27 March 2017

To: "**Leading Practice Mining Acts Review**"

Mineral Resources Division

Department of State Development

c/o DSD.miningactreview@sa.gov.au

RE: Public input to Review of the *Mine Works and Inspection Act 1920,* on amendments & improvements to the *Roxby Downs Indenture (Ratification) Act 1982,* and on assessment of mining impacts on *Matters of NES* under the *Cth-SA Assessment Bilateral Agreement.*

Please accept this public submission to the Department of State Development (DSD) Leading Practice Mining Acts Review and consider the Recommendations toward a Bill to Parliament in mid-2017.

There is an *onus of proof* on the DSD to demonstrate required legislative amendments to fully retain and preferably enhance key public interest powers currently held in the *Mine Works and Inspection Act 1920* (given DSD's preferred review option for repeal of the Act): Especially required appropriate amendments to the *Roxby Downs Indenture (Ratification) Act 1982* and transfer of unfettered powers to protect the Health and Safety of the general public to *Environment Protection Act 1993.*

In response to the DSD request for leading practice views *"on any improvements"* to the regulation of the indentured Olympic Dam mine operations, the *Roxby Downs Indenture (Ratification) Act 1982* must be amended to no longer take precedence over the *Environment Protection Act 1993* and preferably should be amended to not take precedence over an updated and reformed *Mining Act.*

A statutory power to protect *Matters of National Environmental Significance* (NES) as required by the EPBC Act and to refuse actions with unacceptable or unsustainable impacts on *Matters of NES* is proposed to give effect to SA government and DSD responsibilities through the *"Commonwealth – SA Assessment Bilateral Agreement"* (signed 25 Sept 2014).

Leading Practice in Mining requires that public interest statutory powers must apply across all mining and works in SA without exemptions and this DSD Review should recognise the principle.

Olympic Dam must be subject to a statutory mandated 100% unconditional bond over the full estimated cost of radioactive ore mining remediation and rehabilitation liabilities, in such a way to ensure radioactive tailings are physically isolated from the environment for at least 10,000 years.

DSD has an opportunity to respect Aboriginal Heritage through Leading Practice *"Improvements"* in the Olympic Dam Indenture by repeal of outdated, untenable, arbitrary, vested interest legal privileges in Part 2 Clause 9 that applies a 1979 Act and requires the consent of BHP to update it.

I appreciated the opportunity to attend the Briefing held by DSD for the environment sector on 9th March and look forward to further opportunities with DSD as these issues progress through 2017.

Yours sincerely

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Onus of proof on DSD to demonstrate key required equivalent statutory powers before proposed repeal of the *Mine Works and Inspection Act 1920:*

The DSD has a preferred option to repeal the *Mine Works and Inspection Act 1920* and retain the powers of key provisions of that Act by a transfer of powers to an updated and reformed *Mining Act*.

The December Discussion Paper (p.88) states:

> *"If the Mines and Works Inspection Act is repealed as part of this Review, then the indentures and/or the Mining Act would be amended so that relevant equivalent provisions of the Mining Act would apply to those operations."*

The *Mine Works and Inspection Act 1920* has an important, warranted and uniquely unfettered statutory application to all mines and works in SA, with the Nov Discussion Paper (p.8) stating:

> *"Section 5 of the Act states that it applies to 'every mine under whatsoever tenure held and wheresoever situated within the State'.*
>
> ...
>
> *There are no proclamations declaring any exemptions from the definition of 'mining operation', so the Act applies to all mines and works (as defined) in South Australia, including:*
>
> - *tenements and private mines under the Mining Act 1971;*
> - *the Olympic Dam mine;*
> - *the Leigh Creek Coal mine;*
> - *the Whyalla Steel Works;"*

There are a range of key statutory public interest powers vested in the *Mine Works and Inspection Act 1920* which DSD must demonstrate will be equivalently retained through new provisions in other SA Legislation with the power to mandate compliance and apply without exemptions across all mining in SA - including Olympic Dam Operations.

