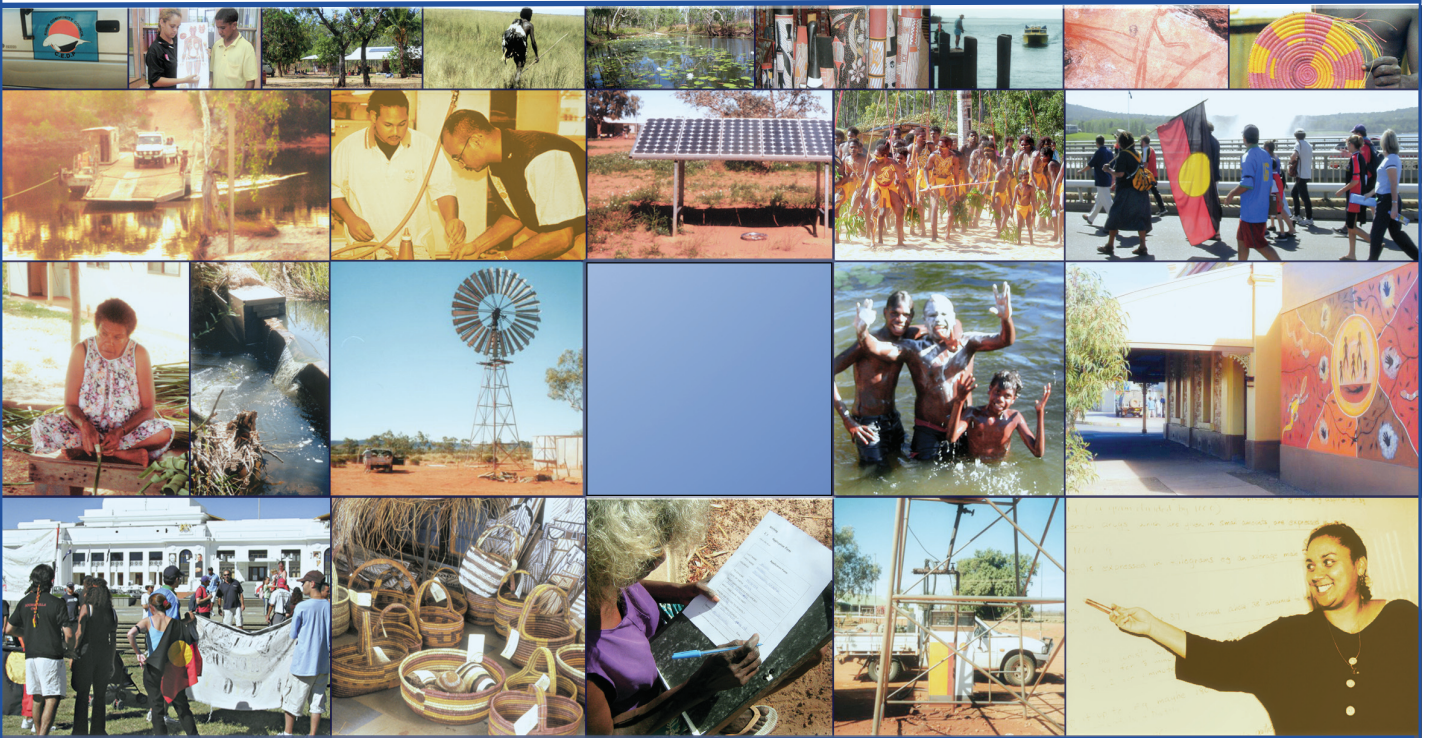


Submission to the Senate Standing Committee on
Environment, Communications and the Arts inquiry
into the operation of the Environment Protection and
Biodiversity Conservation Act 1999

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The Secretary
Senate Standing Committee on Environment, Communications and the Arts
PO Box 6100
Parliament House
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Australia

Dear Secretary

Please find attached a brief submission by Sean Kerins and myself on the Inquiry into the operation of the *Environment Protection and Biodiversity Conservation Act 1999*.

We also draw your attention to the submission we have recently made to Senate Rural and Regional Affairs and Transport Committee's Inquiry into Natural Resource Management and Conservation Challenges (see <http://www.aph.gov.au/Senate/committee/rrat_ctte/natural_resource/index.htm>) and other submissions that one of us (Altman) has made to the Environment, Communications, Information Technology and the Arts Committee's Inquiry into Australia's National Parks, Conservation Reserves and Marine Protected Areas, and the then Department of the Environment and Heritage's Indigenous Protected Areas Programme Review. These are available at <<http://www.anu.edu.au/caepr/Publications/topical/NPSub.pdf>> and <<http://www.anu.edu.au/caepr/Publications/topical/IPAReview.pdf>> respectively.

