

## **Parliamentary Inquiry into the destruction of Indigenous heritage sites**

**July 2020**

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### **Introduction**

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HESTA welcomes the opportunity to make a submission to the Parliamentary Inquiry into the destruction of Indigenous heritage sites. HESTA is an industry superannuation fund dedicated to meet the specific needs of employees working in the health and community services sector. HESTA has \$52 billion of assets and 860,000 members, many of whom have dedicated their lives to advancing the aims of equality and reconciliation in this country. We know they will share our dismay at the destruction of one of the country's oldest known Aboriginal heritage sites by an investee company, Rio Tinto, which has prompted this inquiry.

HESTA was the first stand-alone super fund to launch a Reconciliation Action Plan (RAP). We take our obligations to advance the ambitions of reconciliation in this country seriously. One of the great benefits and obligations of being a responsible investor is the focus we have on being active stewards of capital. It is our strong view that the misalignment between the public commentary in the Rio Tinto RAP, their sustainability statements and their operational actions is a matter for the Rio Tinto Board, as it is a matter of shareholder value. However, while we look to advance conversations with Rio Tinto directly as a shareholder, we note that the actions taken were legal and that Rio Tinto obtained ministerial consent in 2013. On this basis, we welcome the Inquiry and have some comments to make from the perspective of an institutional investor on:

- i) the effectiveness, adequacy and opportunities for improvement to the Aboriginal and Torres Strait Islander cultural heritage laws, which apparently supported the destruction of the caves.
- ii) the consultation that Rio Tinto engaged in prior to the destruction of the caves with Indigenous Peoples.

We have also read and endorse the submission made by Professor Glynn Cochrane to this Inquiry.

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### **Benefits of a review of cultural heritage laws and regulations from the perspective of an institutional investor**

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We believe our investee companies should adopt and promote a culture which asks whether companies 'should' do something rather than whether they 'can' do something. We acknowledge that the law can sometimes lag community expectations and we expect companies to recognise this and make appropriate decisions to safeguard and enhance the value of the company over the long term.

On occasions where companies make decisions and discover a gap between the letter of the law and community expectations, it is investors such as HESTA who bear the costs, which ultimately results in lower returns for our members. In the case of Rio Tinto and the

decision to destroy culturally significant caves in the Juukan Gorge, investors will pay the long-term costs of the damage to Rio Tinto's license to operate in the form of:

- i) Potential future delays in permitting;
- ii) A lack of trust from Traditional Owners and understandable reticence to engage in future agreement-making processes;
- iii) Board and management time and resources responding to the fallout of the company's actions and;
- iv) The resource-intensive road ahead for Rio Tinto to rebuild its reputation as leaders in the area of Indigenous Relations.

As such, it would be less costly and easier for all parties if this gap did not exist; however, in the case of protecting cultural heritage it obviously does. Therefore, we are supportive of a review of Aboriginal and Torres Strait Islander cultural heritage laws to not only protect investors from these costs in the future but to empower Indigenous communities and protect their intangible heritage.

Based on our discussions with various parties on the legal deficiencies which may have contributed to the eventual destruction of the heritage sites in the Juukan Gorge, we have noted several potential shortcomings. We encourage the Inquiry to specifically review and address potential shortcomings in the law relating to:

- A lack of dispute resolution or appeal mechanisms available for Traditional Owners to ministerial consents.
- The potential conflict of interest that may exist at a state level between state-based ministerial consents for the destruction of heritage sites and state-based mining royalties
- The existence of power inequities in the Native Title Agreement process, including discrepancies in the quality and availability of professional and legal advice available to Traditional Owners relative to extractive companies throughout this process.

We are hopeful that the Inquiry will make practical suggestions to address these issues to improve fairness, transparency and access to information to for all parties.

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### **Reviewing the consultation that Rio Tinto engaged in prior to the destruction of the caves with Indigenous peoples**

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While we have engaged with representatives of Rio Tinto on their consultation processes, there remains a lack of transparency on several aspects of the process.

In reviewing the consultation that Rio Tinto engaged in with Traditional Owners prior to the destruction of the caves, we would encourage the Committee to review:

- The skillset and seniority of Rio Tinto appointees charged with consulting Traditional Owners and whether relevant anthropological and archaeological skills and experience were present in the team.
- The nature of this specific Indigenous Land Use Agreement and Rio Tinto's implementation of the agreement.
- Whether Rio Tinto's consultation with Traditional Owners was of an ongoing nature and if relevant communities were updated with new information.

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## **Investor requirements**

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To ensure the sustainability of the Australian extraction sector, investors need certainty at the organisation level and certainty at the regulatory level. We need to be assured that community relationships are properly conducted, valued and governed within the companies we may wish to invest in. We need to be assured of fair, consistent regulatory approaches delivered through legislation.

We encourage this review to be considerate of the possibility of deep reform to deliver these outcomes.