginal and Torres Strait Islander groups, each with their own culture, language, beliefs and practices. Including First Nations peoples' culture into the commencement of this new digital technology facilitates respect, awareness and understanding of the oldest continuing living culture that has been present on this earth since time immemorial and as a possible template for other cultures. In 2016, Aboriginal and Torres Strait Islander peoples made up just 3.3 per cent of the Australian population.<sup>9</sup> The importance of preserving these cultures cannot be overstated, especially since the physical land was never ceded and nor were the waters or the air.

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<sup>9</sup> Australian Institute of Aboriginal and Torres Strait Islander Studies, Australia's First Peoples, <https://aiatsis.gov.au/explore/australias-first-peoples>.



## 2.0 PARTICIPATION OF FIRST NATIONS' PEOPLES IN THE METAVERSE

### 2.1 Aims

The following have been identified as aims in the pursuit of representation of First Nations' peoples in the metaverse:

1. **To ensure** self-sovereignty of First Nations peoples in the metaverse.
2. **To ensure** that First Nations peoples are represented in the metaverse.
3. **To ensure** that the history, culture and spiritual traditions of First Nations peoples are recognised and respected in the metaverse.
4. **To ensure** that the harms of colonisation are not repeated in the creation of 'mirror' and imaginary worlds in the metaverse.
5. **To promote** ethical creation in and use of the metaverse.
6. **To ensure** First Nations peoples' intellectual property and creative rights are protected.
7. **To ensure** that agreements with First Nations peoples are entered into in good faith with informed consent obtained before use – not during or after, but before.

### 2.2 Cultural Embassy Model

Establishing cultural embassies on plots of virtual land in the various metaverse worlds (platforms), presents a tangible way to pursue the Aims articulated above in order to promote respect, inclusion and recognition of the interests and culture of First Nations peoples.

The cultural embassies could act as focal points in each metaverse world to promote representation of different Nations and tribes and facilitate treaties and economic and cultural partnerships with other Sovereign States and communities represented in the metaverse including increasingly gaming guilds.

The setting up of a Cultural Embassy could initially include:

1. Negotiating with metaverse platforms to secure for First Nations peoples, virtual land donations or purchasing virtual land.
2. Working with web3 experts to design the virtual Cultural Embassy building and subsequent experience while in the virtual embassy building.
3. Consulting with existing metaverse platforms to:
  - a. co-design virtual land and virtual experiences (including gaming) to promote awareness, connection to history, culture and spiritual traditions of First Nations peoples of Australia, while preserving their intellectual property and creative rights; and

- b. respect mystical and spiritual dimensions of First Nations peoples' culture, including of sacred sites and spiritual and sacred objects, e.g. through storytelling; and
  - c. appropriately reference back to cultural education, connection and healing available via the virtual and physical to inform the processes and protocols of the Cultural Embassies.
4. Setting up Decentralised Autonomous Organisation (**DAO**) governance bodies to ensure representation of First Nations peoples and transparency of decision making with regards to the Cultural Embassies.

DAO-based protocols that support liquidity pools largely represent tokens in financial protocols but increasingly DAOs and their governance tokens (to ERC20 and other commensurate standards) reflect social communities and a social conscience. First Nations peoples are dispersed but could benefit from a collective voice through a DAO and a token – to be able to hold, manage and participate in the metaverse with those assets, and in the interim Cultural Embassies that own virtual land and digital assets on their behalf. But first, there is a need to signal support and welcome First Nations peoples into web3 and the metaverse to enable ideas to form that encourage participation.

5. Preparing proposals for approval by the DAO governance bodies with upcoming virtual land sales to receive allocations of virtual land and additional funding to support:
- a. participation in the metaverse e.g. through digital skills training;
  - b. cultural education i.e. the creation of cultural curricula for the users of the metaverse;
  - c. data collection; and
  - d. ethical research.
6. Coordination and management of capital and resources for all of the above, including constant but appropriate decentralisation of governance of each embassy's efforts and resources.
7. Marketing collateral and speaking engagements to communicate success stories, upcoming opportunities, findings from data collected and ethical research.

The authors of this discussion paper have considered how these objects of a Cultural Embassy could be achieved in practice, and have set out a proposed operational model for a cultural embassy in Appendix A. We understand that the model set forth in Appendix A is intended to be used as the basis for the pilot project being undertaken by Dr Vanessa Lee-Ah Mat and Bibi Barba, as further described in section 4.3 of this discussion paper.

## 2.3 The cultural and spiritual premise for a Cultural Embassy – Cultural Rights and Protocols

### The Lore founded in Tribal Kinship

Kinship is at the heart of First Nations peoples' culture and community, and it is inherently the family structure that is pivotal to family identity (totem, moiety, songlines, etc.), it is about

having a social responsibility to yourself, each other, and about inclusion within the physical and spiritual worlds. Kinship is the force that binds First Nations peoples across the Nations together; it establishes your place in the community and secures one's connection to the earth.