We would be very happy to provide further information or witness evidence to the Committee if required.

Yours sincerely



Professor Jon Altman
Director, CAEPR

22 September 2008

Submission to the Senate Standing Committee on Environment, Communications and the Arts inquiry into the operation of the Environment Protection and Biodiversity Conservation Act 1999

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This submission addresses the Inquiry's terms of reference in a general sense but with a specific focus on lessons learnt from the first 10 years of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC), and the Act's interface with the emerging formalisation of Indigenous land and sea management programs—what is commonly referred to in indigenous communities as 'caring for country'. Formalised Indigenous land and sea management programs are essential components in managing matters of national environmental significance which are key objectives of the EPBC Act.

The Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University is currently undertaking a three to five year research project 'People on Country, Healthy Landscapes and Indigenous Economic Futures'. This research project is collaborative, working with a number of community-based caring for country ranger projects in north Australia who are engaged to varying degrees in cultural and natural resource management (CNRM) activities (see Northern Land Council 2006).

The research has two aims. Firstly, to provide business planning advice and to assist with monitoring of employment and CNRM outcomes to get the projects onto a sustainable footing and operating more effectively. And secondly, to forge alliances with key Indigenous regional representative and natural resource management agencies to assist them with evidence-based research on outcomes, and to assist to reduce institutional barriers to growing the sector with transportable best practice models. This will facilitate enhanced Indigenous involvement in the provision of environmental services at a regional scale and in emerging new industries such as carbon abatement—industries that will generate economic benefits for remote Indigenous communities currently lacking in conventional commercial opportunities. Such activities will also generate national benefits during a period of climatic and related environmental uncertainties.

Over the past three decades, over 20 per cent of the Australian land mass has been returned to Indigenous Australians as a result of successful land rights and native title claims and land acquisition programs (Altman, Buchanan and Larsen 2007). Recent legal decisions, such as the Blue Mud Bay High Court judgment of 30 July 2008—which confirmed Indigenous people in the Northern Territory are the owners of an estimated 5,600 kms of intertidal coastline—suggest that Indigenous people will also potentially have a growing role to play in coastal and fisheries management issues.¹ This again indicates the need to ensure that Indigenous people are provided management and employment opportunities where they reside and in the national interest rather than elsewhere in mainstream industries.

EPBC:

Environment
Protection and
Biodiversity
Conservation Act
1999

CNRM:

cultural and
natural resource
management

WALFA:

West Arnhem Land
Fire Abatement
project

CDEP:

Community
Development
Employment
Program

NHT:

Natural Heritage
Trust

IPA:

Indigenous
Protected Area

What we term the Indigenous estate includes some of the most biodiverse lands in Australia. Official natural resource atlas maps indicate that many of the most intact and nationally important wetlands, riparian zones, forests, and rivers and waterways are located on the Indigenous estate. Mapping also shows that these lands are at risk of species contraction and face major threats from feral animals, exotic weeds, changed fire regimes, pollution and over-grazing (Woinarski et al. 2007). On top of these threats, the latest available climate science suggests that substantial biodiversity impacts on this crucial part of the continental landmass are inevitable. In the face of this, an innovative national policy approach is required to support community-based efforts to ameliorate threats and minimize adverse biodiversity outcomes. This position is based on the documented recognition by CSIRO that effective resource management is much less expensive than environmental repair, something that is very clear from recent experience in the Murray-Darling Basin in south-east Australia.

While much of the Indigenous estate is not commercially viable for 'old-economy' pastoral and agricultural uses, it is a significant environmental and ecological asset (Altman and Dillon 2004). Some bio-regions are largely intact, while others face pressures from wildfires, weeds, feral animals and other threats like the lack of a peopled landscape. The recent *Fourth Assessment Report of the Intergovernmental Panel on Climate Change* found that many regions will face an increased threat to biodiversity with the onset of climate change, including an increase in pests, weeds and wildfires (Hennessy et al. 2007; see also Dunlop and Brown 2008; Millennium Ecosystem Assessment 2005; NRMCC 2004). This may result in adverse patterns of biodiversity change over relatively short timeframes (Altman et al. 2007: 33).