Recommendation:

Key statutory public interest powers currently vested in the *Mine Works and Inspection Act 1920* that must at a minimum be retained through this Leading Practice Mining Acts Review include the following matters acknowledged in the November Discussion Paper:

- Powers of Mine Inspectors to undertake inspections (including to enter any mine at any time without notice) and to ascertain whether mining acts are being complied with. Including (p.16) that:

  "There is no clear right for mining inspectors to enter and inspect the Olympic Dam mine site except under the Mines and Works Inspection Act." ;

- Power of Mine Inspectors to make orders, to enforce plans and programs for mining and for mine rehabilitation, including to order that mine operations and any mining practice that is considered unsafe must cease subject to further notice or be varied as directed;

- *"Matters that are exclusively regulated under the Act and Regulations that should be retained, namely: ... The regulation of the Leigh Creek and Olympic Dam mines, and other operations subject to conditions or legislation mandating compliance with the Act"* (p.13);

- *"This Act regulates the operation of the Olympic Dam mine and sets standards for the protection and management of the environment and compliance, e.g. mining and milling of radioactive ores (Clauses 10 and 11 of the Indenture). This Act is subject to the provisions of the Mines and Works Inspection Act (see the Second Schedule to the Indenture)"* (p.16);

- *"Certain mining activities undertaken under both the Mining Act and the Roxby Downs Indenture (Ratification) Act 1982 are exempt from the provisions of the Environment Protection Act, unless they are prescribed activities of environmental significance"* (p.12);

  In contrast there are no exemptions to the application of the environment protection and management powers held under the *Mine Works and Inspection Act 1920* on any mine sites in SA - including Olympic Dam, and these environment powers are matched with the strong inspection, enforcement and orders powers of Mining Inspectors;

- Power of Mine Inspectors to make orders for mining operations and any mining practices to cease or be varied as directed if considered to be unsafe for protection of the Health and Safety of the general public that may be affected by mining operations – including by Olympic Dam operations;

  The Review Discussion Papers do not explain how powers relating to protection of the Health and Safety of the general public that may be affected by mining will be retained.

- The Chief Inspector of Mines holds exclusive powers over post closure mine rehabilitation, including a unique power to make orders to require an owner to ensure rehabilitation is done within two years of the end of mining - including on the Olympic Dam mine and on Leigh Creek mine.

  DSD can still make orders under the 1920 Act for completion of rehabilitation at Leigh Creek.

Recommendation:

This Leading Practice Mining Acts Review must properly consider not just a *transfer* of key statutory public interest powers currently held in the *Mine Works and Inspection Act 1920* - to be retained in other legislation, but the review and *enhancement* of these key public interest powers, including especially to:

- **Enhance (and not in any way diminish) the powers of Mines Inspectors;**

- **Enhance powers to set standards and to make regulations and to issue orders for the protection of the Health and Safety of the general public affected by mining, and ensure these powers apply across all mining and works in SA without exemptions;**

- **Enhance environment protection powers currently held under the *Mine Works and Inspection Act 1920* and retain the key statutory advantage that these powers are unfettered and apply to all mining and works in SA without exemptions.**

Protection of the Health and Safety of the general public affected by mining and required consequential amendments to the *Environment Protection Act 1993*:

This Leading Practice Mining Acts Review requires decisions on how to retain key statutory public interest powers currently held in the *Mine Works and Inspection Act 1920,* in particular full transfer of the "general public" Health and Safety powers over to the *Environment Protection Act 1993.*

Noting that the *Work Health and Safety Act 2012* does not have coverage over the general public AND the *Environment Protection Act 1993* already holds a range of key powers to set standards and to regulate and to impose orders for the protection of the Health and Safety of the general public.

It is arguable that any *Mining Act* entails a core untenable *conflict of interest* in claiming to govern and protect the Health and Safety of the general public affected by mining.

Recommendation:

The *Environment Protection Act 1993* should be amended to take up and enhance the unfettered powers currently held in the *Mine Works and Inspection Act 1920* for the protection of the Health and Safety of the general public that may be affected by mining.

These powers to protect the general public should apply to all mining & works in SA without any exemption – including to Olympic Dam mine operations, Leigh Creek and the Whyalla Steel Works.

Clearly, it is not leading practice to *only* transfer certain powers from the *Mine Works and Inspection Act 1920* to a consequentially amended *Environment Protection Act 1993*, without ensuring their unfettered application to the State's largest and most important mining operation – the indentured Olympic Dam mine.