First Nations peoples – Tribal Lore which governs all aspects of traditional life, passed down to generations through storytelling, songs, dance and art, provides rules on how to interact with the land, community and kinship, and is connected to 'The Dreaming' / 'Creation'(e.g. Ngarranggarni, Tjukula Jukurrpa, Manguny). Creation is the process, and the Dreaming explains the Creation process. Together, the Dreaming and Creation explains how things came to be and provided the rules and ways of being, doing and knowing in Australia's First Peoples culture – ***the ultimate guide to life and how to live, of the world, written into the land, waters and sky itself.***

'The Dreaming' is an inadequate English translation of a First Nations concept, difficult to translate because of its complexity, its evolving, non-static, non-linear and non-finite nature; it encompasses the past, present and future, grounded in the Earth itself and is an integrated way of life for First Nations peoples. 'The Dreaming'/'Creation' gives identity and connection – as all people and all things are interconnected. Australian anthropologist W.E.H. Stanner in his 1956 essay, 'The Dreaming', described the idea as something that:<sup>10</sup>

*One cannot 'fix' The Dreaming in time: it was, and is, everywhen.*

### **Spiritual and Sacred Objects**

During creation, spiritual beings/ancestors journeyed over the land and created the 'sacred world' and the relationships between the land and all living beings, including First Nations peoples. Once they created the world, these spiritual beings/ancestors turned into stars, rocks, watering holes, trees or a part of the landscape, these became sacred places, where they continue to dwell. Their descendants, kangaroo, snake etc. are totems of the First Nations groups. And the land gave birth to language – it is inseparable with culture – a rich and diverse culture comprising 250 First Nations languages including 800 dialects united by their connection to the land.

'The Dreaming'/'Creation' belongs to every First Nations person globally. Spiritual and/or sacred objects are a large part of who First Nations people are, bringing together responsibilities which carry the stories that shape First Nations peoples' Lore which are passed onto future generations. These objects are intrinsically linked to Kinship and can include objects associated with initiation or other ceremonial, birth or burial purposes.

There is an obligation on every member of a Nation Group to be a protector of these objects as it is only Traditional Owners who can determine what First Nations' objects are considered spiritual and/or sacred; and who can source the objects. It is only the First Nations people as Traditional Owners who can be the protectors of spiritual and/or sacred objects within the metaverse. It is their obligation and their right. Through their connection, First Nations peoples are sovereign owners of the land, water, air, within the physical and the spiritual worlds.

### **Storytelling in the metaverse**

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<sup>10</sup> 'The Dreaming', essay by Australian anthropologist, W.E.H. Stanner, published in, 'The Dreaming & Other Essays' (Black Inc. Agenda, 2011).

First Nations peoples' perspectives are consistent with the past and present; and are embodied through storytelling by means of oral traditions, dance, painting, drawing, and creating. Beliefs and values have been passed down from generation to generation, through specific cultural practices and have been carried down through history by the use of dance, song, oral storytelling, drawing, rock and sand art, body painting and in addition to this, contemporary expression through different genres and disciplines, for example storytelling in astronomy links the formations of stars to the reproductive cycles of different animals, and the directions of the winds links to the maturation of certain seafood.

The passing down of past, present and future knowledge for both the physical and spiritual world has been guided by Kinship (which comes from the Lores of creation) for over 65,000 years in Western Science, and this extends to the worlds of the metaverse. Kinship may ground the metaverse with principles of social responsibility and connectedness and provides a foundational concept in advocating for the recognition, inclusion and respect of First Nations peoples' perspectives, and traditionally underrepresented groups, in the metaverse.

## 2.4 Intellectual property rights

Recognising that metaverses operate across State jurisdictions, there is a need to advocate for international protection of First Nations peoples' intellectual property (ICIP) and creative rights through traditional Cultural expressions (TCE's), being imbed within all cultural content in the metaverse, consistent with UNDRIP, to ensure that the rights of First Nations peoples are not limited, diminished or extinguished.<sup>11</sup> There should be recognition and respect for the principle that only First Nations people as protectors of their land, waters and air, of spiritual and sacred objects, can share their stories, or give others permission for a specific use (ensuring transparency and no exploitation in use) to share their stories, through words, song, dance and art.

## 3.0 CLOSING REMARKS

### 3.1 Advantage of recognising First Nations culture in the metaverse

The advantage of recognising First Nations peoples' culture in the metaverse is that the culture and practice of Kinship is founded upon creating sustainable, enduring, equitable and inclusive relationships.

First Nations culture has stood the test of time, in spite of the disruption of colonisation and cultural genocide for hundreds of years. The First Nations spiritual and cultural connection with the land, water and air was never ceded and had continued unbroken for over 65,000 years – this is the endurance and bonding of Kinship to the past, present and future that feeds social responsibility.

Especially as we anticipate spending more of our lives online in immersive virtual experiences that replicate and enhance what we do with land, water, air and the physical and spiritual worlds, we may find solace and healing in culture and Kinship principles that go beyond current and proposed legislative regimes for digital identity, privacy and access to virtual products and

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<sup>11</sup> See comments in footnote 5 above.

services. These issues are at the heart of a thriving and equitable metaverse and the teachings from the oldest continuing First Nations culture have much to offer here.

## 3.2 Conclusion

Australian First Peoples, the Aboriginal and Torres Strait Islander people, have the longest continuous spiritual and cultural history of any group of people on Earth. They are the First and therefore vitally important.

In advocating for the original and oldest continuing culture, a culture that transcends time immemorial and extends to the stars through its song lines, to be represented in the metaverse the intended outcome is that First Nations peoples can stand on equal footing with other sovereign nations in the formation of foundations of the metaverse. In doing so, the cultural embassy model may be a template for many cultures and underrepresented groups.

