

BHP's Roxby Downs Act condemned by the Federal "A Way Forward" Report, Call to "fast-track" repeal of untenable BHP legal privileges over-riding Aboriginal Heritage

Briefing by David Noonan, Independent Campaigner 3 Nov 2021

BHP and Rio Tinto both stand condemned by the Federal Parliamentary Juukan Gorge [Inquiry](#) into Aboriginal Heritage over "*Legislative exemptions from cultural heritage protections*" (p.147-148):

5.154 The Phenomenon of states and territories passing specific legislation to exempt certain projects or areas from cultural heritage protections is a significant problem for the protection of cultural heritage. Acts such as ... the Roxby Downs (Indenture Ratification) Act in SA are examples of this phenomenon.

Acts such as these have had devastating consequences for traditional owners as rights to protect cultural heritage are intentionally disrupted and prevented.

5.155 The Committee notes that Rio Tinto and BHP have committed to transitioning away from the Marandoo Act/ the Roxby Downs Act ...

5.156 Nevertheless, these Acts remain in force and even when they are repealed their associated histories of injustices will remain.

5.157 States and territories as well as companies involved in such acts should seek to fast-track transitions and recompense traditional owners for injustices that have occurred.

Q: What must now be included in a "fast-track" repeal of BHP's untenable legal privileges?

The *Roxby Downs Act 1982* governs the Olympic Dam mine and applies to associated activities across the Stuart Shelf Area of 12 000 km². BHP took over Olympic Dam in 2005 and has failed for 16 years to reform or surrender these outdated legal privileges (which also over-ride the *Mining Act* in SA).

The *Roxby Downs Act 1982* is also claimed to apply to BHP's Oak Dam Project, a proposed copper-uranium mine 65 km south-east of Olympic Dam - which is now under assessment by BHP.

BHP's injustices to date must not be allowed to be repeated in the contested Oak Dam Project (see [DN Submission No.19.1](#), Sept 6th, to the SA Aboriginal Heritage Inquiry). BHP's Oak Dam Exploration Lease is up for a 5-year renewal in Feb 2022 – just ahead of the March 2022 SA State Election.

There must be clear SA State Election policy commitments by *both* the Liberal Party and the Labor Party: to "fast-track" repeal of BHP's *Roxby Downs Act 1982* over-rides of Aboriginal Heritage protection; AND to repeal any BHP legal privileges from this 1982 Act over the proposed Oak Dam Project – 'privileges' intended to take precedence over an array of other SA legislation, due process, standards, rights and interests, and contemporary community expectations in the 2020's.

It is untenable for BHP to claim Oak Dam is a "Subsequent Project" under the outdated 1982 Act.

The *Roxby Downs Act 1982* governs BHP water extraction from the Great Artesian Basin (GAB), with impacts on unique and fragile Springs of significant ecological, cultural and spiritual value to Aboriginal people. Those Clauses also require "fast-track" reform and must not be allowed to apply to a proposed mine water supply for Oak Dam or to expanded ore processing at Olympic Dam.

See public interest reporting "[Mining giant sucking life out of SA's vanishing Springs](#)" (The Advertiser, 30 June 2021) and a feature article overview "[SA's Disappearing Springs raise Questions for miner BHP](#)" (The Age and The Sydney Morning Herald, 23 Nov 2020).

“Box 5.3 Case study: The sacred mound springs of the Arabana people” sets the scene:

The Arabana people have Native Title over Kati Thanda-Lake Eyre, a significant area between Lake Torrens, Coober Pedy and Oodnadatta in SA. Their home is a place with a rich abundance of life which is fed by mound springs, seepages at the southern edge of the Lake.⁹⁵ These springs are of great significance to the Arabana people and they are an important part of their cultural heritage.

Over the last 20 years the springs have been disappearing due to water extraction from the Great Artesian Basin.⁹⁶ ... There are fears that continued extraction from the springs will result in a significant reduction to the ‘vitality and the ecological viability of the springs’,⁹⁸ and that there is a high likelihood that more springs will go extinct.

A key problem that has contributed to this pumping of water is the Roxby Downs (Indenture Ratification) Act 1982(SA). The Act imposes legal privileges to BHP which takes precedence over the State’s Aboriginal Heritage legislation as well as overriding other State laws and due process.⁹⁹ The indenture applies over the Olympic Dam Special Mine lease and also includes the ‘Stuart Shelf Area’ of over 12,000km², allowing BHP to operate the Olympic Dam Mine without consideration of Aboriginal cultural heritage.

The Act also gives BHP primary access to water from the Great Artesian Basin, currently pumping at a rate of 34-35 megalitres per day with a planned future increase in water extraction by a further 50 percent.¹⁰⁰ This increase has caused significant concern for the Arabana people.

BHP have committed to working with the South Australian Government and traditional owners to formally transition management of Aboriginal cultural heritage protection at Olympic Dam to the South Australian Aboriginal Heritage Act 1988 (SA).¹⁰¹

It is not yet known how this change will impact BHPs water extraction from the Great Artesian Basin and by relation the mound springs.

(“A Way Forward” Report, p.124-125, Ref 95-97 Arabana Aboriginal Corporation; Ref 98-100 DN; Ref 101 BHP)

This SA Aboriginal Heritage Inquiry must be informed by the Federal “A Way Forward” Report, act in accordance with Recommendation No.3 & 4, take up the Findings on the failings of the States, and implement Indigenous People’s Right to “Free, Prior and Informed Consent” on mining in SA.

BHP can-not claim to have “Free, Prior and Informed Consent” over Olympic Dam operations, over impacts on GAB Springs, or over the Oak Dam Project - with drilling operations underway.

Recommendations made by [DN Submission No.19](#) (30 March 2021) to this Inquiry to repeal BHP’s privileges must now be taken up - in at least an “Interim Report” before the 2022 State Election.

Evidence to the Juukan Caves Inquiry on BHP operations in SA must be considered: a key Arabana Aboriginal Corporation (AAC) [Submission 92](#); in [Hearing evidence](#) (29 June 2021) by Ms Underwood AAC, and by David Noonan; and in [DN Submission 73.3](#) on “Free, Prior and Informed Consent”, on “BHP must surrender legal privileges over Aboriginal Heritage, Oak Dam and GAB Springs”, and on “EPBC Act Approval Conditions (2011) must be applied to Olympic Dam to protect Springs”.

Further, Lake Torrens must be addressed, see a DN quote in the “A Way Forward” Report p.129.

I renew my request to provide Evidence to this Inquiry as a Witness in a Hearing this year.

Conclusion: BHP’s belated move (2nd June 2021) to agree “to transition” to compliance with the Aboriginal Heritage Act 1988 must now be “fast-tracked” by this Inquiry & by the State of SA.