

# Facts: The Juukan cave manipulation and disinformation operation

An unpublished submission from a concerned member of the public

2 OCT 2022



## Introduction & Context

Aboriginal heritage is a sensitive topic in Australia and across the globe. The blast of the Juukan caves attracted some very emotional coverage.

It is not coincidental that the destruction of the Juukan Gorge rock shelters and the paucity of cultural heritage protections thereby brought into public view have the feel of a colonial frontier.<sup>1</sup>

This coverage has unfortunately happened to the detriment of facts because it has not encouraged a nuanced, healthy debate. This is clearly a missed opportunity.

If facts are not established and accepted in an objective way, the real issues will not be solved, which will only create more friction. As a result, positions will become even more entrenched. This is exactly what happened during this Inquiry.

As an example, Pat Dodson compared the blast to a 'cultural and incremental genocide' not only inaccurate it is obvious that the blast does not fit the definition of genocide) it also encourages an aggressive, emotional discourse that will not help a meaningful resolution of heritage issues.<sup>2</sup>

Aggressive rhetoric has been used to paint Rio Tinto in a bad light. The fact that Rio Tinto is not the only mining company using Section 18 to legally expand mines or build infrastructure has been minimised or even ignored.

BHP is also using Section 18 approvals to blast sites. All miners do. The [following article](#) says that BHP has applied for 57 section 18 approvals by the WA government since 1975.<sup>3</sup>

Finally, the blast of the Juukan caves was legal and this fact is of critical importance. The authorisation to disturb the Juukan caves was granted on 31 December 2013 (see Rio Tinto submission 25.0 paragraphs 4 & 49).<sup>4</sup>

It is very clear that the blast was also used to push a political agenda by Noel Pearson, Marcia Langton and others.

Marcia Langton explained in her submission to the Inquiry that she wanted to push a broader agenda and give TOs a veto right & more money (see submission 103). She also heavily criticised Rio Tinto and the executive team, saying that they were racist multiple times.

Noel Pearson was interviewed numerous times. <sup>5</sup>

Other relevant articles are listed below:

- <https://www.afr.com/rear-window/rio-tinto-directors-briefing-against-l-estrangle-20200906-p55sue> <sup>6</sup>
- <https://www.theaustralian.com.au/inquirer/rio-tintos-poor-excuses-on-juukan-gorge/news-story/35f4ef04cf4add0254d4945059e4dd46>

Instead of focusing on hard evidence and real facts, the Senate Inquiry gave a platform to activists who wanted wholesome changes to the constitution and the laws and promoted divisive identity politics.

Far left environmental groups also campaigned to stop mining heritage sites altogether.

This would go against the fact that Indigenous peoples have a right to self-determination: they can decide which site to destroy, and which site to save.

It would be unrealistic to expect all heritage sites to be protected, and a balance between economic and cultural interests needs to be found on a case-by-case basis.



Protesters during a rally outside the Rio Tinto office in Perth. Richard Wainwright/AAP

During the Juukan Inquiry, facts have been routinely ignored or even manipulated to push political agendas, without any consequences whatsoever. As an example, Marcia Langton mentioned that she believed that explosives could be removed despite having no expertise in this field. Nobody dared to correct her.

Experts have provided a different opinion. The relevant extract of her submission is copied below:

'I have checked with experts in the mining industry about the veracity of this claim that the dynamite could not be removed. I have heard two views, and one is that it was entirely possible to deactivate the dynamite.'

**Nobody challenged her.**

As Rio Tinto is a dual listed company (London & Melbourne), activists opportunistically pushed the line that the company should be based in Australia and that its Directors should be Australians. It should be kept in mind that the decision to blast the Juukan caves was made and implemented in Australia by Australians. London had nothing to do with it.

The evidence provided during the Senate Inquiry has clearly shown that thousands of employees are working from Perth, and only dozens from London. The former Rio Tinto CEO Jean-Sebastian Jacques even relocated to Australia and wanted Rio Tinto headquarters to be moved to Australia, as detailed in the press in 2017.

Heritage issues are much more complex than the Juukan cave blast. Castigating Rio Tinto or any other big mining company creates the illusion that a rogue player abused the system. This is factually incorrect. The Aboriginal heritage issue will require significant legislative, cultural and behavioural changes to be addressed. And once again, the blast was legal.