Historically, natural resource management on the lands that now constitute the Indigenous-owned estate has been either absent or significantly under-resourced (Altman and Dillon 2004; Altman, Buchanan and Larsen 2007). While some Indigenous land-owners currently engage in cultural and natural resource management activities, much of this is conducted informally and outside the market or is poorly remunerated, pointing to a significant opportunity for enhanced investments (Altman 2007). Opportunities exist in managing ecosystems to minimise environmental damage and in developing environmental programs that help reduce Australia's carbon emissions, as well as building the capacity of Indigenous communities to become more effective in relation to the protection of critical habitats of threatened species and ecological communities. For example, the West Arnhem Land Fire Abatement (WALFA) project was built using the Community Development Employment Program (CDEP), along with funding from the Natural Heritage Trust (NHT), philanthropic organizations and the private sector (TSCRC n.d.). The WALFA project, as well as reducing green house gas emissions, served as a catalyst for regional Indigenous partnerships in fire management (Warddeken, Jawoyn, Djelk, Adjumarllarl and Mimal land management groups) and building partnerships between Indigenous and non Indigenous organizations (Bushfire NT, Tropical Savannas CRC). Furthermore, it has provided a stable base for traditional owners of the Arnhem Land Plateau to undertake numerous cultural and ecological projects to protect critical habitats of threatened species and improve their recovery.

Since their implementation in 1998, Indigenous Protected Areas (IPAs) have served as an important vehicle in assisting Indigenous Australians in managing their vast estates and protecting ecological communities, critical habitats and threatened species. The strength of IPAs rests with their recognition of Indigenous governance and decision making arrangements. A major weakness of the IPA program is its failure to include 'sea country' within the framework. Such an absence exposes many ecological communities and critical habitats, especially in remote areas, to threatening processes which could otherwise be mitigated by formalised and integrated Indigenous land and sea management should they be provided with the necessary management tools to achieve this. For example, the rights and responsibilities of Indigenous Australians in regard to threatened marine species such as turtle and dugong remains weak.

While the EPBC Act expressly acknowledges the native title rights—including section 211 of the *Native Title Act* (NT) 1993, which preserves native title rights to hunt, fish, gather or undertake other cultural or spiritual activities where these activities would normally be restricted by Commonwealth, State or Territory legislation—it treats these rights weakly so that, in our opinion, these rights are often no more than those of a 'passive' user. That is, Indigenous people have the right to use a resource so long as the activity is undertaken for the purpose of satisfying personal, domestic or non-commercial needs; and be in exercise or enjoyment of their native title rights and interest (s.222 (2)(a)+(b)). Such a right only allows Indigenous people to 'passively' use natural resources yet fails to recognise their right of 'active' management. The failure to recognise the full extent of Aboriginal customary rights means that Indigenous people have no ability to manage threatened species and the threatening processes to these such as, boat strikes, set-nets (amateur and commercial), marine structures and degradation of sea-grass beds.

Such a failure in recognising the full rights of Indigenous Australians can only mean a gradual decline of critical habitats of threatened species and ecological communities. One step towards such recognition would include the extension of the IPA program to include sea country to assist in the protection of critical marine habitats of threatened species.²

Environmental programs (NHT, EnviroFund, Landcare) have served as essential components for Indigenous Australians and their representative organisations to develop and manage their land and sea management programs. However, the environmental programs have failed to recognise the holistic nature of Indigenous land and sea management. For example, Indigenous Australians who are attempting to manage their traditional lands in a holistic manner and protect critical habitats of threatened species and ecological communities are required to compete for compartmentalised funding, requiring groups to apply for numerous separate grants including fire, weeds, feral animals, threatened species, marine debris, heritage protection, and Indigenous ecological knowledge. This compartmentalised, and short-term, funding does not allow for holistic management of Indigenous owned lands, be they catchments, land trust areas, areas successfully claimed under native title law or resource management administrative regions.

At times groups have applied for a suite of funding but have only been successful in one area. This means that Indigenous land and sea management groups can not establish their own priorities for the management of critical habitats, but must work on one isolated issue for which they won funding. In our view, a more effective funding regime would involve environmental programs being refocused so that they invest holistically on Indigenous-owned land. In this way Indigenous land and sea management organisations would, through participatory planning processes, develop land and sea management plans for regions and then submit these as comprehensive planning documents that identify Indigenous aspirations on issues of national environmental significance as identified in the EPBC Act. Such a process would help alleviate the administration crisis that many Indigenous land and sea management organisations face in managing the plethora of environmental programs that they are reliant on to manage their lands and to protect critical habitats of threatened species and ecological communities.