First Nations' participation will help to ground the metaverse with more equitable foundations to support greater diversity and inclusion as well as an environment where all peoples can experience the gift of Kinship and First Nations spirituality and culture. Kinship may be the key ingredient for hope and humanity in the metaverse as governments and regulators struggle to keep pace with its rapid development and advancement. Idealists will say that society was supposed to have learned the lessons about ethical and inclusive technology design from web2 but the trajectory of web3 is showing that without raising this discussion now, even if at first instance through the lens of First Nations' culture, the opportunity for a more equitable web3 and metaverse foundations may pass us by.

## 4.0 ABOUT THIS DISCUSSION PAPER

### 4.1 About the DLA

DLA is an organisation dedicated to advancing a fairer, more inclusive and democratic voice at the intersection of technology, law and policy. Our mission is to encourage leadership, innovation, and diversity in the areas of technology and law by:

- bringing together the brightest legal minds in the profession and academia to collaborate; and
- developing a network that promotes digital law, and particularly female leaders in digital law.

The DLA have signed their support to the [Uluru Statement from the Heart](#).<sup>12</sup> The DLA accept the invitation to walk with First Nations, to a better future for us all. Consistent with that support in walking the path of reconciliation, and as part of the DLA's mission, the DLA have worked with cultural brokers, Dr Vanessa Lee-Ah Mat and Bibi Barba to prepare this discussion paper to support the recognition of First Nations in the metaverse.

### 4.2 About the cultural brokers

The cultural brokers involved in preparing this Discussion Paper, Dr Vanessa Lee-Ah Mat and Bibi Barba facilitate between the different layers of culture for groups of people, not-for-profit organisations, businesses, government, communities, tribes, clan groups, digital worlds, and ethnic, sex, gender and racial groups. They play a crucial role in cultural governance and bridging the cultural divide to determine a smooth interaction between the different layers of culture to achieve outcomes which ensure First Nations people maintain their sovereignty.

### 4.3 The people involved so far

This discussion paper has been authored by (in alphabetical order):

- Bibi Barba of the Darumbal – Biri Gubi – Gadigal – Yuin Nations, Artist, Curator and cultural broker for Lulu Jiji Indigenous Design and Consultancy
- Angelina Gomez – Founder & Director of Digital Law Association; Counsel at Clifford Chance
- Dr Vanessa Lee-Ah Mat of the Yupungathi and Meriam Nations, Founder of Black Lorikeet Cultural Broker, Founding Cultural Chair of Walking Between Worlds, Associate Professor of the University of Sydney and Author
- Joni Pirovich – Founder & Director of Digital Law Association; Founder & Director of Blockchain & Digital Assets – Services + Law (BADASL); Lead of Blockchain Australia Gender & Diversity Working Group

The following people have contributed feedback to this white paper:

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<sup>12</sup> See: <https://ulurustatement.org/>.

- Ariane Garside – Founder & Director of Digital Law Association
- Sarah Jacobson – Founder & Director of Digital Law Association
- Anna Jaffe – Founder & Director of Digital Law Association
- Susannah Wilkinson – Founder & Director of Digital Law Association

We have been supported in the preparation of this white paper by:

- Jane Needham SC, senior counsel, New South Wales
- Susan Phillips, counsel, New South Wales

We thank them for their time, participation and advice.

## 4.4 Domestic and international outreach

Dr Vanessa Lee-Ah Mat of the Yupungathi and Meriam Nations and Bibi Barba of the Darumbal – Biri Gubi – Gadigal – Yuin Nations, are in the process of operationalising an independent pilot project seeking to achieve the Aims and create a Cultural Embassy in the metaverse, including in the manner described in Appendix A (**Cultural Embassy Pilot Project**). In order to operationalise the Cultural Embassy Pilot Project, Dr Vanessa Lee-Ah Mat and Bibi Barba are setting up an entity with First Nations ownership and governance, which will, establish and run the operations of the Cultural Embassy Pilot Project.

Any individuals or organisations (including DAOs) who agree with the issues raised in this paper and share an aligned vision and mission to recognise First Nations culture and connection to Lore in the metaverse, should contact Dr Vanessa Lee-Ah Mat and Bibi Barba to discuss how support may be provided to the Cultural Embassy Pilot Project.

The DLA is not involved in the Cultural Embassy Pilot Project or in any efforts to operationalise the cultural embassy concept and model, nor will the DLA accept donations of fiat currency or digital assets including virtual land. The DLA will have no oversight or governance role in the Cultural Embassy Pilot Project or in the efforts to operationalise the cultural embassy concept and model. You are responsible for seeking your own independent professional legal advice before donating to the Cultural Embassy Pilot Project or any project that may arise as a result of the concepts discussed in this paper.



## APPENDIX A – Proposal for a Cultural Embassy

### A.1 Proposed minimum of resources required

To carry out the operations of any Cultural Embassy, the talent that would be useful in pursuing the objects of the Cultural Embassy model could comprise:

1. First Nations Australian Lead: Two days per week over a two-year period, with a view of increasing the time commitment as the embassy model and embassies increase their reach globally.
2. Australian First Nations Consultant: Two days per week over a two-year period.
3. Advisory Board: Consisting of First Nations peoples globally and non-Indigenous peoples with expertise in First Peoples' culture and/or blockchain and/or metaverse. To be renewed as the project evolves to include work with different Nation Groups.
4. Web3 broker: Two days per week over a two-year period to connect the Lead and Australian Torres Strait Islander Advisor with relevant Web3 contacts and assist in alignment with the web3 protocol mission and governance model and preparing proposals.
5. Project Manager: Full time over a two-year period.
6. Data collection and ethical researchers: Two-year full-time project for two people.
7. Support, reporting and marketing team: Two-year part-time position for two people.

