

Dear Professor Samuel and the Review Panel,
We wish you fortitude and wisdom in the adjudication of this daunting task.

In this submission FARA's focus is primarily on –

- 1) EPBC responsibility for Cultural / Aboriginal heritage
 - 2) EPBC national control of Industrial emissions (possible new triggers = Air Quality, Industrial Emissions)
 - 3) EPBC inclusion of more Indigenous advice and leadership
 - 4) EPBC Compliance shortcomings
 - 5) EPBC Act reforms re community engagement
- as they pertain particularly to the ancient Aboriginal rock engravings within the Dampier Archipelago.

1) Cultural/Aboriginal Heritage

According to the EPBC website – *The EPBC Act enhances the management and protection of Australia's heritage places, including World Heritage properties. It provides for the listing of natural, historic or Indigenous places that are of outstanding national heritage value to the Australian nation as well as heritage places on Commonwealth lands and waters or under Australian Government control.*

- With regard to the ancient rock art of the Dampier Archipelago, the Commonwealth government has had responsibility for its protection since 2007 under the National Heritage Act, and this responsibility will be further increased should this heritage site receive World Heritage listing in c2022.

The EPBC Act should expressly **protect National/World Heritage properties as well as National/World Heritage values.**

Part 3 of the EPBC Act setting out 'matters of national environmental significance' should **explicitly include Aboriginal heritage.**

The EPBC Act should establish an **independent Australian Heritage Committee** to assess and directly list natural and cultural heritage places for national protection.

It should also provide for Indigenous Cultural Heritage to be primarily **identified and assessed by Indigenous representatives**, with **new laws** to replace the outdated 1984 Indigenous heritage legislation.

Listing of Indigenous cultural heritage should include the ability to list the **intangible heritage values** of a site.

- As Western Australia's state environmental laws do not require consideration of cultural heritage, it is **vital that the EPBC Act is more pro-active** in its **responsibility and protection** of this 50,000 year old globally significant heritage site in the face of increasing proposals for industrial development on the Burrup peninsula.

2) Industrial Emissions

The Australian Government's website states that "a high level of impact in these areas on the Burrup Peninsula has resulted in the destruction of archaeological material and in some cases the relocation of engravings and other stone features." (http://www.environment.gov.au/cgi-bin/ahdb/search.pl?mode=place_detail;place_id=105727). An analysis of aerial photographs from August 2004 estimated that high levels of impact have occurred on 1,643 hectares (or 16.4 square kilometres) on the Burrup Peninsula (McDonald and Veth, 2006).

- However, the Commonwealth government (via the EPBC Act) has done very little since National Heritage listing in 2007 to **re-assess the damage** now being done to the Aboriginal engravings **by acidic emissions** from industries on the Burrup peninsula such as Woodside and Yara Pilbara.
- The National Pollution Inventory shows that in 2016 -17 the Woodside Energy Burrup gas plants (the North West Shelf Joint Ventures and Pluto) produced 8,000 tonnes (t) oxides of nitrogen, 97 t sulphur dioxide and 16,000 t of volatile organic compounds, while the Yara Pilbara fertiliser plant produced 13,600 t of sulphur dioxide equivalents in 2014. There are not yet annual figures available for the Yara ammonium nitrate plant.
- The WA government commissioned impact studies from CSIRO for 2004-2014 but their findings were found to be seriously flawed and were discredited by a Federal Senate Inquiry in 2017.