As the *Roxby Downs Indenture (Ratification) Act 1982* Clause 7—*Modification of State law*, 7(1) seeks to modify the provisions of any law of the State as is claimed necessary to give full effect to the Indenture, and 7 (2) states that in the case of and to the extent of any inconsistency between the provisions of any Act or law and of the Indenture, the provisions of the Indenture shall prevail.

Clause 7 (2) (a) (v) specifically names the *Environment Protection Act 1993* as construed subject to the provisions of the Indenture. In the public interest this Clause must be repealed forthwith.

Recommendation:

In any case, the public interest and leading practice requires full and unfettered application of the *Environment Protection Act 1993* across all mining and works in SA without exemptions.

At a minimum, the *Roxby Downs Indenture (Ratification) Act 1982* Clause 7—*Modification of State law* must be amended, with repeal of Clause 7 (2) (a) (v), and amendment to Clause 7 (1) and (2) to ensure in particular that the Indenture does not construe & does not prevail over the EP Act.

This Leading Practice Mining Review must deliver on the leading practice principle that public interest statutory powers must apply across all mining and works in SA without exemptions.

Leading Practice Mining requires the *Roxby Downs Indenture (Ratification) Act 1982* is amended to make provision to apply unfettered powers of an updated *Mining Act*:

Q: How will the Leading Practice Mining Review retain the unique full and unfettered powers of *Mine Works and Inspection Act 1920* to apply to all mines in SA – including Olympic Dam?

Clearly, it is not leading practice to *only* transfer powers from the *Mines and Works Inspection Act 1920* to a consequentially amended *Mining Act* without ensuring their unfettered application to the State's largest and most important mining operation – the indentured Olympic Dam mine.

The Dec Discussion Paper recognises this and discusses indenture operations (p.87-88) stating:

> *"In the first Discussion Paper on the Mines and Works Inspection Act 1920 there is some discussion of the application of that Act to these indentures. If the Mines and Works Inspection Act is repealed as part of this Review, then the indentures and/or the Mining Act would be amended so that relevant equivalent provisions of the Mining Act would apply to those operations.*
>
> *The Department seeks your views on any improvements that could be made to the regulation of indentured mining operations in South Australia."*

It would not be leading practice to only provide equivalent provisions in an updated *Mining Act* without also amending the Indentures to ensure their unfettered application without exemptions.

As the *Roxby Downs Indenture (Ratification) Act 1982* Clause 7—*Modification of State law*, 7(1) seeks to modify the provisions of any law of the State as is claimed necessary to give full effect to the Indenture, and 7 (2) states that in the case of and to the extent of any inconsistency between the provisions of any Act or law and of the Indenture, the provisions of the Indenture shall prevail.

Clause 7 (2) (a) (vii) specifically names the *Mining Act 1971* as construed subject to the provisions of the Indenture. This should be repealed upon review, amendment and updating of the *Mining Act*.

This Leading Practice Mining Review must not allow outdated, arbitrary and vested interest legal privileges in indentures to continue to take precedence over an updated *Mining Act* in SA.

Recommendations:

At a minimum, DSD must demonstrate proposed amendments to indentured mining and works operations - including Olympic Dam operations, to make provision for relevant equivalent provisions to retain unfettered application of the public interest powers in the 1920 Act.

Preferably a reformed and amended 2017 *Mining Act*, incorporating the public interest powers held to date under the *Mines and Works Inspection Act 1920*, should not be subject to outdated, arbitrary and vested interest clauses of the *Roxby Downs Indenture (Ratification) Act 1982*.

The *Roxby Downs Indenture (Ratification) Act 1982* Clause 7—*Modification of State law* should be amended, with repeal of Clause 7 (2) (a) (vii), and amendment to Clause 7 (1) and (2) to ensure in particular that the Indenture does not construe & does not prevail over the reformed *Mining Act*.

The SA Government and DSD have a responsibility to strengthen both the *Mining Act 1971* and the *Development Act 1993* through powers to ensure Matters of NES are protected and actions with unacceptable or unsustainable impacts are refused:

The SA Government and DSD have responsibilities through the *"Commonwealth – SA Assessment Bilateral Agreement"* (signed 25 Sept 2014 & entered into force in 2014) where mining in SA could impact on *Matters of National Environmental Significance* (Matters of NES) under the *EPBC Act 1999*, including to uranium mining as a listed Matter of NES and to Olympic Dam Operations.

