



## Submission to the SA 'Leading practice Mining Acts review'

[http://minerals.statedevelopment.sa.gov.au/mining/leading\\_practice\\_mining\\_acts\\_review](http://minerals.statedevelopment.sa.gov.au/mining/leading_practice_mining_acts_review)

### Friends of the Earth, Australia

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It is important for the SA Government to investigate the track record of Aboriginal people being stripped of their land rights and heritage protections at the behest of the uranium mining industry.<sup>1</sup>

There are many threads to the problem but the only discussed here is the 1982 South Australian Roxby Downs Indenture Act, which sets the legal framework for the operation of BHP Billiton's Olympic Dam mixed mine in SA.

The Indenture Act was amended in 2011 but it retains exemptions from the SA Aboriginal Heritage Act. Incredibly, Traditional Owners were not even consulted before the 2011 legislative amendments. The SA government's spokesperson in Parliament said: "BHP were satisfied with the current arrangements and insisted on the continuation of these arrangements, and the government did not consult further than that."<sup>2</sup>

The following Parliamentary exchange (SA Legislative Council, 24 November 2011) provides more detail.<sup>3</sup>

*The Hon. M. PARNELL: This is a most remarkable clause that deals with a most remarkable section of the current act. Section 9, which relates to the application of the Aboriginal Heritage Act to the Stuart Shelf and Olympic Dam areas. My main difficulty with this provision is that it imposes an outdated set of legal privileges to the company over Aboriginal heritage legislation. The reason I say 'remarkable' is that the regime here is that an old act (the old Aboriginal Heritage Act 1979) is the reference point, rather than the Aboriginal Heritage Act 1988, in the defined Stuart Shelf area and in the Olympic Dam area, which includes the special mining lease. I will go into some detail shortly as to why that is a remarkable legislative provision.*

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<sup>1</sup> [www.theecologist.org/News/news\\_analysis/2987853/radioactive\\_waste\\_and\\_the\\_nuclear\\_war\\_on\\_australias\\_aboriginal\\_people.html](http://www.theecologist.org/News/news_analysis/2987853/radioactive_waste_and_the_nuclear_war_on_australias_aboriginal_people.html)

<sup>2</sup> [http://hansard.parliament.sa.gov.au/pages/loaddoc.aspx?e=2&eD=2011\\_11\\_24&c=26](http://hansard.parliament.sa.gov.au/pages/loaddoc.aspx?e=2&eD=2011_11_24&c=26)

<sup>3</sup> <http://markparnell.org.au/speech.php?speech=1102>

The first question I have relates to Stuart Shelf. When you look at the Stuart Shelf area map (map 2 on page 171 of the bill), and you also look at the description of the Stuart Shelf area (page 152 of the bill), we can see—but not that clearly—that it is a large part of South Australia. My understanding is that it was the original exploration area of interest to the original Roxby proponents. My question is: how big an area is that?

The Hon. G.E. GAGO: We do not know the—

The Hon. M. PARNELL: Well, I am guessing thousands of square kilometres, but if the minister can find out with any more certainty than that I would appreciate that.

The Hon. G.E. GAGO: We will do what we can.

The Hon. M. PARNELL: Thank you. As I understand it, the 1979 Aboriginal Heritage Act was passed by the parliament; but it was not proclaimed and was ultimately repealed, with the exception that it still applies in the case of the indenture in relation to these defined geographic areas I have been talking about; we do not know their size, but we know they are massive. When you go to the South Australian legislation website and you click on the link for acts of parliament, you do not even find the Aboriginal Heritage Act 1979; in fact, you have to click on the secret tab for ceased acts and acts of limited application. When you do that, you come up with the heading, 'Aboriginal Heritage Act 1979 (ceased)'. The notation says that the responsible minister is the Minister for Aboriginal Affairs and Reconciliation, and it states:

"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."

My question of the minister (and I think it is the obvious question) is: why on earth is the Aboriginal heritage regime referred to in this legislation, a regime that was never passed into general South Australian law and has since been repealed, still the standard for this area and for this project?

The Hon. G.E. GAGO: I have been advised that that is what the agreement was at the time and that BHP currently are only willing to consider the continuation of the current arrangements.

The Hon. M. PARNELL: I thank the minister for her answer, but what a remarkable answer. A company has said to the people of South Australia, 'We don't like your Aboriginal heritage laws. The only laws that we are prepared to countenance even partially complying with are laws that have never been proclaimed and have never been applied anywhere else in the state of South Australia, and yet they applied under the 1982 indenture act.'

The follow-on question has to be that, okay, even if you accept—which I do not—that that was an appropriate thing to do in 1982, to apply an act that had never ever been proclaimed, why on earth did the government not take the opportunity in relation to the renegotiation of this indenture to at least insist that the current Aboriginal Heritage Act be the basis for the dealings between this company and Aboriginal people in South Australia, especially given that we are talking about a much bigger area, a new project and a new open-cut mine? Surely this was the opportunity to say to BHP Billiton, 'Sorry, but we are not going to give you the benefit of the 1979 act, you have to comply with the law of South Australia.' Why was that opportunity not taken?

The Hon. G.E. GAGO: I have been advised that BHP insisted that the current arrangements continue and they were not prepared to consider changes to that.

*The Hon. M. PARNELL: I understand there have been negotiations in relation to an Indigenous land use agreement and other negotiations, but what negotiations did the government undertake with, for example, the Aboriginal Legal Rights Movement or other Aboriginal groups in relation to whether this old act should continue to apply or whether the government should insist on the more modern act applying? What consultation was there?*

*The Hon. G.E. GAGO: I have been advised that BHP were satisfied with the current arrangements and insisted on the continuation of these arrangements, and the government did not consult further than that.*

*The Hon. M. PARNELL: To take a slightly different tack, is the minister able to identify the key differences between the 1979 act and the 1988 act that made the older act so much more attractive to BHP Billiton in relation to Aboriginal heritage?*

*The Hon. G.E. GAGO: I have been advised that the 1979 act does not have a mandatory consultation provision equivalent to the 1988 act for determining sites and/or authorising damage, disturbance or interference. However, contemporary administrative law principles, particularly in relation to procedural fairness, necessitate the same or similar consultation.*

*The Hon. M. PARNELL: It seems that there is a lot less consultation involved. It just seems remarkable that the minister has talked about this good corporate citizen and hoping that their goodness will continue into the future, yet when it comes to being obliged to consult with Aboriginal communities they opt for the lowest standard that they can get.*

**Recommendations:**

1. The SA Government should apologise for failing to consult affected Traditional Owners in the lead-up to the 2011 amendments to the Indenture Act.
2. The SA Government should repeal and/or amend the Indenture Act, stripping it of all its crude racism. Before legislation is introduced to Parliament, a thorough consultation process should take place with affected Traditional Owners. Traditional Owners should be provided with legal assistance at the government's expense so they can make sense of the legalese in the Indenture Act.
2. The SA Government should repeal and/or amend the Indenture Act such that Olympic Dam is subject to environmental standards and regulations at least as strong as those applying to other mines.

