



**Yamatji Marlpa**  
ABORIGINAL CORPORATION



6 September 2018

Director, Aboriginal Policy Unit  
Department of the Premier and Cabinet  
2 Havelock Street  
WEST PERTH WA 6005

**IN RESPONSE TO: AN OFFICE FOR ADVOCACY AND ACCOUNTABILITY IN  
ABORIGINAL AFFAIRS IN WESTERN AUSTRALIA**

Yamatji Marlpa Aboriginal Corporation (YMAC) is the Native Title Representative Body for the Yamatji (including the Midwest, Murchison and Gascoyne) and Pilbara regions of Western Australia. YMAC is a not-for-profit Aboriginal corporation, run by an Aboriginal Board of Directors, supported by Yamatji and Pilbara regional committees, who are chosen by our members.

YMAC's services include: native title services, including future acts; heritage protection; community, environmental and economic development projects; and professional support and advocacy for Prescribed Bodies Corporate.

YMAC strongly supports the proposed new independent office for advocacy and accountability in Aboriginal affairs and looks forward to working with the State Government to contribute to its design and implementation.

For too long, Aboriginal people in Western Australia have lacked a powerful advocate with adequate powers to hold the government to account as to the way it engages with Aboriginal people and responds to their concerns. An independent office with the power to obtain information and report directly to Parliament will be a significant positive step. Aboriginal communities and governments have dedicated their time and resources to relentless reviews and inquiries into the complex social and economic challenges experienced by Aboriginal people, however key social indicators show little improvement, with some declining rapidly. An independent office with the ability to monitor and report on the implementation of previous reviews and recommendations is vital in achieving real practical outcomes from these efforts.

YMAC also considers it vital to have an independent advocate to support Aboriginal people in their attempts to take greater control over decisions affecting their day-to-day lives in areas such as health, housing, child protection, community safety, education, economic participation and land management. Evidence of YMAC's commitment to this position is demonstrated in its support given to the Pilbara Aboriginal Voice (Kakurrka Muri). This group was established to provide Pilbara Aboriginal people a united voice in their efforts to engage and advise the State Government on matters affecting them; which was recognised and endorsed by both State and Federal Ministers as an historic movement at the most recent Annual On-Country Bush Meeting at the Yule River Meeting Place.

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YMAC submits that the new office should not only focus on monitoring disadvantage but should also celebrate and share achievements. The office should play a lead role in researching where progress is being made by government and communities working in partnership and identify what the keys to success are in these instances.

As Australia moves into a new native title environment, with many Aboriginal groups establishing their own governance arrangements, it will be important to recognise these bodies and take advantage of the conduit role they can play for relaying information between the new office and community members.

The following responds directly to the specific issues canvassed in the Discussion Paper.

#### **A. Function of the new office**

YMAC supports the scope of functions of the new office proposed in the Discussion Paper, which resembles those of the Aboriginal and Torres Strait Islander Social Justice Commissioner, within the Australian Human Rights Commission. The following should be the minimum requirements of the office:

- Monitoring the effectiveness and efficiency of service delivery;
- Assessing the consistency of policy with human rights, legislative requirements and government commitments; and
- Monitoring and reporting on the implementation of previous government reviews and recommendations.

YMAC considers it essential that the office holder would always be an Aboriginal person so that the office has the integrity, trust and respect of Aboriginal people across the State.

#### **B. Business of the new office**

YMAC supports the proposed scope of business of the new office outlined in the Discussion Paper and agrees that it should not be limited to prescribed subject matters, but rather free to determine which issues are relevant to the interests and well-being of Aboriginal Western Australians.

It will also be important for the office to monitor and report where implementation of policy and service delivery is producing measurable positive social impacts and economic development outcomes. Government departments and agencies are now directing effort and resources to measuring disadvantage and community deficits. However, Aboriginal people, their communities and service providers must be empowered, inspired and guided by those programs that are working so they can be scaled up appropriately.

Government procurement and commissioning of services for Aboriginal people is currently undergoing a significant transformation, with an emphasis on place-

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based, collaborative approaches drawing together parties from government, not-for-profit and the corporate sector. It is essential the new office has the capacity to work with leading institutions such as the Centre for Social Impact at the University of Western Australia and non-government organisations such as Save the Children WA, to monitor the impact of these policy developments and promote where innovations are leading to sustainable positive change.