The *Cth-SA Assessment Bilateral Agreement* states in *Objects D* to the Agreement, that:

> *"Objects: D. The parties will work cooperatively so that Australia's high environmental standards are maintained by ensuring that: ...*
>
> *b. Matters of NES are protected as required under the EPBC Act; ...*
>
> and *d. authorised actions do not have unacceptable or unsustainable impacts on Matters of National Environmental Significance."*

To date the SA Government has unacceptably failed to implement any statutory changes in SA Legislation and Regulations to provide appropriate powers to mandate compliance with these important requirements and responsibilities in the *Cth-SA Assessment Bilateral Agreement.*

This Leading Practice Mining Review provides a belated but important opportunity to start to do so.

The Minister's Release (Sept 27, 2016) states review and reform of the Mining Acts seeks to:

> *"Provide a more flexible 'One-Stop Shop' approach for mining project assessments and approval processes, to promote more efficient and innovative exploration and mining operations in South Australia;"*
>
> And *"Reinforce the existing leading practice environmental protections offered under the Mining Act 1971."*

The December Discussion Paper states under *"Sustainable Futures"* p.44 that:

> *"This agreement accredits South Australian assessment processes under the Mining Act only where those processes meet the strict environmental protection requirements of the EPBC Act.*
>
> *"This inter-jurisdictional agreement demonstrates that the Mining Act meets stringent environmental regulatory standards set by the EPBC Act. ...*
>
> *However we seek your thoughts on any further improvements that could be made."*

The *Mining Act 1971* is an inadequate and non-transparent / secretive instrument in urgent need of reform. It is not credible to claim this Act offers *leading practice environmental protections.*

Nor is it credible of the SA Government to arbitrarily accredit this outdated Act without amendment as supposedly meeting the requirements of the EPBC Act in protection of Matters of NES.

Potentially, after review, a reformed and amended *Mining Act* could in theory do so on merits – but that is yet to be seen, and could only be appraised on examination of the proposed Bill.

A range of initiatives in this Leading Practice Mining Review should be commended on merits.

Including the long overdue commitment to ensure that assessment and management processes become transparent with full public interest release and an open, free and online access to a range of relevant documentation and information - including all PEPR's and all Conditions of any Approval.

Recommendation:

An important area where required improvement can be made toward leading practice environmental protections is to introduce a statutory power in the *Mining Act 1971* comparable to the EPBC Act Division 1 *Decision that the Action is clearly unacceptable*, Section 74B *Refusal powers* to properly protect Matters of NES as required under the *EPBC Act*.

Such that *"authorised actions do not have unacceptable or unsustainable impacts on Matters of NES"* as is required under the *Objects* of the *Cth-SA Assessment Bilateral Agreement* (2014).

This new statutory power should have a mandate to refuse an application at an early stage of the assessment process, corresponding to the Referral stage in the *EPBC Act* process, so that unacceptable proposed developments do not have to go through the full assessment process.

Proponents benefit by early notice that their proposal or at least aspects of the configuration of the proposal are not acceptable and will not be approved, and may amend the proposal and reapply.

Note that Federal ALP Environment Minister's exercised their discretion to protect Matters of NES from clearly unacceptable impacts, through use of the EPBC Act Division 1 *Decision that the Action is clearly unacceptable* Sec.74B *Refusal powers*, some 10 times in the ALP's recent period in Federal office – including exercise of this power at Referral and at final stages in the EPBC Act process.

The *Cth-SA Assessment Bilateral Agreement* also has key relevance to continued application of *Division 2—Major developments or projects* under the *Development Act 1993* regarding mining in SA.

There is little reason for confidence in assessment of mining operations of major social, economic or environmental importance in SA under the *Development Act 1993.*

Recommendation:

DSD should call for amendment to the *Development Act 1993* to introduce a statutory power comparable to the EPBC Act Division 1 *Decision that the Action is clearly unacceptable*, Section 74B *Refusal powers* to properly protect Matters of NES as required under the *EPBC Act*.

Such that *"authorised actions do not have unacceptable or unsustainable impacts on Matters of NES"* as is required under the *Objects* of the *Cth-SA Assessment Bilateral Agreement* (2014).

