



**Goolarabooloo Millibinyarri Indigenous Corporation**

ABN: 55406590615

ICN 7235

BROOME WA 6725

[www.goolarabooloo.org.au](http://www.goolarabooloo.org.au)

**WA Department of Premier and Cabinet Discussion Paper 'An Office For  
Advocacy and Accountability in Aboriginal Affairs in Western Australia'**

Submission by Goolarabooloo Millibinyarri Indigenous Corporation  
September 2018

The Goolarabooloo Millibinyarri Indigenous Corporation (GMIC) represents the traditional law and culture families of the Goolarabooloo people of Broome and surrounding areas. All members of the Goolarabooloo families hold traditional authority and/or custodial responsibilities under the Aboriginal law and culture of this area. Our families have direct, unbroken links to this land, law and cultural tradition through the passing on of law and culture and responsibility directly from the old law bosses and senior law people of the area. It is our responsibility to protect the law of our land and we do so with the support of surrounding law people from other areas.

GMIC welcomes and appreciates the opportunity to comment on the proposal to form an 'Office for Advocacy and Accountability in Aboriginal Affairs' and the related Discussion Paper.

GMIC realises that forms of Aboriginal advocacy are desperately needed in Western Australia, particularly following the removal of the Department of Aboriginal Affairs. Over history varying WA Government Departments concerned themselves with the affairs of Aboriginal people in differing ways. As examples, the Commissioner at the Department of Native Affairs was responsible for all Aboriginal matters in WA, including on an individual level (eg personal finance and family matters including consent for marriage). After 1954 the Commissioner at the Department Native Welfare took on this role, including being the legal guardian of all Western Australian Aboriginal children who were not already wards of the State under the *Child Welfare Act 1947*.

Over time, the Western Australian Government has decentralised Aboriginal involvement and Departments with 'Aboriginal Affairs' or 'Indigenous Affairs' in their name have slowly shifted away from direct engagement/involvement with individual Aboriginal people. By the 1980s Goolarabooloo elders were being

directed to form themselves into a group with a governance structure thought appropriate for Government engagement. The last Department of Aboriginal Affairs seemed quite limited in its ability to advocate for Aboriginal people of this State and appeared to be involved mainly with Aboriginal Affairs as they related to Government concerns, not Aboriginal concerns.

Whilst the earlier institutions created paternalistic power structures that limited Aboriginal people's freedom and independence (as stated on page eight of the Discussion Paper), the narrowing of Government's consideration of what are 'Aboriginal affairs', the limitations placed on direct engagement and the gradual decentralising of the Government's roles and responsibilities in Aboriginal matters have also had detrimental impacts.

The proposed scope of the new statutory office appears to follow down this limiting path. The Introduction of the Discussion Paper advises that this new office would "work with a specific focus on Aboriginal people and the issues that matter to them" (implying its scope of work is defined directly by the input of Aboriginal people). However the Introduction also seems to indicate that the proposal is to strengthen government accountability and advocacy for Aboriginal people's interests within the scope of government policy and performance only.

Page 11 of the Discussion Paper suggests that the new office should be responsive to the needs and priorities of Aboriginal people and that it would be this new office that determines these priorities and needs, as it "should be free to determine which issues relevant to the interests and well-being of Aboriginal Western Australians to focus on". However, if the role of the new office and Advocate is to strengthen government accountability and advocacy for Aboriginal people's interests within the scope of government policy and performance only, then it appears that this 'freedom' is in reality quite constrained and would not necessarily include priorities and needs of Aboriginal people that exist outside the scope of government policy and performance.

It is therefore a little unclear how the new office and Advocate would be conducting itself differently to the general position taken up by the late Department of Aboriginal Affairs. Is it an office of accountability and advocacy across all Aboriginal affairs on behalf of Aboriginal people or an office of accountability and advocacy for Aboriginal affairs as they relate to Government interests? If the latter is the case, then it is suggested that use of the term 'Aboriginal Affairs' in the naming of the new office or Advocate position would be misrepresentative and should not be used in order to avoid the same confusions that Aboriginal people have been led to in the past.

