

Centre for Social Responsibility in Mining
29 July 2020



CREATE CHANGE

Submission to the Joint Standing Committee's Inquiry into the destruction of 46,000 year old caves at Juukan Gorge

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Introduction

This submission has been prepared by the [Centre for Social Responsibility for Mining](#) (CSRM) for the inquiry into the destruction of Indigenous heritage sites at Juukan Gorge, in the Pilbara region of Western Australia. We welcome the response by the Senate, and the opportunity to provide this submission to the *Joint Standing Committee on Northern Australia*, to which this matter has been referred.

CSRM is part of the [Sustainable Minerals Institute](#) (SMI), based at [The University of Queensland](#). As an applied social research centre, CSRM is focused on the social, cultural and political challenges brought about by resource extraction, and has as one of its goals the objective of improving social performance across the resources sector. In this context, “social performance” is defined by a company’s interactions, activities and outcomes with respect to local communities, including Traditional Owners of the lands where mining takes place.¹

The authors of this submission have conducted research on the matters canvassed in this submission:

- [Professor Deanna Kemp](#) and [Professor John Owen](#) have led studies about mining and social performance, including *inter alia*: human rights and development; Indigenous peoples and negotiated Agreements; resettlement and displacement; and company-community conflict. Kemp and Owen’s work has focused on how the global mining industry is organised, resourced, and incentivised to respond to these challenges.
- [Rodger Barnes](#) worked with Aboriginal people in central Australia for more than 20 years, managing consultations with Traditional Owners about mining exploration on their lands and territories. This has included matters relating to informed consent and cultural heritage management. At CSRM, Barnes focuses on negotiated Agreements, and Indigenous employment and contracting.
- Kemp and Owen were recently awarded an [Australian Research Council \(ARC\) Linkage grant](#) to study inquiries commissioned by mining companies when a major social incident or issues arises, such as events at Juukan Gorge. Barnes is actively involved in the ARC Linkage project.

We encourage greater visibility over the matters under consideration by the *Joint Standing Committee*, including the extent to which global mining companies are able to service their legal and policy obligations and commitments to local people established through negotiated Agreements.

A selection of the authors’ published works are listed at the end of the submission for reference.

Observations

The following paragraphs provide a general set of observations for the Committee to consider:

Sequencing The *Joint Standing Committee*’s report is scheduled for release by September 2020. Rio Tinto has announced that it is conducting a parallel Board-led review of its own heritage management processes, to be completed by October 2020. The sequencing of these two inquiry processes limits the extent to which the *Joint Standing Committee* will be able to comment on the organisational factors that may have caused, contributed to, or created conditions for, the destruction of the Juukan Gorge. It is on this basis that we question the extent to which the *Joint Standing Committee* will be able to adequately fulfil items (b) and (c) from its Terms of Reference. The sequencing naturally limits the *Joint Standing Committee*’s ability to reflect on the Rio Tinto’s Board-led heritage review process, and to incorporate lessons drawn from that process.

¹ See: <https://www.csr.uq.edu.au/publications/social-performance-gaps-in-the-global-mining-industry-a-position-paper-for-executives>.

Transparency At the time of writing, there was little information in the public domain about Rio Tinto's Board-led review of heritage. We have sought information from Rio Tinto about the scope of the review, the parties involved, the approach to evidence gathering, the form and content of the public output, and the company's approach to follow up actions. This, in our view, is the minimum standard of information required to substantiate describing a process as "public". In the absence of this information, we have made recommendations about how Rio Tinto can work towards making its review process transparent and independent:

- Ensure the review is conducted independently and avoids conflicts of interest.
- Appoint a review secretariat to guarantee a confidential avenue for informants to contribute evidence and testimony, at arms' length from the company.
- The scope should be co-designed with impacted parties – in this case, the Puutu Kuntj Kurama and Pinikura peoples – and include a process for stakeholders to track the review and the company's response.
- The scope should include the systems and structures of Rio Tinto PLC, and not be limited to Rio Tinto Iron Ore.
- The review should focus on identifying systemic and structural issues within the organisation, and making recommendations for improvement, rather than seeking to assign blame to individuals.
- Interview transcripts, field reports and other evidence should be made accessible to the public (for example, via a dedicated website), where they are not deemed confidential or commercial in confidence.
- The chair should have unfettered access to advisers and experts of their choosing in matters relating to the review.
- The chair should issue a public report at the conclusion of the process.²

