

Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia – May 2021

Introduction

HESTA welcomes the opportunity to make another submission to the parliamentary Inquiry into the destruction of Indigenous heritage sites.

HESTA is an industry superannuation fund dedicated to meet the specific needs of employees working in the health and community services sector. HESTA has \$60 billion of assets and 880,000 members, many of whom have dedicated their lives to advancing the aims of equality and reconciliation in this country. HESTA was the first industry super fund to launch a Reconciliation Action Plan (RAP). We take our obligations to advance the ambitions of reconciliation in this country seriously.

We commend the Committee on its work so far and endorse the findings, sentiment and recommendations of the interim report released in December 2020. We sincerely hope there will never again be a need for an inquiry such as this.

HESTA is committed to:

- building community partnerships grounded in recognition and respect;
- advocating for equity outcomes between non-Aboriginal and Aboriginal people; and
- advancing the aims of reconciliation through our role as a responsible Australian company and a responsible Australian investor.

The purpose of this submission is to formally update the Committee about our ongoing work on these important issues and suggests measures that could assist.

HESTA's activities

As long-term investors, we believe that strong and respectful stakeholder relationships are essential to realising long-term company value. In the case of Rio Tinto and the mining sector more broadly, we believe it is imperative that companies form deep and respectful partnerships with the Indigenous communities on whose land they operate. It is clear to us that these partnerships cannot be formed if the priorities, aspirations, and perspectives of those communities are not heard or actioned.

HESTA has continued to work with Rio and other resources companies to communicate our expectations of companies in working with Indigenous communities and to learn about various industry approaches and practices.

On 27 August 2020 HESTA released a "*Statement on Working with Indigenous Communities*" detailing its investor expectations around how companies manage risks associated with Indigenous heritage protection issues. We have included this document as **Attachment 1** to our submission.

Following this, HESTA wrote to 14 Australian mining and energy companies seeking to engage and focus on understanding how these companies assess and mitigate risks, alignment of this to their public statements, and the governance mechanisms in place to oversee these actions. Traditionally, investors such as HESTA have relied on company disclosures and company meetings to understand and assess how well companies are meeting these expectations; however, the tragic events of May 2020 showed there can be a significant gap between public commitments and reality.

An unfortunate example of this type of gap is that Rio had an Elevate Reconciliation Action Plan (the highest level) in place when they destroyed the Juukan Gorge. Elevate RAP organisations are expected to:

*"champion initiatives to empower Aboriginal and Torres Strait Islander peoples and create societal change. Elevate RAP organisations also require greater transparency and accountability through independent assessment of their activities."*¹

The Rio RAP was revoked on 9 June 2020 by Reconciliation Australia.²

Following the release of the "*Statement on Working with Indigenous Communities*", HESTA embarked on a series of engagements from September to November 2020 with companies to which HESTA had material exposure in the Australian Metals & Mining and Oil & Gas sectors. Based on this experience HESTA has produced a document "*Engagement Series Insights: Working with Indigenous Communities*" that includes examples of what we believe is 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.

HESTA has also been instrumental in facilitating investor collaboration after the destruction at Juukan Gorge. HESTA led an engagement supported by a group of Australian, UK and European investors that advocated for key commitments to give investor confidence that Rio was making progress on managing cultural heritage and fostering respectful partnerships with Indigenous communities.

¹ <https://www.reconciliation.org.au/reconciliation-action-plans/#ra-elevate-rap>

² <https://www.reconciliation.org.au/statement-on-rio-tinto/>

In March 2021 HESTA welcomed the company's announcement³ on new disclosure and governance oversight measures which aim to provide greater transparency on Rio Tinto's progress against the Committee's interim recommendations and the perspectives of Traditional Owners on the extent of the company's progress. There are also a series of collaborative initiatives underway across the investment sector for which HESTA is playing its part. These initiatives are focused on a variety of objectives including:

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

The case for National Standards

As summarised by this Committee, there were a lot of factors which contributed to the destruction of the shelters and the PKKP had no support or protection from anywhere. This event truly highlighted the extent of the power differential that exists between Traditional Owners and the parties with whom they are required to engage – from companies to the government.

Where power imbalances exist, they often result in poor long-term outcomes which are costly for investors, companies, and society in general.

We encourage the companies we invest in to adopt and promote a culture of whether they 'should' do something rather than whether they 'can' do something; however, incidents such as Juukan Gorge strongly suggest that industry cannot self-regulate. As the Committee is aware there are differing standards across State and Federal legislation which leads to inconsistencies and uncertainty between these statutes. HESTA believes the only reliable mechanism to reduce uncertainty generated by such inequalities is a strong legal national framework which sets minimum standards and embeds mechanisms which seek to reduce or regulate these inequalities.

In order to develop a strong national framework that is best practice, we believe a good guide is the standards articulated by the Heritage Chairs and Officials of Australia and New Zealand's (HCOANZ) in their September 2020 publication;

'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.'

³ <https://www.hesta.com.au/about-us/media-centre/Investor-collaboration-achieves-agreement-with-Rio-Tinto.html>

We note that these standards have been developed and endorsed by the Chairs of Australia's national, state and territory Indigenous heritage bodies, with support from peak bodies representing every major land council and native title representative body in Australia.

Given the destruction of caves at Juukan Gorge and the release of the HCOANZ Vision and Standards we urge the Committee to recommend that Indigenous Cultural Heritage laws be updated across all jurisdictions to reflect the best practice standards outlined by HCOANZ.