

Labor Senators' additional comments

1.1 Labor Senators acknowledge that Murujuga, also known as the Burrup Peninsula and Dampier Archipelago, is home to one of the largest and the oldest collections of rock art in the world.

1.2 The petroglyphs document human presence in the area over an estimated 45,000 year timespan—the longest continuous production of rock art in the world.

1.3 It is without doubt that the petroglyphs are of immense and irreplaceable cultural and spiritual significance to Aboriginal people, and are of equally immense national and international archaeological and heritage value.

1.4 Labor Senators sincerely thank the Murujuga Aboriginal Corporation for their participation in this inquiry. The Murujuga Aboriginal Corporation represents the five traditional owner groups: the Ngarluma people, the Mardudhunera people, the Yaburara people, the Yindjibarndi people, and the Wong-Goo-Tt-Oo people. We pay respect to the traditional owners and custodians of Murujuga, their continuing connection to this land, and their right to a place of honour in our constitution and a full and equal share in our nation's future. Community control and direct involvement of Aboriginal and Torres Strait Islander peoples in the planning and delivery of programs and services is vital.

1.5 Labor is committed to building a relationship where Aboriginal and Torres Strait Islander peoples and communities are the architects of their place in Australia and are equal partners with government in the development and implementation of policies that affect their way of life and livelihoods. Land and water are the basis of Aboriginal and Torres Strait Islander spirituality, law, culture, economy and wellbeing. Native Title and land rights are both symbols of social justice and a source of valuable economic opportunity for Aboriginal and Torres Strait Islander Australians.

1.6 Labor believes in the absolute necessity of free, prior and informed consent for Aboriginal and Torres Strait Islander peoples and communities in resource management and conservation decisions. This right is guaranteed under the UN Declaration of the Rights of Indigenous Peoples, which Australia has ratified. Any decisions which pre-suppose an outcome of a community-led process do nothing to protect precious sites and set back Indigenous development. Labor supports the investigation and nomination of areas suitable for future listing in cooperation with traditional owners, state and territory governments and other stakeholders, including industry.

1.7 Labor Senators thank all organisations and individuals that made submissions to this inquiry and gave evidence at hearings, and the Secretariat for their ongoing research and administrative support.

Indigenous-led progress

1.8 Labor Senators note with concern the evidence from the Murujuga Aboriginal Corporation that they have been 'left out a lot regarding the Burrup'.¹ This is with respect to the joint management plan of the Murujuga National Park with the Western Australian Government, including no consultation on World Heritage listing with the current board, no consultation or advice on alleged or potential damage to the petroglyphs from vandalism or pollution, and feeling like a 'subcontractor' in terms of reporting requirements.² Further, unlike other WA national park rangers, the Murujuga rangers are employed by the Murujuga Aboriginal Corporation and hold no enforcement powers.

1.9 Labor Senators consider that as an immediate priority, the Western Australian Government and the Australian Governments must formally consult with the Murujuga Aboriginal Corporation and Murujuga Circle of Elders.

Recommendation 1

1.10 Labor Senators recommend that prior to any future steps in securing protection for Murujuga, or undertaking further decisions relating to resource activities in the region, the Western Australian Government and Australian Government must formally consult with the Murujuga Aboriginal Corporation and Murujuga Circle of Elders, which represent the five traditional owner groups in the region. Such consultation should be conducted on terms set by the Murujuga Aboriginal Corporation and Murujuga Circle of Elders.

Indigenous-led World Heritage Listing

1.11 Labor Senators note with concern the evidence from the Murujuga Aboriginal Corporation that none of the current board and only a small number of elders participated in discussions on World Heritage listing eight to ten years ago. Further, we note concerns from the Murujuga Aboriginal Corporation that World Heritage listing may lead to changes or a reduction in the ability for the Murujuga Aboriginal Corporation to manage the area.

1.12 Labor Senators note that the Australian Heritage Council reported in 2011 that the rock art collection represents a masterpiece of human creative genius and is one of the most exciting and significant collections of rock engravings in the world.

1.13 Labor Senators urge that any consideration of World Heritage listing for Murujuga is led by the traditional owners of Murujuga.