### A.2 Proposed roadmap

A possible 3-5 year roadmap with milestones to achieve the aims through the setting up of Cultural Embassies in the metaverse could comprise:

|  |  |
|--|--|
| <b>Proposed mission of the Cultural Embassy:</b> Sovereignty expressed through the establishment of a Cultural Embassy model with virtual embassies in at least each of the major metaverse platforms. <sup>13</sup> This will allow for treaties, and cultural and economic exchanges with other Sovereign States and communities legally represented in the metaverse. |  |
| <b>3 months</b>  | Identify the key stakeholders in the metaverse and representatives of the various Nations.<br><br>Source and allocate funding to secure human resources including the persons identified in section A.1 above. |

<sup>13</sup> Negotiations with a metaverse platform and/or the presence of a Cultural Embassy on a metaverse platform should not be taken as an endorsement of other landowners of the platform; users and key stakeholders of the platform. To the extent that a Cultural Embassy becomes aware of ethical and/or legal issues with the platform, the Cultural Embassy on that platform should reserve its rights to disengage with the platform.

|                  |  |
|------------------|--|
| <b>6 months</b>  | <p>Negotiate with the metaverse worlds (platforms) providers and web3 experts to:</p> <ul style="list-style-type: none"> <li>a. set up pilot Australian First Nations' embassies in their worlds, e.g. by way of land grants; and</li> <li>b. co-design virtual land, tokens etc. to promote awareness and connection to the history, culture and spiritual traditions of First Nations Australians, while preserving their intellectual property and creative rights.</li> </ul> <p>Undertake First Nations focus groups to determine what should form part of the operations of the pilot Australian First Nations' embassies.</p> <p>Investigate ways of decentralising governance to increase participation, transparency and security in voting on the operations of any Australian First Nations' embassy.</p> |
| <b>1-2 years</b> | <p>Set up a DAO or other best practice platform/structure to facilitate the operations of all First Nations' embassies including establishing economic and cultural partnerships with other Sovereign States and non-First Nations' communities.</p> <p>Create a cultural curriculum for the users of the metaverse and run educational programs through partnerships with schools and universities with the aim of ensuring that those that engage in the metaverse will do so with respect and understanding of First Nations' spiritual and cultural history.</p>   |
| <b>3-5 years</b> | <p>Establish First Nations' embassies in all major metaverse worlds.</p> <p>Survey users, students of the educational programs and contributors to the First Nations' embassies.</p> <p>Publish a report on the operations of the Australian First Nations' embassies.</p>   |

## APPENDIX B

### B.1 Native Title and Aboriginal Land Rights

First Nations Australians have a 65,000 year continuous history with the land and this "connection to land is essential to the continued cultural survival of Australia's First Peoples as well as their economic and social development."<sup>14</sup> In 2020, Rodney Carter, chairperson of the Victorian Aboriginal Heritage Council explained this connection to country:<sup>15</sup>

*As custodians of the oldest living culture on earth, our people have an ancient lineal connection to country, to culture and to each other ... As traditional owners we have both inherited and we create cultural heritage. We create artefacts and materials, live traditions and spirituality, and imbed it all within the landscape ... That is why all country is sacred.*

This connection was interrupted by the colonisation of Australia.<sup>16</sup>

The ground-breaking High Court decision in *Mabo v Queensland (No 2)* (1992) 175 CLR 1 recognised for the first time in Australia's common law, this interruption, rejected the doctrine that Australia was terra nullius (land belonging to no-one) at the time of European settlement and recognised the existence of Native Title. In the plaintiffs' words, their reason for seeking redress through the Courts:<sup>17</sup>

Flo Kennedy:

*This is what would have happened to anyone who tried to take our lands in the early days. They would have had their heads taken off with a bamboo knife though.*

*But today we have to use their kind of weapons, so we took them to court.*

Father Dave Passi:

*It's my father's land, it's my grandfather's land, my grandmother's land... where I'm related to it. And, ah... which also gives me my identity. Ah. If I don't fight for it, then... ah... I will be moved out of it and that will be loss of my identity. Therefore, I'm fighting very hard in that case. That's why I became a plaintiff.*

Eddie Koiki Mabo:

*If only we can get those people to recognise us... I suppose by saying that, that the only way that we can prove that the system do exist is to convince the white man's law system to recognize that we have a custom, a tradition and set of rules that we have to abide by.*

<sup>14</sup> Australian Institute of Aboriginal and Torres Strait Islander Studies, 'Land Rights', *Reuters*, <https://aiatsis.gov.au/explore/land-rights>.

<sup>15</sup> Reuters Staff, 'Explainer: What is an Aboriginal sacred site in Australia?', 9 December 2020, <https://www.reuters.com/article/us-australia-mining-indigenous-explainer-idINKBN28J0U5>.

<sup>16</sup> See Eddie Koiki Mabo, *The Torres Strait Islander Community*, Race and Culture course lectures, 1982, James Cook University, Townsville, QLD, Australia, <https://nqheritage.jcu.edu.au/757/>.