Even if some facts appear shocking or insensitive, they remain facts and need to be accepted as evidence. Problems cannot be solved without an adequate description of facts.

Accuracy is also not something that should be compromised during a Senate Inquiry.

Sadly, this hasn't been the case. In particular, the following inaccuracies need to be corrected:

1. The Juukan rock shelters are not man-made. They are natural geological occurrence dating back several billions of years. The caves themselves were not 46,000 years old, but probably much older;
2. Such rock shelters are a common sight throughout the Pilbara. There are thousands of them;
3. There was no rock art or paintings in the caves;
4. Some of the artefacts were c. 46,000 years old.

A copy of a 2009 Slack report can be found [here](#):<sup>7</sup>

It should be noted that the archeological reports mentioned in the Senate Inquiry haven't been made public, which does not help.

The caves had all been excavated before the blast as had been agreed.

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*Most artefacts were fossilised organic matters, mainly animal droppings (see Slack report & link above)*

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No meaningful conclusions or reparations can be made if there is no agreed set of facts.

#### The significance of the Juukan caves

When talking about the Juukan caves, it is important to clarify whether one is talking about:

- the rock shelters;
- the artefacts;
- or both.

The artefacts were archeologically significant because of their age and this is the main reason why they were duly excavated and stored on site.

The artefacts were not damaged and were carefully stored in a container.

**No evidence that the PKKP claimed the artefacts back after their excavation was provided during the Senate Inquiry.**

The caves themselves were not archeologically significant. Such caves are a common sight in the Pilbara.

The Juukan rock shelters were not on the reserve list in 2011.

- 12      The 2011 Participation Agreement included a list of sixteen (16) areas of high cultural heritage significance identified by the PKKP, and referred to as "Rights Reserved Areas", which it was agreed would have additional protections. The Juukan sites were not included on that list.

(Submission of Rio Tinto's Senate Inquiry (25.0), paragraph 12 Senate)

**See also para 108: the Juukan caves were not on the list of areas of significance.**

The Juukan caves were not identified as sacred or significant in 2011.

The reserve list was drafted by the PKKP to identify all the sites that needed to be protected because they were sacred or culturally significant.

The fact that the Juukan caves were not on the reserve list proves that the PKKP did not know, at the time, that the rock shelters were sacred or culturally significant.

The PKKP did not object to the Section 18 granted on 31 December 2013.

(See Submission of the Register office (Ms Tanya Butler, submission 152).<sup>8</sup>

The relevant extract is copied below for ease of reference.

**Mr SNOWDON:** Do your records show if there was any opposition to the proposal to provide a section 18?

Ms Butler: I don't recall specifically.

Mr SNOWDON: Could you investigate that for us, please, and take it on notice.

**Response:** No, the records do not show any opposition to the section 18, rather a number of recommendations as a result of the consultation between the Applicant and the PKKP people.)

This point was confirmed by the statement of the Register Office to this Inquiry. The PKKP received a copy of the Section 18 application, despite initial statement to the contrary by Dr Heather Buihth.

In August 2014, the artefacts excavated at the Juukan caves were presented to the public in Perth, during the 'Colours of our Country' festival. The Western Australia Premier, the PKKP chairman Burchell Hayes and other PKKP representatives attended the festival. The Juukan caves were presented as a model of collaboration between mining companies and Traditional Owners. Andrew Harding, then CEO of Rio Tinto Iron Ore division, even made a speech about them. It was known and agreed by everybody in attendance that the caves were going to be destroyed.

11:26 AM · Sep 14, 2022

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This can only mean that the PKKP still did not know, at the time, that the caves were sacred or culturally significant.

The PKKP did not report any evidence of visits and cultural rituals at the Juukan caves.

This would tend to prove that the caves were neither sacred nor culturally significant. Further explanations are needed to understand why the PKKP now claims that the caves are sacred and what has changed between 2014 and the blast. What is the significance of the caves? When was it known?

One of the Slack report was issued in 2014.

The cave had already been excavated in 2009, as can be seen [here](#):<sup>9</sup>

This report clearly shows that the PKKP took an active part in the excavation works (Burchell Hayes participated, last paragraph). The site is not described as sacred. There is a description of the artefacts.

The significance of the site seems to derive from the artefacts. The final version of the report seems to be an update of the initial report and is not attached to the submission files. It should be made public.