A current funding void in environmental programs is the absence of funding identified for investment into Indigenous governance associated with land and sea management. Many Indigenous traditional owner groups are disadvantaged in applying for funding through environmental programs because they have no representative organisations or individuals who can compete for the funding or administer grants. This means that many Indigenous-owned lands and their critical habitats are left exposed to threatening processes. CAEPR's People on Country research project has identified strong, effective and representative governance as a cornerstone of successful Indigenous land and sea management programs.³

WoC:
Working on
Country program

In May 2007, The Howard Government initiated the Working on Country program (WoC) which builds on Indigenous-initiated Caring for Country programs and goes some way towards a more holistic funding program by contracting Indigenous people to provide environmental services and paying them proper award wages. This work will help to maintain, restore, protect and manage Australia's environment, often in very remote and sparsely populated regions. While the Working on Country program represents a symbolic and practical breakthrough in recognising, respecting, and recurrently funding innovative community-based resource management effort on the Indigenous-owned estate, it must be seen as one component in a much larger process of developing long-term effective Indigenous management of some of Australia's most important bioregions. Other important components of developing long-term effective Indigenous management of important bioregions include the linkage of caring for country activities (Indigenous ecological knowledge, ecology, fire management, geographic information systems and remote sensing etc.) to the school curriculum, especially in Indigenous communities. Such an initiative will strengthen the 'two-way' (Indigenous ecological knowledge and western science) management of the Indigenous-owned estate and ensure a diversity of future employment opportunities of Indigenous Australians in remote areas.

In 2006, the signing of the Northern Territory Bilateral 'Healthy Country Healthy People' Schedule also sought to build on Northern Territory Caring for Country programs by identifying \$10 million for additional investment over a two year period, to be supplemented by another \$10 million from the Indigenous Land Corporation. Despite this timeframe and the development of an investment strategy, operationalisation of this strategy has been very slow, possibly owing to the Northern Territory Emergency Response intervention and strained Commonwealth/Northern Territory relations.

The Northern Territory Emergency Response has nevertheless effectively increased government investment for CNRM through an expansion of the WoC program to include a Working on Country Northern Territory (WoC NT) program. This hasty expansion was largely driven by the poorly considered decision by the Howard Government to abolish the Community Development Employment Program (CDEP) from 21 July 2007, and a need to demonstrate that so-called real jobs were being made available as a partial offset. While this additional investment was welcomed in principle by land and sea management groups, the speed of its introduction, without subsequent community development investment and the slow delivery of funding from the Healthy Country Healthy People Schedule may undermine both the WoC and WoC NT programs and ultimately the aims of the EPBC Act.

In recent years there has been much debate on the viability of remote communities, especially small outstations. This debate is generating growing uncertainty for Outstation Resource Agencies and CDEP organisations that provide much of the infrastructural and service delivery base that sustains Caring for Country projects. The emerging dominant discourse of defining economic development success only in terms of mainstream jobs sends a very negative message to Indigenous Australians that the land and sea management work they are currently involved in on country is not 'real work'. This very public, acrimonious and generally poorly informed, debate creates a high level of uncertainty in remote communities where land and sea management work is of great economic, social, cultural and environmental importance.

Furthermore, such a debate does not recognise the growing evidence base demonstrating the important role that Indigenous land and sea management groups play in the protection of Australia's natural resources. Examples of this debate include the recent proposal by Andrew Forrest—warmly embraced by the Prime Minister and a number of powerful Indigenous spokespeople—to create 50,000 full-time private sector jobs within two years;⁴ and the more recent propositions that have garnered much public attention to force unemployed Indigenous people to take on low-skilled work as seasonal fruit and vegetable harvesters, often at great distance from the land that they own that requires active management.

WoC NT:
Working on
Country Northern
Territory program

We believe that this focus solely on mainstream opportunity is misguided. There is a crucial and strategic role for Indigenous people residing on the massive Indigenous estate and engaging in CNRM. Such a focus only adds strength to six of the seven matters of national environmental significance to which the EPBC Act applies (that is, world heritage sites; national heritage places; wetlands of international importance; nationally threatened species and ecological communities; migratory species; and Commonwealth marine areas).