- Dr John Black has published several **rigorously researched scientific papers** on the destructive effects of acidic pollution on the rock engravings see: <https://www.fara.com.au/current-assessment-of-the-impact-of-pollution-on-murujuga-rock-art/> and submitted them to both the WA and the Commonwealth governments – but again these were **never followed up in line with the Precautionary Principle conditions of the EPBC Act and its responsibility for a National Heritage listed site.**
- The WA government continues to maintain that toxic industry can safely co-exist on the Burrup peninsula alongside ancient Aboriginal heritage – but where is the EPBC authority to counter such a ludicrous claim? This is yet another example of the deliberate flouting by the WA government of the **Precautionary and Intergenerational Principles** which underlie the basis of EPBC objectives.
- In 2017 the Murujuga Rock Art Stakeholder Reference Group, (predominantly representatives from industry and WA government, only two scientists with rock art knowledge) released their Rock Art Monitoring Strategy and, without consultation with the two scientists in the Group, awarded the monitoring tender to a newly formed company with very little demonstrable rock art expertise.
- Their findings will not be available for at least another 4 years and in the meantime the WA government is eager to approve Woodside's enormous Browse Basin & Scarborough expansions, as well as encouraging proposals from Perdaman Fertilisers and Coogee Chemicals! Again, our EPBC authority seems to be missing in action!
- With such blatant disrespect from the WA government for the heritage values of the rock art, it is **vital that the EPBC Act is strengthened to require that no further industry is approved on the Burrup peninsula (or anywhere else in Australia) until acidic emissions from all industries are reduced to near zero (immediately possible with the adoption of new technology) in order to preserve the Dampier Archipelago's Aboriginal rock engravings as part of Australia's national heritage.**
- The impact of these emissions on **human health** is also a cause of great concern (higher incidence of respiratory complications) for the workers and residents of Pilbara towns like Dampier and Karratha. This area currently falls under the jurisdiction of the state government but we feel it is a serious issue which **should also be addressed under the EPBC Act.**
- **NBB:** the cumulative effect of the barely controlled ongoing acidic emissions on the fragile rock art and human health will prove to be a huge obstacle for **UNESCO** when considering the heritage site for **World Heritage listing**, and bring further unwelcome critical focus on the Australian government for the gross ineffectiveness of its EPBC laws.

For improved Commonwealth governance the EPBC Act should set clear criteria and public accountability for key stages of decision-making, including requirements for objective, science-based outcomes assessment.

To oversee this, there should be a **new national independent Environmental Protection Authority (EPA)** – to assess, approve or refuse projects, monitor project-level compliance and take enforcement action – and be **immune to corporate or political pressure.**

It should be well funded, well staffed, and have the **authority to act as watchdog** over the system and ensure our laws are properly enforced; it must be able to penalize, fine and litigate to protect cultural heritage, ecologically sensitive habitats and biodiversity.

In addition, a new **National Sustainability Commission** should be established – to coordinate national plans and actions, set national environmental standards, provide high-level oversight and **give strategic advice and oversight to Ministers, agencies** and the wider community.

And where/when necessary, **expert advisory Councils and task forces** should be established.

- **The scope** of the EPBC Act should be extended to include **new triggers** like 'Aboriginal Heritage' and 'Air Quality' and/or 'Industrial Emissions' and/or Greenhouse Gas Emissions.
- The **powers given to advisory agencies** like NOPSEMA and CSIRO **should be reviewed** to ensure that they are free of political or corporate influence and focus particularly on the public interest.

3) Indigenous leadership

In addition to increased protection of recognized Aboriginal heritage sites, there also needs to be a much greater emphasis on **Indigenous leadership**, land management and biodiversity stewardship, including formal recognition of Indigenous Protected Areas.

Since heritage value is part of the EPBC Act, their advice must be properly considered, and given appropriate weighting, when a new project is being evaluated.

- However, in the case of the Aboriginal custodians of the Burrup peninsula, their **rights to object** to further industrial development were effectively **signed away to the WA government** in the 2002 Burrup Murujuga Industrial Estates Agreement (BMIEA) in return for ongoing funding and jobs within those industries.
 - Unfortunately the Dampier Archipelago was not National Heritage listed at that stage, but there should be a clause within the **reformed EPBC Act which allows previous state legislation to be overturned** if it specifically disallows Aboriginal custodians to protect their cultural heritage.
 - **Free, prior and informed consent of Indigenous communities** should become a mandatory operational principle within the Act, as well as provision within the reformed EPBC Act for **retrospective review** of deleterious previous removal of Aboriginal custodians from their protection of heritage.
 - **A specific governance mechanism** (an **independent** body such as a Commissioner or agency, free from political influence) should be established within the EPBC Act **to facilitate 'free, prior and informed' consent**.
 - **Indigenous knowledge** should be taken into account in all decision-making in ways that appropriately safeguard Indigenous communities, peoples and heritage. (If only their long-practised superior fire management knowledge had been heeded long before our recent disastrous bush fires...)
 - **Jobs in tourism** for the Aboriginal custodians **IF** World Heritage listing is granted to the Dampier Archipelago would help restore to them control of their own heritage and reduce their dependence on jobs in the very industry destroying that heritage.
- a) Therefore it is urgent that inevitable **obstacles to the granting of World Heritage listing** – ie. acidic emissions destroying their 50,000 year old history as etched in these petroglyphs – be **removed as soon as possible**.