Going forward, sacred and culturally significant sites should be formally identified on a centralised register, with clear and agreed assessment criteria.

From the evidence presented during the Inquiry it is impossible to determine whether the Juukan caves were sacred or culturally significant and why. This needs to be further investigated and clarified.

Furthermore, the PKKP knew that the caves were going to be destroyed as the Section 18 had been granted in 2013. The excavation works and the documentary were commissioned to understand the sites better. No formal objection to the destruction of the Juukan caves was ever lodged.



Josephine Cashman  
@Josieamycashman

In 2014 excavated Juukan artifacts were presented at the 'Colours of our Country' festival. Andrew Harding CEO of Rio Tinto's Iron Ore division made a speech about them. It was known & agreed by all in attendance that the caves were going to be destroyed. [aph.gov.au/DocumentStore...](http://aph.gov.au/DocumentStore...)

<b>Mr Haynes:</b> We're very happy to provide that detail.	
7. <b>Senator Dean Smith:</b> I just want to go back over some previous territory. In answer to question 7 from the original hearing, Rio Tinto noted that a review of documentation had found that the former CEO of iron ore, Mr Andrew Harding, had first mentioned the significance of the gorge in a 2014 event at Central Park in Perth's CBD. I'll just quote from your response. It says, 'we, Rio Tinto, understand that Andrew Harding, then Chief Executive Iron Ore, delivered a speech in which the Juukan rock shelters were mentioned at the opening of the Colours of our Country Aboriginal Art Exhibition on Monday 8 of September 2014 at Central Park, Perth. The speech noted that, at this most significant site, the evidence estimates Aboriginal occupation dating back	There was no current member of the Rio Tinto executive team who attended the Colours of our Country event in 2014.  There is one new member of the Iron Ore Senior Leadership Team (SLT) who attended the event in 2014 - Richard Cohen. Richard joined the Iron Ore SLT in October 2020 and was not part of the Iron Ore SLT in May 2020 ahead of the blast in 2014 when he attended the Colours of our Country event he was the MD Project Services in Growth & Innovation at Rio Tinto. He was not in the Iron Ore business at that time.

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Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia  
Submission 25 - Supplementary Submission

Question no	Questions from transcript	Response
	some 43 000 years'. Who else from the leadership team was present at this event in 2014? <b>Mr Haynes:</b> We will come back to you on who else was present from the leadership team at that event. But in terms of our understanding, no-one from the existing team was present. <b>Senator Dean Smith:</b> No-one from the existing leadership team was present at that event? <b>Mr Haynes:</b> That's my understanding but I will double check that. <b>Mr Salisbury:</b> We're talking about the senior leadership team or the current executive committee of iron ore but as to who else was there, we'd have to check. <b>Senator Dean Smith:</b> Can you provide to us what other notables were there not necessarily from Rio. I'm sure you'll have an attendance list or a program or a running order.	Rio Tinto has enclosed a copy of the running order from the Colours of our Country event in 2014. A copy of the opening address from Andrew Harding is included as part of this running order.  A copy of the final acceptance list is provided on a confidential basis. We note this is a list of acceptances rather than attendees and should not be taken to be complete given some individuals may not have attended on the day. The list does not include Premier Barnett, who did attend the event.

Relevant extracts of Submission 152 are copied below for ease of reference:

**Senator DODSON:** Can I get some clarity—did you have any discussions with the PKKP people prior to the blowing up of the Juukan caves?

**Ms Butler:** Yes. There was a meeting held with PKKP representatives.

**Senator DODSON:** On what date did that occur?

**Ms Butler:** The 19th of May, I believe.

**Senator DODSON:** And what was discussed?

**Ms Butler:** The meeting was for another matter. I cannot specifically recall the details of that meeting. It was for another meeting about another matter with one of my officers. I was in attendance and there was a question raised by the PKKP representatives on the section 18 process.

