



## SUBMISSION

# **An inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia**

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**Commonwealth Joint Standing Committee on  
Northern Australia**

**07 August 2020**

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## **SCOPE OF SUBMISSION**

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Fortescue Metals Group Ltd (**Fortescue**) acknowledges the Joint Standing Committee on Northern Australia (the **Committee**) inquiry into the destruction of Indigenous heritage sites at Juukan Gorge (the **Inquiry**). Fortescue makes this submission in response to the Chair of the Committee's letter of invitation to make a submission dated 18 June 2020.

Fortescue makes no submission on, or in response to, the Inquiry's terms of reference that relate to the Juukan Gorge incident because Fortescue has no direct knowledge of the facts of that matter. Fortescue's submission responds to the terms of reference that are listed at (a), (f) -(j), namely:

- (a) the operation of the Aboriginal Heritage Act 1972 (WA) and approvals provided under the Act;
- (f) the interaction, of state indigenous heritage regulations with Commonwealth laws;
- (g) the effectiveness and adequacy of state and federal laws in relation to Aboriginal and Torres Strait Islander cultural heritage in each of the Australian jurisdictions;
- (h) how Aboriginal and Torres Strait Islander cultural heritage laws might be improved to guarantee the protection of culturally and historically significant sites;
- (i) opportunities to improve indigenous heritage protection through the Environment Protection and Biodiversity Conservation Act 1999; and
- (j) any other related matters.

## **A. EXECUTIVE SUMMARY**

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1. Fortescue has built excellent relationships with Aboriginal People across the Pilbara region of Western Australia built on deep engagement, mutual respect and the agreement-making process of seven comprehensive Native Title Agreements.
2. Among other things, the Native Title Agreements facilitate the identification and protection of significant Aboriginal cultural heritage through Aboriginal Cultural heritage surveys. As a result of these surveys, Fortescue and native title holders have surveyed 2.5 million km<sup>2</sup> of land and identified and protected over 5900 cultural heritage places. Fortescue submits that this extensive protection is evidence that the State cultural heritage protection regime is largely successful.
3. Fortescue has extensive mechanisms in place that identify, promote and protect Aboriginal cultural heritage across our operations. These mechanisms, combined with the close on-the-ground relationships between Fortescue team members and local Traditional Knowledge Holders provide a number of fail-safes to ensure the protection of, and mitigate the risk of ill-considered damage to, important Aboriginal cultural heritage.



4. Fortescue supports the modernisation of the WA Aboriginal Heritage Act. In particular, Fortescue acknowledges and supports the State Government's policy objectives of achieving:
  - an enhanced focus on agreement-making between Aboriginal people and developers on land;
  - preserving a role for Government in making decisions that balance the preservation of heritage and the broader public interest in jobs and growth, in circumstances where agreement cannot be reached about a development that may or will impact cultural heritage;
  - an increased voice for Aboriginal people in the heritage process; and
  - equitable rights of appeal to all parties in the heritage process.
5. Fortescue does not support the imposition of additional Federal heritage regulation on Western Australian resources projects. Our experience is that duplication of Federal and State law over the same subject matter does not lead to substantively better outcomes, but does result in increased cost, uncertainty and delay.
6. Aboriginal people have occupied the Pilbara region for at least 50,000 years. The land is replete with evidence of this occupation in the form of tangible and intangible Aboriginal cultural heritage. Fortescue recognises that we are privileged to operate in this environment and we take our legal and ethical responsibilities in this regard extremely seriously.
7. Fortescue is proud of the role that we have played, in partnership with our native title partners, in recognising, promoting and protecting significant Aboriginal cultural heritage while building a company that has created thousands of Australian jobs and contributed significantly to the prosperity of our State and our Nation.

## **B. BACKGROUND**

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8. A proud West Australian company listed on the Australian Securities Exchange, Fortescue Metals Group Ltd is a global leader in the iron ore industry, recognised for our unique culture and Values and industry-leading development of infrastructure and assets in the Pilbara, Western Australia.
9. Since Fortescue was established by our Founder and Chairman Dr Andrew Forrest AO in 2003, we have discovered and developed major iron ore deposits, constructed some of the most globally significant iron ore mines and have grown to be one of the world's largest producers of iron ore. As one of the world's largest producers of iron ore, Fortescue's wholly owned and integrated operation in the Pilbara includes the Chichester and Solomon mining hubs and the Western Hub, which is currently under development. Our mining infrastructure



is connected to the wholly owned five berth Herb Elliott Port and Judith Street Harbour towage facility in Port Hedland via the fastest, heavy haul railway in the world.