1 Ms Raelene Cooper, Murujuga Aboriginal Corporation, *Committee Hansard*, 20 April 2017, p. 5.

2 Ms Raelene Cooper, Murujuga Aboriginal Corporation, *Committee Hansard*, 20 April 2017, p. 5.

Recommendation 2

1.14 Labor Senators recommend that, if agreed by the Murujuga Aboriginal Corporation, it be provided funding to consult on the potential to seek listing of Murujuga on Australia's Tentative World Heritage List. If a listing is agreed, that the Murujuga Aboriginal Corporation be assisted by the Western Australian and Australian Governments to prepare a tentative listing.

Recommendation 3

1.15 If a Tentative listing is agreed by traditional owners, and Murujuga is placed on the Tentative World Heritage list, Labor Senators recommend that the Australian Government and the Western Australian Government work together to resource traditional owners to prepare a nomination of Murujuga for World Heritage listing.

Indigenous ranger support

1.16 Labor Senators note with concern the evidence from the Murujuga Aboriginal Corporation that unlike other WA national park rangers, the Murujuga Indigenous Rangers hold no enforcement powers and must refer matters to the Department of Parks and Wildlife. These Indigenous Rangers 'can tell people what they should and should not do, but they simply have no power to move them on, to make them cease or to issue fines or whatever'.³ The Murujuga Aboriginal Corporation officials continued:

Mr Bonney: We have got traditional owners who are rangers on their own country seeing people do the wrong thing, and they have no power to move them off their own country.⁴

Ms Cooper: Also, it does not protect our rangers if there is any kind of conflict with individuals who may be partying out on the beach or whatnot. It can get quite horrific. Things can happen. It is something that we need to protect them as well as individuals who visit the Burrup.⁵

1.17 Ms Cooper from the Murujuga Aboriginal Corporation stated that 'one of our worst fears is the graffiti'. Ms Cooper continued:

Our rangers are out patrolling all the time and they see a lot more and they report and input into a data system that we have set up. Basically, everything is recorded through Murujuga from Murujuga's point of view. We are not experts in chemicals and whatever but it would be fantastic to

3 Mr Craig Bonney, Murujuga Aboriginal Corporation, *Committee Hansard*, 20 April 2017, p. 4.

4 Mr Craig Bonney, Murujuga Aboriginal Corporation, *Committee Hansard*, 20 April 2017, p. 4.

5 Ms Raelene Cooper, Murujuga Aboriginal Corporation, *Committee Hansard*, 20 April 2017, p. 4.

have that information and then see how we can deal with any potential hazards that are affecting our rock art.⁶

1.18 Labor Senators recognise the vital work of the Murujuga Indigenous Rangers in managing and protecting the Murujuga. We urge the Western Australian Government and Australian Government to ensure the Murujuga Indigenous Rangers have the resources and enforcement powers to best manage and protect the Murujuga.

Recommendation 4

1.19 Labor Senators note the vital work that is undertaken by the Murujuga Indigenous Rangers and the importance of ensuring that the area is protected from physical destruction and vandalism. Labor Senators recommend that the Murujuga Indigenous Ranger program be given appropriate funding by both the Australian Government and the Western Australian Government. In particular, the Murujuga Rangers must be granted the power to undertake the same enforcement activities as state-employed rangers and must be engaged by the state and Commonwealth governments on any monitoring and research work.

Tourism

1.20 Labor Senators note the Murujuga Aboriginal Corporation and the Western Australian Government are undertaking a comprehensive feasibility study, which commenced in early 2014, for a proposal to site a multi-purpose Murujuga Living Knowledge Centre in or near the park.⁷

1.21 The Murujuga Aboriginal Corporation expressed an interest in locating the Living Knowledge Centre at Conzinc Bay at the northern end of the Burrup Peninsula.⁸ Conzinc Bay is a preferred site as there is no industrial development near Conzinc Bay, and a section of land identified for future industrial use could house the Centre and be incorporated into the national park. The Murujuga Aboriginal Corporation has requested that additional costs related to relocation to Conzinc Bay be met by the Western Australian Government.

1.22 The Murujuga Aboriginal Corporation acknowledged that this proposal would require road access to Conzinc Bay. It was argued that improved road access is likely to also benefit the environment through improved controls on access:

The core reason for us to relocate to that site is that it gives us a better opportunity to protect the environment and to control the traffic on the road.

