



Yamatji Marlpa
ABORIGINAL CORPORATION



Our Ref: GEN033 – Submissions – EPBC Act Review
Your Ref:
Office: Perth
Date: 1 May 2020

To: Environment Protection and Biodiversity Conservation Act Review Panel
Attn: Professor Graeme Samuel AC
(Response provided via online submission)

Dear Professor Samuel,

**RE: Environment Protection and Biodiversity Conservation Act Review –
Response to current ‘Discussion Paper’**

Yamatji Marlpa Aboriginal Corporation (YMAC) is the Native Title Representative Body (NTRB) for the Pilbara, Mid West and Gascoyne regions of Western Australia. We are a not-for-profit organisation run by an Aboriginal Board of Directors, and currently represent over 20 client native title claim groups and/or their related organisations (each of whom have their own language, culture, traditions and protocols). YMAC provides a range of services to our clients, including claim and future-act representation, heritage protection services, community and economic development assistance, and natural resource management support.

On behalf of YMAC, I am writing to you in your capacity as the presently appointed independent reviewer of the *Environment Protection and Biodiversity Conservation Act 1999 (C’th)* (the EPBC Act), to provide feedback on the public discussion paper pertaining to the review underway. Please find our responses to several of the questions posed within the paper, as well as additional general comments, below.

Question 3: Should the objects of the EPBC Act be more specific?

While the EPBC Act, in particular its objects, act to *recognise* and *promote* the role and involvement of Indigenous¹ people, i.e. “promote a cooperative approach to the protection and management of the environment involving governments, the community, land-holders and Indigenous peoples”; “recognise the role of Indigenous people in the conservation and ecologically sustainable use of Australia’s biodiversity”; and, promote the use of Indigenous peoples’ knowledge of biodiversity with the involvement of, and in cooperation with, the owners of the knowledge”, YMAC fully supports the review’s suggestion that Indigenous peoples’ contributions to the implementation of the EPBC Act require strengthening, and clarity in relation to what this entails, both theoretically and practically, is necessary.

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¹ The term “Indigenous” is used throughout this response to align with the content of the EPBC Act.



Question 4: Should the matters of national environmental significance within the EPBC Act be changed? How?

YMAC believes more emphasis on Indigenous peoples' cultural and heritage value systems should be afforded within the scope of the existing matters, i.e. more status should be given to how Indigenous people view and hold significant cultural complexes and environmental landscapes holistically; it is not culturally-appropriate for Indigenous people to be expected to consider and assign value to certain elements in isolation, but instead the relational importance of environmental and cultural features together must be acknowledged and respected.

(For additional information on this critique, we refer you to feedback we received during consultations undertaken for BHP's Strategic Environmental Assessment (available at, http://epa.wa.gov.au/sites/default/files/Proponent_response_to_submissions/20161222_BHPBIO_PERSP_Supplementary%20Report_REV1_FINAL.pdf), which YMAC facilitated (in particular, please see pages 80 through 85 of this document). Such comments will help to further convey the problematic nature of this disconnect, specifically the inappropriateness of where what is valued under existing legislation and implemented via government policies and practices conflicts with what Indigenous people view as important.)

Question 5: Which elements of the EPBC Act should be priorities for reform? For example, should future reforms focus on assessment and approval processes or on biodiversity conservation? Should the Act have proactive mechanisms to enable landholders to protect matters of national environmental significance and biodiversity, removing the need for regulation in the right circumstances?

Again, YMAC is of the opinion that there is currently little *meaningful* consideration provided within the EPBC Act for Indigenous peoples' value systems, nor the benefits their Traditional Ecological Knowledge (TEK) could play in terms of environmental management, and nor are there provisions to practically engage Indigenous groups in related monitoring and compliance; generally, we see their potential contributions being underestimated and undervalued. To remedy this oversight, reforms that act to enhance the inclusion of Indigenous people in both mandated and practical ways should be made a priority. For example, Indigenous rangers who are not directly employed by government agencies are not presently afforded any law enforcement powers (this is despite most of these groups being either fully- or partially-funded under State and/or Commonwealth Government programs). Hence, one simple and practical way Indigenous people could be empowered under the EPBC Act would be to include a provision that allows for suitably experienced and qualified Indigenous people/rangers to be recognised and resourced to act as compliance officers. Australia has witnessed significant developments in terms of Indigenous ranger groups, particularly over the past ten or so years. In many instances, such groups have achieved high levels of professionalism and capacity, and have the potential to become permanent actors to support the implementation of any environmental legislation.

