

30 Oct 2020

To: The Secretary

Joint Standing Committee on Northern Australia

Inquiry “The destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of WA”

Supplementary Public Submission No.73.1 on Terms of Reference (g) to (j):

A case study on BHP Olympic Dam mine over-ride of Aboriginal Heritage legislation in SA and BHP’s ongoing threat to the integrity of culturally important Springs of the Great Artesian Basin.

Dear Secretary

This Supplementary Submission provides further address to [Terms of Reference](#) (g) to (j) on public interest issues on BHP’s Olympic Dam copper-uranium mine, operating under an outdated 1982 “State Agreement” law to over-ride Aboriginal Heritage and an ongoing threat to GAB Springs.

To honour of the Juukan Caves tragedy, it is imperative this Inquiry makes Findings on continued unacceptable BHP over-ride of Aboriginal Heritage protection and legislation in this case.

I commend the strong heart-felt Arabana Aboriginal Corporation [Submission No.92](#) (11 August) to this Inquiry. You must act on the Arabana Chairperson’s call for protection of GAB Springs:

“Unfortunately, our springs are disappearing. ... The cause of the disappearance of our springs, is water that is being taken from the Great Artesian Basin by BHP’s mine at Roxby Downs. ... Unless something is done by the Commonwealth, our springs will disappear... It is unsustainable, destructive of nature, and destructive of our culture to allow the springs to die. Will you please enact laws that ensure our mound springs and culture are recognised, respected and protected?”

This Inquiry must recognise BHP’s ongoing threat to the integrity of the Springs. Though excessive BHP operations in extraction of approx. 34-35 million litres of GAB waters a day, regulated under the outdated 1982 Indenture – set to apply out to 2036, and in proposed application in the 2020’s of ‘rights’ under an Indenture Act License from the 1990’s to take up to 42 million litres a day.

These matters are in no way lessened by BHP recently abandoning a proposed Olympic Dam mine expansion, announced just after BHP’s AGM, and despite the PM ‘fast track’ of Approvals to BHP.

BHP has made claims “BHP agreements with traditional owners in Australia” ([BHP News Release, 16 Sept 2020](#)) that do not stand up to scrutiny, given BHP continues to retain untenable over-ride of Aboriginal Heritage in SA and has not taken required steps to protect unique and fragile GAB Springs.

“BHP views its relationship with Traditional Owners as partnerships based on mutual respect and trust. ... We have listened to Indigenous leaders from around our operations, and at a state and national level. ... Relationships are fundamental and should reflect the deep respect that BHP holds for Traditional Owners and their cultural heritage. ... These clarifications are consistent with BHP’s commitment to Free Prior Informed Consent.”

[Submission No.73](#) has set out [evidence](#) of BHP retaining outdated legal privileges since taking over Olympic Dam in 2005 and of [unheeded civil society calls](#) for BHP to surrender such anachronisms.

It is a travesty that BHP has deliberately retained 1982 era over-rides of Aboriginal Heritage across the 12,000 km² "Stuart Shelf Area" around the Olympic Dam mine, and retains outdated legal rights to take excessive volumes of GAB waters affecting the integrity and very survival of GAB Springs.

These matters affect the rights and interests of a number of Aboriginal groups, including [Arabana](#), [Kokatha](#), Kuyani and Barngarla, and are ongoing issues for SA Native Title Services ([SANTS](#)).

This Inquiry should make Findings for action to repeal Clauses of the "[Roxby Downs \(Indenture Ratification\) Act 1982](#)", an dated 'State Agreement', that impose over-rides of Aboriginal Heritage protection and legislation, despite successive State Governments having inexplicably failed to do so.

This inquiry should now seek formal public assurance from BHP to surrender these legal privileges.

Further, the [BHP September 2020 Quarterly Report](#) has proposed a major new deep underground mine 'Oak Dam' (within the 1982 Indenture Act defined Stuart Shelf Area) may be developed 65 km south-east of Olympic Dam, with copper ore to be transported for processing at Olympic Dam.

However, BHP has failed to renounce 'rights' to Oak Dam as a "Future Project" under the 1982 Indenture and may trigger further application of Clauses over-riding Aboriginal Heritage in that case.

[BHP's claim](#) of a commitment to Free Prior Informed Consent can have no credibility, unless the company now surrenders and foregoes the untenable 1982 Indenture over Olympic Dam and its application to development of a proposed major new mine in Oak Dam during the 2020's.

This Inquiry should recognise an obligation to investigate & seek these public assurances from BHP.

I commend the First Nations Heritage Protection Alliance [call](#) to "*urge people from all sections of Australian society to support our call for greater protection of Australia's cultural heritage*".

These matters come under that call and should be part of any [Alliance negotiations with BHP](#):

"On 13 October 2020, BHP and the First Nations Heritage Protection Alliance announced they have jointly agreed a path forward to enhance the influence and voice of Traditional Owners in relation to heritage protection." [BHP News Release 20 Oct](#) "BHP OPERATIONAL REVIEW", Corporate update p.3.

My experience is relevant, including some sixteen years as an Australian Conservation Foundation (ACF) Campaigner 1996-2011 based in Adelaide; as lead author consultant on three Joint Env. NGO submissions (ACF, Conservation SA, and Friends of the Earth Australia) to BHP EPBC Act Olympic Dam Referrals in 2019; and with 25 years involvement across public interest issues in Olympic Dam mine operations. For further information see: <https://nuclear.foe.org.au/olympic-dam/>

Please feel free for the Secretary of the Inquiry and Members of the Committee and any staff, to contact on any aspect of these issues, for further information, clarifications or discussion.

Thank you for your consideration to this Supplementary Public Submission and to my initial Submission No.73 dated 1st August 2020 and the Recommendations provided (p.3).

Yours sincerely

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