

Australian Government response to the Senate Environment and Communications References Committee Report:

Protection of Aboriginal rock art of the Burrup Peninsula

June 2020

Introduction

On 30 November 2016, the Senate referred the following matter to the Senate Standing Committee on Environment and Communications for inquiry and report by 21 March 2017:

The Commonwealth's responsibility under the *Environment Protection and Biodiversity Conservation Act 1999* to protect the globally significant and National Heritage listed Aboriginal rock art of the Burrup Peninsula in Western Australia, with particular reference to:

(a) the total industrial pollution load from existing industrial activities and port zone on the Burrup Peninsula in Western Australia, and its existing impacts on Aboriginal rock art;

(b) the projected additional pollution load from the Yara Pilbara Fertilisers Pty Ltd ammonium nitrate plant, including the likely impacts on the Aboriginal rock art, human health and the environment;

(c) the accuracy and adequacy of reports used by the Western Australian and Commonwealth governments when setting the relevant technical, environmental and cultural conditions regulating the construction and operation of the Yara Pilbara Fertilisers Pty Ltd ammonium nitrate plant in an area of highly significant Aboriginal rock art;

(d) the rigour and adequacy of the monitoring, analysis, compliance and enforcement performed by the Western Australian and Commonwealth government agencies in carrying out their legislated responsibilities in overseeing industries on the Burrup Peninsula;

(e) the projected level of fugitive gas and nitric acid leaks from the Yara Pilbara fertiliser and ammonium nitrate plants, their effects on human health, likely effects on rock art and the general environment, and the adequacy of the company responses;

(f) the failure by Yara Pilbara Fertilisers Pty Ltd, the Western Australian Government or the Federal Government to include risk analysis of establishing an ammonium nitrate plant in close proximity to the rock art, a gas hub and major port and in a cyclone surge zone;

(g) the adequacy of the Yara Pilbara plans to protect the communities of Dampier and Karratha and the rock art sites from the consequences of any explosion caused by 'sympathetic detonation' or other factors, including the ability to douse the nitrate stores with sufficient water to prevent a spontaneous explosion; and

(h) any related matters.

On 21 March 2018, the Senate Inquiry tabled a report, *Protection of Aboriginal rock art of the Burrup Peninsula*. The Senate Committee stated that it 'recognises and acknowledges the vast cultural and historical values of the rock art of the Burrup Peninsula and is of the view that it is critical that the petroglyphs should be protected and conserved for current and future generations' (para 7.5, p.99), but did not make any formal majority recommendations.

The Australian Government agrees with the Committee's statement about the values of the rock art of the Burrup Peninsula and the need for its protection and conservation.

The Australian Government considers Indigenous engagement as central to the design of its programs service delivery. Central to this engagement is the principle of free, prior and informed consent and ensuring government processes reinforce this.

Additional comments were provided by the Greens, Coalition and Labor Senators. The Coalition Senators did not make any recommendations. The Australian Greens Senators made 15 recommendations and Labor Senators 14 recommendations.

For clarity and to avoid duplication, the party recommendations have been grouped to provide a response to cover related topics. An index has been provided for referencing back to the Committee report.

The Australian Government welcomes the opportunity to respond to the recommendations made in the additional comments.

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Labor Senators recommend	Noted
that prior to any future steps	Murujuga is listed in Australia's National
in securing protection for	Heritage List (NHL) and protected by the
Murujuga, or undertaking	Environment Protection and Biodiversity
further decisions relating to	Conservation Act 1999 (the EPBC Act).
resource activities in the	The EPBC National Heritage
region, the Western	Management Principles recognise that
Australian Government and	Indigenous people are the primary source
Australian Government must	of information about the value of their
formally consult with the	heritage. The Australian Government
Murujuga Aboriginal	follows best practice consultation for
Corporation and Murujuga	decisions that affect Indigenous people.
Circle of Elders, which	This involves early and ongoing
represent the five Traditional	engagement, ensuring appropriate
Owner groups in the region.	timeframes and settings, and respecting
Such consultation should be	community protocols.
conducted on terms set by the	
Murujuga Aboriginal	
Circle of Elders.	
	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