Engagement Good inquiry practice would include direct engagement with affected stakeholders. This is particularly important if members of the *Joint Standing Committee* are seeking to understand the loss or damage experienced by Traditional Owners as per item (d) of the Committee's Terms of Reference. It is concerning that following an event of this nature that the Committee would not be making a concerted effort to gather oral testimony from Aboriginal people. We note that in-person hearings or a visit to country (or closest proxy in the context of COVID-19) are not listed as part of the Committee's inquiry process.

Confidentiality Our research confirms that a significant amount of social performance knowledge (including knowledge about cultural heritage management systems and practice) is held privately. This is because subject matter experts and other parties are routinely subject to confidentiality clauses in employment and service contracts. Traditional Owners are often bound by non-disclosure clauses as part of Agreements, or clauses that otherwise constrain their ability to speak out on issues of concern. We surmise that the economic and reputational dependencies embedded in these relationships means that some, dare we say most, knowledgeable parties may be disinclined to lodge a submission in a high profile public inquiry process. This limits the *Joint Standing Committee* ability to access critical knowledge to understand this incident and its underlying conditions.

Agreements The Western Australia's *Aboriginal Heritage Act (1972)* has functioned as a vehicle for the managed destruction of Indigenous heritage sites for generations. In privileging industry interests, the right to self-determination, and the land and resources rights of Aboriginal peoples have been deprioritised. We note the *Joint Standing Committee*'s mandate to review laws and legislation in relation to Aboriginal heritage. What is not

² See: <https://theconversation.com/how-rio-tinto-can-ensure-its-aboriginal-heritage-review-is-transparent-and-independent-141192>.

clear is whether this will include an examination of Agreements negotiated under the *Native Title Act (1993)*, and their function with respect to the protection and undermining of Aboriginal heritage.

Capability The field of mining and social performance is in decline. This has weakened the ability of community relations and social performance professionals to challenge production priorities in circumstances where risks to community exceed reasonable thresholds. Our research highlights shortcomings across organisational structures, internal lines of reporting, management systems, incentives and talent management. These are relevant considerations for understanding mining companies' social management capability, including for heritage management. These issues may be relevant to understanding the Juukan Gorge and similar incidents.

Recommendations

1. Rio Tinto has confirmed its intent to co-operate with the *Joint Standing Committee* inquiry. On this basis, the Committee should include in its own report, a description of the review scope, and evidentiary process that Rio Tinto will follow to execute its Board-led review.
2. The *Joint Standing Committee* should recommend arrangements for ensuring that lessons learned and recommendations made by both the *Joint Standing Committee* inquiry and Rio Tinto's own Board-led review are compared and consolidated once both public reports are publicly available.
3. *Joint Standing Committee* members should enable direct engagement Traditional Owners and other stakeholders who may not be in a position to engage in a public process. We would advocate for secure and protected pathways to be available for those parties who may have sensitive or confidential information to disclose.
4. In its deliberations, the *Joint Standing Committee* should consider the extent to which negotiated Agreements function to protect or undermine Indigenous peoples' rights, interests and aspirations, specifically with respect to heritage protection.
5. The *Joint Standing Committee* could inquire as to whether mining companies have the necessary internal capability to service their legal and policy commitments, and contractual obligations under negotiated Agreements. We would encourage members of the Committee to consider the issue not only as it relates to Rio Tinto Iron Ore, but also how the company's corporate governance architecture (i.e. to Board level) may have influenced local events in this instance.
6. The *Joint Standing Committee* should consider incentives for mining companies to build the appropriate governance architecture, management systems, and human resources capability that reflect the contexts in which they operate, and to avoid incidents like Juukan Gorge in the future.

Relevant references

Kemp, D. & Owen, J.R. (2020). Corporate affairs and the conquest of social performance in mining. *Extractive Industries and Society*. <https://doi.org/10.1016/j.exis.2020.06.012>.

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