With the power to refuse an application at an early stage of the assessment process, corresponding to the Referral stage in the *EPBC Act* process, so that developments with unacceptable and unsustainable impacts do not have to go through the full assessment process.

Further, the application of the *Development Act 1993* Sec.46 to Sec.48 to assessment of mining operations that are considered to be of major social, economic or environmental importance (through an EIS or a PER) contains key provisions that are contrary to the public interest in Sec.48 (12*) No appeal lies against a decision under this section*, and Sec.48E *Protection from Proceedings*:

> *"No proceeding for judicial review or for a declaration, injunction, writ, order or other remedy may be brought to challenge or question—*
> *(a) a decision or determination of the Governor, the Minister or the Development Assessment Commission under this Division; or*
> *(b) proceedings or procedures under this Division; or*
> *(c) an act, omission, matter or thing incidental or relating to the operation of this Division."*

These *Development Act 1993* provisions are contrary to the public interest and to due process and are inconsistent with observance of commitments in the *Objects* D (b) and (d) of the *Cth-SA Assessment Bilateral Agreement* to ensure protection of Matters of NES as required in the EPBC Act and to not authorise actions with unacceptable or unsustainable impacts on Matters of NES.

Recommendation:

Public interest rights and the protection of Matters of NES under the *Cth-SA Assessment Bilateral Agreement* require repeal of contrary *Development Act 1993* provisions *Sec.48 (12) No appeal* and Sec.48E *Protection from Proceedings.*

There is also significant concern in SA and across Australia over the direction of the *One Stop Shop* agenda. There is a particular concern in SA over the potential adverse effect of *Cth-SA Assessment Bilateral Agreement, Clause 8.1 Conditions attached to an Approval.*

Clause 8.1 (c)(ii) apparently seeks to restrict the Commonwealth Minister's statutory discretion under the *EPBC Act 1999* with respect to the imposition of approval conditions:

> *(c) To minimise duplication to the extent possible for actions assessed under this Agreement:*
>
> (i) *SA will identify conditions imposed, recommended or likely to be imposed by the SA in relation to Matters of NES; and*
>
> (ii) *the Commonwealth will use its best endeavours to ensure that conditions under the EPBC Act are strictly limited to matters not addressed, or likely to be addressed, by the State conditions*

The Commonwealth Minister must retain full statutory discretion under the *EPBC Act 1999* with respect to the imposition of approval conditions, what-ever the advice of the SA government which may variously have a conflict of interest in decisions over major developments including mining.

The environment sector has a strong position, supported by Federal ALP and by Australian Greens policy, that the Commonwealth must retain full Approval Decision powers under the *EPBC Act 1999.*

It is a credit to the Senate and to the Federal ALP that no Cth-State Approval Bilateral Agreements have entered into force. Any further attempt to do so including to finalise & bring the 2015 proposed *Cth-SA draft Approval Bilateral Agreement* in to force will be strongly countered by a National and State alliance of environment NGO's and civil society groups.

Olympic Dam Operations must be subject to a statutory mandated 100 per cent unconditional bond over estimated rehabilitation liabilities:

Leading Practice in Mining requires that public interest statutory powers must apply across all mining and works in SA without exemptions and this DSD Review should recognise the principle.

DSD's commitment to this Review will be judged by the extent of mandated application of the Review to the State's largest and most important mining project Olympic Dam Operations.

In particular: Mandated application of a required 100 per cent unconditional bond over estimated rehabilitation liabilities at Olympic Dam Operations through amendments to the *Roxby Downs Indenture (Ratification) Act 1982.*

The Leading Practice Mining Acts Review December Discussion Paper at "2.3 *Enforcing leading practice mine closure planning, and progressive rehabilitation to achieve sustainable mine completion outcomes*" (p.52-55) commendably states:

> *"Appropriate rehabilitation of all mining operations should be non-negotiable. Planning for mine closure from the earliest stages of mine planning and progressive rehabilitation throughout the life of a mine is leading practice behaviour, and all regulators should be able to elicit this behaviour...*
>
> *The current process for mining operations in SA is that the Government seeks to impose unconditional bonds for 100% of the estimated rehabilitation liabilities. ...*
>
> *The Department is proposing to introduce a leading practice financial assurance model into South Australia that will adequately meet three 'non-negotiable' criteria. Namely, any modernised model must: ...*
>
> - *appropriately incentivise progressive compliance and rehabilitation behaviour so that all operations are undertaken in the most sustainable manner;"*