Ultimately, the effectiveness of the proposed office and Advocate in sufficiently maintaining accountability and reducing risks associated with Government actions and policy introductions/changes will largely depend on how well informed the office and Advocate will be. Page 11 suggests that the new office would be expected to develop its priority areas in collaboration with Aboriginal organisations, as well as government agencies, other non-government organisations and technical specialists. The degree of input that Aboriginal

people would therefore have with the new office in identifying needs and shaping priorities is quite concerning.

It appears that the new office would not include mechanisms for direct engagement with individual Aboriginal people or groups of Aboriginal people who do not have representation under a representative body/organisation. This includes many of the most vulnerable, disenfranchised and marginalised Aboriginal people. The 'gaps' that Government seeks to address, potentially aided by the advocacy and accountability proposed through the new office, relate to a large degree to the circumstances and opportunities of these people.

Aboriginal organisations, government agencies, other non-government organisations and technical specialists already have long standing involvement in formulating and collaborating on initiatives that have attempted to 'close gaps' and advocate. Something is missing. The voices of the vulnerable, the disenfranchised and the marginalised (including those in remote locations) are too often stifled, silenced, mistaken or trumped by organisational or majority agendas. The experiences and needs of these people are often not being properly realised and represented.

Many of these people are not included in 'native title processes' so their rights and interests are not represented by Native Title Representative Bodies or Prescribed Bodies' Corporate (PBCs). Representation of their issues and concerns are then left to non-Government organisations who can only be as effective as their funding provides for. While they do provide a voice for Aboriginal people, that voice is often controlled through funding distribution and other ways. The provision of an Aboriginal voice to the new office only through these non-government and native title organisations would serve to filter and abstract the voice of the vulnerable and marginalised through an administrative perspective and is not going to be adequate. Government can and needs to do better.

Many Aboriginal people who do sit within a PBC are in reality quite marginalised, for a variety of reasons, and their rights and interests are often not properly protected from underneath non-traditional decision making structures. It must be made clear that external PBC voices do not always include or properly represent the interests and needs of law people within that PBC. Fear of reprisal and removal from the PBC for speaking up and being identified as 'vexatious' under terms in a PBC Rule Book is also very real.

Page three of the Discussion Paper advises that Accountability for outcomes in Aboriginal affairs is about policy settings, service delivery, expenditure and genuine engagement. GMIC considers that 'genuine engagement' should include direct engagement and involvement with Aboriginal people at a grass roots level. Government has realised the need for this type of engagement in reform development previously - a successful example of this would be the public workshops with Aboriginal people conducted under the current review of the *Aboriginal Heritage Act 1972* at numerous regional centres across the State. In this process, issues for discussion were identified and advertised and Aboriginal

people were able to walk into a meeting room, sit at a table and directly engage over the issues, voice their concerns, suggest solutions and provide real life experiences directly to representatives of the Minister who were needing to understand context.

Genuine engagement should also involve distinctions between traditional and non-traditional Aboriginal interests and priorities. Whilst it is very important to represent and advocate for the needs and priorities of all Aboriginal people, it is also vitally important that the office recognises that needs and interests will vary, sometimes markedly, across spectrums, such as 'traditional - non-traditional' and 'regional/remote - urban' spectrums and that it is able to distinguish, understand and account for these internal differences.

In the past, Government policies and actions have had massive detrimental impacts on traditional Aboriginal laws and cultures in Western Australia. It is fair to say that some of these impacts have been deliberate and overt cultural genocide. Traditional Aboriginal people's rights and interests in relation to their heritage and culture are now identified and protected under International United Nations Declaration and Charter, to which Australia is a signatory. There is no longer any place or excuse for forms of cultural genocide in Western Australia and a no tolerance approach to this must be taken by the new office.