<sup>17</sup> The Native Title Revolution, Mabo, The Plaintiffs, [https://www.mabonativetitle.com/mabo\\_02.shtml](https://www.mabonativetitle.com/mabo_02.shtml).

Consequent to that decision, the *Native Title Act 1993* (Cth) was enacted to provide for the recognition and protection of Native Title – to provide a statutory mechanism for recognition of Native Title and processing of claims. The Preamble of the *Native Title Act 1993* (Cth) acknowledged that Aboriginal peoples and Torres Strait Islanders were the inhabitants of Australia before European settlement and had been without compensation progressively dispossessed of their lands.

However, to successfully make a claim, a Native Title claim group must demonstrate that the acknowledgement and observance of traditional laws and customs have continued substantially uninterrupted since sovereignty (capable of being recognised by the common law of Australia).<sup>18</sup> Forced systematic dispossession of First Nations peoples make it difficult to prove the existence of Native Title. The Preamble to the Act recognised that many Aboriginal peoples and Torres Strait Islanders, because they have been dispossessed of their traditional lands, will be unable to assert Native Title rights and interests under the Act and that a special fund needs to be established to assist them to acquire land. Compensation is also available under the Act (sections 23J and 50(2) subject to the criteria described in section 51), however, how is it possible to compensate the loss of a 65,000 spiritual connection to your land, to your sacred sites. Can such a loss be accurately quantified or compensated?<sup>19</sup>

Further, Native Title is usually non-exclusive, meaning that holders of the title do not have the right to control access/use of the area but may have procedural rights with regards to future acts (Part 1, Division 3). It is a collection of rights and interests; and the content varies because it depends on the traditional laws and customs from which they are derived. For example, these rights may include the right to camp, hunt, use water, hold meetings, perform ceremony **and/or** protect cultural sites.<sup>20</sup>

As of 30 September 2015, Native Title had been recognised over approximately 2,469,647 km<sup>2</sup> or about 32% of the Australian land mass.<sup>21</sup> In 2016, Chairperson of the Indigenous Land and Sea Corporation, Eddie Fry, in a speech to the National Native Title Conference (2016), said:

*To begin, I want to ask you what kind of Australia do you dream of for you and your loved ones to live in, and what kind of people do you dream of who will live in that ideal society?*

*In 1770, when Captain James Cook looked out at the coastline of eastern Australia, he was looking at land that our ancestors had tended for more than 50,000 years.  
Native Title: ABSOLUTE*

<sup>18</sup> See section 223(1) of the *Native Title Act 1993* (Cth).

<sup>19</sup> Should the value of non-exclusive native title rights and interests be no more than 50 per cent of freehold value? See *Northern Territory v Griffiths* (2019) 269 CLR 1 where Kiefel CJ and Bell, Keane, Nettle and Gordon JJ, at p. 66 [106] explained:

*...But here, given the native title was devoid of rights of admission, exclusion and commercial exploitation, a correct application of principle dictates on any reasonable view of the matter that those non-exclusive native title rights and interests, expressed as a percentage of freehold value, could certainly have been no more than 50 per cent. The Full Court's estimate of 65 per cent was plainly so high relative to the limited extent of the native title rights and interests as to bespeak error of principle. That is so notwithstanding that the Full Court included inalienability as a discounting factor in its estimate.*

<sup>20</sup> See *Akiba v The Commonwealth* (2013) 250 CLR 209: Held that legislative prohibitions on commercial fishing without a licence had not extinguished the relevant native title rights and interests.

<sup>21</sup> Australian Trade and Investment Commission, 'Native Title', <https://www.austrade.gov.au/land-tenure/native-title/native-title>. See also Australian Law Reform Commission, 'Land rights and native title in the states and territories', 22 May 2015, <https://www.alrc.gov.au/publication/connection-to-country-review-of-the-native-title-act-1993-cth-alrc-report-126/3-context-for-reform/land-rights-and-native-title-in-the-states-and-territories/>.

*Our forebears lived in close-knit local societies with their own lore and laws.*

*They used complex, country-wide systems of land management.*

*These systems of land management can be recognised in enough different places to say that the system was universal, that it was a single estate.*

*We would argue: The biggest estate on earth – the Indigenous Estate.*

It is estimated that Australia's Indigenous Estate (comprising assets held by or for the benefit of Aboriginal and Torres Strait Islander people and includes tangible assets (lands and waters) and intangible assets (cultural and intellectual property rights, and environmental and biosciences practices), currently make up more than 40% of Australia's land mass (and up to 60% when you factor in currently unresolved land claims).<sup>22</sup>

In addition to the Native Title Act, States and Territories have their own statutory regimes that legislate the land rights of Aboriginal and Torres Strait Islander peoples in their jurisdiction. For example, Aboriginal Land Councils can make claims, depending on the state or territory legislation, over Crown land not in use, owned by someone else or the subject to a registered Native Title claim or determination, for unalienable freehold title without needing to prove a traditional connection.

