



Australian Government

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.

Responses to recommendations in Additional Comments

Report Index	Additional Comments	Australian Government Response
Consultation with Murujuga Aboriginal Corporation and Elders		
Labor Recommendation 1 Paragraph 1.10 Page 130	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.	Noted Murujuga is listed in Australia’s National Heritage List (NHL) and protected by the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (the EPBC Act). The EPBC National Heritage Management Principles recognise that Indigenous people are the primary source of information about the value of their heritage. The Australian Government follows best practice consultation for decisions that affect Indigenous people. This involves early and ongoing engagement, ensuring appropriate timeframes and settings, and respecting community protocols.

World Heritage Listing of the Burrup Peninsula		
Greens Recommendation 1 Paragraph 1.4 Page 101	Australian Greens Senators recommend that the Western Australian Government immediately approach the Australian Government to seek the listing of the Burrup Peninsula on Australia's World Heritage Tentative List, following appropriate consultation with the Murujuga Aboriginal Corporation.	Noted The Western Australian Government has provided its support for World Heritage listing. The Murujuga Aboriginal Corporation representing the Traditional Owners and custodians have formally agreed to the pursuit of World Heritage listing. Following consideration and agreement at the Meeting of Environment Ministers in November 2019, the WA Government provided a submission to the Australian Government for inclusion of the property on Australia's World Heritage Tentative List. The Australian Government successfully transmitted the World Heritage Tentative List submission to the UNESCO World Heritage Centre in January 2020.
Greens Recommendation 2 Paragraph 1.5 Page 101	Australian Greens Senators recommend that following listing on the Tentative World Heritage List, the Australian Government and the Western Australian Government work together to nominate the Burrup Peninsula for World Heritage listing.	Now included on Australia's Tentative List, the WA Government is responsible for developing and funding a nomination for World Heritage listing in consultation with the Murujuga Aboriginal Corporation. Technical assistance is provided by the Australian Government.
Labor Recommendation 2 Paragraph 1.14 Page 131	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 World Heritage Tentative 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.	
Labor Recommendation 3 Paragraph 1.15 Page 131	If tentative listing is agreed by Traditional Owners, and Murujuga is placed on Australia's World Heritage Tentative 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 programs		
Greens Recommendation 3 Paragraph 1.6 Page 101	Australian Greens Senators recommend that the Murujuga Indigenous Ranger program be given appropriate funding by both the Australian Government and the Western Australian Government, and the Murujuga Rangers be granted the power to undertake the same enforcement activities as state-employed rangers.	Noted The Murujuga Indigenous Ranger Project is managed by the Murujuga Aboriginal Corporation with cultural advice and guidance through the Circle of Elders. The Ranger project has been funded under the EPBC Act Conservation Agreements with Woodside Energy Ltd and Hamersley Iron Pty Ltd and Dampier Salt Ltd (Rio Tinto). There is funding for the Ranger project until 2021 as a part of an ongoing commitment to the Conservation Agreements by Woodside and Rio Tinto.
Labor Recommendation 4 Paragraph 1.19 Page 132	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.	This commitment recognises the strong relationships with the Murujuga Aboriginal Corporation and ongoing support for the protection, conservation and management of the National Heritage values. Management responsibility for Murujuga National Park rests with the WA Government. The Australian Government notes that the WA Department of Biodiversity Conservation and Attractions has been working with the Murujuga Aboriginal Corporation to develop Murujuga Rangers' capacity to administer and manage Murujuga National Park, including by addressing their legislative authority to do so.
Regulation of emissions from shipping and land-based activity		
Greens Recommendation 4 Paragraph 1.11 Page 102	Australian Greens Senators recommend that the Western Australian Government implement measures to ensure that ships entering and leaving the Port of Dampier use low sulphur content fuel or an approved means of achieving required emissions reductions. The maximum sulphur content of fuel utilised by ships entering and	Noted The Australian Government supports a global approach to regulating ships due to the international nature of the industry and the importance of ships for Australia. The Australian Government implements Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL Annex VI), which regulates the sulphur content of fuel used by ships, through the <i>Protection of the Sea</i>

	<p>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.</p>	<p><i>(Prevention of Pollution from Ships) Act 1983 and Marine Order 97.</i></p> <p>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.</p>
<p>Labor Recommendation 12 Paragraph 1.59 Page 138</p>	<p>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</p>	<p>Noted See the response to recommendation 4 (Greens).</p> <p>While the monitoring of emissions at the Port of Dampier is the responsibility of the Western Australian Government, the Australian Government supports the ongoing 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.</p>
<p>Greens Recommendation 6 Paragraph 1.32 Page 105</p>	<p>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</p>	<p>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.</p>
<p>Greens Recommendation 5 Paragraph 1.18 Page 103</p>	<p>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.</p>	<p>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 1986</i>.</p> <p>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</p>

		<p>for air quality emissions monitoring and reporting.</p> <p>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.</p>
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.	<p>Noted</p> <p>These recommendations fall wholly within the responsibilities of the Western Australian Government.</p> <p>The Australian Government agrees with the intent of these recommendations.</p>
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 development on the Peninsula		
Greens Recommendation 7 Paragraph 139 Page 106	Australian Greens Senators recommend that the TANPF be relocated to the Maitland SIA.	<p>Noted</p> <p>This recommendation falls wholly within the responsibilities of the Western Australian Government.</p>
Greens Recommendation 8 Paragraph 1.40 Page 106	Australian Greens Senators recommend that no further industrial development be approved for the Burrup Peninsula.	<p>Noted</p> <p>Decisions regarding further industrial development on the Burrup Peninsula are the primary responsibility of the Western Australian Government.</p> <p>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 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.</p>
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.	
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	

	approving decisions relating to Murujuga	<p>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.</p> <p>The Australian Government will make use of new data and information made available to it.</p>
Alternatives to industrial development on the Peninsula		
Greens Recommendation 9 Paragraph 1.41 Page 106	Australian Greens Senators recommend that the Western Australian Government promote tourism to the Burrup Peninsula as a long-term employment and economic opportunity.	<p>Noted</p> <p>These recommendations fall wholly within the responsibilities of the Western Australian Government.</p> <p>The Australian Government supports efforts to strengthen tourism opportunities on the Burrup Peninsula.</p>
Labor Recommendation 5 Paragraph 1.24 Page 133	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 programs and Rock Art Strategy		
Greens Recommendation 10 Paragraph 1.54 Page 108	Australian Greens Senators recommend that the incorrect use of the Cinderby et al report in the Gillett 2008 air pollution study, and the impact that this flawed report has had on the establishment of approval conditions be noted; and recommend that CSIRO acknowledge that it	<p>Not Agreed</p> <p>CSIRO does not agree with the view that the Gillett 2008 Report has been demonstrated to have flawed content. CSIRO notes that the establishment of regulatory approval conditions is not a role for which CSIRO has responsibility. The Australian Government will consider, as appropriate, the Cinderby <i>et al</i> report and liaise with the CSIRO on</p>

	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 TANPF approval		
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).

		Impacts on environmental and human health in general are regulated through state and territory environmental and public health legislation.
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.	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 environmental significance.
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.	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 Biodiversity Conservation Act 1999</i> be amended to require the Minister or their delegate to consider the cumulative effects when approving decisions.	<p>Noted</p> <p>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 as matters of national environmental significance.</p> <p>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.</p> <p>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.</p>