**Senator DODSON:** Was there any discussion in relation to the capacity to access Commonwealth relief—

**Ms Butler:** No.

**Senator DODSON:** through one or other of the acts?

**Ms Butler:** No. Not in that meeting.

**Senator DODSON:** Was there any other meeting that that was discussed at?

**Ms Butler:** No. Not with me.

**Senator DODSON:** With anyone else?

**Ms Butler:** Not that I'm aware of.

**Senator DODSON:** Were there any other meetings held with the PKKP, outside of the ones that we're talking about?

**Ms Butler:** Not that I can recall.

**Senator DODSON:** You might want to take it on notice and just check the record, if you wouldn't mind.

**Response:** I can confirm that I have not attended any meetings with PKKP representatives other than the 19 May 2020.

**Later In The Submission:**

**Mr SNOWDON:** Do your records show if there was any opposition to the proposal to provide a section 18?

**Ms Butler:** I don't recall specifically.

**Mr SNOWDON:** Could you investigate that for us, please, and take it on notice.

**Response:** No, the records do not show any opposition to the section 18, rather a number of recommendations as a result of the consultation between the Applicant and the PKKP people.



The PKKP had many years to object but chose not to do so until it was too late. Even then, they did not follow the formal process. This needs to be explained.

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*It is important to test whether or not the Juukan gorges were sacred. The recent controversy surrounding the publication of Dark Emu, by Bruce Pascoe, proves that claims need to be thoroughly tested. This has not been done. Evidence presented to the Senate Inquiry points to the fact that the caves were neither sacred nor culturally significant. The artefacts were archeologically significant and have been excavated.*

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### Free Prior And Informed Consent (FPIC)

FPIC means that Indigenous peoples must be informed about mining, logging, palm oil and other large projects in a timely manner. This section examines whether Free Prior and Informed consent has been given by the PKKP.

#### *Juukan mining contract negotiations*

Years were spent negotiating the mining contract between the PKKP and Rio Tinto.

(See para 74-76 of Rio Tinto Senate Inquiry submission (Binding initial agreement 2004-2006), and sections 3.4 & 3.5;

See also response 10 of Submission 25.1 ‘ MAC had two in-house lawyers who were involved in the negotiations. PKKP also obtained advice from HWL Ebsworth. In relation to the benefits management structure, PKKP obtained advice from Jackson McDonald.)

To ensure the agreement negotiation process was comprehensive, robust and well represented for the Traditional Owners, Rio Tinto funded a portion of the Traditional Owners’ advisory costs. This amounted to more than \$14 million in funding provided between 2007 and 2011 to Pilbara Traditional Owner groups This means that \$14m of legal fees were entirely paid by Rio Tinto.

The negotiations started in 2003. The PKKP insisted on not identifying each site and preferred to give consent to mine entire regions, with a reserve list identifying the sites that needed protection. Nobody forced the PKKP to sign the contract. From the evidence presented to the Senate Inquiry, it is disingenuous to claim that the contract was not really understood when so much time and money was spent negotiating it.

Marcia Langton, Noel Pearson and numerous Indigenous leaders were involved in drafting the mining contracts.

Marcia Langton even praised the mining contracts in 2015, as can be seen [here](#):<sup>10</sup>

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*‘Those familiar with my work on Indigenous agreements with mining companies would know that the Indigenous supply chain in the iron ore industry in Western Australia alone now exceeds \$AUD3 billion, achieved in less than 5 years.’*

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Here is an interesting blog about Noel Pearson:<sup>11</sup>

Relevant extract as follows : ‘Noel Pearson is an articulate exponent of what he regards as the best interests of his people, but he is also a foul-mouthed bully. When I was a journalist with *The Sydney Morning Herald*, **I dared to write about connections between some north Queensland indigenous organisations and big mining companies.**<sup>12</sup>

I was subjected to a 30-minute raging rant on the phone from Pearson, during which he called me “a f...ing c..t” on no fewer than 15 occasions. [As has been written elsewhere](#), there is a deeply disturbing side to this man which the public has not largely been privy to.’<sup>13</sup>

This is an [interesting read](#) about Noel Pearson. It explains that he wanted the Indigenous peoples to be more independent (hence the mining contracts).<sup>14</sup>

Noel Pearson and Marcia Langton were therefore fully aware of the so-called ‘gag-clauses’.

There is no evidence that they objected to them. It is therefore dishonest for the same Indigenous leaders to describe them as unacceptable now.

The Committee needs to be reminded that Marcia Langton has already been accused of ditching serious debate for name-calling (Crikey, 27 February 2013): ([Link here](#))<sup>15</sup>

Marcia Langton repeated the same pattern of behaviour during the Juukan Inquiry when, in essence, she implied that Rio Tinto management team was racist.