Many of these regimes were in place before the enactment of the Native Title Act. By way of example, the *Aboriginal Land Rights Act (Northern Territory) 1976* (Cth), was the first land claim process for Traditional Owners established in Australia (following recommendations of the Woodward Royal Commission). Aboriginal sacred sites are recognised and protected under the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Northern Territory Aboriginal Sacred Sites Act 1989* (Cth). As of 2015, AIATSIS reported that approximately 50% of land and 85% of the coastline in the Northern Territory is now Aboriginal land granted under the Act.<sup>23</sup> In 2005, the ABC reported that North-west Victorian First Nations groups were considering withdrawing Native Title claims in favour of land justice settlements.<sup>24</sup> In 2010, Victoria enacted the *Victorian Traditional Owner Settlement Act 2010* (Vic) provides for out-of-court settlement of Native Title, allowing the Victorian Government to recognise Traditional Owners and certain rights in Crown land (which could include grants of land in freehold title for cultural or economic purposes) in exchange for Traditional Owners agreeing to withdraw any Native Title claims and not to make any future claims.<sup>25</sup>

In Western Australia, the Aboriginal Lands Trust established under section 20 of the *Aboriginal Affairs Planning Authority Act 1972* (WA), was responsible for approximately 24 million hectares or 9.65 percent of the State's land mass.<sup>26</sup> However, it was only in 2017 that the State Government committed to divest 311 properties (approximately 22 million hectares or about 8.7 percent of the State's land mass) held in the Aboriginal Lands Trust estate to

<sup>22</sup> PWC Indigenous Consulting, 'Joining the dots: ESG and the Indigenous Estate', The Mandarin, 28 January 2022, <https://www.themandarin.com.au/178372-joining-the-dots-esg-and-the-indigenous-estate/>.

<sup>23</sup> Australian Institute of Aboriginal and Torres Strait Islander Studies, 'Native Title Information Handbook Northern Territory', 2016, p 3 [https://aiatsis.gov.au/sites/default/files/research\\_pub/native\\_title\\_information\\_handbook\\_2016\\_nt\\_2.pdf](https://aiatsis.gov.au/sites/default/files/research_pub/native_title_information_handbook_2016_nt_2.pdf).

<sup>24</sup> 'Land justice settlements may replace native title claims', ABC News, 9 March 2005, <https://www.abc.net.au/news/2005-03-09/land-justice-settlements-may-replace-native-title/1531944>.

<sup>25</sup> Victoria State Government, <https://www.justice.vic.gov.au/your-rights/native-title/traditional-owner-settlement-act-2010#:~:text=The%20Victorian%20Traditional%20Owner%20Settlement,certain%20rights%20in%20Crown%20land> and <https://content.legislation.vic.gov.au/sites/default/files/2020-12/10-62aa025%20authorised.pdf>.

<sup>26</sup> Government of Western Australia, Aboriginal Affairs Planning Authority, 'Annual Report 2018/19' [https://www.dph.wa.gov.au/getmedia/aaa1fc2a-369d-46f1-b357-03b539684138/AR\\_AAPA\\_Annual\\_Report\\_2018-19](https://www.dph.wa.gov.au/getmedia/aaa1fc2a-369d-46f1-b357-03b539684138/AR_AAPA_Annual_Report_2018-19).

appropriate Aboriginal organisations – to increase direct Aboriginal control of land. As of 30 June 2021, only 53 properties were approved for divestment and only five properties had been transferred.<sup>27</sup>

In 2018, in an interview for The Age's investigative podcast *Wrong Skin*, the Hon. Michael Kirby raised the idea of a national fund *"to provide for the economic benefits of Aboriginals who can't prove [Native Title] ... But until we somehow resolve the economic injustices that have been suffered by the Indigenous people and have a second chance to re-establish relationships between all people in Australia on the basis of equity and justice, we are not going to see Aboriginal advancement to true equality in the country."*<sup>28</sup> In 2018, six Indigenous Land Use Agreements, comprising Western Australia's South West Native Title Settlement (including return of land to the Noongar Boodja Trust, 12 payments of \$50 million a year into a trust and 12 payments of \$10 million a year into an operations fund) was registered on the National Register; and commenced on 25 February 2021.<sup>29</sup>

Post *Northern Territory v Griffiths* (2019) 269 CLR 1 (Timber Creek), where the High Court of Australia awarded compensation of \$1.3 million for economic loss and for the loss of cultural and spiritual relationship with the relevant land, several compensation claims have been launched, but not all have taken off. In March 2021, the Federal Court of Australia struck out the compensation claims of the Bigambul People and Kooma People for failing to identify any compensable acts (*Saunders on behalf of the Bigambul People v State of Queensland (No 2)* [2021] FCA 190 and *Wharton on behalf of the Kooma People v State of Queensland* [2021] FCA 191). The most promising of these claims appears to be – In 2019, First Nations leader Dr Galarrwuy Yunupingu filed a Native Title compensation claim for approximately \$700 million on behalf of the Gumatj Clan claiming that the Commonwealth failed to act *"on just terms"* when land in the Gove Peninsula was acquired in 1969 to build a mine without properly consulting with the land owners (NTD43/2019).<sup>30</sup>

The simple fact is that 30 years after *Mabo*, the common law, legal actions and statutory regimes are still trying and failing for the most part to rectify historic injustices. It is time to examine new tools and new approaches.

