

## ***Western Australia's 'archaic' heritage laws are in the spotlight as global outrage grows over the destruction of Aboriginal sites***



*The mounting backlash against mining companies grew after Rio Tinto's destruction of a 46,000-year-old Aboriginal site at Juukan Gorge. Photograph: Richard Wainwright/EPA*

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Calls are growing for an immediate halt to mining operations in the Pilbara that have been approved under Western Australia's "archaic" Aboriginal heritage laws and the Senate will hold an urgent inquiry, as international outrage from investors pushes big mining companies Rio Tinto and BHP into damage control.

On Thursday, Guardian Australia revealed that BHP Billiton was poised to destroy at least 40 significant Aboriginal sites in the central Pilbara to expand its A\$4.5bn South Flank iron-ore mine, even though it was aware the traditional owners are deeply opposed to the move.

By day's end, following public outcry, the company said it would not go ahead without "further extensive consultation" with the traditional owners, the Banjima people.

The mounting backlash against mining companies for their destruction of Aboriginal heritage grew after Rio Tinto's destruction of a 46,000-year-old heritage site at Juukan Gorge last month, and their actions have been

compared by shareholder groups to widespread bad conduct in the financial services sector before the banking royal commission.

Rio Tinto's global chief, Jean-Sebastien Jacques, made his first public comment on the issue on Friday, saying "we are very sorry for the distress we have caused the PKKP in relation to Juukan Gorge and our first priority remains rebuilding trust with the PKKP." The apology came after Rio's chairman held meetings in London this week to explain their actions to major shareholders. Among them were Aberdeen Standard International (ASI), its seventh-largest shareholder, which said it was "deeply concerned".

"The reports on BHP's activities are also deeply concerning to ASI, and we will similarly be reaching out to BHP to discuss these reports," said ASI's Danielle Welsh-Rose.

Welsh-Rose said investors should expect companies to go beyond their legal obligations, particularly when local laws fall short of international standards or community expectations.

"ESG factors" are the environmental, social and governance values of its investments. Even Australian Super, which is notoriously quiet on matters of ESG, told Guardian Australia it was "very concerned about this situation" and had twice engaged with Rio Tinto about it.

This week, Rio Tinto was also stripped of its partner status with Reconciliation Australia.

Reconciliation Australia wrote to all its partner organisations, including BHP, "regarding our expectations on the standards we expect of them as partners and what constitutes respectful relationships, including organisations who operate under WA heritage laws".

On Tuesday, about 300 people joined a protest led by Noongar elders outside Rio Tinto's offices. The WA premier, Mark McGowan, asked protesters to "express yourselves in other ways" than gathering during the coronavirus pandemic, even though most wore face masks.

"The approvals for [Rio] were granted in 2013, we didn't know anything about it," McGowan told reporters.

But concerns about mining in the Pilbara have been around for years. The executive officer of the Australasian Centre for Corporate Responsibility, Brynn O'Brien, said she had been contacted by investors concerned about BHP's Aboriginal heritage track record long before Guardian Australia revealed it had received permission to destroy sites in the expansion of its South Flank mine. Rio Tinto and BHP are considered peers in the industry, O'Brien said. "BHP would be very, very unwise to ignore this backlash."

But their conduct has been perfectly legal. Both companies received ministerial consent order to destroy the sites under WA's outdated Aboriginal heritage laws.

The Aboriginal Heritage Act was introduced in 1972 to protect "sacred or otherwise culturally significant" sites from destruction by the mining and pastoral industries. It developed a process for registering sites, making it illegal to discover a site and not notify the government.

Section 18 allows mining companies and other landholders to apply for ministerial permission to destroy Aboriginal heritage. It does not give traditional owners a right of appeal or even a right of reply.

In many cases, as with BHP, the registration of sites and permission to destroy them is sought in a single application. The Aboriginal Cultural Materials Committee (ACMC) makes a recommendation to the Aboriginal affairs minister, who grants consent for a site to be destroyed.

Between 1 July 2010 and 1 March 2020, the ACMC considered 463 section 18 applications from mining companies. None were refused.

In BHP's case, permission was granted four days after news broke of Rio Tinto's detonation at Juukan Gorge.



*The West Australian minister for Aboriginal affairs, Ben Wyatt, said he had not known about the blast at Juukan Gorge until it happened. Photograph: PKKP Aboriginal Corporation/AFP/Getty Images*

On May 28, the WA minister for Aboriginal affairs, Ben Wyatt, a Yamatji man, said he had not known about Juukan Gorge until after the blast happened.

He told reporters: “Yeah, I didn’t know. Which is unusual. Normally when there is a concern around upcoming activity around heritage sites I do get contacted pretty rapidly by the relevant Aboriginal organisation. The first I heard about this was after the explosion.

But it has emerged that his department was aware. Wyatt told parliament that the Department of Planning, Lands and Heritage held a pre-arranged meeting with advisers for the Puutu Kuntj Kurrama and Pinikura people (PKKP) four days before the blast. It told the PKKP advisors there was no way to revoke the section 18 approval, and called Rio Tinto after the meeting. But Wyatt repeated that he was not aware of concerns until after the site was destroyed.

Federal Indigenous Australians minister Ken Wyatt, also a Yamatji man and cousin to his West Australian counterpart, admitted lawyers from the PKKP contacted his office on 20 May, seeking an injunction under federal laws.

Wyatt referred them to the environment minister, Sussan Ley, who has carriage of the federal Aboriginal heritage protection act. Wyatt told the ABC this week the PKKP lawyers did contact Ley, but “by then it was too late”. His office did not follow-up with Ley until after the sites were destroyed.

“But we have to watch every other site that exists within that Pilbara region and I would urge elders to make sure that they check on those sites to ensure that there is no further damage done in the Pilbara, because some of those other sites are 60,000 years plus old,” he said.

On Friday, the Senate agreed to take a look at all states and territories, where Aboriginal heritage is poorly protected under the law.

“This is a very significant outcome,” Labor’s Linda Burney said on Friday. “We believe that the resources industry is incredibly important to the Australian economy, and we want to see better practices.

“We also make the point very strongly that Aboriginal cultural heritage, as pointed out by Unesco two weeks ago, is the heritage of all Australians.”

But WA Labor senator Pat Dodson went further, calling for a moratorium on the granting of section 18s until WA amends the act.

“And if that holds up production, well that’s a question for the minister to be getting on with these consultations and trying to improve the legislation,” Dodson said.

“It’s an archaic act, the minister makes that admission himself. He’s been trying to amend this for two years or so. There’s gonna be another election before he gets around to introducing a new bill. So, in the meantime, you just cannot have the status quo position prevail.

“I cant tell the state what to do, but, you know, there’s got to be some fairness for First Nations peoples.”

A long way from machinations in Perth and Canberra, the Banjima traditional owners found themselves in the media spotlight this week, unable to comment specifically due to their agreement with BHP, and reeling from the sudden loss of a beloved senior elder.

But in a statement they said: “As a matter of lore and culture shared with other traditional owners across Australia and the world, the Banjima people do not support the destruction of sites of cultural significance.

“We stand with all Aboriginal traditional owners and particularly our Pilbara brothers and sisters, the Puutu Kunti Kurrama and Pinikura, at this time in our abhorrence at the destruction of the Juukan rock shelters, and those suffering the threat of or having recently experienced similar site destruction.”

The Senate inquiry is due to report by 30 September.