(AFR article: [Marcia Langton eviscerates Rio Tinto](#))<sup>16</sup>

Extract: ‘Indigenous leader and anthropologist Marcia Langton has accused Rio Tinto of “a return to the corporate culture that led to the disaster at Bougainville” and linked its degeneration to the 2016 appointment of current chief executive Jean-Sébastien Jacques.’)

She gave numerous interviews and made aggressive statements throughout the course of the Inquiry. This did not promote a healthy debate and prevented the voices of the Traditional Owners from being heard.

Bruce Harvey was also one of the architects of mining contracts. He should detail what his exact involvement in the negotiations was. It should also be noted that Bruce Harvey was in charge of Indigenous relations in 2011, when the reserve list was drafted. The Juukan Gorges were not on the reserve list. How could Mr Harvey miss them if they were so significant?

The mining contract has not been made publicly available during the Senate Inquiry.

It needs to be made public in its entirety to allow for a meaningful debate.

It is unclear whether Traditional Owners would agree to publish mining contracts in their entirety. Having all contracts in a non-redacted form would allow the public to have all the facts and be able to judge whether the contracts are fair and balanced. This has not happened yet and does not allow for a balance debate.

The going rate for mining royalties is c 0.5% of the revenues. Based on the production of the Brockman 4 mine, this means that the PKKP has received over \$160m of royalties over the last ten years (22mt x 10 years x \$150 (average price) x 0.5%= \$165m). The exact amount should be made public. What was done with it? Why wasn't it used to protect significantly cultural sites?

The PKKP annual report can be found [here](#)<sup>17</sup>

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*It doesn't give any details as to what was done with the money. It pays handsomely its Board members (see p17). The report mentions that the Juukan caves were 'precious and sacred' but*

*doesn't explain why. Nobody has challenged this narrative.*

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It should be noted that the annual report of the PKKP does not tell the whole story: mining royalties are usually put in a trust fund. The trust fund is probably financing the PKKP organisation. Trust funds don't have to disclose how the money is used. There are billions of dollars of royalties in trust funds all over Australia.

It is therefore disingenuous to say that the Traditional Owners don't have any resources when billions of royalties have been paid to them.

### **Was the PKKP informed honestly?**

Rio Tinto considered four mining plans and eventually chose the mining plan that involved the destruction of the Juukan caves over the three other mining plans. The different options were never presented to the Traditional Owners, the PKKP. This is problematic and akin to lying by omission.

This fact would tend to prove that informed consent was not given because all the relevant information was not shared with the Traditional Owners. Was this done intentionally? The Senate Inquiry has not clarified this point and preferred to focus on the sequence of the blast. However, the fate of the Juukan caves was clearly decided in 2013. This is a clear gap in the Inquiry.

Sam Walsh, who was in charge of the Iron Ore division until mid 2013, has not been questioned by the Committee. He mentioned in the press that he had given the instruction not to mine the caves in 2012.

This was formally denied by Greg Lilleyman. Both Sam Walsh, Greg Lilleyman and the general manager of the mine at the time need to be questioned by the Committee to understand why the mining plans were not presented to the PKKP, and whether the instruction not to mine the Juukan caves was given or not.

If the instruction not to mine the Juukan caves was given, why was the Section 18 still submitted and granted end of 2013. Who made the decision to submit it and why?

If the instruction not to mine the Juukan caves was not given, why did Sam Walsh lie?

Andrew Harding and the former General Manger of Brockman should also be interviewed to shine a light on the sequence of events. Andrew Harding made a speech on the caves in 2014 during the 'Colours of our country' festival. The caves were presented as a model of cooperation. Mr Harding needs to be asked whether he knew of the significance of the Juukan caves.

Former employee Bruce Harvey was in charge of aboriginal heritage and relationship at the time of the submission section 18.

He has admitted, during the Senate Inquiry, that he didn't know anything about the Juukan caves. Despite this fact, he put the blame solely on the new management team for what seems to be his own failings in identifying them in the reserve list and more generally protecting them. He also failed to declare that he is now advising Traditional Owners and wants to protect his reputation. It was not in his interest to question the events of 2011, 2012 and 2013, despite their relevance to the sequence of events. This should have been disclosed and further investigated.

Glen Cochrane criticised the team that blasted the caves and conveniently forgot to explain what he had done, if anything, to protect the caves when he was working for Rio Tinto. He seems to have spent most of his career on Bougainville-related issues rather than Indigenous issues in Australia. He should also explain the circumstances of his leaving Rio Tinto to ensure that there are no conflicts of interest.