There is precedent. In New Zealand, the Whanganui Maori iwi won a 140 year legal battle that resulted in their ancestral Whanganui river being bestowed with legal personhood. New Zealand passed a historic bill (Royal Assent on 20 March 2017) to recognise the special relationship between the Whanganui River and Whanganui iwi, clause 14:

<sup>27</sup> Government of Western Australia, 'Annual Report 2020/21', p 24 [https://www.wa.gov.au/system/files/2021-10/DPLH-1-%20Annual\\_Report\\_2020-21.pdf](https://www.wa.gov.au/system/files/2021-10/DPLH-1-%20Annual_Report_2020-21.pdf).

<sup>28</sup> As reported by Richard Baker, 'This will mean moolah': former High Court judge calls for cash for Indigenous families', *The Sydney Morning Herald*, 24 July 2018, <https://www.smh.com.au/politics/federal/this-will-mean-moolah-former-high-court-judge-calls-for-cash-for-indigenous-families-20180723-p4zt1h.html#:~:text=Wrong%20Skin%20Investigation-.%20This%20will%20mean%20moolah%3A%20former%20High%20Court%20judge%20calls,for%20cash%20for%20Indigenous%20families&text=This%20will%20mean%20cash%20out.is%20very%20controversial%20in%20Australia.>

<sup>29</sup> South West Native Title Settlement: Indigenous Land Use Agreements, <https://www.wa.gov.au/government/publications/south-west-native-title-settlement-indigenous-land-use-agreements>. See also Office of the Minister, Hon Ben Wyatt LLB MSc MLA, 'Media Statement: High Court clears the way for historic South West Native Title Settlement to proceed', 26 November 2020, <https://www.mediastatements.wa.gov.au/Pages/McGowan/2020/11/High-Court-clears-the-way-for-historic-South-West-Native-Title-Settlement-to-proceed.aspx>; <https://cdn.hcourt.gov.au/assets/registry/special-leave-results/2020/26-11-20ResultsMei.pdf>.

<sup>30</sup> Oliver Gordon and Lauren Roberts, 'Yolngu leader files \$700 million compensation claim over Gove Peninsula', ANC News, 30 November 2019, <https://www.abc.net.au/news/2019-11-30/galarrwuy-yunupingu-gove-penninsula-compensation-claim/11752454>. See also [http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/details.aspx?NTDA\\_FileNo=DC2019/007](http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/details.aspx?NTDA_FileNo=DC2019/007).



*Te Awa Tupua declared to be legal person*

- (1) *Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person.*
- (2) *The rights, powers, and duties of Te Awa Tupua must be exercised or performed, and responsibility for its liabilities must be taken, by Te Pou Tupua on behalf of, and in the name of, Te Awa Tupua, in the manner provided for in this Part and in Ruruku Whakatupua—Te Mana o Te Awa Tupua.*

Sovereign governments are negotiating deals with metaverse platforms for “sovereign virtual land”. CoinDesk reported in late 2021 that the Barbadian Ministry of Foreign Affairs and Foreign Trade had signed an agreement on Sunday with Decentraland, to establish a digital embassy and was in the process of finalising agreements with “*Somnium Space, SuperWorld and other Metaverse platforms*”.<sup>31</sup> Gabriel Abed, Barbados’ ambassador to the United Arab Emirates, the man behind Barbados’ digital-diplomacy push, stated that Barbados’ diplomatic compound would likely cost anywhere from \$5,000 to \$50,000 to build, but that all the expenses were being covered by a “*five-figure*” grant from Decentraland while explaining:<sup>32</sup>

*This is about diplomatic parity. We simply cannot support 197 diplomatic missions around the world ...We recognize that we’re a 166-square mile island – we’re tiny – but in the metaverse we’re as large as America or Germany.*

The city of Seoul is seeking to become one of the first municipal governments with a full-service virtual world where citizens will be able to make reservations at city-run facilities, visit re-creations of destroyed historical sites, file administrative complaints with city bureaucrats and visit cultural heritage sites,<sup>33</sup> dedicating 345.9 billion won to the metaverse and other digitisation projects.<sup>34</sup>

## B.2 Heritage protection

In theory, there is added protection in legislation to protect and preserve First Nations sites of significant cultural or spiritual significance that provide First Nations peoples with an important link to their present and past culture. However, in practice, this legislative protection has not always resulted in real protection.

In 2020, Rio Tinto destroyed a 46,000 year old sacred site at Juukan Gorge, in the Pilbara region, which had continued human occupation through the last ice age, for an iron ore mine.<sup>35</sup> The Juukan George held spiritual rights and passages of Lore for First Peoples. In December

<sup>31</sup> Andrew Thurman, "Barbados to Become First Sovereign Nation With an Embassy in the Metaverse", *CoinDesk*, 15 November 2021, <https://www.coindesk.com/business/2021/11/15/barbados-to-become-first-sovereign-nation-with-an-embassy-in-the-metaverse/>.

<sup>32</sup> Jim Wyss, "Barbados Is Opening a Diplomatic Embassy in the Metaverse", *Bloomberg News – Technology*, 14 December 2021, <https://www.bnnbloomberg.ca/barbados-is-opening-a-diplomatic-embassy-in-the-metaverse-1.1695625>.

<sup>33</sup> Michelle Ye Hee Lee, "Seoul wants to build a metaverse. A virtual New Year's Eve ceremony will kick it off", *The Washington Post*, 28 November 2021, [https://www.washingtonpost.com/world/asia\\_pacific/metaverse-seoul-virtual/2021/11/27/03928120-4248-11ec-9404-50a28a88b9cd\\_story.html](https://www.washingtonpost.com/world/asia_pacific/metaverse-seoul-virtual/2021/11/27/03928120-4248-11ec-9404-50a28a88b9cd_story.html).