Question 6: What high level concerns should the review focus on? For example, should there be greater focus on better guidance on the EPBC Act, including clear environmental standards? How effective has the EPBC Act been in achieving its statutory objectives to protect the environment and promote ecologically sustainable development and biodiversity conservation? What have been the economic costs associated with the operation and administration of the EPBC Act?

In regards to the EPBC Act's performance, YMAC concurs with the concerns detailed within the current discussion paper under the 'Inclusion' subheading, i.e. "The EPBC Act includes specific objects to recognise the role of Indigenous Australians and to promote the use of their knowledge in the protection of the environment and biodiversity.

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However, stakeholders have suggested that the involvement of Indigenous Australians in the operation of the EPBC Act has been inconsistent and potentially inadequate. Shortcomings often raised include environmental impact assessment, protection of Indigenous heritage and understanding the cultural significance of Australia's plants, animals and cultural landscapes." Feedback, including suggestions for how to mitigate such shortcomings, are provided in responses elsewhere throughout this submission.

Question 19: How should the EPBC Act support the engagement of Indigenous Australians in environment and heritage management? How can we best engage with Indigenous Australians to best understand their needs and potential contributions? What mechanisms should be added to the Act to support the role of Indigenous Australians?

In line with the other feedback provided in this submission, YMAC would like to see the elimination of 'motherhood statements' used within the EPBC Act, which currently act to only *encourage* Indigenous peoples' inclusion. Instead, we would like to see the use of more proactive language that makes it *obligatory* for the right (i.e. recognised in both a cultural and legal sense) Indigenous people to be involved in environmental and cultural heritage decision-making and management; the EPBC Act must move beyond the symbolic nature of "recognising" and "promoting" Indigenous peoples' involvement in all activities falling within its purview.

As acknowledged in the current discussion paper, YMAC agrees that any amendments should be considerate of "reflecting the unique needs of different communities". Along these lines – to ensure an appropriate, localised response that takes into account the distinctive cultural views and practices relevant to a particular place/area/Indigenous group – we propose a framework based on registered native title claims and determinations. This could be achieved by recognising Registered Native Title Claimants (RNTCs) and Registered Native Title Bodies Corporate (RNTBCs) within the EPBC Act, and making it mandatory that they be engaged early on in any related processes. With a greater emphasis placed on the *necessity* of early and genuine engagement, Indigenous people can begin to experience an appropriate level of equity in terms of consultation, design and delivery of all relevant issues/activities. However, we also note that certain provisions will need to be made to ensure such involvement is suitably supported and resourced.

Further, heightened grassroots/on-the-ground representation and input is required pertaining to the administration of the EPBC Act. To achieve this, more authority and resources to consult and advocate should be afforded to the statutory 'Indigenous Advisory Committee' (IAC); as it stands, the IAC "is an advisory and not a decision making body and it is not a consultative mechanism to seek the views of stakeholders. It does not advocate on behalf of Indigenous communities, stakeholders or funded proponents. It provides strategic advice at the request of the Minister" (see, <http://environment.gov.au/epbc/advisory-committees/iac>). Ideally, the IAC should be able (and required) to consult with appropriate grassroots structures, affording it to be better connected with its base. For example, by utilising certain Indigenous peak bodies in each State and Territory (provided such bodies themselves have a good understanding of environmental issues on-the-ground), drawing from other advisory committees/networks, e.g. the Australian Marine Parks Advisory Committees, Aboriginal Fisheries Consultative Committees, and Indigenous land management collaborations, e.g. The 10 Deserts Project, as well as engaging with NTRBs/RNTCs/RNTBCs.

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Overall, YMAC is encouraged by the direction of some of the proposed suggestions within the current discussion paper, in particular those that highlight the need for any reforms made to have stronger emphases and clarity regarding the enhanced involvement of Indigenous people. We were, however, disappointed to discover that many of these same issues and possible solutions were raised and not, consequently, adequately addressed as part of the last EPBC Act Review undertaken in 2009 (e.g., see the submission from the then-Department of the Environment, Water, Heritage and the Arts' Indigenous Advisory Committee Secretariat, available at <https://www.environment.gov.au/system/files/pages/dacbaf4-0bca-46ee-9271-2fa95ce1b6dc/files/210-iac.pdf>). YMAC sincerely hopes our feedback, which we feel is highly reasonable and achievable, will be suitably considered and suggestions adopted as a result of the pending review, as we don't wish to find ourselves repeating the same advice again in ten years' time.

Finally, I thank you for the opportunity for YMAC to provide this feedback. Should this response generate any questions or concerns for you, please contact my Executive Assistant, Ms Dee Way, in our Perth office on 08 9268 7000, or by emailing dway@ymac.org.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Simon Hawkins'.

Simon Hawkins
Chief Executive Officer

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