

Committee enquiry – Juukan Gorge failure of the Aboriginal Cultural Heritage Protection Act

The Gomeri Traditional Custodians thank you for the opportunity to submit this letter to you. While it is good to see we have to be honest and say that writing to you is not our way to discuss our culture and heritage. Nor can we express to you adequately enough just how devastatingly spirit destroying the failure of protection of our sacred places and sites means to us.

As a predominantly oral community, we fear that our letter will not portray the level of anxiety, and the level of impact the Commonwealths failure to value our heritage means to us. We would welcome an opportunity to speak with you personally as we do not believe this letter is in any way adequate to convey what the failure of the ATSHIP Act means to us as a people and to the continuing traditions of us as a people.

In Australia, the colonial and post-colonial architectures, places and histories are protected. Both through legislation codes and trusts. However, in Australia in our experience, when it comes to the protection of Aboriginal culture and heritage and sacred places, these protections are not afforded to our people or to our places. Instead, the state protections are turned off with the stroke of a pen by declaring a state project under Planning and the NSW Planning and Assessment commission are put into place to sit and listen to views and once this occurs the right to appeal through legal process is switched off with no legal course to challenge the decisions or the standard or quality of the archeological reports (which in many instances are glaringly failing to demonstrate the policies and Burra charter standards we are told are in place to protect our culture and heritage. After this traumatic process, we as a people have only one recourse to seek protection under the Commonwealth Aboriginal Torres Strait Islander Heritage Protection Act.

We, the Gomeri Traditional Custodians (over 600 signature ATSHIP Application people, supported by the Gomeri Native Title Applicants on behalf of some 15,000 peoples) and multinationals (Aboriginal peoples) who have a cultural impact directly to them is the songline is destroyed, blindly and naively put our trust in the ATSHIP system, believing that the Act and its intention as a last resort protection will be able to protect our sacred places, our mortuary trail, multiple burial sites and multiple grinding grooves, a place of post colonial massacre, a place where the 3rd regiment was deployed to kill our people. Sadly, the ATSHIP Act or more so the Minister representing the Government has been given the power by the elected representatives of modern day Australia to choose not to protect.

What makes this a travesty and what we see as a miscarriage of justice is that the Minister has stated in her assessment of our submission that we met all the criteria for the protection of our sacred places under the Act. She agreed from the evidence we provided-spanning more than nine years of having to prove our cultural heritage is of value (over 1000 pages of evidence – difficult for an oral community including being scrutinized by an external reporter) She agreed that Shenhua Watermark -a Peoples Republic of China mining company mega 3 open pit mine in Breeza -smack bang in the food bowl of the Liverpool plains would irreversibly destroy our sacred places and acknowledged that this destruction would cause high levels of emotional and spiritual devastation for our people. She agreed that our culture and heritage for which we are seeking protection is of immeasurable value.

One would think that after all of this we as a people would be celebrating that we have been able to protect our sacred places and protect our ancestors burials. We believe reasonable Australians and the parliament elect would see that we met all the criteria for protection under what is in effect the last resort protection of our culture and heritage only to find that even this is not enough.

The Minister decided that although she acknowledged that our culture and heritage is of immeasurable value, the value of the mine "on balance" would be protected to proceed over the protection of our culture and heritage. The impact of this is devastating. Bewildering and for us as a people so very wrong. How can a last resort protection Act be put into place which was supposed to protect our culture and heritage not protect our culture and heritage and instead be used to protect the interests of a foreign owned open cut mine which will destroy our culture and heritage? How do we explain this to our elders? How do we explain this to our children and grandchildren? How do we explain this to our young men and women our warriors?

How do we trust the Government and anything its stands for when we feel so duped? When we are reeling from what we see is massive injustice and failure by those elected in a system not of our choosing?

If the Minister and the Commonwealth government believe a mine who has more economic clout than the first peoples of this nation have their rights overrule our protection of our culture and heritage we are set up for failure we are set up to spend over 11 years trying to work through a system which demands the burden of proof that our culture and heritage and sacred places exist and are of any value and should be protected. We are the only party in this fiasco that has no monetary interest in the protection of our culture and heritage. We were not even afforded a copy of the economic documents the mine put to the minister as they were cited to be commercial in confidence....we wanted then scrutinized by an independent economist.

There are seven open cut and underground mines in the Gunnedah Liverpool area. Employment through mining is there for people if they want it. Coal is a finite asset and the risk of an isolated asset is evident, the coal grade isn't as valuable as first stated, one pit will flood and cause aquifer issues for food security. Yet despite this, the Minister 'on balance' affords protection of the mine over the protection of our sacred places under the Aboriginal and Torres Strait Islander Protection Act.

We have another Section 10 ATSHIP protection submission before the Minister over the same area seeking again protection of our sacred places and burial sites and includes the songline and other sacred places as our final attempt to try and protect this area because this area is so culturally and spiritually important to us. We have to be honest with you we do not understand how a last resort Aboriginal and Torres Strait Islander Heritage protection Act cannot be enacted to do what it says protect our culture and heritage. Two senate enquiries have already been held spanning several years which clearly told the government of the day that the ATSHIP Act needed to be improved to protect. Our culture and heritage is important to us..it defines who we are as a unique people. These sacred places and sacred objects have survived despite the impact of colonial and post-colonial settlement and deliberate acts of violence and murder of our people. They are part of our history our tradition and obligation to keep sacred and protect. They are also part of modern day Australia and should also be valued by Australians. They are also part of our shared history.

As the oldest living culture on this earth, our culture and heritage and sacred places deserve protection. We hope that this enquiry will act and act quickly and decisively to afford protection as our sacred places and burial sites are currently under direct, and imminent destruction.

We cant help but be emotional in our letter however important points include

- In 2015 and 2017 lodged application seeking protection for sacred and significant areas. Application supported by the Gomeri Nation and NSWALC
- Following extensive written and oral submissions Minister agreed and acknowledged that the areas were of immeasurable cultural significance to the Gomeri. However, she determined not to grant protection because she accepted the mine's assessment of the predicted local social and economic benefits of the mine and she considered that these predicted local benefits outweighed the immeasurable cultural heritage value of the area We dispute this assertion and no consideration was taken that there are jobs in mining in the area and the landholder farmers and Aboriginal community are both adversely impacted
- GTC cannot understand how this decision can be made under legislation that is specifically designed to protect our culture and heritage..no other legislation has been put into place by the Commonwealth to do this
- In this situation because processes under NSW planning law unable to fairly assess and protect heritage from mining – in effect we have no right to appeal under NSW law
- The imminent destruction of heritage has profound consequences for us, our community and our identity...it is doubly damaging for us to be told that perceived economic benefit to a few outweighs the destruction of our sacred heritage
- Process has been enormously damaging and burdensome, outcome devastating and grounds for decision very distressing
- GTC has now (on 3 July 2020) lodged a further ATSIHP Act application. This new application is supported by submissions from Gomeri people as well as representatives of the many other Aboriginal Nations for whom this area is significant. GTC has also collected information relevant to the assessment of likely local social and economic impacts (which was considered relevant by the Minister).
- We are happy to provide you with a copy of the Ministers July 2019 statement of reasons and our statement of significance/2020 cover letter for the ATSIHP Act application if this is appropriate
- We ask to be involved in your further consultation and be provided with an opportunity to talk to the Committee about our experiences.