Responses to recommendations in Additional Comments

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Indigenous Ranger	programs	
Greens	Australian Greens Senators	Noted
Recommendation	recommend that the	The Murujuga Indigenous Ranger Project
3	Murujuga Indigenous Ranger	is managed by the Murujuga Aboriginal
Paragraph 1.6	program be given appropriate	Corporation with cultural advice and
Page 101	funding by both the	guidance through the Circle of Elders. The
	Australian Government and	Ranger project has been funded under the
	the Western Australian	EPBC Act Conservation Agreements with
	Government, and the	Woodside Energy Ltd and Hamersley Iron
	Murujuga Rangers be granted	Pty Ltd and Dampier Salt Ltd (Rio Tinto).
	the power to undertake the	There is for the Demonstrate
	same enforcement activities	There is funding for the Ranger project
	as state-employed rangers.	until 2021 as a part of an ongoing
		commitment to the Conservation
Labor	Labor Senators note the vital	Agreements by Woodside and Rio Tinto.
Recommendation	work that is undertaken by	This commitment recognises the strong
4	the Murujuga Indigenous	relationships with the Murujuga
Paragraph 1.19	Rangers and the importance	Aboriginal Corporation and ongoing
Page 132	of ensuring that the area is	support for the protection, conservation
	protected from physical	and management of the National Heritage
	destruction and vandalism.	values.
	Labor Senators recommend	
	that the Murujuga Indigenous	Management responsibility for Murujuga
	Ranger program be given	National Park rests with the WA
	appropriate funding by both	Government. The Australian Government
	the Australian Government	notes that the WA Department of
	and the Western Australian	Biodiversity Conservation and Attractions
	Government. In particular,	has been working with the Murujuga
	the Murujuga Rangers must	Aboriginal Corporation to develop
	be granted the power to	Murujuga Rangers' capacity to administer
Di II	undertake the same	and manage Murujuga National Park,
	enforcement activities as	including by addressing their legislative
	state-employed rangers and	authority to do so.
	must be engaged by the state	autionity to do so.
	and Commonwealth	
	governments on any	
	monitoring and research work.	
Population of omica		ad activity
Greens	ons from shipping and land-base Australian Greens Senators	Noted
Recommendation	recommend that the Western	The Australian Government supports a
4	Australian Government	
	NY, AND A CONTRACT OF A CONTRACT	global approach to regulating ships due to
Paragraph 1.11	implement measures to	the international nature of the industry and
Page 102	ensure that ships entering and	the importance of ships for Australia. The
	leaving the Port of Dampier	Australian Government implements
	use low sulphur content fuel	Annex VI of the International Convention
	or an approved means of	for the Prevention of Pollution from Ships
	achieving required emissions	(MARPOL Annex VI), which regulates
	reductions. The maximum	the sulphur content of fuel used by ships,
	sulphur content of fuel	through the Protection of the Sea
	utilised by ships entering and	

	leaving the port should be 0.10 per cent, as required for Emissions Control Areas declared under Annex VI to IMO MARPOL 73/78 Convention.	 (Prevention of Pollution from Ships) Act 1983 and Marine Order 97. These limits have been progressively tightened and from 1 January 2020, the limit on sulphur will be reduced from 3.5% to 0.5%. This will significantly reduce the impacts of sulphur oxide emissions from ships on the environment and human health.
Labor Recommendation 12 Paragraph 1.59 Page 138	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	Noted See the response to recommendation 4 (Greens). While the monitoring of emissions at the Port of Dampier is the responsibility of the Western Australian Government, the Australian Government supports the on- going monitoring and collection of data on emissions from both shipping and land- based industries. Such data is important for assessing air quality issues and investigating the type and extent of controls that may be required.
Greens Recommendation 6 Paragraph 1.32 Page 105	Australian Greens Senators recommend that the Western Australian Government require all other industry and shipping on the Burrup Peninsula to comply with zero acidic emissions standards within one year	Noted See the response to recommendation 4 (Greens) in relation to sulphur dioxide emissions from shipping. Land-based industry emission standards fall within the responsibilities of the Western Australian Government.
Greens Recommendation 5 Paragraph 1.18 Page 103	Australian Greens Senators recommend that the Commonwealth Government, in conjunction with the Western Australian Government, establish measurements of existing emissions as a matter of priority.	Noted The Australian Government is not responsible for monitoring air emissions. Under the Australian Constitution the states are responsible for natural resource management, including air shed management. In this case, the emissions of air pollutants are regulated by the Western Australian <i>Environment Protection Act</i> 1986.
		However, for any actions that are approved under the EPBC Act where air emissions may impact on matters protected under the EPBC Act, such as the Aboriginal rock art on the Burrup Peninsula, the Minister may impose certain conditions such as the requirement