<sup>34</sup> Yonhap, "Seoul to invest W345.9b in metaverse, other digitization projects in 2022", *The Korea Herald*, 13 January 2022, [https://www.koreaherald.com/view.php?ud=20220113000545#:~:text=9b%20in%20metaverse%2C%20other%20digitization%20projects%20in%202022,-By%20Yonhap&text=The%20Seoul%20city%20government%20said.and%20artificial%20intelligence%20\(AI\)](https://www.koreaherald.com/view.php?ud=20220113000545#:~:text=9b%20in%20metaverse%2C%20other%20digitization%20projects%20in%202022,-By%20Yonhap&text=The%20Seoul%20city%20government%20said.and%20artificial%20intelligence%20(AI)).

<sup>35</sup> Serge Negus, Tom Forrest and Meghna Bali, 'How our laws allow the destruction of Indigenous sacred sites', *ABC News*, 7 July 2021, <https://www.abc.net.au/triplej/programs/hack/how-our-laws-allow-the-destruction-of-sacred-indigenous-sites/13435592>.



2020, the Joint Standing Committee on Northern Australia, in the report, 'Never Again', identified at p vi:<sup>36</sup>

*Rio Tinto's role in this tragedy is inexcusable. Rio knew the value of what they were destroying but blew it up anyway. It pursued the option of destroying the shelters despite having options which would have preserved them. Rio knew of the site's archaeological significance and its cultural significance to the PKKP. It had funded studies which had uncovered some 7,000-odd artefacts, including a four thousand year old human hair belt that linked the site directly to the ancestors of the current Traditional Owners.*

The 'Never Again' report (at p 12) was critical of what it described as the inadequacy of current Commonwealth protections under both the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) because:

*The process for Traditional Owners to access the protections in either Act is complex and often unsuccessful. The limited number of declarations made under ss. 9 and 10 of the ATSIHP Act and the small number of sites added to the National Heritage List primarily for their Indigenous values demonstrate how rarely these Acts have been used to effectively protect First Nations heritage.*

The ABC reported that between 2017-2021, the mining industry made 144 requests to the Western Australian Government to impact heritage sites – only one request was rejected.<sup>37</sup> Since Juukan Gorge was destroyed, 22 requests have been granted (and only one was rejected).<sup>38</sup>

In November 2021, the *Aboriginal Cultural Heritage Bill 2021* (WA)<sup>39</sup> passed both houses of the Western Australian Parliament (yet to receive Royal Assent), repealing the *Aboriginal Heritage Act 1972* (WA), including section 18, being the provision under which approval was given to Rio Tinto to blow up the Juukan Gorge. However, the lack of consultation has caused concern around Australia, specifically of concern is that the due diligence process is left in the hands of the proponents rather than the affected First Nations stakeholders, the Minister is allowed to override the refusal of Traditional Owners to give consent and the bill preserves section 18 proposals for another ten years. It has been reported that Rio Tinto holds more than 1,000 such approvals.<sup>40</sup>

<sup>36</sup> Parliament of the Commonwealth of Australia, Joint Standing Committee on Northern Australia, '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', [https://parliinfo.aph.gov.au/parliInfo/download/committees/reportjnt/024579/toc\\_pdf/NeverAgain.pdf.fileType=application%2Fpdf](https://parliinfo.aph.gov.au/parliInfo/download/committees/reportjnt/024579/toc_pdf/NeverAgain.pdf.fileType=application%2Fpdf).

<sup>37</sup> Serge Negus, Tom Forrest and Meghna Bali, 'How our laws allow the destruction of Indigenous sacred sites', *ABC News*, 7 July 2021, <https://www.abc.net.au/triplej/programs/hack/how-our-laws-allow-the-destruction-of-sacred-indigenous-sites/13435592>.

<sup>38</sup> Ibid; Karen Michelmore, 'BHP tells parliamentary inquiry it was granted approval to destroy Aboriginal heritage sites in the Pilbara', *ABC News*, 17 September 2020, <https://www.abc.net.au/news/2020-09-17/bhp-gives-evidence-at-juukan-gorge-inquiry/12672628>.

<sup>39</sup> WA Government, *Aboriginal Cultural Heritage Act 2021*, <https://www.wa.gov.au/government/document-collections/aboriginal-cultural-heritage-act-2021>. See also <https://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=F761A1DBBD9832A04825878F001FCB97>.

<sup>40</sup> Lorena Allam, 'Rio Tinto still has 1,780 approvals to destroy Aboriginal sacred sites, Juukan Gorge inquiry told', *The Guardian*, 16 October 2020, <https://www.theguardian.com/australia-news/2020/oct/16/rio-tinto-still-has-1780-approvals-to-destroy-aboriginal-sacred-sites-juukan-gorge-inquiry-told>.

Heritage protection of sacred and/or spiritual sites needs to be in the hands of the people whose spiritual and cultural connection with the land make it both their duty and right. The metaverse provides an opportunity to ground its sustainability in respect to the spiritual realm, instead of merely reacting to past injustices by imperfect and often ineffectual 'protections' of sacred sites, more inclusive, diverse and equitable worlds can be created in the metaverse.