6 Ms Raelene Cooper, Murujuga Aboriginal Corporation, *Committee Hansard*, 20 April 2017, p. 4.

7 Parks WA, <https://parks.dpaw.wa.gov.au/sites/default/files/downloads/parks/20140778%20MurujugaNP%20Bro%20WEB.pdf>.

8 Mr Craig Bonney, Murujuga Aboriginal Corporation, *Committee Hansard*, 20 April 2017, pp. 7–8.

All of the visitors that come to the park must come to the cultural centre and be made culturally aware of the environment they are visiting, which we hope will mitigate the damage and prevent the desecration that occurred in the past.⁹

Part of the road design and management will be that there is one road in and one road out, and all of the side tracks will be blocked off. That better protects the country as well. That is part of the plan. We are there fundamentally for the protection of that environment, and that is what this thing will do.¹⁰

1.23 The City of Karratha costed the road upgrade at \$6 million and expressed a willingness to contribute financially to the upgrade.¹¹

Recommendation 5

1.24 Labor Senators commend the Murujuga Aboriginal Corporation, the Western Australian Government and the City of Karratha, for their collaborative efforts to improve tourism and road infrastructure at Murujuga. Labor Senators recommend that the Western Australian Government should make a significant contribution to the Living Knowledge Centre and road upgrade to Conzinc Bay as well as continue to improve support to the Murujuga Aboriginal Corporation for the ongoing development of tourism on the Burrup Peninsula.

Monitoring

1.25 Industry on the Burrup Peninsula is subject to regulation by both state and Commonwealth legislative frameworks. As such, the TANPF was approved with a number of conditions under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). These conditions include the requirement for an air monitoring program, and a spectral mineralogy program to be implemented.

1.26 The committee received evidence which indicated major flaws in the work undertaken by CSIRO on behalf of the Western Australian Government. This work has been used to establish approval conditions for the TANPF, and by proponents who argue that industry on the Burrup Peninsula has not resulted in damage to the rock art collections.

9 Mr Craig Bonney, Murujuga Aboriginal Corporation, *Committee Hansard*, 20 April 2017, p. 8.

10 Mr Craig Bonney, Murujuga Aboriginal Corporation, *Committee Hansard*, 20 April 2017, p. 10.

11 Councillor Long, City of Karratha, *Committee Hansard*, 20 April 2017, p. 11.

1.27 This evidence included that:

- the 2007 fumigation studies conducted by CSIRO suffered poor experiment design through an inadequate selection of rock samples, and inadequate replication;
- the 2008 air pollution study incorrectly used a study by Cinderby et al to conclude that the critical load for the Burrup rocks would be 200 meq/m²/year;
- the analysis of rock art monitoring conducted between 2004–2014 did not include adequate statistical analysis, and further the measurements taken were unreliable due to the equipment used.

1.28 Professor John Black raised these concerns with both CSIRO and the Western Australian Government and proposed improvements which could be made to the work of CSIRO. As a result, in 2016 the Western Australian Government engaged an independent reviewer, Data Analysis Australia (DAA), to review the CSIRO monitoring reports and the work of Professor Black. DAA found that:

- the statistical methods proposed by Professor Black represented a substantial change in the effective monitoring of the rock art sites, and the CSIRO reports demonstrated a number of inadequacies such as a lack of statistical analysis; and
- there were significant problems with cross-calibration between measuring instruments, inconsistent error-prone data management, and clear errors in the CSIRO data. As such, the CSIRO data collected should be archived and DAA concluded that it is not appropriate for regulators to make any decisions based on that data.¹²

1.29 In 2017, DAA was again engaged to review the draft *Burrup Peninsula Aboriginal Petroglyphs: Colour Change & Spectral Mineralogy 2004–2016* CSIRO monitoring report. It found that four of the recommendations made in 2016 to improve the monitoring program had not been implemented, one recommendation had been partially implemented and one recommendation had been largely implemented. DAA acknowledged that while the 2017 report demonstrated substantial efforts on the part of CSIRO to improve the reporting of data collection and to present better analysis, more needed to be done. It concluded that the CSIRO report was unable to dispel reasonable concerns about the impact of industry on the rock art.

1.30 As a result of the 2017 DAA review, CSIRO made a number of changes to the *Burrup Peninsula Aboriginal Petroglyphs: Colour Change & Spectral Mineralogy 2004-2016* report. CSIRO noted that this final report supersedes all previous results published by CSIRO for the monitoring program and that it implemented all the recommendations of the 2016 and 2017 DAA reviews.

12 Data Analysis Australia, *Review of Statistical Aspects of Burrup Peninsula Rock Art Monitoring*, November 2016, Executive Summary.