10. In the first 15 years since Fortescue was established (2003 – 2018) we invested US\$22 billion in our world class infrastructure and assets. Over the last two years, we have announced a further investment of US\$3.875 billion in the Eliwana Mine and Rail and Iron Bridge growth projects, and together with our partners, an investment of US\$800 million in energy infrastructure.
11. Fortescue's commitment to Aboriginal Australians is unparalleled. We employ, directly and indirectly, approximately 13,000 people and are proud to be one of Australia's largest employers of Aboriginal people. As at 31 March 2020, 857 of our Fortescue team mates are Aboriginal people, representing 11 per cent of our total Australian workforce and 15 per cent of employees at our Pilbara operational sites.
12. Fundamental to the provision of meaningful employment is the ongoing development of our Aboriginal workforce through sustainable career opportunities. Since 2006, over 900 Aboriginal people have been offered full-time employment through our pioneering Vocational Training and Employment Centre program. Currently, almost 50 per cent of our apprentices are Aboriginal.
13. Since the inception of our Billion Opportunities Aboriginal procurement program in 2011, Fortescue has awarded contracts and sub-contracts worth over A\$2.5 billion to over 120 Aboriginal businesses and joint venture partners.
14. Fortescue is a party to seven native title Land Access Agreements; three of these agreements are underpinned by registered Indigenous Land Use Agreements (together, **native title agreements: NTAs**). The NTAs were entered into between Fortescue and native title claimants (**native title claimants: NTCs**) across the Pilbara region of Western Australia between 2005 and 2017. The NTAs provide a range of benefits including vocational training and job opportunities with Fortescue, commercial contracting arrangements and compensation in return for the temporary suppression of Native Title rights during mining.
15. Importantly, the NTAs set out detailed processes, procedures and principles for the identification, management and protection of significant Aboriginal cultural heritage.
16. For example, the agreements set out procedures for, *inter alia*, the organisation and facilitation of Aboriginal cultural heritage surveys conducted by independent professionally qualified heritage consultants and Traditional Knowledge Holders nominated by the NTCs. The primary purpose of an Aboriginal Heritage Survey is the identification of Aboriginal Cultural Heritage on the land.



17. Through the heritage survey process, Fortescue and our native title partners have conducted Aboriginal heritage surveys across over 2.5 million km<sup>2</sup> of land and identified and protected over 5900 cultural heritage places. Many of these places were estranged to the contemporary NTCs until they were rediscovered during the Aboriginal Heritage Survey process funded by Fortescue.
18. Fortescue is proud to play a role in this significant process which adds to NTCs' cultural knowledge and self-determination. Fortescue submits that this extensive survey and protection process is evidence that the Western Australian statutory Aboriginal Heritage regime has been largely successful in protecting important Aboriginal cultural heritage.

### **C. ABORIGINAL CULTURAL HERITAGE: LEGISLATIVE AND REGULATORY FRAMEWORK**

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19. In Western Australia, places of Aboriginal heritage are primarily protected by the Aboriginal Heritage Act (AHA). That legislation is administered by the Western Australian Department of Planning, Lands and Heritage (**DPLH**). (In interpreting the following it may assist the Committee to note that prior to April 2017, DPLH was named "Department of Aboriginal Affairs" and often referred to by the acronym "DAA".)
20. In *Robinson -v- Fielding* [2015] WASC 108, in a case involving the Pilbara Ports Authority (PPA) and Traditional Knowledge Holders in the Pilbara, Justice Chaney described the AHA as follows:

7        *The AH Act is 'an Act to make provisions for the preservation on behalf of the community of places and objects customarily used by, or traditional to, the original inhabitants of Australia or their descendants, or associated therewith, and for other purposes incidental thereto'.*

8        *Section 5 describes the places to which the Act has application. It provides:*

#### **5. Application to places**

*This Act applies to -*

- (a) *any place of importance and significance where persons of Aboriginal descent have, or appear to have, left any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of the Aboriginal people, past or present;*
- (b) *any sacred, ritual or ceremonial site, which is of importance and special significance to persons of Aboriginal descent;*
- (c) *any place which, in the opinion of the Committee, is or was associated with the Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and should be preserved because of its importance and significance to the cultural heritage of the State;*



- (d) *any place where objects to which this Act applies are traditionally stored, or to which, under the provisions of this Act, such objects have been taken or removed.*

9 *The expression 'Aboriginal site' is defined to mean a place to which the Act applies by the operation of s 5.*

