

Submission for Inquiry into How the Corporate Sector Establishes Models of Best Practice to Foster Better Engagement with Aboriginal and Torres Strait Islander Consumers

November 2021

Background

HESTA welcomes the opportunity to make a submission to this Inquiry.

HESTA is an industry superannuation fund dedicated to meet the specific needs of employees working in the health and community services sector. HESTA has \$66 billion of assets and 900,000 members, many of whom have dedicated their lives to advancing the aims of equality and reconciliation in this country through their work.

HESTA has an interest in improving engagement with First Nations Peoples both as a superannuation fund with First Nations members, and as an investor seeking to maximise long-term financial outcomes for our members. The focus of this submission is on our approach as investors, though we note in opening that these two perspectives are related. The economic disadvantage experienced by many First Nations Peoples throughout their lives, both in the workforce and as consumers, translates to significantly reduced financial outcomes in retirement.

As a superannuation fund HESTA has sought to improve outcomes for our Aboriginal and Torres Strait Islander members, including by:

- Being the first industry super fund to implement a Reconciliation Action Plan (RAP)
- Working with the First Nations Foundation, organisers of the Big Super Day Out which provides education sessions and one-on-one general advice to assist indigenous attendees manage their super
- Advocating for a broader legislative definition of dependency that acknowledges First Nations Peoples' kinship structures in relation to superannuation death benefits
- Implementing the AUSTRAC identification guidelines for Aboriginal and Torres Strait Islander members
- Establishing a phone line that dedicated to assisting Aboriginal and Torres Strait Islander people with their superannuation queries

Introduction

The interactions that investee companies may have with First Nations Peoples is multi-faceted. We note that the terms of reference for this Inquiry refer specifically to the engagement of companies with First Nations Peoples as consumers. However, the long-term value of the companies we invest in is also impacted by how they engage with their community stakeholders. It is therefore also important to consider how engagement

proceeds in situations where First Nations Peoples are not necessarily consumers but are rightsholders/stakeholders in a company's operations. Our comments are made with this broader context in mind.

This submission:

- i) Provides the Committee with an understanding of the way investors are encouraging the corporate sector to support meaningful engagement with First Nations Peoples (Terms of reference 1)
- ii) Suggests some options to strengthen corporate sector cultural understanding (Terms of reference 2)

In addition to what is provided here, HESTA would also like to note our support for submissions made to this Inquiry by the Australian Council of Superannuation Investors (ACSI) and the Responsible Investment Association of Australasia (RIAA).

1. Investor engagement with the corporate sector to support meaningful relationships with First Nations Peoples

Strong relationships between First Nations Peoples and the corporate sector matter for long-term investors

As long-term investors, we believe that strong and respectful stakeholder relationships are essential to realising long-term company value. The destruction of significant cultural heritage at Juukan Gorge by Rio Tinto, the findings of the independent panel review into Woolworths' proposed Dan Murphy's development in Darwin and the ACCC's findings against Telstra for unconscionable sales to Indigenous consumers, underscore the risks and potential value implications poor management of relationships with First Nations Peoples can have for shareholders.

Using these examples, the direct and indirect costs that are ultimately borne by shareholders because of poor company relationships with First Nations Peoples include:

- Potential future delays in permitting
- Board and management time and resources responding to the fallout of the company's actions
- Substantial regulatory fines
- Significant sunk costs in relation to projects that advanced without adequate stakeholder engagement and were ultimately cancelled as a result
- Reduction in revenues through the loss of an ability to expand operations which could have been prevented by improved stakeholder engagement, trust, and respect.
- Legal risks in agreements when legally tenuous clauses are included/uncovered due to a significant power imbalance between parties at the time of negotiation.
- Ripple effects related to reputational fallout (both for the company as well as the investor), such as difficulty retaining or attracting staff, trust with suppliers, mistrust among other communities which leads to other difficulties in operations/expansions etc.

As such, this type of company conduct can negatively impact the value of our members' investments, and, ultimately, their retirement outcomes.

