



**Yamatji Marlpa**  
ABORIGINAL CORPORATION



Our Ref: GEN033 – Submissions  
Your Ref: NA  
Office: Perth  
Date: 25 February 2020

To: Ms Kate Alderton, Director  
Aboriginal Policy and Coordination Unit  
Department of the Premier and Cabinet  
Dumas House  
2 Havelock Street  
WEST PERTH WA 6005

Dear Ms Alderton,

**RE: Response to “A Path Forward: Developing the Western Australian Government’s Aboriginal Empowerment Strategy” Discussion Paper**

On behalf of the Yamatji Marlpa Aboriginal Corporation (YMAC) Board of Directors, I am writing to you to provide feedback on the current version of the State Government’s discussion paper: “A Path Forward: Developing the Western Australian Government’s Aboriginal Empowerment Strategy”. Please find our responses to the questions posed in the document, along with additional general comments, below.

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**1. Are the main ideas right? Do you agree with the description of the overall goal, principles, strategic elements and framework? Would you change or add anything?**

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**Overall Goal (pp.8-9):**

Putting the focus of the “Overall Goal” on positive, strength-based outcomes, rather than drawing attention to the adversities and deficiencies faced by so many Australian First Nations people is supported. So, too, is the objective being underpinned by the notion of First Nations people’s self-determination and accountability for their own lives and futures. This should not take away from the dispossession and disadvantages experienced, nor the intergenerational trauma suffered, but it is a step in the right direction to showcase the resiliency of First Nations people and the modification of governmental practices required to commence meaningfully addressing past wrongdoings.

Suggested amendments to the relevant diagram (p.9) would be to strengthen the language being used, ensuring it is more aspirational e.g. prefixing the phrases with affirmative terms like “*Fulfilled* community and family life”, “*Successful* business and enterprise”, etc. It is also felt additional, specific emphases on social emotional wellbeing and mental health could be incorporated into the foundational elements of the illustration. Further, it is recommended, if the intention of “Passing on Culture” is to encompass the *sharing* and *promotion* of heritage and culture to the wider community (not only as part of traditional/customary practice), this could be made clearer also.

**Principles (p.10):**

The described “Principles” adequately reflect the necessity for government to acknowledge and be informed by what is generally important to First Nations people, including their history, culture and country, as well as their diversity. Hence, affording community-led, localised solution development will be imperative. It will also be critical that First Nations people be apprised of all relevant, available data, including spend/investment, evaluation measures/outcomes and empirical effects to assist in their

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deliberations and decision-making. Such open and robust two-way information sharing will be crucial to the success of the intended strategy.

Suggested amendments to this section include: referencing “connection to Country” as on par with “Culture” under the first dot point of “Culture and country”; adding “financial circumstances” to the dot point discussing “Services” accessibility barriers; and, referencing the need for increased investment in preventative and early-intervention initiatives (discussed later in the paper on pp.18-19) under “Services”.

#### **Strategic Elements (pp.11-23):**

The appearance of a genuine willingness by government to have First Nations people actively and equitably driving change in regard to reforms, policies and practices is encouraging and, if realised, will be the cornerstone to affecting positive outcomes. The “key ideas” as outlined throughout the paper (pp.13, 15, 17, 19, 21 and 23) are generally supported.

Suggested amendments to this section include incorporating emphasis that First Nations people should also be involved in the “review” and/or “evaluation of *existing* services and programs, not just the design and procurement of future initiatives (p.16). Further, the table relating to “Building cultural understanding and respect” (p.23) could be improved by including references to the importance of “reconciliation” and “truth-telling” – both essential approaches to assist in bridging the gap of the wider community’s understanding Aboriginal people’s plights and resilience – as well as the need for ‘cultural responsiveness training and standards’ to have a localised focus, wherever possible. For example, it is not appropriate for a government employee working in, say, Geraldton or Port Hedland, to have only partaken in cultural awareness training programs delivered in Perth by a Noongar person/organisation. To suitably reflect the government’s proposed principle of acknowledging the diversity of people and places across the state, this recognition must also be reflected in its staff development practices, which should be centred on the need for employees to have *direct* contact with the communities they are working with.