10 *The Aboriginal Cultural Materials Committee (ACMC) is established by s 28 of the AH Act. Section 39 sets out the functions of the Committee as follows:*

### **39. Functions of the Committee**

(1) *The functions of the Committee are -*

- (a) *to evaluate on behalf of the community the importance of places and objects alleged to be associated with Aboriginal persons;*
- (b) *where appropriate, to record and preserve the traditional Aboriginal lore related to such places and objects;*
- (c) *to recommend to the Minister places and objects which, in the opinion of the Committee, are, or have been, of special significance to persons of Aboriginal descent and should be preserved, acquired and managed by the Minister;*

*[(d) deleted]*

- (e) *to advise the Minister on any question referred to the Committee, and generally on any matter related to the objects and purposes of this Act;*
- (ea) *to perform the functions allocated to the Committee by this Act; and*
- (f) *to advise the Minister when requested to do so as to the apportionment and application of moneys available for the administration of this Act.*

(2) *In evaluating the importance of places and objects the Committee shall have regard to -*

- (a) *any existing use or significance attributed under relevant Aboriginal custom;*
- (b) *any former or reputed use or significance which may be attributed upon the basis of tradition, historical association, or Aboriginal sentiment;*
- (c) *any potential anthropological, archaeological or ethnographical interest; and*



(d) *aesthetic values.*

(3) *Associated sacred beliefs, and ritual or ceremonial usage, in so far as such matters can be ascertained, shall be regarded as the primary considerations to be taken into account in the evaluation of any place or object for the purposes of this Act.*

11 *Section 37 establishes the position of Registrar of Aboriginal Sites, whose function it is to administer the day to day operations of the ACMC and perform other functions allocated by the AH Act. Section 38 requires that the Registrar, so far as practicable, is to maintain a register of all places and objects to which the AH Act applies.*

12 *Section 17 makes it an offence for any person to excavate, destroy, damage, conceal, or in any way alter, any Aboriginal site unless that person is acting with the authorisation of the Registrar under s 16 or with the consent of the Minister under s 18. Section 16 permits the Registrar, on the advice of the ACMC, to interfere with Aboriginal sites.*

13 *Section 18 provides for the owner of land to obtain consent from the Minister to use land for a purpose which would otherwise breach s 17. PPA is an owner of land for the purposes of s 18. Section 18(2) and s 18(3) provide:*

**18. Consent to certain uses**

...

(2) *Where the owner of any land gives to the Committee notice in writing that he requires to use the land for a purpose which, unless the Minister gives his consent under this section, would be likely to result in a breach of section 17 in respect of any Aboriginal site that might be on the land, the Committee shall, as soon as it is reasonably able, form an opinion as to whether there is any Aboriginal site on the land, evaluate the importance and significance of any such site, and submit the notice to the Minister together with its recommendation in writing as to whether or not the Minister should consent to the use of the land for that purpose, and, where applicable, the extent to which and the conditions upon which his consent should be given.*

(3) *Where the Committee submits a notice to the Minister under subsection (2) he shall consider its recommendation and having regard to the general interest of the community shall either -*

(a) *consent to the use of the land the subject of the notice, or a specified part of the land, for the purpose required, subject to such conditions, if any, as he may specify; or*





(b) wholly decline to consent to the use of the land the subject of the notice for the purpose required,

and shall forthwith inform the owner in writing of his decision.

14 Section 18(5) provides a right to the owner of any land who is aggrieved by the decision of the Minister to apply to the State Administrative Tribunal for a review of the decision.

21. There are six further matters of highlight:

i. to assist the ACMC to undertake the function prescribed by the AHA (and for the broader purposes set out below), Fortescue provides the ACMC with detailed reports of Aboriginal heritage surveys conducted over the land the subject of any notice pursuant to s 18(3) AHA. That approach has been endorsed by the Supreme Court of Western Australia. In *Robinson -v- Fielding* [2015] WASC 108 at [139], Justice Chaney stated:

*It is clear from the course of conduct illustrated by the treatment of the various s 18 notices which have been discussed earlier in these reasons that the ACMC recognises the need to have information from the affected Aboriginal groups as to the existence, significance and importance of sites which might be affected by proposed works. That requirement appears generally to have been met by the provision of anthropological reports commissioned and provided by the s18 proponent. That approach is an appropriate and practical way of addressing the performance of the ACMC's statutory function under s 18.*