Government, investor and company focus on improving how the corporate sector can support meaningful engagement with First Nations Peoples is critical. For this reason, we commend the Committee's focus on this topic.

HESTA Investor Expectations and Sector Engagement

Since the destruction of cultural heritage at Juukan Gorge, improving the quality of relationships between investee companies and First Nations Peoples has been a key area of focus for HESTA. Much of our work has focused on understanding what good practice looks like, and how to encourage companies to undertake meaningful engagement.

On 27 August 2020 we released a "Statement on Working with Indigenous Communities" detailing our expectations of companies in their engagement with First Nations Peoples and the protection of cultural heritage. We have included this document as *Attachment 1* to our submission.

Following this, HESTA embarked on a series of engagements with companies to which HESTA had material exposure in the Australian Metals & Mining and Oil & Gas sectors. The purpose of these meetings was to understand how these companies engage First Nations Peoples, alignment of this to their public statements, and the governance mechanisms in place to oversee these actions.

Based on this experience HESTA produced a document "Engagement Series Insights: Working with Indigenous Communities" that includes examples of good practice in relation to issues such as board oversight, organisational structure, benefit-sharing approaches, agreements and agreement-making. We have included this document as *Attachment 2* to our submission.

Our work to date has focused on companies in the mining sector however, the principles underpinning this work extend beyond this sector.

Company-specific engagement: Rio Tinto

HESTA has engaged extensively with Rio Tinto to advocate for key commitments to give investors confidence that Rio was making progress on managing cultural heritage and fostering respectful partnerships with Traditional Owners.

In March 2021, Rio Tinto announced new disclosure and governance oversight measures which aim to provide greater transparency on Rio Tinto's progress against a range of internal and external recommendations and the perspectives of Traditional Owners on the extent of the company's progress.

In September 2021, Rio Tinto published an interim report in line with these commitments. Although this report shows that Rio Tinto has a long way to go, the publication of feedback from Traditional Owners, with their consent, allows investors and other stakeholders to assess the quality of relationships beyond the company's own words. As far as we are aware this type of disclosure is the first of its kind in the mining sector.

Ensuring companies demonstrate the genuine value of their engagement, rather than their intentions, is a challenge. This type of disclosure, which reports on engagement from the point of view of First Nations Peoples, is one of the strongest ways companies

can demonstrate a genuine desire for meaningful engagement and most importantly, reveal the areas in which they can improve.

The Dhawura Ngilan Business and Investor Initiative

There are also a series of initiatives underway across the investment sector. These initiatives are focused on a variety of objectives including:

- i) Building relationships between First Nations leaders and organisations and the investment sector
- ii) Improving disclosure
- iii) Sharing insights across the investment sector to build capacity

A key initiative that may be worth particular attention by the Committee is the recently announced *Dhawura Ngilan Business and Investor Initiative*. This initiative is a landmark initiative that brings together First Nations Peoples with business and investor communities, with the explicit intent of translating the *Dhawura Ngilan* Vision into best practice standards for businesses and investors.

In September 2020, the Heritage Chairs and Officials of Australia and New Zealand's (HCOANZ) published, '*Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation.*' The *Dhawura Ngilan Business and Investor Initiative* will add to the legislative standards, providing standards which can also be applied businesses and investors. These standards will be aligned to a uniquely Australian Vision supported by peak bodies representing every major land council and native title representative body in Australia.

2. Strengthening corporate sector cultural understanding

An important mechanism in improving corporate sector cultural understanding is to legislate high minimum standards across all states and territories in relation to the protection of cultural heritage and engagement with First Nations Peoples. High standard setting signals to the corporate sector what is acceptable.

We support legislated standards which reflect those articulated in, '*Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia.*' These standards should align with those that will be published by the *Dhawura Ngilan* Business and Investor Initiative. Legislating these standards removes ambiguity for corporations and investors who are already actively seeking to improve cultural understanding and engagement outcomes.