



Proxy Alert: Proposal on Australian Cultural Heritage Protection Law at Fortescue

Symbol: FMG (ASX)

Annual Meeting date: November 9, 2021

Filer: Australasian Centre for Corporate Responsibility (ACCR) with the support of the National Native Title Council (NNTC) and the Western Australian Aboriginal Heritage Alliance

Shareholder Resolution 8: Support for Improvement to Western Australian Cultural Heritage Protection Law

SHARE's Recommendation: Vote FOR shareholder resolution

To promote the long-term success of our Company, and noting:

the findings and recommendations of the Interim Report of the Joint Parliamentary Committee on Northern Australia's interim report entitled Never Again published on 9 December 2020 ('Interim Report');

the importance of adequate cultural heritage protection laws in mitigating social, reputational and financial risks to our Company;

the acknowledged inadequacy of existing cultural heritage protection law and the need for fit-for-purpose cultural heritage protection laws in Western Australia and nationally; and

the objection of WA First peoples and organisations to the Aboriginal Cultural Heritage Bill 2020 (WA) ('ACH Bill') in its current form,

shareholders request that our Company:

publicly support part of Recommendation 2 of the Juukan Inquiry Interim Report, namely: That the Western Australian Government replace the Aboriginal Heritage Act 1972 with stronger heritage protections as a matter of priority, noting the progress already made in consultation on the draft Aboriginal Cultural Heritage Bill 2020. Any new legislation must as a minimum ensure Aboriginal people have meaningful involvement in and control over heritage decision making, in line with the internationally recognised principles of free, prior and informed consent, including relevant Registered Native Title Bodies Corporate under the Native Title Act...;

publicly support the WA Aboriginal peoples calls on the Western Australian Government to pause the enactment of the ACH Bill in its current form and to enter into an engagement in good faith with WA



Aboriginal Traditional Owners and their representative organisations to co-design the new WA cultural heritage protection law and regulations; and

ensure that the advocacy of trade associations of which the Company is a member (including the Western Australian Chamber of Minerals and Energy and the Minerals Council of Australia) is consistent with the terms of this resolution, and if not, review to ensure consistency.

Nothing in this resolution should be read as limiting the Board's discretion to take decisions in the best interests of our Company, or the Board's ability to limit the disclosure of commercial-in-confidence information.

SHARE's Recommendation and Rationale

The potential impacts of Fortescue's operations upon Indigenous peoples' rights pose substantial risks. Possible impacts to cultural heritage and other Indigenous rights expose companies, and therefore their shareholders, to significant reputational and financial risks.

In May 2020, following peer company Rio Tinto's detonation of a 46,000-year-old site at the Juukan Gorge caves in Australia, Rio Tinto was impacted by significant reputational and financial losses [1]. To mitigate these material risks, mining activities need to be regulated by adequate legislative and policy standards. The Juukan Inquiry Interim Report, "Never Again," highlighted the inadequacy of existing cultural heritage protection regulation in Western Australia and recommended the replacement of the Aboriginal Heritage Act 1972, which allowed Rio Tinto's activity, with stronger heritage protection as a matter of priority.

The Aboriginal Cultural Heritage Bill 2020, meant to replace the 1972 Act, was expected to reset the relationship between land users and Traditional Owners – or Indigenous peoples – and transform how Aboriginal cultural heritage is identified, managed, and conserved [2]. However, Indigenous peoples posit that the Bill does not provide them greater protections and afford the Minister for Aboriginal Affairs the final authority based on what is "in the interests of the state" [3], therefore failing to remedy the legally permissive environment that led to the Juukan Gorge disaster. They called the Western Australian Government to pause the Bill's enactment and engage in a genuine process of consultation with Indigenous Peoples [4] – a demand supported by a coalition of international institutional investors and other stakeholders [5] [6]. Without adequate legislative reform on heritage protection, Fortescue remains exposed to the risks evidenced by the Juukan Gorge disaster. It is therefore in the interest of Fortescue and its shareholders to support the resolution.

This resolution enjoys the support of the National Native Title Council (NNTC) and the Western Australian Aboriginal Heritage Alliance.

SHARE's recommendation: Vote FOR the proposal for improvement to Western Australian Cultural Heritage Protection Law.



Read the full proposal (p. 10): https://www.fmgl.com.au/docs/default-source/announcements/notice-of-annual-general-meetingdab5132f989c4c20a9840bf2522a7e75.pdf?sfvrsn=dce52e66_2

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- [1] <https://www.smh.com.au/national/a-year-on-from-the-destruction-at-juukan-could-it-happen-again-20210518-p57syw.html>
- [2] <https://www.wa.gov.au/organisation/department-of-planning-lands-and-heritage/the-aboriginal-cultural-heritage-bill-2020-faq>
- [3] <https://nit.com.au/aboriginal-leaders-take-wa-cultural-heritage-Bill-to-the-un/>
- [4] https://nntc.com.au/media_releases/nntc-supports-call-for-a-halt-to-passing-draft-wa-heritage-bill-cites-lack-of-consultation-lack-of-heritage-protection-financial-risks/
- [5] <https://collaborate.unpri.org/group/8346/stream>
- [6] <https://nit.com.au/over-60-per-cent-of-stakeholders-oppose-new-wa-cultural-heritage-Bill/>