- ii. the offence created by s 17 AHA is a “strict liability” offence;
- iii. the penalties prescribed by the AHA are severe. Section 57 of the AHA provides in part as follows:

#### **57. Penalties**

- (1) A person who commits an offence against this Act for which no penalty is specifically provided is liable, on summary conviction —
  - (a) in the case of an individual, to —
    - (i) for a first offence, \$20,000 and imprisonment for 9 months; and
    - (ii) for a second or subsequent offence, \$40,000 and imprisonment for 2 years,and in any case, to a daily penalty of \$400; and
  - (b) in the case of a body corporate, to —
    - (i) for a first offence, \$50,000; and



- (ii) for a second or subsequent offence, \$100,000,  
and in any case, to a daily penalty of \$1,000.

- (2) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to have committed that offence and is liable to be proceeded against and punished accordingly.

- iv. s 62 AHA creates a special defence. It provides as follows:

**62. Special defence of lack of knowledge**

In proceedings for an offence against this Act it is a defence for the person charged to prove that he did not know and could not reasonably be expected to have known, that the place or object to which the charge relates was a place or object to which this Act applies.

- v. s 15 AHA mandates the compulsory reporting of Aboriginal sites. It provides as follows:

**15. Report of findings**

Any person who has knowledge of the existence of any thing in the nature of Aboriginal burial grounds, symbols or objects of sacred, ritual or ceremonial significance, cave or rock paintings or engravings, stone structures or arranged stones, carved trees, or of any other place or thing to which this Act applies or to which this Act might reasonably be suspected to apply shall report its existence to the Registrar, or to a police officer, unless he has reasonable cause to believe the existence of the thing or place in question to be already known to the Registrar.

- vi. whilst not mandated by the AHA, DPLH request/direct that:

- any reporting in accordance with s 15 AHA be undertaken using DPLH's "Heritage Information Submission Form" or "HISF"; and
- a HISF be given to the Registrar where a place nominated in a notice pursuant to s 18 AHA is not registered on the Register of Aboriginal Places and Objects, or where new information is contained in a notice pursuant to s 18 AHA in respect of a place already registered on the Register of Aboriginal Places and Objects.



## **D. FORTESCUE'S APPROACH TO THE IDENTIFICATION AND PROTECTION OF ABORIGINAL HERITAGE**

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22. Fortescue values and respects Aboriginal cultural heritage and we support the self-determination of NTCs in relation to their cultural heritage. We work closely with NTCs to identify and understand the Aboriginal cultural heritage landscape of the environs in which we work. In addition to the heritage protection regime established under the native title agreements, and compliance with the provisions of the AHA, together with NTCs Fortescue has, since 2011, provided more than A\$5 million in support for heritage protection and promotion activities. Additionally, as noted above, across our exploration and operational footprint we have identified and now manage in excess of 5900 Aboriginal cultural heritage sites and places.

### **Induction**

23. Respect for Aboriginal cultural heritage is instilled in Fortescue employees and contractors from their earliest initial engagement, with every new employee undertaking a module on Aboriginal cultural heritage within the Fortescue induction program.
24. Additionally, at each operational minesite, every Fortescue employee and contractor must undertake a half-day Aboriginal Cross-Cultural Awareness Training (CCAT) program. This program is developed and delivered by Pilbara Aboriginal people and at most of our sites the program has been developed and is delivered by Elder representatives and NTCs of the land on which the site operates.
25. The Elders are often accompanied by a younger member of the group, fostering transference of knowledge from one generation to the next.
26. The course content covers an extensive range of topics and issues, including:
- Educating Fortescue personnel on Aboriginal cultural differences including social and cultural obligations;
  - Kinship system (Skin Groups);
  - Lore/culture, Aboriginal governance and protocol and Land ownership (language group; boundaries);
  - The deep connection of Aboriginal people to their traditional land and waters through their cultural identity;
  - History - particularly history of the Pilbara since the arrival of Europeans;
  - Native Title and heritage legislation; and
  - Aboriginal employment and education under Fortescue's Vocational Training and Employment Centre (VTEC).



27. CCAT is part of a broader, long-term program designed to break down misconceptions, encourage an environment at Fortescue that respects and promotes Aboriginal culture and heritage, and foster a corporate culture in which Aboriginal employees feel comfortable.
28. All inductions presented at Fortescue include content about Aboriginal heritage with a particular focus on the two key rules of heritage protection:
  - Don't drive off existing roads and tracks; and
  - Comply with the Land Use Certificate (**LUC**) conditions (see below for detail on the LUC system).