1.31 The *Burrup Peninsula Aboriginal Petroglyphs: Colour Change & Spectral Mineralogy 2004–2016* concluded that there has been a small but statistically significant change to the rocks in some dimensions of colour. However, the committee received evidence that this conclusion seeks to diminish the value of these colour changes. It was argued that a colour change of approximately 13 per cent over 13 years is a major change which should be of concern in the preservation of rock art.

1.32 Professor Black recently contacted the committee after examining the Western Australian Government's Commissioning Report for the Yara Pilbara Nitrates Pty Ltd Technical Ammonium Nitrate Production Facility with a colleague, Dr Ilona Box. Professor Black and Dr Box concluded that there have been numerous large emissions of nitrogen dioxide that are a serious risk to human health as well contributing to the formation of nitric acid that will increase the speed the rock art is being destroyed.

1.33 Labor Senators thank Professor John Black and his colleagues for undertaking such comprehensive reviews of the CSIRO reports, and for continuing to raise their concerns with both CSIRO and the Western Australian Government.

1.34 Labor Senators are of the view that the development and implementation of a new monitoring program should be a priority for the Western Australian Government.

1.35 In September 2017, the Western Australian Government released the Draft Burrup Rock Art Strategy which proposes to develop a revised method for the collection and analysis of data that incorporates the recommendations of the DAA review. These proposals should be implemented as soon as possible.

Recommendation 6

1.36 Labor Senators recommend the Western Australian Government prioritise the development and implementation of a new, fully funded independent monitoring program.

Recommendation 7

1.37 Labor Senators recommend that the Western Australian Government implement, as soon as possible, proposals for further monitoring included in the Draft Burrup Rock Art Strategy.

Compliance

1.38 The committee received evidence that Yara Pilbara has had a number of incidents of non-compliance with EPBC Act approval conditions. First, it failed to self-refer the TANPF proposal for assessment under the EPBC Act, and it has subsequently failed to comply with a number of its approval conditions.

1.39 The incidents of non-compliance with approval conditions include late production of annual compliance reports and rock art monitoring reports. The Department of the Environment and Energy (the department) told the committee that

it is working with Yara Pilbara to improve the capacity of Yara Pilbara to comply with its approval conditions.

1.40 In September 2017, the department also issued a directed variation to the approval for the TANPF in response to non-compliance. This variation imposed new reporting requirements, new air quality monitoring and reporting requirements, and established a requirement that the approval holder must ensure that no measurable impacts from air pollution must occur within two kilometres of the site, for the life of the approval.

1.41 Labor Senators consider such incidents of non-compliance as unacceptable, particularly in an environment where the consequences may be catastrophic to the irreplaceable rock art collection. The Department of the Environment and Energy must ensure that Yara Pilbara's compliance is improved.

Recommendation 8

1.42 Labor Senators recommend that the Department of Environment and Energy actively work with Yara Pilbara to ensure its compliance is improved.

1.43 Some submitters raised concerns that a heritage monitor should have been engaged to conduct a comprehensive survey of all rock art sites in a two kilometre radius of the Yara Pilbara site. However, Yara Pilbara only monitors six petroglyph sites in its two kilometre radius and has not conducted a survey to identify all the sites that exist in this area. Submitters argued that this sample of sites is inadequate.

1.44 However, both Yara Pilbara and the Department of the Environment and Energy asserted that the approval conditions only required the monitoring of six sites and that there had been no instance of non-compliance in this regard.

1.45 Labor Senators consider that that such a small sample is inadequate.

1.46 As the approval conditions were set by the Department of the Environment and Energy, the Australian Government should engage a Heritage Monitor to conduct a comprehensive survey to identify all rock art sites in the two kilometre radius which may be affected by emissions.

Recommendation 9

1.47 Labor Senators recommend that the Australian Government engage a Heritage Monitor to conduct a comprehensive survey to identify all rock art sites in a two kilometre radius from the site, which may be affected by emissions.

1.48 The committee also received evidence that Yara Pilbara has failed to comply with air quality monitoring requirements as established by approval conditions granted by the Western Australian Government.

1.49 In particular, submitters argued that Yara Pilbara compliance reports demonstrate non-compliance with the requirement to measure PM₁₀ particles, NH₃, NO_x, and SO_x at five sites, including three rock art sites. There are instances in the report where 'No Data' is recorded, and measurements of negative amounts of PM₁₀ particles which are arguably impossible.