#### Was the PKKP informed in a timely manner?

The section 18 for the Juukan caves was granted on 31 December 2013. The Register office has confirmed that it has never received any comments or objections from the Traditional Owners. The Section 18 submission had been communicated to the PKKP.

All the conditions of the approval were fulfilled, as summarised below:

The artefacts were excavated and stored on site. The Traditional Owners were fully aware of the excavation. They did not ask to be given the artefacts back.

A documentary financed by Rio Tinto was made to keep a memory of the Juukan caves to preserve the memory of the caves

The documentary has not been publicly released. It is mentioned in the [following article](#) <sup>18</sup>

An archaeological report was issued in 2014 and updated in 2018. The reports have not been made public. They are [mentioned here](#) <sup>19</sup>

A copy of the 2009 report can be [found here](#). <sup>20</sup>

It should be noted that all the artefacts were removed with the full knowledge and cooperation of the traditional Owners. It is disingenuous to claim that they did not know about the future destruction of Juukan when they actively took part to the preparatory works.

The PKKP did not mention going on site to inspect the artefacts, or claim them back from Rio Tinto.

No objections from the PKKP were submitted until end of 2019 or start of 2020. Even then, the objections did not follow the formal process.

Dr Heather Built mentioned that she could not reach anyone from Rio Tinto in the run-up to the blast. This is surprising as she used to be a Rio Tinto employee and should know the organisation as she used to be part of it. Her LinkedIn profile still mentions that she works for Rio Tinto.

In September 2014, the artefacts were presented to the public during the colours of our country festival. Burchell Hayes attended the festival with the Western Australia Premier. The Juukan caves were presented as a model of collaboration. There was no indication at the time that the PKKP had objected to the blast. Quite the opposite, the future destruction of the caves was celebrated.

Here is an Extract of Andrew Harding speech on 8 September 2014 (See Rio Submission 25.4 p14 of 19):

'But we are here tonight, surrounded by this amazing art, which tells the story of the Pilbara and its people across millennia.



It reminds me that Rio Tinto's presence in and relationship with the Pilbara is but a small moment in its incredible history.

For example, we are currently working with Traditional Owners to document heritage sites at an area known as the Jukaan (*pron: jew-kahn*) rock shelters.

At this most significant site, the evidence estimates Aboriginal occupation dating back some 43,000 years

By collaborating to preserve heritage and culture, we have gained a better understanding and appreciation of the intrinsic link that Aboriginal people have to their traditional country.

And we have learnt that to maintain positive relationships, cultural heritage must be treated with the utmost respect. ‘

Representatives of the PKKP, including Burchell Hayes, attended the festival.

From all the evidence presented to the Senate Inquiry, it appears that the Traditional Owners had been informed years in advance of the blast and could not pretend to ignore it. They did not take any steps to prevent it.

In conclusion, the PKKP was informed in a timely manner but the fact that they were not told of different mining plans cast a doubt on the validity of their consent. This needs to be further explored as it goes to the heart of the definition of Free Prior and Informed Consent.

### **The blast was legal and was used as a political platform**

It has been more than a year since the blast and numerous other sites and artefacts have been disturbed or destroyed by various companies. Despite the title of this Inquiry's preliminary report, nothing has changed.

Ben Wyatt, who was WA Treasurer and Minister of aboriginal affairs at the time of the destruction of the Juukan caves, had been working on a new law for years. This law has not been passed. It should be noted that this law would not have saved the Juukan caves.

More than a year after the blast, a repeat of Juukan could still happen.

Ben Wyatt heavily criticised Rio Tinto for the blast despite not doing anything to stop it. Again, the blast was legal. Ben Wyatt was in charge of governing the law.

Ben Wyatt's office office was contacted but did not do anything to stop the blast.

[Ben Wyatt has now been appointed to the Board of Rio Tinto.](#)

Much has been said on the sequence of events leading to the blast. It is common knowledge, at the Brockman 4 mine, that PKKP members are part of the squad who blasted the caves (Alannah, Shayne...)

Recent hearings tends to prove that Rio Tinto is a leader in managing Indigenous communities in Cape York and Queensland.