#### **Framework (pp.24-28):**

YMAC are highly supportive of the regional representativeness of the newly appointed Western Australian Aboriginal Advisory Council (WAAAC) and congratulate the government on addressing this long-time concern of many First Nations people who did not feel previous memberships adequately reflected them, their experiences nor their needs.

In-principle support is offered in relation to what is described in the discussion paper as it stands, however, more details on proposed implementation, monitoring and assessment processes are required.

Further, though not a direct critique of the current discussion paper but given the critical need to address the suicide crisis and other related matters, it is recommended the Aboriginal Affairs Coordinating Committee open its membership up to include representation from the Mental Health Commission.

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## **2. Are we using the right words? You might broadly agree with the main ideas, but want to see them expressed using different language. We welcome your recommendations. In particular, we are interested in whether the term “Aboriginal people” should be used or whether other terms such as “First Nations” would be more appropriate.**

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Generally, the language used throughout the document is satisfactory and the prose is relatively clear and uncomplicated.

Regarding the request for feedback on the preferred, specific terminology to be used, the YMAC Board had a robust discussion about appropriate terminology. All agreed that “Indigenous” is not an option. “Aboriginal” would be acceptable, but “**First Nations people of Australia**” is recommended and preferred. They feel this is reflective of more contemporary terminology, plus it reminds people that they were here first.

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### **3. What else should we be thinking about? You may have a view on how the strategy should be implemented in a particular region or subject area, or examples of current good practice. Your ideas are valuable to us.**

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#### ***Representation***

Being a Native Title Representative Body working across multiple regions of the state, YMAC is uniquely positioned to offer comment on the importance of approaching each community mindfully and respectfully; different regions may be in various stages of establishing their own leadership/advisory frameworks and/or models, and what may work in one region may not be transferrable to or suitable/fit-for-purpose in another. YMAC's advice is for government not to ignore existing entities in this space, and instead work with and resource these First Nations groups – including adequately supporting them – to enhance their efforts to-date.

This consultation and collaboration should be considered at both regional and local level. For example, with more and more Traditional Owners achieving Native Title in their community, Prescribed Bodies Corporate are being formed, and are uniquely placed to speak on behalf of their community with respect to their Country and culture.

As an example of an existing regional voice, in the Pilbara region the Pilbara Aboriginal Voice (*Kakurrka Muri*) (PAV) was established following a request from the local community and has worked hard to build relationships and interface with government and other stakeholders to prioritise and develop place-based, solution-focused initiatives to address shared concerns. PAV is also now formally represented on the Pilbara District Leadership Group and the WAAAC. Through these means (though pending ongoing funding provision), the group is ideally positioned to filter information both from government – even at the state-wide level – to community, and from the grassroots community to the appropriate level of government.

Regarding the Yamatji region, YMAC anticipates discussions regarding a preferred community model/structure for improved engagement with government at a regional-level will occur at its upcoming on-Country meeting, and which also takes into account existing collaborations for some parts of the region.

#### ***Secure land tenure and ownership***

The provision of secure land tenure in favour of the Traditional Owners is a sensitive issue for Aboriginal People and is significantly lacking in Western Australia.

Ownership and control of Country is the foundation for empowering Aboriginal people but does not seem to have been specifically identified or captured in the strategy.

The following extracts from the Uluru Statement from the Heart clearly articulate the importance of the land and ownership of land to Aboriginal and Torres Strait Islander People.

“Our Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands, and possessed it under our own laws and customs. This our ancestors did, according to the reckoning of our culture, from the Creation, according to the common law from ‘time immemorial’, and according to science more than 60,000 years ago. This sovereignty is a spiritual notion: the ancestral tie between the land, or ‘mother nature’, and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty. It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown.”