		for air quality emissions monitoring and reporting. Under EPBC Approval 2008/4546 Yara Pilbara Nitrates are required to undertake an air quality management program at selected Aboriginal rock art sites to establish baseline air quality data levels and to undertake on-going monitoring for the life of the project. The Department of Environment and Energy requires the monitoring results to be submitted annually.
Greens Recommendation 5 Paragraph 1.19 Page 103	Australian Greens Senators recommend that the Western Australian Government implement measures to ensure that the emission load on the Burrup Peninsula is reduced.	NotedThese recommendations fall whollywithin the responsibilities of the WesternAustralian Government.The Australian Government agrees withthe intent of these recommendations.
Labor Recommendation 11 Paragraph 1.56 Page 138	Labor Senators recommend that the Western Australian Government investigate and implement measures to ensure that the emission load on the Burrup Peninsula is reduced.	
Industrial developm	ent on the Peninsula	and the second of the second
Greens Recommendation 7 Paragraph 139 Page 106	Australian Greens Senators recommend that the TANPF be relocated to the Maitland SIA.	Noted This recommendation falls wholly within the responsibilities of the Western Australian Government.
Greens Recommendation 8 Paragraph 1.40 Page 106	Australian Greens Senators recommend that no further industrial development be approved for the Burrup Peninsula.	Noted Decisions regarding further industrial development on the Burrup Peninsula are the primary responsibility of the Western Australian Government.
Labor Recommendation 13 Paragraph 1.63 Page 138	Labor Senators recommend that further industrial development be approved in the Burrup Peninsula only under strict environmental conditions.	The EPBC Act sets out the requirements for Commonwealth consideration of the potential impacts of actions on matters of national environmental significance, including the listed values of national
Labor Recommendation 14 Paragraph 1.68 Page 139	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	heritage places. Actions referred to the Commonwealth for consideration under this legislation are considered on their merits on the basis of information provided for the assessment by the proponent.

Alternatives to indus Greens Recommendation 9 Paragraph 1.41 Page 106 Labor Recommendation 5 Paragraph 1.24 Page 133	approving decisions relating to Murujuga strial development on the Penins Australian Greens Senators recommend that the Western Australian Government promote tourism to the Burrup Peninsula as a long- term employment and economic opportunity. 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	Approvals under the EPBC Act are often accompanied by conditions designed to ensure avoidance or mitigation of impacts to matters of national environmental significance. Conditions may require compensatory measures be put in place. The Australian Government will make use of new data and information made available to it. ula Noted These recommendations fall wholly within the responsibilities of the Western Australian Government. The Australian Government supports efforts to strengthen tourism opportunities on the Burrup Peninsula.
*	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 program	s and Rock Art Strategy	
Greens	Australian Greens Senators	Not Agreed
Recommendation	recommend that the incorrect	CSIRO does not agree with the view that
10 Paragraph 1 54	use of the Cinderby et al	the Gillett 2008 Report has been demonstrated to have flawed content.
Paragraph 1.54 Page 108	report in the Gillett 2008 air pollution study, and the	CSIRO notes that the establishment of
1 age 100	impact that this flawed report	regulatory approval conditions is not a
	has had on the establishment	role for which CSIRO has responsibility.
	of approval conditions be	The Australian Government will consider,
	noted; and recommend that	as appropriate, the Cinderby <i>et al</i> report
	I ALL LAND AND A LAND AND A LIGHT	as appropriate, the children of the report