## **SYSTEMS AND PROCESSES**

29. Fortescue has in place a number of processes and procedures to ensure that Aboriginal cultural heritage in both exploration and project areas is effectively protected. Some examples of these are set out below.

### **Geospatial Information System**

30. Fortescue maintains a highly sophisticated Geospatial Information System (GIS) which includes records for all known Aboriginal cultural heritage including heritage data extracted from the DPLH Register of Aboriginal Sites, and all Aboriginal Cultural heritage identified through the Aboriginal heritage survey process and/or otherwise brought to Fortescue's attention by our native title partners.

### **Land Use Certificate System**

31. Fortescue's Heritage Department utilises Fortescue's Business Management System (BMS) to manage and record all ground disturbance, safety incidents, hazards and Aboriginal cultural heritage.
32. A key element of the BMS is the LUC process. The LUC is issued via Fortescue's geospatially enabled InfoScope system. No ground disturbance, or other land use on previously undisturbed ground, may occur on any Fortescue exploration or project area without the issue of a LUC.
33. An applicant for a LUC makes the application setting out the precise nature and location of the proposed land use.
34. Fortescue's heritage team will assess the LUC and may either:
  - Refuse the LUC;
  - Approve the LUC; or (most often)



- Approve the LUC subject to conditions.
35. The Heritage Department set LUC conditions based on a number of factors, including:
- the proximity of proposed works to identified Aboriginal cultural heritage locations;
  - specific Aboriginal cultural heritage in the vicinity of proposed works (i.e. type, cultural sensitivity);
  - the scope of ground disturbance works (i.e. level of impact, type of equipment to be used);
  - recommendations made by NTCs during Aboriginal heritage surveys over the area;
  - general recommendations/requests made by NTCs during consultations;
  - total area requested to be cleared (i.e. clearance of a communications tower pad versus the clearance of a mining pit);
  - extent of area requested to be cleared (i.e. multiple drill pads in a large project area; an initial access road along a rail centreline etc.);
  - the level of ongoing activity associated with ground clearance; and
  - natural barriers that may exist between the proposed ground clearance area and sites.
36. The overarching purpose of the conditions set by the heritage team is to ensure that Aboriginal cultural heritage is protected while mining, construction and/or exploration activities can safely proceed.
37. In this way, the heritage team provides a crucial link between NTC's, Traditional Custodians and the work of the operational teams.

### **Physical delineation of Aboriginal cultural heritage places**

38. The boundaries of Aboriginal cultural heritage places are determined by NTCs and heritage professionals during Aboriginal cultural heritage surveys. These initial boundaries are delineated using pink/black survey tape attached to shrubs and trees.
39. Following receipt of survey reporting (including GIS data confirmation of a boundary) the Fortescue heritage team return to the site and use handheld GPS units loaded with the site boundary to demarcate the site using star pickets with pink/black heritage caps. Pink and black flagging tape is often attached to the heritage caps to make these more visible to operational teams (see Figure 1). These star pickets are always pegged outside the identified boundary of the Site.
40. In some cases it may be determined that Aboriginal cultural heritage requires additional buffer to reduce the risk of impact from any future works; this may include sites such as rock

shelters, walled niches or other structurally sensitive sites. Any additional exclusion zone (buffer) is reflected in the GIS database as a Heritage Restricted Zone (see below).

41. Ethnographic site boundaries may not be physically demarcated due to their large size, however the GIS boundaries are reflected on all maps and included in LUC conditions to ensure the site is protected.



**Figure 1.**

### **Heritage Restricted Zones**

42. There are places on Fortescue's project areas with special significance to Aboriginal people. These places may or may not be sites registered under the AHA. Fortescue works in partnership with our native title partners to identify, protect and manage the places by using Heritage Restriction Zones (HRZs) and restricting personnel access to sites. HRZs operate as an additional layer of protection for the most sensitive places. Entry to HRZs is strictly controlled and Fortescue staff and contractors will be subject to disciplinary action, including dismissal, if the boundary of an HRZ is breached.

## **E. THE MINE DEVELOPMENT PROCESS**

43. The development of a mine is a multi-stage process, commencing with exploration and progressing to construction and operation and concluding with rehabilitation and closure.
44. Fortescue's exploration activities have historically avoided all known Aboriginal cultural heritage. In recent years, several extensive creek systems (collectively spanning many hundreds of kilometres) have been registered as Aboriginal Sites (Sites) under the AHA. In



order for our exploration vehicles to use and maintain existing crossings of ephemeral creeks, Fortescue has been required to apply for Ministerial consent to disturb these Sites. This impact is relatively minor (comprising less than 0.1% of the area of the registered Site) and temporary.