Finally, it is disingenuous to say that the blast will never happen again. It will, because the whole point of self-determination is to give indigenous peoples the right to choose what to do with their heritage. Territorial Owners have hugely benefitted from mining. For each heritage site, informed decisions balancing the economic and cultural interests will have to be made.

### **The questions that remained unanswered**

Burchell Hayes, the PKKP Chairman, has repeatedly said in the press that he was driving with his grandchildren when he found out that the caves had been destroyed. This statement is at odds with the following facts: the PKKP was fully aware that the artefacts had been removed, did not object and representatives attended the excavation works. Burchell Hayes also took part in the 2009 excavation works (see Slack report). This work was done to prepare for the blast.

Burchell Hayes also attended the 'Colours of our country' festival in Perth and didn't object to the destruction of the caves. The caves were presented as a model of collaboration.

Finally Burchell Hayes only visited the Juukan caves a few times between 2011 and 2019. Mr Hayes should be asked to clarify these points.

Heather Builth has said:

That she didn't receive a copy of the Section 18 report.

This is not true and needs to be corrected.

Relevant extract from the PKKP submission (Submission 129) to the Senate Inquiry.

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*[On 3 October, 2013, Rio Tinto sent a copy of the draft Notice for its Section 18 application and supporting submissions to Cath McLeish of YMAC. YMAC has informed PKKP that YMAC has no record to suggest that YMAC passed the draft notice and accompanying documents on to PKKP, nor did YMAC consider it was within its role as PKKP's heritage body under the Participation Agreement to assess the notice. There is no evidence that PKKP ever received the section 18 notice and accompanying documents before it was submitted. => the PKKP had a copy of the Section 18, at least AFTER it was granted.]*

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That Fortescue did not inform the PKKP of their application in September 2020. This was wrong, as explained by Ms Gaines

- Initial story see [here](#) <sup>21</sup>
- Response from Ms Gaines (Fortescue CEO) – The PKKP had been warned. <sup>22</sup>

That she couldn't contact Rio Tinto despite being a former employee (Her LinkedIn profile mentions that she still works for Rio Tinto)

That the Juukan caves were highly significant.

Miss Builth should be asked to clarify such statements. She should also explain why the Juukan caves were not on the reserve list. When did they become significant? Are they sacred? Are we talking about the caves or the artefacts?

The Senate Inquiry has focused on the sequence of the blasting as opposed to the section 18 application. The management team at the time if the section 18 needs to be interviewed. In particular Sam Walsh, Andrew Harding and Greg Lileyman need to give evidence to the Senate Inquiry. This will be critical to establish whether informed consent was given.

As Head of the sustainability committee, Meghan Clarke also needs to be questioned. Kellie Parker was in charge of heritage and permitting in 2016 and should also give

evidence

Natural justice will only be served if the facts are established without an agenda. It is obvious that this has not happened yet.

It would be premature to discuss whether a change of law is necessary as the facts put forward to the Inquiry are not accurate and various political and economic agendas have heavily polluted the debate.

Only a thorough review of whether Free Prior & Informed consent was given will allow a meaningful debate. This has not happened yet.

**This submission was used as '*general correspondence*' - we are not sure what it means**

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- <sup>1</sup> Morgan Brigg and Mary Graham, *The relevance of Aboriginal political concepts (2): The need for Aboriginal ethics*, ABC, 15 Jun 2020, <https://www.abc.net.au/religion/stop-destroying-indigenous-sites-and-lives-morgan-brigg-and-mar/12355284>
- <sup>2</sup> Karen Michelmore, *Rio Tinto accused of 'incremental genocide' after grilling at Juukan Gorge inquiry*, ABC, 16 Oct 2020, <https://www.abc.net.au/news/2020-10-16/rio-tinto-grilled-at-juukan-gorge-inquiry/12775866>
- <sup>3</sup> Karen Michelmore, *BHP tells parliamentary inquiry it was granted approval to destroy Aboriginal heritage sites in the Pilbara*, ABC, 17 Sep 2020, <https://www.abc.net.au/news/2020-09-17/bhp-gives-evidence-at-juukan-gorge-inquiry/12672628>
- <sup>4</sup> *Rio Tinto publishes submission to Parliamentary Inquiry on Juukan Gorge*, 4 August 2020 <https://www.riotinto.com/news/releases/2020/Rio-Tinto-publishes-submission-to-Parliamentary-Inquiry-on-Juukan-Gorge>
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