	has produced fundamentally flawed assessments.	implications, if any, for air pollution controls in respect to the TAN plant.
Green Recommendation 11 Paragraph 1.55 Page 108	Australian Greens Senators recommend that the Western Australian Government prioritise the development and implementation of a new, fully funded independent monitoring program that meets all of the recommendations of the Data Analysis Australia reviews.	Noted These recommendations fall wholly within the responsibilities of the Western Australian Government. The Australian Government can lend support to the proposal outlined in these recommendations.
Labor Recommendation 6 Paragraph 1.36 Page 135	Labor Senators recommend the Western Australian Government prioritise the development and implementation of a new, fully funded independent monitoring program.	
Greens Recommendation 12 Paragraph 1.56 Page 109	Australian Greens Senators recommend that the proposals for further monitoring included in the Draft Burrup Rock Art Strategy be implemented as soon as possible.	Noted These recommendations fall wholly within the responsibilities of the Western Australian Government. The Australian Government agrees with the intent of these recommendations.
Labor Recommendation 7 Paragraph 1.37 Page 135	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.	
Yara Pilbara TANPI		
Greens Recommendation 6 Paragraph 1.31 Page 105	Australian Greens Senators recommend that given the significant impact of ammonium nitrate and other acidic emissions on both the environment and human health, the Australian Government vary the conditions of approval of the Yara Pilbara TANPF to impose a zero acidic emissions requirement.	Noted The Government may only, in accordance with the EPBC Act, assess the impacts of actions on matters of national environmental significance, such as National Heritage Places or listed vulnerable, endangered or critically endangered species. Following the approval of the Operational Environmental Management Plan required under Condition 7 of EPBC Act approval for the TANPF plant, there has been no cause to vary the conditions of approval (i.e. a breach in approved conditions).

Labor Recommendation 8 Paragraph 1.42 Page 136	Labor Senators recommend that the Department of Environment and Energy actively work with Yara Pilbara to ensure its compliance is improved.	Impacts on environmental and human health in general are regulated through state and territory environmental and public health legislation. Noted The Australian Government is responsible for monitoring actions that are approved under the EPBC Act. The Department of Environment and Energy monitors compliance with approved actions by undertaking desktop assessments, audits, site inspections, and by reviewing compliance reports and environmental monitoring reports. The Department prioritises compliance monitoring work on potential risks to matters of national
Greens Recommendation 13 Paragraph 1.64 Page 110	Australian Greens Senators recommend that the Australian Government vary the approval conditions for the TANPF to require Yara Pilbara to engage a Heritage Monitor to conduct a comprehensive survey to identify all rock art sites in a two kilometre radius from the site.	environmental significance. Noted The Australian Government considers the Operational Environmental Management Plan, approved 15 September 2017, adequately addresses these matters.
Labor Recommendation 9 Paragraph 1.47 Page 136	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	
Greens Recommendation 14 Paragraph 1.69 Page 110	Australian Greens Senators recommend that the Western Australian Government promptly review and assess Yara Pilbara's compliance with its approval conditions, and take any necessary enforcement action.	Noted These recommendations fall wholly within the responsibilities of the Western Australian Government.
Labor Recommendation 10 Paragraph 1.52 Page 137	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.	
Legislative reform		
Greens Recommendation 15 Paragraph 1.74 Page 111	Australian Greens Senators recommend that the <i>Environment Protection and</i> <i>Biodiversity Conservation</i> <i>Act 1999</i> be amended to require the Minister or their delegate to consider the cumulative effects when	Noted The EPBC Act is the Australian Government's central piece of environmental legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places – defined in the EPBC Act
	approving decisions.	as matters of national environmental significance. The Minister may consider cumulative impacts of a range of activities when deciding whether an action requires approval under the EPBC Act, to the extent that those cumulative impacts form part of the context of the action.
	5.	The next statutory review of the EPBC Act commenced October 2019. The review will examine the operation of the Act, and the extent to which its objects have been achieved. While the Government has not yet determined the scope of the review, issues such as consideration of cumulative effects under the EPBC Act, may be examined.