



8 April 2021

The Hon Warren Entsch MP
Chair
Joint Standing Committee on Northern Australia
PO Box 6021
Parliament House
CANBERRA ACT 2000

Via email: jscna@aph.gov.au

Dear Chair

Responses to questions on notice from JSCNA hearing on 9 March 2021

Thank you for the opportunity for the MCA to address the Joint Standing Committee on Northern Australia on 9 March as part of the committee's examination of matters relating to cultural heritage protection and work to contribute to better processes and outcomes.

The committee has an important role in understanding the complex factors surrounding events at the caves at Juukan Gorge and providing lessons for policymakers and industry.

During this appearance, I outlined significant actions taken by the MCA to date to promote and support strong heritage protection practices and equitable, respectful partnerships with Traditional Owners across industry in response to the tragedy at Juukan Gorge.

Actions to date include:

- Engaging with national First Nations representative bodies to reinforce industry's commitment to heritage protection and equitable partnerships with Traditional Owners on common priorities.
- Establishing a new senior committee of MCA member company executives to ensure Traditional Owner and community partnerships have a strong profile as workplace safety consistently across industry.
- Preparing for and announcing the adoption of Towards Sustainable Mining, a transparency and accountability system that involves regular and consistent site-level reporting against social, environmental and community indicators.
 - This includes indicators relating to First Nations partnerships, benefits-sharing and heritage protection. Guidance will be updated in 2021 in collaboration with First Nations organisations ahead of phased implementation.
- Stating the industry's support for modernisation of state, territory and Commonwealth heritage regimes and enhancements to support an equitable, stable and practical native title regime.
- Making practical recommendations to support meaningful and proportionate transparency with native title holders regarding monies associated with land use agreements as part of the

review to modernise *the Corporations (Aboriginal and Torres Strait Islander) Act 2006*. The MCA also recommended changes to expand the range of asset management vehicles available for Traditional Owner groups to deploy native title monies for Indigenous-led economic development.

- Continuing to advocate for increased stable and sufficient government for Traditional Owner organisations to establish foundations, consult with community and support their cultural, social and economic priorities. Increased government funding and support for these organisations is integral to a stable, practical and equitable native title system.
- Commencing a landscape assessment of industry commitments regarding free, prior and informed consent and other international standards.

In its national leadership role, the MCA will build on these actions during 2021.

I also wish to highlight and add further to the MCA's recommendations to improve the efficiency, transparency and practicality of the *Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

An essential safeguard, the ATSIHP Act is an important part of Australia's cultural heritage protection framework. Importantly, the Act enables the Commonwealth Minister for the Environment to make a declaration to protect a culturally-significant place or object at risk of harm. Any Indigenous person/s can make an application for this emergency protection.

Immediate administrative improvements could assist to restore confidence in this critical Commonwealth safeguard. The five practical measures the MCA recommended are:

1. Increasing the involvement of the Minister for Indigenous Australians and National Indigenous Australians Agency to ensure assessments are undertaken in a culturally-appropriate, timely and comprehensive manner. How advice from NIAA will be sought and considered should be clearly defined and included in published information.
2. The Department of Water, Agriculture and Environment should establish and maintain an online register of applications, including new, ongoing and closed cases. The list would summarise each application, its status and reasons for the final decision. Culturally and commercially sensitive information should be excluded.
3. Establish clear timeframes to assess and respond to an application, including engagement with relevant parties.
4. Publish accessible plain-English and sensitively written guidance on the application process and assessment criteria. This should include information explaining decision-making processes and engagement with different government departments and between Commonwealth and state and territory departments and ministers.
5. The MCA supports additional funding provided in the Commonwealth 2020-21 budget to address the backlog of applications and make administrative improvements. Appropriate levels of ongoing funding will assist improved operation of the Act into the future. This was reinforced in the [MCA's 2021-22 Pre-Budget submission](#) to government.

The MCA also welcomed the Australian Government's decision to focus on heritage with outstanding Indigenous cultural values in the most recent calls for nominations on the National Heritage List. Furthermore, greater integration of Traditional Owner views, knowledge and expertise in processes under the *Environment Protection and Biodiversity Conservation Act 1999* is supported.

Question by Senator Thorpe regarding Traditional Owner benefits from mining

Senator Thorpe sought an overall figure on mining profit compared to what Traditional Owners receive from land use agreements and partnerships.

Benefits arising from land use agreements and partnerships can include both financial and non-financial aspects. Arrangements can depend on the nature, location and scale of a minerals project, Traditional Owner aspirations and priorities and other factors.¹

Financial aspects can include compensation for the impacts of land use and payments to support Traditional Owner aspirations and priorities.² These can include regular payments, royalty streams and other financial arrangements. Financial arrangements may be kept confidential for commercial reasons.

Non-financial benefits may be extensive, with the aim to support the individual aspirations and priorities of Traditional Owner groups. Economic and social opportunity, especially for young people, has been a long-standing priority for many communities with which the industry partners.

Accordingly, tailored education, training and employment pathways, preferential supply opportunities and business assistance are common non-financial benefits.³ Companies often invest in significant work readiness, Indigenous procurement programs, education funds and other support to maximise these opportunities for Traditional Owners and other Aboriginal and Torres Strait Islander people.

Financial and non-financial benefits arising from land use agreements are often complemented by voluntary social investment activities. Voluntary social investment can include support for broader education, infrastructure, health and other local priorities.

While these contributions are immensely important, further work is required to attribute a financial value to activities and outcomes attributable to non-financial benefits and voluntary social investment activities.

For the above reasons, the MCA is unaware of a single figure comprising mining profit to Traditional Owner benefits.

The MCA will conduct an industry survey in 2021-22 to establish a current picture of the types of social and economic commitments and contributions the sector makes to First Nations landholders and communities.

Question by Senator Canavan regarding equity arrangements

Senator Canavan sought examples of agreements providing equity in a joint venture project rather than a royalty stream or similar.

The characteristics of a particular minerals project, Traditional Owner aspirations and preferences and other factors inform the types of financial arrangements arising from a land use agreement. Payments at different project stages, regular contributions and royalty arrangements are common forms of financial terms.

The MCA understands that new financial arrangements such as project equity arrangements and share options are being considered by companies and Traditional Owner groups. However the MCA is not aware of any settled arrangements at this time.

Yours sincerely

TANIA CONSTABLE PSM
CHIEF EXECUTIVE OFFICER

¹ Department of Industry, [Working with Indigenous Communities](#), Australian Government, Canberra, September 2016, p. 49.

² *ibid*, p. 49.

³ *ibid*, p. 49.