

10 July 2021

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.73.3 on Terms of Reference (g) to (j): Case study on BHP Olympic Dam mine and Priority issues following Witness evidence in the Hearing 29 June.

Dear Secretary

Firstly, I expand on a primary recommendation for UNDRIP to be implemented into Commonwealth law, policy and practice, with "Free, Prior and Informed Consent" under Article 32.2 on mining, resources and water projects to be recognised as a Human Right for Indigenous People in Australia.

In my Hearing [evidence as a witness](#) on Tuesday 29th June I raised the Australian Human Rights Commission's (2021) Key Issue Statement **"Implementing UNDRIP"** for consideration by JSCNA.

Available at: [https://humanrights.gov.au/sites/default/files/2020-10/implementing_undrip -
_australias_third_upr_2021.pdf](https://humanrights.gov.au/sites/default/files/2020-10/implementing_undrip_-_australias_third_upr_2021.pdf), Extract:

"Key Issue – The UN Declaration on the Rights of Indigenous Peoples: Australia endorsed UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2009. Since then, in international forums, Australia has committed to take actions to implement the Declaration and promote indigenous people's enjoyment of rights on an equal basis.

The Australian Government has not, however:

- *taken steps to implement the UNDRIP into law, policy and practice.*
- *Negotiated with indigenous peoples a National Action Plan to implement the UNDRIP*
- *Audited existing laws, policies and practice for compliance with the UNDRIP."*

In the Hearing I called on JSCNA to take up the **AHRC Recommendation** in your Findings, that:

"Government develop a national program to implement UNDRIP and schedule it to the definition of human rights in the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)"

I recommend the best measure that JSCNA could endorse to protect Aboriginal Heritage is to:

- Implement the UNDRIP into law, policy and practice;
- AND to Audit existing laws, policies and practice for compliance with the UNDRIP;
- with priority application of UNDRIP Article 32.2 on mining, resources and water issues:

"States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."

Further, I have sought to emphasise that modernisation of Aboriginal Cultural Heritage protections can-not be limited in application to new decisions, future acts, and new mining & resources projects and extensions. But must be applied across the board: Including through an Audit of existing mining and resource projects for compliance with the UNDRIP and especially regarding compliance with the formal UN Human Right to Free, Prior and Informed Consent.

BHP must surrender legal privileges over Aboriginal Heritage, Oak Dam and GAB Springs:

Secondly, the recent BHP statements to transition to compliance with the SA *Aboriginal Heritage Act 1988*, regarding Olympic Dam copper-uranium mine & associated Stuart Shelf Area, are insufficient.

BHP has had some fifteen years since taking over Olympic Dam mine in 2005 to surrender a range of outdated untenable legal privileges in the [Roxby Downs \(Indenture Ratification\) Act 1982](#).

BHP's recent letter to the JSCNA and Submission No.32 to the SA Aboriginal Lands Parliamentary Standing Committee (ALPSC) "Aboriginal Heritage Inquiry" commits to a 'voluntary' transition to the *Aboriginal Heritage Act 1988*, "until the transition is legislated" (3. BHP's SA operations, p.2).

However, a wider range of legislative amendments are required to the 1982 Indenture Act governing BHP's Olympic Dam operations to respect and protect Indigenous rights and interests and to meet and reflect community expectations. Consider my Submission No.19 (March 2021) to the [ALPSC Heritage Inquiry](#) and Rec's No.7 to 16 for review and reform of BHP's operations in SA, including:

- required legal amendments to bring on full application of the *Aboriginal Heritage Act 1988*;
- proposed new mining projects in the Stuart Shelf Area be subject to application of "*the full suite of contemporary SA Laws and due process ... without restriction, precedence or override by the 1982 Indenture Act*", with particular application to **Oak Dam**, a proposed major new BHP copper-uranium underground mining operation 65 km south-east of Olympic Dam;
- Recommendation No.16 for investigation of the impacts of BHP Olympic Dam mine water extraction operations on the unique and fragile Mound Springs of the Great Artesian Basin (GAB), which are an EPBC Act listed Endangered Ecological Community and of fundamental ongoing significant Cultural and Spiritual importance to Aboriginal People, Noting:
 - the feature article overview "[SA's Disappearing Springs raise Questions for miner BHP](#)" (The Age and The Sydney Morning Herald, 23 Nov 2020);
 - Recommendations in a Joint State and National Environment Group's Briefing Paper "[Preconditions to Protect Mound Springs in Olympic Dam Expansion EIS Guidelines](#)" (By: Australian Conservation Foundation, Conservation SA, and Friends of the Earth Australia, lead author David Noonan, June 2019);
 - Call for investigation of alternative mine water supply for Olympic Dam operations.

