

## To Stand for Country

### NAIDOC WEEK 2021

Today we focus on an Aboriginal man who represented himself before the High Court of Australia, speaking in his Indigenous language to the Court<sup>1</sup>.



Image: Australian Coat of Arms<sup>2</sup>

*Buzzacott v Tait* was part of criminal action against Arabunna Elder, Kevin Buzzacott, concerning removal of a coat of arms from a pillar of old Parliament House in Canberra, during the early days of the Tent Embassy.

Buzzacott claimed he removed it for religious and spiritual reasons. The High Court consisted of Justices Kirby and Heydon. Tait was the Police officer.

In the course of this criminal case, Buzzacott applied, in 2003, under s40 *Judiciary Act 1903*, seeking removal of his case to the High Court because, he argued, it involved interpretation of the Australian Constitution. He raised issues as to the use of the kangaroo and emu on the coat of arms and on Tait's uniform, given the very great spiritual symbolism of these animals to him and his People.

Fearlessly, he addressed the Court.

*'... I guess, your Honour, that this is a very – as far as I am concerned, me and my family and my people, this is a very, very urgent issue and it is very important that I am given enough time to explain what this is about because this is why I am here ... so that I can get a good hearing regarding the issue.'*



Image: Kevin Buzzacott, 2014<sup>3</sup>

<sup>1</sup> *Buzzacott v Tait* [http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCATrans/2003/724.html?context=1;query=%22Buzzacott%22;mask\\_path=au/cases/cth/HCATrans](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCATrans/2003/724.html?context=1;query=%22Buzzacott%22;mask_path=au/cases/cth/HCATrans), accessed 8 July 2021 (this is a draft transcript; the final transcript is not publicly available).

<sup>2</sup> <https://theconversation.com/its-australia-v-england-in-battle-over-stubbs-masterpieces-19921> accessed 8 July 2021.

<sup>3</sup> [https://upload.wikimedia.org/commons/7/76/Uncle\\_Kevin\\_Buzzacott\\_in\\_Adelaide\\_2014.JPG](https://upload.wikimedia.org/commons/7/76/Uncle_Kevin_Buzzacott_in_Adelaide_2014.JPG) accessed 8 July 2021.

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This case is fascinating as recording the voice of an Australian Aboriginal, in his own language, speaking on behalf of his Country before the highest court within the Australian legal system.

Justice Kirby asked Mr Buzzacott what he wanted to say and Buzzacott answered in the Arabunna language:

***“Antha Arabana, antha pantu-nganha, antha maka-nganha, thirka-nganha, wangka antha yanhirnda arnakara wangka, wadlhu nhiki-nganha, apalka-nganha. Antu ngawi(ra) antha yanhirnda? Antha yanhirnda anthunha wangka, wangka nhikiri-nganha.***

*“... In English, I am saying I am an Arabunna man. I come from Lake Eyre. I come from the fire. I come from the ashes. I come from the dreaming time and this language I am talking, that is my language. That also come from the dreamtime. It belongs to this land, and I said also, “Do you understand that language? Do you understand me, what I am – what I just talked about, what I just said?”*



Image: Lake Eyre – white kangaroo skin

Buzzacott was not speaking lightly of fire and ashes. He was conveying to the Court his sacred birthing ceremony where the newborn is placed in ashes. He was saying that his very essence of himself and his People comes from the Lake and the fire – and the dreaming time – and ancient stories of the white kangaroo and bird men.

Buzzacott told the court that in one of the lower courts, the transcript put his language down as ‘a foreign language’. Kirby J responded:

*‘Well, it is certainly not a foreign language in Australia. It is an Australian language and when the court reporter tries to reproduce what you have said in an Aboriginal language, I will get the Registrar to send it to you to make sure that you can ensure that the phonetic transcription of it is correct. So that will be sent to you, and you can check it and make sure we get it right.’*

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Buzzacott spoke again:

*“So, I am seeking the High Court to see what the justice is here and so that since the foreign powers, the colonial powers, back in 1788 and so forth, me and my people have been – we have got a lot of pressure on our mob.*

*We have got desecrations of sacred sites, dispossession of land and so on and so on. And also the misuse of our totems, the emu and the kangaroo, and I also see*

*behind you, your Honour, you have the emu and the kangaroo up there and I am saying part of my argument here today is I want to put this to your court, the High Court, here so that I could really explain what those animals and those other symbols mean. I say also since I do not know exactly when they were put up on there, but I say also permission, it was done the wrong way. The permission was not given from my people for those animals to be used up there and also used against myself. ...*

*It is my cultural obligations and responsibility. It is my job as well to look after my land, my country, as well as my sacred symbols as well...*

*We have got serious issues happening around the place now and it is all coming from this Constitution or this, what I refer to as a government, or a foreign government, that has only been set up for 200 years and under the emu and the kangaroo lot of this happening and our people are needing a right to life, they are needing peace, they are needing – we have so much sickness and illnesses out there, our countries have been desecrated.*

*So, there is that cultural spiritual obligation to stop this happening. We feel that our freedom has been taken away from us. If we try to talk to people, we have not been able to do that. So, what our end result is being summonsed and locked up in one of the gaols, and it is wrong. ...*

*You know, I think that what we are all striving for is a knowledge and a coming the right way and a lot of the problems out in the communities and that we have around the place in this country, I think we can contribute a lot towards to that if there can be some common ground me, and sometimes we have to bring our issues to the Court ...”*



Buzzacott’s application failed but Tait sought no order for costs.

