



## YMAC has concerns about draft Aboriginal Heritage Bill

---

**MEDIA RELEASE: 24 September 2020**

Yamatji Marlpa Aboriginal Corporation (YMAC) welcomes the State Government's draft *Aboriginal Cultural Heritage Bill 2020 (ACHB)* but is concerned it falls short in addressing the inherent power imbalance in current legislation.

YMAC believes more time for consultation in this crucial phase is needed. As well, there is too many unknowns about yet-to-be-drafted guidelines and regulations that people cannot possibly have an informed understanding or make informed comment.

YMAC CEO Simon Hawkins says this is a once in a generation opportunity to ensure stronger heritage recognition and protections and achieve a more equitable environment for decision-making and negotiations. He said extending the deadline for submissions will assist Traditional Owners to provide considered feedback and propose additions and revisions before the final Bill is considered by Parliament.

"We need to get this right. The draft bill contains improvements on the inadequate *Aboriginal Heritage Act (1972)*, but further amendments are needed to ensure a significant shift away from the AHA. It doesn't yet achieve genuine empowerment of Traditional Owners," YMAC CEO Simon Hawkins said.

"The improvements YMAC has noted in the draft ACHB are good – but they are low-hanging fruit. In its current form too much decision-making power remains with the Minister and with proponents," Mr Hawkins said.

"There is a risk of conflict of interest arising depending on the Minister's portfolio, particularly when they are considering the interests and economic value of development for the State."

If parties can't reach agreement about an Aboriginal Cultural Heritage Management Plan (ACHMP) the ACH Council will mediate. If mediation is unsuccessful, ultimately the Minister will decide whether the ACHMP is authorised by Traditional Owners or not. YMAC considers this approach has the flavour of the current AHA section 18 consents.

Mr Hawkins said 'best practice' standards of heritage management in Australia should be consistent with international standards and heritage industry practice. This includes the requirement of free prior and informed consent (FIPC), applied consistently across *all* aspects of the bill, including with respect to removing or amending Protected Areas – this is not apparent in the draft bill.

YMAC also believes clear processes for Traditional Owners to make written and oral submissions to the ACH Council and the Minister prior to them making any decision about their cultural heritage, should be included in the Bill.

YMAC supports the appointment of local Aboriginal Cultural Heritage service providers (LACHS), noting they will play a pivotal role on behalf of knowledge holders at the local level. It is important the proposed LACHS providers are also adequately resourced to perform those functions. The process of appointing LACHS providers is yet to be detailed and will need to be managed carefully to minimise conflict and confusion in communities.

It is unclear whether yet-to-be-written guidelines such as Due Diligence Guidelines and ACH Management Code (approvals section) will enhance or detract from the heritage protection



set out in the draft bill. For example, s105 requires a proponent who wishes to conduct a low impact activity to give relevant people (e.g. LACHS providers) an opportunity to submit their views on the impact of the activity within a 'prescribed period'. Without knowing the length of the 'prescribed period', it is impossible to assess its workability. This does not appear to encourage early and ongoing consultation with Traditional Owners.

Mr Hawkins said YMAC's hope is that the new laws will be future proofed for successive governments. The more robust the legislation, the less heritage protection will be subject to the whims of political parties, that can change regulations.

"It's also vital that other legislation - such as WA's *Mining Act* (1978), the Commonwealth *Native Title Act* (1993), WA's *Local Government Act* (1995) and federal heritage and environment legislation - is amended to recognise Aboriginal cultural heritage much earlier in projects. Heritage needs to be considered throughout a project's lifecycle - particularly as new information comes to light – and both before and after agreements (including existing agreements) have been made. This needs to be reflected across the board."

YMAC has welcomed opportunity to further discuss the draft with State Government as it prepares for the 9 October submission deadline. The corporation's submission will contain expanded feedback and suggestions for improvement, in addition to the items mentioned above.

The corporation urges Traditional Owners across the state to learn more about the proposed Act and make their concerns heard.

*All quotes to be attributed to Mr Simon Hawkins, CEO Yamatji Marlpa Aboriginal Corporation.*

---

#### **About Yamatji Marlpa Aboriginal Corporation**

Yamatji Marlpa Aboriginal Corporation (YMAC) is the native title representative body for the Pilbara, Mid West and Gascoyne regions of Western Australia. YMAC has a representative area of over one-third of WA and represents several Traditional Owner groups - all with their own language, culture and traditions. YMAC is a not-for-profit organisation run by an Aboriginal Board of Directors and provides a range of services to its members including claim and future-act representation, heritage protection services, executive office, community and economic development and natural resource management.

---

For interviews please contact: **Jane Mitchell**, Communications Manager, email [jmitchell@ymac.org.au](mailto:jmitchell@ymac.org.au) or [editor@ymac.org.au](mailto:editor@ymac.org.au) , mobile **0427 463 796**.