The SA government has endorsed Recommendation 5 of the Nuclear Fuel Cycle Royal Commission:

> *"Based on the findings set out in the report the Commission recommends that the South Australian Government:*
>
> *5. ensure the full costs of decommissioning and remediation with respect to radioactive ore mining projects are secured in advance from miners through associated guarantees."*

It is not acceptable that some 35 years after passage of the *Roxby Downs Indenture (Ratification) Act 1982* successive SA State governments have failed to realise a bond over estimated rehabilitation liabilities at the State's largest and most important mining project Olympic Dam Operations.

BHP Billiton should have to present a costed tailings waste management and disposal plan for Olympic Dam Operations to comply with the statutory standard required by the Commonwealth for analogous disposal of radioactive ore uranium tailings at the Ranger open pit mine.

Including required modelling that can demonstrate the isolation of radioactive ore tailings to ensure any contaminants arising from the tailings will not result in any detrimental environmental impacts

for at least the same minimum *"for at least 10, 000 years"* regulatory period required by the Commonwealth for analogous disposal of uranium tailings at the Ranger open pit mine.

The DSD should require proposed tailings disposal at Olympic Dam Operations to realise full compliance with analogous contemporary standards set by the *Ranger Project Environmental Requirements* relating to the Ranger Project Area.

As set out in Appendix A to the Schedule to the authority issued under section 41 of the Commonwealth *Atomic Energy Act 1953* and dated Nov 1999.

Paragraph 11 (Management of Tailings) of the *Environmental Requirements* states:

> *11.2 By the end of operations all tailings must be placed in the mined out pits.*
>
> *11.3 Final disposal of tailings must be undertaken, to the satisfaction of the Minister with the advice of the Supervising Scientist on the best available modelling, in such a way to ensure that:*
>
> *i) The tailings are physically isolated from the environment for at least 10,000 years;*
>
> *ii) Any contaminants arising from the tailings will not result in any detrimental environmental impact for at least 10,000 years;*

Recommendations:

Olympic Dam Operations must be subject to a statutory mandated 100% unconditional bond over estimated rehabilitation liabilities through amendments to the *Roxby Downs Indenture (Ratification) Act 1982* to ensure the full costs of remediation and decommissioning with respect to radioactive ore mining are secured in advance;

DSD should require BHP Billiton to publicly release current estimates of the full costs of decommissioning and remediation with respect to radioactive ore mining and rehabilitation liabilities across Olympic Dam Operations;

DSD should require BHP Billiton to present a costed tailings waste management and disposal plan for Olympic Dam Operations to comply with the statutory standard required by the Commonwealth for analogous disposal of radioactive ore uranium tailings at the Ranger open pit mine, in particular regarding the *Environmental Requirements, Management of Tailings* (1999), stating a requirement to ensure that:

- ***The tailings are physically isolated from the environment for at least 10,000 years;***
- ***Any contaminants arising from the tailings will not result in any detrimental environmental impact for at least 10,000 years.***

Contemporary protection and preservation of Aboriginal Heritage in SA requires repeal of Olympic Dam Operations outdated & untenable stand-alone Indenture regime:

The Leading Practice Mining Review December Discussion Paper (p.88) seeks views on: *"any improvements that could be made to the regulation of indentured mining operations in SA".*

DSD has an opportunity to respect Aboriginal Heritage through Leading Practice *"improvements"* in the Olympic Dam indenture by repeal of outdated, untenable, arbitrary, vested interest legal privileges in Part 2 Clause 9 that applies a 1979 Act and requires the consent of BHP to update it.

The *Roxby Downs Indenture (Ratification) Act 1982* applies an outdated and constrained form of the *Aboriginal Heritage Act 1979* to operations of BHP in the Stuart Shelf Area or the Olympic Dam Area.

This represents a significant part of the State of South Australia. The defined "Stuart Shelf Area" is of over 12 000 km^2 and represents the area of original exploration interest to Olympic Dam proponents and is equal to approximately 1 per cent of the total area of SA (approx. three times the size of Kangaroo Island). The "Olympic Dam Area" directly around the mine is of approx. 170 km^2.

