

Repeal of BHP's over-ride of Aboriginal Heritage, as BHP tries to retain 1982 Indenture Act impacts on GAB waters & Springs and privileges to a major new Oak Dam mine

Briefing by David Noonan, Independent Campaigner, 06 September 2021

Following the Juukan Caves disaster and long after taking over Olympic Dam copper-uranium mine in 2005, BHP has belatedly agreed to a repeal of legal privileges overriding Aboriginal Cultural Heritage.

In a once in a decade opportunity, the [controversial Roxby Downs \(Indenture Ratification\) Act 1982](#) will come before the SA Parliament for amendment - likely in Oct, pre the SA State Election in March.

BHP's 16-year vested interest over-ride of Aboriginal Heritage protections at Olympic Dam and across the associated 12 000 km² Stuart Shelf Area has been an unprincipled corporate travesty.

While BHP has now committed to abide by the SA *Aboriginal Heritage Act 1988*, "until the transition is legislated" (BHP input to the SA [Aboriginal Heritage Inquiry](#), Sub. No.32, "BHP's SA operations", p.2), BHP has however so far failed to accept other needed basic reforms to the 1982 Indenture Act.

For BHP to respect and protect Indigenous rights and interests, and to meet and reflect modern community expectations, a range of reform amendments to the 1982 Indenture Act are required.

These matters are under consideration by the federal [Juukan Caves Inquiry](#) (see [D Noonan Hearing evidence](#) on 29/6/21, & Sub. No.73-73.3) and SA Aboriginal Heritage Inquiry (Sub. No.19, 30/3/21).

BHP causes untenable impacts on Aboriginal Cultural Heritage in decline of unique and fragile Mound Springs of the Great Artesian Basin (GAB). These Springs are an EPBC Act listed *Endangered Ecological Community*, are under threat, and are of fundamental ongoing Cultural and Spiritual importance to Aboriginal People (see the Arabana Corporation Sub No.92, and DN's Sub. No.73.1).

The Indenture Act grants BHP priority rights to take GAB groundwater, free of charge, in a 'stand-alone' Special Water License regime with precedence over other SA laws, imposing an excessive rate of extraction of GAB water – set at up to 42 million litres a day in 1997. This regime must be revoked.

Olympic Dam mine operations cause serious adverse long-term impacts on the groundwater pressure and flow in the GAB on which the fragile Springs depend. See: "[Mining giant sucking life out of SA's vanishing Springs](#)" (The Advertiser, 30 June 2021); and a feature "[SA's Disappearing Springs raise Questions for miner BHP](#)" (The Age and SMH, 23 Nov 2020).

Inappropriate location of BHP's Wellfield A, in the midst of an arc of Mound Springs south of Lake Eyre, causes an adverse regional drawdown effect in the most potentially impacting location. National and State Environment Groups have long [recommended](#) that Wellfield A must close ASAP.

In Dec 2019 the Australian Conservation Foundation, Conservation SA and Friends of the Earth [called on](#) Environment Minister Ley to apply strong EPBC Act Conditions from 2011 (see DN's Sub.No.73.3, p.3) to BHP's Olympic Dam mine to protect the GAB Springs - as a national asset, an EPBC Act *Matter of National Environmental Significance*, and an icon of ongoing Aboriginal Cultural Heritage.

In 2011 BHP accepted these strong EPBC Act Approval Conditions were to apply across the entire Olympic Dam operation. But they were set aside after BHP abandoned an open pit mining project in 2012. A decade on, the federal gov is [still updating](#) this important set of 2011 EPBC Act Approval Conditions - but they have never been applied to protect the GAB Springs. SA should now do so.

The SA Parliament's review of the 1982 Indenture Act is a key test of BHP's 'social licence' to operate and of BHP's untenable impacts on the Ecological and Cultural integrity of GAB Springs.

BHP's Oak Dam copper-uranium project usurps due process, laws, rights & interests:

A [BHP Operational Review](#) (Sept 2020) reports the "Oak Dam" project is under assessment by BHP as a potential major new underground mine. The Oak Dam "Project Status Update" (p.22-29) says next stage resource definition drilling to inform future design work is due from mid-2021.

The Oak Dam project is located 65 km south-east of Olympic Dam and within Exploration Licence 5941, 100% owned by BHP, which expires on 21 Feb 2022 - when a subsequent application will be lodged. Copper-uranium ore from Oak Dam is proposed to be processed at Olympic Dam.

BHP claims the Oak Dam project is covered by four-decade old privileges under the *Roxby Downs (Indenture Ratification) Act 1982*, as a "Subsequent Project" (Clause 9) [taking precedence over a wide range of SA laws](#) (as it is geographically within the Stuart Shelf Area as defined back in 1982).

The Oak Dam project is controversial in a number of respects: "[Heritage spat slows BHP at Olympic Dam and Oak Dam](#)" (AFR, 28 April 2021), as Kokatha Native Title holders contest outdated and culturally inappropriate agreements, stop surveys, and want a new agreement with BHP.

Any major new mining project in 2020's, and any use of Olympic Dam as a regional processing centre for ores mined at Oak Dam, must be subject to a full suite of SA's contemporary laws and due process and not be governed by long outdated legal privileges from a 1982 era Act.

Recent reforms to the SA *Mining Act* & Regulations do not apply at Olympic Dam or at Oak Dam as the 1982 Indenture Act takes precedence over the *Mining Act*. Key parts of a [Closing the Gap plan to tackle 'institutional racism'](#) in SA may also be overridden by the Indenture and not apply to BHP, in:

"Amendments to the Mining Act that would help Aboriginal people monitor the progress of mining and exploration projects and provide a real-time indication of what is happening on their land."

Mining at Oak Dam and any higher rate of ore processing at Olympic Dam must not be used to sanction further BHP priority water extraction from the GAB, with associated Ecological and Cultural Heritage impacts on Mound Springs - again impacting on and overriding Aboriginal Cultural Heritage.

Sourcing mine water supply by over exploiting the GAB is a known limiting factor to mining in SA.

On announcing a new \$5.6 million investigation of groundwater sources for mining, stretching from near Port Pirie to north-west of Leigh Creek, Minister for Mining Dan van Holst Pellekaan has stated:

"We cannot take anymore water in the GAB, we cannot take water out of the Murray for mining either" (The Flinders News, "Search is on for new water source", 18 August 2021, p.1)

Respecting Aboriginal rights and interests requires far more from the SA Parliament and from BHP than a simple repeal of the 1982 Indenture Act's overrides of the *Aboriginal Heritage Act 1988*.

Indigenous People have a UN Declaration right to *Free, Prior and Informed Consent* over mining projects on their country (see DN Sub. No. [73.3](#), p.1) and Parliament should require BHP to do so.

The SA [ALPSC Heritage Inquiry](#) has a set of Recommendations before it to reform BHP's operations in SA (DN Sub. No. [19](#), Rec. No.'s 7 to 16). These Rec's also serve as input to an expected Bill to amend the *Roxby Downs (Indenture Ratification) Act 1982* before the SA State Election in 2022.

The SA Parliament must amend the 1982 Indenture Act to remove Oak Dam and not sanction application of *untenable* legal privileges to BHP over a major new mining project.

For further information see: <https://nuclear.foe.org.au/olympic-dam/>