There should be no doubt about it, native title and the subversion of traditional group governance through the imposition of native title decision-making structures has affected traditional law and culture. It will therefore not be sufficient for the new office to take direction largely from native title groups when collaborating to identify priorities on behalf of Aboriginal people. Such a situation will certainly lead to widespread disaffection, allegations of cultural genocide and the premature demise of the new office. It is not sufficient that the new office becomes the Office for Advocacy and Accountability in Native Title Affairs in Western Australia in name or spirit.

For the new office to be sustainable and successful, the advocacy and accountability that it provides to Government must be well informed by the Aboriginal community, including on a grass roots level and through appropriate traditional cultural people - elders and law people. The absence of these groups in engagement and involvement is one of the reasons why 'Government is not serving Aboriginal people as well as it should be'. It is not genuine engagement and its continuance will serve to sustain or widen the 'gaps' illustrated on pages four, five and six of the Discussion Paper.

The need for inclusion of diversity is in fact recognised on page seven of the Discussion Paper, where it is recognised that many of the Aboriginal-specific issues requiring the strongest advocacy involve the types of questions around balancing the interests of different sectors of society, or diverse ideological or cultural perspectives.

Page 10 of the Discussion Paper indicates that the day-to-day work of the new office would involve conducting investigations and formal inquiries but it also

mentions that it is not envisaged that the new office would have a role in investigating complaints. While it is agreed that the new office should not be left to investigate individual complaints, it could take a supporting role in assisting those complainants to appropriate avenues of complaint. The new office should however have a capacity to take on board complaints and initiate investigations or studies into issues if substantial concern is expressed.

Rather than ending up as an avenue for Government outsourcing of risk, accountability and responsibility in Aboriginal matters, the new office can potentially revolutionise engagement and relationships between Aboriginal people and the WA Government. However for this to happen the new office must be independent, highly aware and appropriately informed.

The office must also maintain records appropriately, be transparent and its staff must also be appropriately accountable. The actions and decisions of any appointed Advocate and senior staff should be accountable to proper considerations of all relevant information held by the office.

GMIC agrees that it would be appropriate to have an Aboriginal person as an appointed Advocate. However it is strongly believed that in order to advocate appropriately and optimally it would not be sufficient for that Aboriginal person to come from outside of WA. Senior staff within the office should also provide Aboriginal representation from across much of the state.

The appointed Advocate should be required to provide Statements of Interests and declare potential conflicts of interest publically. The Advocate and office should also be required to lodge annual activity and performance reports for public scrutiny.

It is felt that five years as the term of office for the appointed Advocate may be too long and three years would be a better term, provided with a possibility of a two-year extension if performance is deemed satisfactory. Perhaps this performance evaluation could be undertaken through the Aboriginal Advisory Council and Aboriginal Affairs Planning Authority if their role in Government is to consider matters relating to the interests and well being of Aboriginal people.

Removal from office and endorsement of performance evaluation could both be undertaken through Parliamentary approval, however it is important that a mechanism is provided for receiving and dealing with performance complaints from within the general community. The new office and Advocate should operate within the general endorsement of the Aboriginal community if it is to provide their voice as intended.

Interactions with the Aboriginal community and the appointment process will not be simple. Ideally the office would have advocate support from officers that sit in the regions, who interact with the communities and pass relevant information up to the Advocate. Conducting regular, open, regional forums and workshops would be very beneficial. How the new office interacts and engages

with traditional law people who have the standing to speak for traditional law, culture and country will be a major determinant in the success of the office.

The appointment process should be substantial and include state-wide engagement of as many Aboriginal people as are wanting to be involved in the appointment process. Native title organisations, land councils and associated service providers generally operate within their areas of interests and are not representative of all Aboriginal people, just a particular demographic of the Aboriginal community. They can sometimes even act against the interests of some Aboriginal groups, including law and culture groups. Complaints against native title processes and outcomes, including the degradation of traditional law and culture, are numerous in the Aboriginal community. Again, it is crucial that the appointed advocate does not just become a native title representative or advocate.

It may be the case that the Advocate position is too much for one person to bear and a small group of senior advocates with a representative becomes a better fit.

This feedback is provided in order to be as constructive as possible in the process. GMIC thanks the Department of Premier and Cabinet for the opportunity.