The *Roxby Downs Indenture (Ratification) Act 1982* Clause 9 —*Application of Aboriginal Heritage Act to the Stuart Shelf Area and the Olympic Dam Area* sub-sections (1) and (10):

- Arbitrarily applies the *Aboriginal Heritage Act 1979* (and in a form that is variously and arbitrarily constrained, limited and override by Clause 9 sub-sections 2 to 8) rather than application of the contemporary *Aboriginal Heritage Act 1988* which applies across the rest of South Australia *"to provide for the protection and preservation of Aboriginal heritage"*;

- Declares that the "consent" of BHP Billiton is a pre-requisite requirement to the application of any subsequent form of that 1979 Act (as the company that has since 2005 held the 'rights' of the original Joint Venturers under the Indenture);

- Declares that *"the subsequent amendment, replacement or repeal of that Act shall not affect its operation"* as it applies under Clause 9. In effect seeking to tie the hand of Parliament to not amend, reform and update Aboriginal Heritage legislation that applies to the Stuart Shelf Area and to the Olympic Dam Area of BHP Billiton's operations and interests.

These clauses declare that the outdates stand-alone Aboriginal Heritage regime at Olympic Dam can't be varied except with the consent of BHP Billiton the world's largest mining company.

In fact, irrespective of what-ever the Indenture may say, neither this Indenture nor the Parliament back in 1982 can tie the hands of future Parliaments to legislate and to reform outdated Acts.

The present SA State Government has full discretion to legislate on these matters and the DSD has a formal responsibility through this Leading Practice Mining Review to improve and amend the regulation of indentured mining operations in SA – in particular Olympic Dam Operations.

The failure of successive SA Governments over the last three decades to apply the *Aboriginal Heritage Act 1988* to Olympic Dam Operations and across the Stuart Shelf Area is unacceptable.

The Indenture's declared corporate powers held over Aboriginal Heritage legislation, protection and preservation in SA (including the various controls declared over the 1979 Act) are at best outdated, untenable, arbitrary, vested interest legal privileges to mining interests which must be repealed.

The *Aboriginal Heritage Act 1988* is also overridden by the *Roxby Downs Indenture (Ratification) Act 1982* Clause 7—*Modification of State law*, 7(1) which seeks to modify the provisions of any law of the State as is claimed necessary to give full effect to the Indenture, and 7 (2) which states that in the case of and to the extent of any inconsistency between the provisions of any Act or law and of the Indenture, the provisions of the Indenture shall prevail.

This affects the rights and interests of a number of Aboriginal Native Title groups and organisations with Aboriginal Heritage and due process interests in the broad Stuart Shelf Area, and subjects them to multiple statutory regimes regarding the protection and the preservation of Aboriginal Heritage.

Further, the Attorney-General's "South Australian Legislation" website says of the *Aboriginal Heritage Act 1979* that;

> *"This Act has never been brought into operation but has not been expressly repealed. Section 9 of the Roxby Downs Indenture (Ratification) Act 1982 applies this Act to certain operations. Apart from that, the Act has been effectively impliedly repealed by the Aboriginal Heritage Act 1988 and is consequently, treated as a historical version."*

In fact, the *Objects* of the *Aboriginal Heritage Act 1988* state that it is an Act to repeal the *Aboriginal Heritage Act 1979.*

Q: Why is this out-dated 1979 Act still applied to Olympic Dam Operations and the Stuart Shelf Area?

Recommendation:

DSD has a formal responsibility through the Leading Practice Mining Review to see to improvements in the regulation of indentured mining operations in South Australia:

- **In particular, that the *Aboriginal Heritage Act 1988* has full unfettered application to all indentured mining operations in SA including Olympic Dam Operations;**

To provide for the contemporary protection and preservation of Aboriginal Heritage in South Australia the following out-dated and untenable statutes must be repealed:

- **the *Roxby Downs Indenture (Ratification) Act 1982* Clause 9 —*Application of Aboriginal Heritage Act to the Stuart Shelf Area and the Olympic Dam Area*;**
- **AND: Clause 7—*Modification of State law*, 7(1) and 7(2).**

(public submission ends)