“We seek constitutional reforms to empower our people and take a rightful place in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.”

“We call for the establishment of a First Nations Voice enshrined in the Constitution. Makarrata is the culmination of our agenda: the coming together after a struggle. It captures our aspirations for a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination. We seek a Makarrata Commission to supervise a process of

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agreement-making between governments and First Nations and truth-telling about our history.”

The following high-level tenure related policy outcomes would significantly assist in to empower First Nations people:

- Amend legislation to explicitly confirm Traditional Owners ability to use exclusive possession land tenure in a similar manner to freehold land.
- The application of the non-extinguishment of Native Title Rights principle where the State grants of exclusive land tenure such as freehold and leasehold to third parties
- Low cost tenure options for Traditional Owners and First Nations people for cultural, social and economic purposes
- Protection of land from mining unless approval/consent given by Traditional Owners

### ***Expedited Procedure***

The State’s policy is to assert that the expedited procedure applies to all exploratory tenement applications (including prospecting licenses and exploration licenses). This policy includes a statement to that effect in notices under section 29 of the *Native Title Act*, regardless of its location, size, or likely interference with areas or sites of particular significance to native title parties and/or interference with the carrying out of social and community activities.

This policy places a large burden on registered native title claimants and Prescribed Bodies Corporate (PBC), as they need to make an objection application to the National Native Title Tribunal (NNTT) to protect their Country. The cost of gathering the evidence and opposing the expedited procedure costs PBCs \$20,000. This policy approach appears to be unique to Western Australia. More than 98% of the decisions by the NNTT that the expedited procedure does not apply have been within Western Australia.

The State should either cease to seek the application of the expedited procedure to exploratory titles, or work with PBCs to develop a policy to ensure that the expedited procedure is only applied where the tenement will not interfere with sites or areas of particular significance, community, and social activities.

Native title parties routinely dispute the “Regional Standard Heritage Agreement (RSHA) condition” on the grant of the licence or the operation of the *Aboriginal Heritage Act 1972 (WA)* (AHA), operates to mitigate or remove the risk of interference to sites and areas of particular significance or to the conduct of social and community activities.

The NNTT has made determinations that the expedited procedure does not apply, despite the “RSHA condition” or operation of the AHA in relation to sites or areas of particular significance. For example see: *Yinhawangka Aboriginal Corporation RNTBC v WA Mining Resources Pty Ltd & Another* [2019] NNTTA 36 (11 June 2019); [35]-[39]; *Kalman Murphy & Ors on behalf of Warturta v FMG Resources Pty Ltd & Another* [2020] [31]-[38].

### **General comments:**

Overall, the strategy is encouraging – its ethos and the consultations undertaken to-date provide promise that the State Government is pursuing meaningful change regarding how it works with First Nations people and their communities across the state.

While appreciating that it was not within the scope of the current discussion paper, there remains a keen interest to learn of the details of how it is proposed these ideas, in practical terms, will be rolled-out, resourced, measured and monitored. Perhaps with the next release of a more comprehensive proposed strategy which describes such, information outlining recent and/or proposed initiatives demonstrating the State Government’s work on its new “path” be included.

Once a strategy has been adopted, YMAC will be interested to see what progress reporting to communities will happen. Further to this, if Government determines to change the way is strategy is being implemented, YMAC would be keen to see that consultation also takes place with First Nations people as part of the process.

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Finally, one Board member observed (and others agreed) that some of the captions for the images used in the discussion paper are perhaps unnecessarily lengthy in some instances.

YMAC and its Board thanks your agency for the opportunity to provide additional feedback on the State Government's new approach to Aboriginal affairs and offers to continue to contribute to conversations relating to the proposed strategy. We look forward to helping to inform the next stage of this process.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Simon Hawkins', written in a cursive style.

Simon Hawkins

**Chief Executive Officer**

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