1.50 Yara Pilbara acknowledged that there have been periods of time where its air quality monitoring equipment has been unavailable due to breaking down or maintenance work. Yara Pilbara also acknowledged that it has engaged an air quality monitoring consultant to conduct a review of all its air quality monitoring data and baseline data sets.

1.51 Labor Senators are concerned that Yara Pilbara has failed to comply with the approval conditions set by the Western Australian Government.

Recommendation 10

1.52 Labor Senators recommend that the Western Australian Government promptly review and assess Yara Pilbara's compliance with its approval conditions and against best practice, and take any necessary action to improve compliance.

Land-based emissions

1.53 Some submitters expressed concern that the projected increase in emissions from the TANPF would contribute to the destruction of the rock art of the Burrup Peninsula and argued that Yara Pilbara's proposed outputs of airborne ammonium nitrate particles at PM₁₀ size exceed limits which are known to be toxic to humans.

1.54 However, Yara Pilbara responded to such concerns by noting that its emissions modelling was assessed by the Western Australian Department of Environmental Regulation during the TAN Plant Works Approval application, and its PM₁₀ emissions were determined to be insignificant. Further, its carbon monoxide emissions were assessed twice by the Western Australian Department of Environmental Regulation and the Environmental Protection Authority Western Australia. It was found that the worst-case predicted ground level carbon monoxide concentrations from the operation of the TANPF were less than 0.2 per cent of the National Environmental Protection Measure and Impact Statement for Ambient Air Quality.

1.55 Labor Senators recognise the concern and the contentious evidence provided by both sides of the debate. Labor Senators consider it appropriate for the Western Australian Government to examine ways to work with industry and use environmental approvals to reduce the emission load on the Burrup Peninsula.

Recommendation 11

1.56 Labor Senators recommend that the Western Australian Government investigate and implement measures to ensure that the emission load on the Burrup Peninsula is reduced.

Shipping emissions

1.57 Labor Senators suggest that caution should be exercised in comparing operations of commercial freight and passenger cruise ships.

1.58 Nevertheless, given the risks to the rock art from sulphur dioxide, Labor Senators consider it appropriate to monitor emission loads at the Port of Dampier and, if necessary, investigate reducing sulphur emissions.

Recommendation 12

1.59 Labor Senators recommend the Western Australian Government monitor the Port of Dampier to determine if emissions from ships are impacting the values of the surrounding area. If a problem is identified, Labor Senators recommend that a transition to use of low sulphur content fuel or an approved means of achieving required emissions reductions is investigated.

Responsible development

1.60 Successive Western Australian governments have pursued a long-term vision of transforming the Burrup Peninsula into the largest industrial precinct in the southern hemisphere, attracting foreign investment and royalties. As such, the Burrup Strategic Industrial Area (Burrup SIA) was developed to provide an area for industry in close proximity to gas, port and other key infrastructure.

1.61 Some submitters argued that further development on the Burrup Peninsula will damage the rock art. However, this was refuted by other submitters.

1.62 Labor Senators consider that any further industrial development of the Burrup SIA only be pursued by the Western Australian Government under strict environmental conditions.

Recommendation 13

1.63 Labor Senators recommend that further industrial development be approved in the Burrup Peninsula only under strict environmental conditions.

Cumulative effects

1.64 The committee received evidence that under the EPBC Act, the ability for the Minister or their delegate to consider cumulative effects when undertaking an approval assessment is limited.

1.65 Submitters expressed concern that the cumulative effects of existing industry on the Burrup Peninsula may not have been considered during the EPBC approval process. Further, submitters argued that without the release of the Minister's statement of reasons, it is unclear whether or to what extent the cumulative effects are considered.

1.66 The Department of the Environment and Energy and Yara Pilbara provided evidence that the cumulative effects of existing industry on the Burrup Peninsula were considered during the approval process for the TANPF. The Department of the Environment and Energy also provided evidence that any future approvals for development on the Burrup would also include a consideration of the cumulative effects on matters of national significance.

1.67 Labor Senators consider that the improved monitoring programs outlined at Recommendations 6 and 7 will better inform the Minister for the Environment and Energy of cumulative effects.

Recommendation 14

1.68 Labor Senators recommend that the Minister for the Environment and Energy use new data and information provided by improved monitoring to consider the cumulative effects when approving decisions relating to Murujuga.

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