### **C. How should it be structured and what powers should it be given?**

YMAC agrees in principle with the majority of elements set out in the Discussion Paper in relation to the proposed structure of the new office. In particular, YMAC agrees that:

- the office's powers and functions should be set out in legislation;
- the office should be accountable to Parliament and independent of any Minister, and
- the office should not be subject to Ministerial directions, but the Minister should have a limited power to refer specific matters to the office.

The Discussion Paper indicates that the State Government doesn't expect the new office will have the power to investigate complaints from Aboriginal people about the government directly. However, it could refer complaints for investigation by the Ombudsman or Office of the Auditor General, for example. The rationale provided is that this would avoid duplicating these functions.

YMAC accepts the risk of duplication is real, however, the new office must have some direct mechanism for receiving feedback from Aboriginal people and their organisations in relation to government policy and service delivery issues. While the office may not have a formal investigative role, it should offer Aboriginal people an opportunity to draw attention to instances where human rights, legislative requirements and official government commitments are being undermined. The Office for the Commissioner for Children and Young People offers a useful model in this regard.

While the office holder may not have the power to investigate these issues, they ought to have an obligation to refer them to the relevant agency and, where appropriate, the Ombudsman – while also keeping a register of such to identify trends in complaints. The reason for this is because Aboriginal people and Aboriginal organisations are much more likely to report matters to an office held by an Aboriginal person, compared to the government agency responsible for the incursion and may not be aware of their options to lodge a complaint with a mainstream statutory authority.

Whatever method is used to appoint the office holder, YMAC suggests that the position should be supported by an Aboriginal reference group comprised of respected representatives of the diverse regions of Western Australia. The reference group would guide and advise the office holder so they understand the distinct cultural, social and economic interests of local communities.

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One challenge in forming the new office will be to ensure it is genuinely able to hold government accountable to Aboriginal people and the broader public of Western Australia. YMAC suggests that this could be achieved by requiring the office holder to report to Parliament on specific performance indicators and progress towards key outcomes. This would be similar in form to the annual *Closing the Gap Statement* delivered by the Prime Minister to the Federal Parliament.

YMAC envisages that the reference group would work closely with the office holder to identify a suite of priority outcomes that the government should be working towards. This would work to unify Western Australian Aboriginal people and government agencies around a shared vision of success in Aboriginal policy development and implementation.

#### **D. What should it be called?**

YMAC does not have a strong view on what the new office should be called. However, the name should be relatable and meaningful to Aboriginal people. For example, a name such as the Office of the Independent Commissioner for Aboriginal People (WA) would be appropriate and workable.

#### **E. What role should Aboriginal people and organisations have in the appointment of the office-holder?**

The Discussion Paper notes that 'At present, there is no single Statewide representative structure, and many of the regional structures that exist are limited to specific issues such as land rights or health.' YMAC would like to draw attention to the momentum growing around the establishment of regional representative bodies such as the Pilbara Aboriginal Voice (Kakurrka Muri) and the new regional bodies that will be established under the Yamatji Nation Southern Regional Agreement and Noongar Settlement Agreement. It is understood that there is also an appetite to establish a similar regional body in the Kimberley.

As Australia moves into a post-native title determination environment, these bodies will play a vital role in bringing Traditional Owner groups together at a regional level and will inevitably have a broader focus than land-based rights and interests. Following their native title determination, many of these groups are increasingly becoming directly involved in social and economic development initiatives and cultural revitalisation. Importantly, these groups also have the cultural authority to speak for their Country and this is an important first step in achieving culturally integrated social and economic development outcomes for all Aboriginal people.

It is YMAC's view that such groups should be afforded input regarding the appointment of the office holder; perhaps a shortlist of candidates possessing the relevant skills and experience can be put forward for evaluation/feedback.

#### **Conclusion**

Overall, YMAC is encouraged by the State Government's proposal to establish an independent office to advocate for the interests of Aboriginal people and hold

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the government accountable in terms of its policy commitments, legislative requirements and service delivery outcomes. The recognition of the history of disenfranchisement and limited political power Aboriginal people have had in Western Australia and the need for a dedicated independent office to ensure their human rights are protected and unique interests advanced detailed in the Discussion Paper is appreciated.

In designing the structure and functions of the new office, it is vital that the government is alive to, and takes advantage of, the continually growing governance capacity and competencies of local and regional Aboriginal representative bodies, including native title holders. These will be an invaluable resource to the new office in determining priority issues and challenges experienced by Aboriginal people in diverse regions, but also key allies in brokering sustainable and culturally integrated solutions.

YMAC looks forward to working closely with the State Government and other Aboriginal organisations to progress this initiative.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'S. Hawkins'.

Simon Hawkins  
Chief Executive Officer

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