45. Our mining operations are designed and built on a site avoidance basis wherever this is achievable. For example, over the past 15 years, Fortescue has redesigned significant infrastructure such as railway lines, mining pits, waste dumps and tailings storage facilities to avoid impacts to Aboriginal cultural heritage.
46. Where avoidance cannot be achieved, Fortescue minimises the impact on Aboriginal cultural heritage to the greatest possible extent. Once this iterative process of heritage surveys, consultation and project redesign is concluded, decisions need to be made about Aboriginal cultural heritage sites and places that cannot be avoided and may (or will) be disturbed by our operations. In these circumstances, Fortescue must make application under s 18 of the AHA for Ministerial consent to disturb Aboriginal cultural heritage on the Land (s 18 consent).
47. Fortescue's NTAs set out a highly structured process including formal notification, consultation and (if requested by the native title partner) further on-site visits, that must be followed before Fortescue can apply for a s 18 consent.
48. It is therefore the case that applications for s 18 consent follow many years of consultation and are typically discussed at multiple meetings and always notified. The majority of Fortescue's applications for s 18 consent are accompanied by a voluntarily provided 'letter of non-objection' from the relevant native title group. Contested s 18 notice applications do occur, but these are the exception and the decision on these rests with the Minister.

## **F. PROPOSED REPEAL AND REPLACEMENT OF THE *ABORIGINAL HERITAGE ACT 1972 (WA)***

49. Fortescue is broadly supportive of the stated intent of the West Australian Government's proposed repeal of the *Aboriginal Heritage Act 1972* and its replacement with a new Aboriginal Heritage Act (NAHA). Fortescue has engaged constructively with the State Government both directly and through peak representative bodies throughout the public consultation processes leading to the development of the NAHA.
50. In particular, Fortescue acknowledges and supports the State Government's policy objectives of achieving:
  - an enhanced focus on agreement-making between Aboriginal people and developers on land;





- preserving a role for Government in making decisions that balance the preservation of heritage and the broader public interest in circumstances where agreement cannot be reached about a development that may or will impact cultural heritage;
- an increased voice for Aboriginal people in the heritage process; and
- equitable rights of appeal to all parties in the heritage process.

51. Fortescue has reservations about two aspects of the proposed NAHA, namely:

- the creation of a monopoly for the provision of Aboriginal heritage services in a particular region. It is our view that monopolies almost inevitably lead to market distortion, particularly in an unregulated market such as the provision of heritage services; and
- the proposition that existing NTAs will be subject to some kind of (yet to be defined) assessment process by the State Government and/or that significant operative provisions in the agreements may become ineffective. These agreements were freely entered into in good faith between two willing parties and have delivered substantial benefit to native title parties, while providing Fortescue with the confidence to invest more than US\$25 billion in projects employing thousands of Australians and generating billions of dollars of tax and royalty revenue to Government.

## **G. ROLE OF THE FEDERAL GOVERNMENT IN THE MANAGEMENT OF WESTERN AUSTRALIAN ABORIGINAL HERITAGE**

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52. *The Environment Protection and Biodiversity Conservation Act 1999* establishes the National Heritage List, which includes natural, Indigenous and historic places that are of outstanding heritage value to the nation.
53. Introduced at a time when not all States had Aboriginal Heritage protection regimes and in order to ensure Australia was meeting its international treaty obligations, the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* provides a power to the Commonwealth to make protective declarations. This is intended as a last resort, after relevant processes of the State or Territory have been exhausted.
54. Fortescue does not support the imposition of additional Federal heritage regulation on Western Australian resources projects. Our experience, as highlighted in the recent Samuel Review of the Federal Environmental Protection and Biodiversity Conservation Act, is that duplication of Federal and State law over the same subject matter does not lead to substantively better outcomes, but does result in increased cost, uncertainty and delay.





## **CONCLUSION**

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55. Aboriginal people have occupied the Pilbara region for at least 50,000 years. The land is replete with evidence of this occupation in the form of tangible and intangible Aboriginal cultural heritage. Fortescue recognises that we are privileged to operate in this environment and we take our legal and ethical responsibilities in this regard extremely seriously.
56. Fortescue is proud of the role that we have played, in partnership with our native title partners, in recognising, promoting and protecting significant Aboriginal cultural heritage while building a company that has created thousands of Australian jobs and contributed significantly to the prosperity of our State and our Nation.