4) EPBC Compliance shortcomings

Of the 462 EPBC Act projects that were monitored in FY16, a mere 96 were found to be non-compliant with some requirements, although the Department declined to name the projects inspected and where non-compliances were identified. Where is the transparency? The need to strengthen the EPBC is highlighted by these following 'outcomes':

* none of the non-compliances identified in FY16 resulted in prosecutions.

* instead, the department relied on administrative measures such as variations to conditions of approval, revisions to management plans, conservation agreements and warnings.

* there were inadequate inspections and audits even for high-risk projects (the goal is that at least 30% will be inspected, and at least 5% will be subject to directed independent audit).

- Obviously **additional funding and enforcement powers** are required in order to increase the rate of environmental compliance and follow through on agreed biodiversity offsets and revegetation programs.
- Despite the Department having a policy of targeting mining, energy, construction and transport sectors as priority for compliance monitoring, **none of the audits** reported from 2015-2019 **were conducted on major LNG, energy or mining projects in the Pilbara of Western Australia**. (<https://www.environment.gov.au/epbc/publications#compliance>)
- In order to have confidence that the intent of the EPBC Act is being met, we need **greater transparency** with a summary of annual compliance reports for **all** projects, both industrial and government, with appendices listing (naming) the entities in high-risk categories, whether they were inspected and/or audited and whether they were found to be compliant.
- In the case of large damaging industrial developments and major government infrastructure projects, **more effective penalties** must be imposed to show companies that the Commonwealth government is serious in its enforcement of EPBC compliance. These penalties should include a forfeiture of at least 5% of their annual turnover (profits being problematic as these are easily distorted by company accounting), and jail terms for company officials who flout the laws.

- **Offsets** into environmental projects are commendable, but far better that the damage is intercepted/legislated against before it can be done?

5) EPBC Act reforms re community engagement

Although Minister Ley said the EPBC Review would “tackle green tape” and reduce delays in project approvals, this is a dangerous promise as transparent, comprehensive consideration of potential environmental damage, without corporate pressure, has to be given to potential environmental impacts before industrial projects can be approved.

- It is clear that what is actually required is a much **more effective Environmental Act** which actually protects Australian biodiversity, conserves habitat and ecosystems, ensures that we have sustainable development, and **protects cultural/ Aboriginal) heritage**. Given Australia's shameful record of destroying endangered species habitat (7.7 million hectares destroyed since the EPBC Act was established), the ever-growing lists of threatened and endangered species, and seriously **endangered heritage sites**, we (government and community) must work harder to actually accomplish these principles and intent of the EPBC Act.
- FARA's recommendations for **public participation, transparency and access to justice** include:
 - * Strong and iterative **community engagement** and public participation provisions **at all key stages of the Act**, from strategic planning to project assessment and compliance monitoring, reporting and enforcement.
 - * Simpler and faster heritage nomination and listing processes, and strong, non-regressive common standards for assessment across the Commonwealth, states and territories.
 - * All valid nominations should be assessed within statutory timeframes.
 - * **Emergency listing provisions for national heritage places** – particularly applicable to stop the destruction of ancient heritage in the Dampier Archipelago
 - * Rights for interested community members to seek **merits reviews of key decisions under the Act** (such as when a nominated entity or place is declined for listing; on the adequacy of an approved recovery plan; whether a proposed action requires Commonwealth assessment; serious environmental and heritage concerns about approvals granted under the Act).
 - * **Easily accessible, timely public information** on actions and decisions.
 - * 'Open standing' for the community to seek **judicial review of legal errors**.
 - * 'Open standing' to pursue **civil enforcement for a breach** of the Act or regulations.
 - * **Protective costs orders** for legal actions brought in the public interest.
- **Above all the Precautionary and Intergenerational principles should be applied to ALL decisions by the Commonwealth government with regard to Australia's environmental and heritage protection.**

One last salutary reminder: **No Jobs on a Dead Planet...** and we earnestly hope these proposed reforms will be addressed and implemented more seriously than those 10 years ago, given the urgency of our environmental/heritage situation today.

Yours sincerely,
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