

Committee Secretariat
Joint Standing Committee on Northern Australia
PO Box 6021
Parliament House
Canberra ACT 2600

Re: Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia

I urge the Committee Chair, the Hon Warren Entsch MP, and Joint Standing Committee on Northern Australia members to consider my submission for the referenced inquiry. I firstly acknowledge Senators Anthony Chisholm and Pat Dodson for proposing and referring this issue to the Committee.

I, alongside many members of the Australian public, condemn the sequence of events and decision-making processes that resulted in the destruction of the caves at Juukan Gorge. Not only do I condemn this series of individual actions, I also assert our current legislative system and cultural consciousness is deficient in preventing such destruction from occurring again.

I call on the Committee to recommend:

- The moratorium of all previously granted section 18 approvals by the Minister for Aboriginal Affairs under the Aboriginal Heritage Act 1972 (WA) pending the reassessment of applicants;
- The moratorium of decision for current and new applicants under section 18 of the Aboriginal Heritage Act 1972 (WA) pending legal review and reform;
- Reforms to the Aboriginal Heritage Act 1972 (WA) and activities and/or approvals under the Act to prevent destruction of culturally significant sites, including:
 - the provision of review rights and appeals to the Traditional Owners of a heritage site under section 18;
 - funding to conduct assessment of the full significance of a site prior to decision under section 18;
 - inclusion of expiration clause to the approval under section 18;
 - stricter enforcement of compliance with the Act; and
 - financial or in-kind compensation to the Traditional Owners, should section 18 be granted to an applicant, of which does not preclude future cultural or legal concerns by the Traditional Owners to be made publicly; and
 - the review of the definition and assessment of cultural sites under section 5 of the Act;

- Reforms to relevant state and federal laws and regulation to effectively guarantee the protection Aboriginal and Torres Strait Islander cultural heritage sites across Australian jurisdictions, including to the Environment Protection and Biodiversity Conservation Act 1999;
- A consistent binding framework for engagement and consultation between corporations and Indigenous peoples in relation to business activities that have the potential to impact heritage sites, encompassing methods of appropriate and effective communications between these groups during native title agreements;
- Reparations to address the loss or damage caused to the Puutu Kunti Kurrama and Pinikura People due to the destruction of the caves at Juukan Gorge;
- Additional funding and resources to improve the documentation, preservation and appreciation of previously destroyed culturally significant sites across Australia, as well as that of existing heritage sites.

Terms of Reference - Legal considerations

- (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.

The destruction of Juukan Gorge has demonstrated the interactions between current state and federal laws with regards to cultural heritage sites is not fit for purpose. The current Minister for Aboriginal Affairs Ben Wyatt, recently stated he felt "the pain of administering an outdated and inadequate system that led to this sad and regrettable outcome". The Australian public is in agreement with this sentiment, with a petition on change.org amassing over 18000 signatures calling for Rio Tinto to be held accountable for the destruction. Despite his statement, Minister Wyatt has refused take personal action and accountability to place a moratorium on approvals for the destruction of heritage sites prior to legal reform. The current legislative protections are not aligned with the expectations of the Australian public, necessitating legal reforms to represent the regulation of society and behaviour which adequately protects Aboriginal and Torres Strait Islander cultural heritage sites, and wider Australian interests.

Recently, BHP has received media coverage for the proposed destruction of Aboriginal heritage sites in the central Pilbara region of WA. Legal permission under section 18 of the same Act was granted. Sadly, I would confidently assume this destruction would have occurred, was there not current public outcry on the protection of cultural heritage sites. Australia, and the Banjima people as native title holders of the area would have “suffer[ed] spiritual and physical harm”, akin to the destruction at Juukan Gorge by Rio Tinto.

As such, my recommendations for the Committee include the moratorium of activities by section 18 applicants under the Aboriginal Heritage Act 1972 (WA) as well as reform to state and federal indigenous heritage regulation and legislation to guarantee future protection to sites.

Terms of Reference - Cultural considerations

- (d) the loss or damage to the Traditional Owners, Puutu, Kunti Kurrama and Pinikura people, from the destruction of the site;
- (e) the heritage and preservation work that has been conducted at the site.

The destruction of the site demonstrates a lack of appreciation, understanding and valuation of Aboriginal and Torres Strait Islander culture and interests. The resulting loss and damage cannot be suitably rectified through the salvation of cultural artefacts and materials from one of Australia's oldest known Aboriginal heritage sites. The recognition of the significance of the sites, after its destruction furthermore speaks to the lack of cultural consciousness and acknowledgement afforded to Aboriginal and Torres Strait Islander heritage.

As such, my recommendations for the Committee include reparations for the loss and damage caused, alongside funding for the preservation of culturally significant sites across Australia to ensure future protection from destruction economic and business interests of such sites.

Terms of Reference - Economic considerations

- (b) the consultation that Rio Tinto engaged in prior to the destruction of the caves with Indigenous peoples;
- (c) the sequence of events and decision-making process undertaken by Rio Tinto that led to the destruction.

The Land Agreement and Claim Wide Participation Agreements signed between Rio Tinto and the Traditional Owner groups in 2011 has resulted in the Traditional Owners opting into the Regional Framework Deed (RFD).

Rio Tinto notes the “purpose of the RFD is to promote the wellbeing of Pilbara Aboriginal People and provide a vehicle for the parties to work together to help address joint commitments”. It is not an incorrect conclusion to assert that the RFD has not protected the interests and wellbeing of the Puutu Kunti Kurrama and Pinikura People in the destruction of Juukan Gorge caves. Such native title and heritage agreements between business firms and Traditional Owners demonstrate inadequacies, in both the agreement’s stated purpose, the expectations of the Australian public, and correspondingly, Rio Tinto shareholders. These agreements are often restrictive, with legal non-disclosure clauses which do not require the same legal scrutiny as state or federal legislation.

As such, my recommendations to the Committee include the review of the frameworks developing native title and land agreements between corporations and Aboriginal and Torres Strait Islander people, to appropriately complement the legislative obligations of state and federal law in the continued protection of culturally and historically significant sites.

To conclude, I wish to again express my dismay at the destruction of caves at Juukan Gorge and demand the Committee to heed my recommendations to adequately and effectively protect Australian heritage. The people of Australia will no longer tolerate such callous destruction enabled by outdated legislation.