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Kevin Buzzacott is an Arabunna Elder who has long struggled to 'heal' his Country from the impacts of the Olympic Dam uranium mine. Arabunna Country, which provides the principal water supply to BHP's Olympic Dam mine, contains groundwater river systems, caves and mound springs that connect with the Great Artesian Basin in its southern areas, where the Basin's roof touches the Earth. These springs and the water are sacred and have great ecological, anthropological and economic significance.

In December 2019, Minister Ley, the Minister of the Environment and Heritage, approved the construction, commission and operation of an additional tailings storage facility cell at Olympic Dam (**Tailings Dam**).<sup>4</sup> BHP's 2019 *EPBC Act* referral stated that the Tailings Dam would need to cover 416 ha, with a wall embankment height of approximately 30 metres, to provide Olympic Dam with sufficient tailings storage capacity for tailings containing chemicals, hydrocarbons and radioactive process materials.<sup>5</sup> This is the equivalent of a 7-storey building, 200 times the size of the MCG.



**Image:** Sacred Mound Springs

In June 2020, Prime Minister Scott Morrison announced fast-tracking of BHP approvals at Olympic Dam.

BHP enjoys exceptional legal privileges under special purpose State legislation - the *Roxby Downs (Indenture Ratification) Act 1982 (Act)*. The Olympic Dam and Stuart Shelf Indenture (**Indenture**), a Schedule to the Act, allows BHP to search for underground water (CI13(7) Indenture) and investigate the development and use of surface run off water (CI10 Indenture). Through a system of Special Water Licences, it empowers BHP to draw underground water without royalty, compensation or payment of any kind to Aboriginal Peoples, even for health effects let alone loss of

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<sup>4</sup> <http://epbcnotices.environment.gov.au/entity/annotation/d26cc369-d522-ea11-a521-00505684324c/a71d58ad-4cba-48b6-8dab-f3091fc31cd5?t=1588991384279> accessed 8 July 2021.

<sup>5</sup> Submission #4210 - Olympic Dam Operations - Tailings Storage Facility Six, <http://epbcnotices.environment.gov.au/entity/annotation/0ffd8a29-a590-e911-8f1d-00505684324c/a71d58ad-4cba-48b6-8dab-f3091fc31cd5?t=1560750579909>, pp. 1, 27, 39 accessed 8 July 2021.

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highly significant cultural heritage. (Cl13(8)B(v) Indenture). The Act also provides exemptions to certain provisions of the *Aboriginal Heritage Act 1988* (SA) (AHA) (s 9 AHA ) and subjects the *Water Resources Act 1990* (SA) and the *Environment Protection Act 1993* (SA) to provisions of the Indenture (s 7Act).

The extreme risk created by a tailings dam is highlighted by two separate and recent catastrophic failures of tailings dam walls in BHP joint venture operations in Brazil. In 2015, the Fundão dam collapsed killing 19 people and displacing 700<sup>6</sup>. In 2019, Dam 1 at the Córrego do Feijão mine collapsed, resulting in 259 deaths<sup>7</sup>. The owner of both these mines, Samarco, a Brazilian mining company, is a joint venture between Vale S.A. and BHP Billiton<sup>8</sup>.

In June 2019, the *Financial Times* reported BHP's own risk-assessment identifying Olympic Dam as one of five tailings dams that posed an "extreme risk" of damaging the local environment and harming nearby residents if they collapsed<sup>9</sup>.

Despite EPBC Act approval and a 'fast track' from Australia's Prime Minister, Olympic Dam mine poses grave risks to Indigenous cultural heritage and the environment as well as major community health and safety risks.

As Rio Tinto's experience at Juukan Caves demonstrates, directors face onerous legal duties that concern investors and shareholders. BHP directors and shareholders must seriously and urgently address their legal obligations given the known risk at Olympic Dam, regardless of any approvals or fast tracking they might have secured. Everyone holding BHP shares has an interest in ensuring directors address this matter.

Kevin Buzzacott will continue to fight to 'Heal Country' and give voice to his People's concerns.

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<sup>6</sup> [https://en.wikipedia.org/wiki/Mariana\\_dam\\_disaster](https://en.wikipedia.org/wiki/Mariana_dam_disaster) accessed 8 July 2021.

<sup>7</sup> [https://en.wikipedia.org/wiki/Brumadinho\\_dam\\_disaster](https://en.wikipedia.org/wiki/Brumadinho_dam_disaster) accessed 8 July 2021.

<sup>8</sup> <https://en.wikipedia.org/wiki/Samarco> accessed 8 July 2021.

<sup>9</sup> <https://www.ft.com/content/07233a08-890b-11e9-97ea-05ac2431f453> accessed 8 July 2021.

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