It is unacceptable that BHP operations continue to cause ongoing significant adverse 'legal' impacts on Aboriginal Cultural Heritage in SA through impacts on and risks to the unique and fragile Mound Springs of the GAB. While BHP publicly call for tougher sanctions on 'illegal' impacts on Heritage: see [BHP urges huge fines for damaging Aboriginal heritage - InDaily](#) (08 July 2021).

BHP extraction of excessive volumes of GAB water for Olympic Dam mine operations causes serious adverse long-term impacts on the groundwater pressure in the GAB on which the Springs rely, see: "[Mining giant sucking life out of SA's vanishing Springs](#)" (The Advertiser, 30 June 2021).

In addition, inappropriate location of BHP Borefield A in the midst of the arc of Mound Springs south of Lake Eyre causes a regional drawdown effect in the most potentially impacting location. National and State Environment Groups have repeatedly recommended that Borefield A must close ASAP.

BHP legal privileges under the 1982 Indenture Act granting priority access to GAB groundwater, and the 1990's 'stand-alone' Licensing regime overriding other SA legislation, must be revoked.

EPBC Act Approval Conditions (2011) must be applied to Olympic Dam to protect Springs:

Thirdly, in my Witness testimony I referred the JSCNA to EPBC Act Approval Conditions set by the Federal Labor Environment Minister in 2011 to prevent BHP Olympic Dam operations from causing significant adverse impacts on the Mound Springs and on the groundwater pressure in the GAB.

Due to a legal technicality, these EPBC Act Conditions were not applied to Olympic Dam mine operations after BHP abandoned the mine expansion open pit project assessed in a 2005-11 EIS.

The federal Department of Environment assessed Mound Spring protection issues in 2011. At that time the federal Minister set a range of strong EPBC Act Conditions on "Groundwater" No. 22 to 26 and on "Extraction of Water from the Great Artesian Basin" No.27 & 28, stating:

24. ... Compliance Criteria must be adequate to confirm that: a. in relation to 22(a), that groundwater drawdown from mining operations will have no significant adverse impact on groundwater pressure in the Great Artesian Basin. ...

27. The Approval Holder must ensure that the extraction of water from Wellfields A and B in the Great Artesian Basin ... does not have a significant adverse impact on groundwater dependent listed threatened species or Ecological Communities.

BHP accepted these EPBC Act Conditions at the time as intended to apply across the entire Olympic Dam operation, on both the proposed open pit expansion AND across existing BHP operations.

It is noteworthy that the federal government continues to maintain and update this 2011 set of EPBC Act Approval Conditions, see: [2005-2270-Variation-to-Conditions.pdf \(314.61 KB\)](#) - a 23 page compendium of Conditions giving the Variations of Conditions (last updated in April 2021).

I have referred JSCNA to these important EPBC Act Conditions in my Submission No.73 (August 2020), see Recommendation 4 & 7, including to refer to the Joint National and State Environment Groups [submission](#) (Dec 2019, lead author & consultant David Noonan) to federal Environment Minister Sussan Ley which discusses these important public interest issues.

The Australian Conservation Foundation (ACF), Conservation SA and Friends of the Earth Australia (FOE) called on federal Minister Sussan Ley to apply these 2011 EPBC Act Conditions to BHP's Olympic Dam mine operations to protect the Mound Springs as a national asset, an EPBC Act *Matter of National Environmental Significance*, and an icon of ongoing Aboriginal Cultural Heritage.

The influence of BHP vested interests to prioritise control of costs to the company and to continue to compromise the ecological and cultural integrity of the Mound Springs is of serious concern.

Note - I will respond to the 'Question on Notice' by Warren Snowden MP to comment on BHP's proposed amendments to the *SA Aboriginal Heritage Act 1988* and input by 21 July.

Thank you for your consideration to my Public Submissions and Recommendations to this important JSCNA Inquiry and for the opportunity to provide evidence as a Witness in a Hearing.

Yours sincerely

Mr David J Noonan B.Sc., M.Env.St.

Independent Environment Campaigner and Consultant (ABN Sole Trader), Seaview Downs SA