Above we mention the vital importance of a peopled landscape. A clear example of the negative ecological impacts of a depopulated landscape, and how it undermines the aims of the EPBC Act, can be seen on the Waanyi/Garawa Aboriginal Land Trust on the Northern Territory/Queensland border. This land trust covers 12,000 sq kms and contains areas of high national conservation value. Since traditional owners moved off the land trust, because of the lack of provision of basic services (health, housing and education) that they should enjoy as a citizenship entitlement, their country has experienced large-scale late dry season hot fires. In some years these fires burn in excess of 16,000 sq kms, extending beyond the land trust area. The long-term result of these uncontrolled hot fires is evident across much of the land trust where vast areas of country have lost significant areas of vegetation. The loss of this vegetation means the loss of feeding and breeding habitats for many native species, including endemic threatened species. The loss of vegetation also causes the exposure of skeletal soils to erosion. In all likelihood, without people living on country and the resumption of Aboriginal fire management, these soils will slowly choke the rivers and billabongs and significantly reduce the habitat of marine species. Such hot fires also emit additional greenhouse gases that marginally exacerbate global warming.

Indigenous people play a crucial role to the success of the EPBC Act. Indigenous ecological and local knowledge combined with scientific practice are essential tools in the sustainable management of much of remote Australia. This role is likely to grow owing to the challenges posed by climate change, the scarcity of fresh water resources, and associated biodiversity issues.

We end this submission with the following seven recommendations:

1. It is important that the significance of a peopled landscape or 'people on country' is recognised as a fundamental principle in the natural resource management of the Australian continent. In the case of the vast Indigenous estate that now covers 20 per cent of the continent, or 1.5 million sq kms, this means Indigenous occupation and management of the land that they now own under Australian land rights and native title laws.
2. The environmental management work of Indigenous Australians participating in Caring for Country and Caring for Sea Country programs needs to be recognised and appropriately remunerated. This should include recognising and investing in the holistic management of Indigenous owned lands and coastal zones. Supporting such management regimes, often based on a mix of Indigenous and local knowledge, is in the national interest and will assist to maintain Australia's unique continental biodiversity and therefore the aims of the EPBC Act.
3. The IPA framework should be expanded so that it provides for Indigenous management and protection of critical marine habitats of threatened species and ecological communities as an effective way of improving their recovery.
4. It is imperative that the crucial roles that institutions such as CDEP organisations and Outstation Resource Agencies with proven track records play in supporting Caring for Country programs be recognised.⁵ The current policy focus on mainstream opportunity and depopulation of remote Australia needs careful consideration, as do the current threats to CDEP and to the provision of basic services to remote outstations.

5. Environmental programs should be expanded so that they provide support for the development and operation of local level Indigenous governance organisations for land and sea management.
6. The recently established WoC and WoC NT programs are important developments that need to be carefully grown. It is imperative that these investments are supplemented by additional public sector funding for equipment, ranger training and capacity building for robust governance. A whole-of-government approach to Indigenous land and sea management, which importantly includes increased funding opportunities from a wide spectrum of government agencies (not just the Department of the Environment, Water, Heritage and the Arts) is critical to the viability of Indigenous land and sea management organisations and therefore to the areas identified in the EPBC Act of national environmental significance. Such a shift could be achieved via negotiation of effective bilateral agreements between states/territories and the Australian Government and in purpose built agreements with Indigenous landowners and managers.
7. Place-based assessments of additional jobs that could be generated in land and sea management and in the management of threatened species such as turtle and dugong should be undertaken urgently. Such labour force planning is important to ensure that the Indigenous estate is not prematurely emptied of the manpower and expertise needed for its management in the national interest.

NOTES

1. See <<http://www.crikey.com.au/Politics/20080801-Understanding-the-Blue-Mud-Bay-decision.html>>.
2. See NAILSMA 2008
<<http://www.nailsma.org.au/nailsma/publications/downloads/NAISMA-Imp-and-Opp-Study-email.pdf>>.
3. Also see CAEPR working papers from the Indigenous Governance Community Program (Hunt and Smith 2006 and 2007).
4. See <<http://www.crikey.com.au/Politics/20080805-The-Forrest-plan-A-high-risk-strategy-to-close-the-Indigenous-employment-gap.html>>.
5. See <<http://www.aph.gov.au/house/committee/atsia/indigenousterprises/subs/sub039.pdf>>.

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