



AIATSIS

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Environment and Communications References Committee
The Senate
Parliament House
Canberra ACT 2600
Via email: ec.sen@aph.gov.au

Dear Committee Members

Senate Inquiry into Australia's faunal extinction crisis AIATSIS Submission

The Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS) welcomes the opportunity to make a submission in support of the Senate Inquiry into Australia's faunal extinction crisis.

AIATSIS would recommend the focus of this senate inquiry includes: consultation with traditional owner groups; native title corporations administering native title settlements and agreements bodies; Native Title Representative Bodies (NTRBs); Native Title Service Providers (NTSPs) and Aboriginal Land Councils: all of whom exercise responsibility for the management of the Indigenous Estate and large tracts of the National Reserve System. This critical consultation and engagement is to ensure that traditional knowledge and management is acknowledged as being an essential element in threatened species recovery, management and conservation.

AIATSIS submits that acknowledging the totality of the Indigenous Estate and its interconnection with the National Reserve System is essential in terms of addressing the faunal extinction crisis across the content. Caring for Country programs, Indigenous Land and Sea Management Programs (ILSMPs) and Indigenous Protected Areas (IPAs) are achieving great success in terms of threatened species recovery and the eradication of feral pests and species.

Please find attached the AIATSIS submission which is based upon 26 years of research and practice by AIATSIS in Indigenous cultural heritage and native title law. Our submission outlines key support for co-designing targets, measures and evaluation of threatened species recovery programs with Aboriginal and Torres Strait Islander peoples to achieve better environmental outcomes.

In summary, AIATSIS submits that a strategy to seriously address Australia's extinction crisis must include:

- (1) Long term, co-ordinated and simultaneous efforts to control invasive species populations in selected protected areas.



(2) The expansion of the area of land under traditional Indigenous land management regimes, particularly the expansion of burning practices.

(3) The urgent provision of additional resources and funding for native title corporations and traditional owner land and sea management organisations and groups to arrest the faunal extinction crisis in Australia.

Indigenous Knowledges and skills need to be applied as part of the management of the National Reserve System and the Indigenous Estate. Governments and non-Indigenous reserve managers must work closely and collaboratively with traditional owners to utilise the wisdom of Aboriginal political communities who have managed their traditional lands and waters for tens of thousands of years. The expansion of the physical coverage and resources of the Indigenous Protected Areas and Working on Country programs are important prerequisites for these efforts.

For any queries please contact Dr Lisa Strelein, Executive Director of Research and Education (Lisa.Strelein@aiatsis.gov.au).

Yours sincerely



Craig Ritchie
Chief Executive Officer

14 September 2018





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AND TORRES STRAIT ISLANDER STUDIES

Australia's faunal extinction crisis

Senate Standing Committees on Environment and Communications

Dr Lisa Strelein Rachel Ippoliti and Cedric Hassing



About AIATSIS

AIATSIS is one of Australia's publicly funded research agencies and has legislative responsibility, inter alia, to provide leadership in Aboriginal and Torres Strait Islander research and provide advice to government on Aboriginal and Torres Strait Islander culture and heritage. AIATSIS is committed to ensuring Indigenous peoples' knowledge, culture and governance is understood, respected, valued and empowered by laws and policies that concern them.

As a national institute, AIATSIS works at the intersection of Indigenous and non-Indigenous knowledges, playing an important role in the mediation of those knowledges and supporting their expression and protection via our research and collections work.¹ AIATSIS undertakes research on issues that impact upon Aboriginal and Torres Strait Islander peoples and their lives. The AIATSIS Native Title Research Unit (NTRU) was established 26 years ago, as a partnership between the Commonwealth Indigenous affairs portfolio agency and AIATSIS, following the High Court's *Mabo*² decision. AIATSIS supports the native title sector and conducts research and analysis of the law, policy and practice of native title.

The AIATSIS Indigenous Culture and Heritage Unit aims to support the active practice of culture through the protection and transmission of knowledge. Our research work at AIATSIS involves both academic and community based investigation into and study of materials and sources in order to establish new evidence and reach conclusions, with the aim of enabling archive access and information management, repatriation and the recording of new materials within culturally informed frameworks.

We work with researchers, policymakers, cultural and collecting institutions, the corporate sector and Indigenous organisations to support cultural practice in practical and meaningful ways. AIATSIS has conducted many successful research and recording projects in communities, and our research is informed by community governance and underpinned by our Guidelines for Ethical Research in Indigenous Studies.³ As a national research institute, AIATSIS is well placed to interrogate what Indigenous knowledge 'looks' like and how it can be asserted in a practical way.⁴ AIATSIS uses best practice ethical Indigenous research methodologies for best practice Indigenous policy outcomes. AIATSIS submits that utilising Indigenous Knowledges in threatened species conservation programs and Caring for Country programs is an effective way to address Australia's faunal extinction crisis.

¹ Tran, T. and Barcham, C. '(Re) defining Indigenous Intangible Cultural Heritage' AIATSIS Research Discussion Paper No. 37, AIATSIS Research Publications, Canberra 2018, p.4

² *Mabo and ors v State of Queensland (No 2)* 175 CLR 1

³ Available at: <https://aiatsis.gov.au/research/ethical-research/guidelines-ethical-research-australian-indigenous-studies>

⁴ Tran, T. and Barcham, C. '(Re) defining Indigenous Intangible Cultural Heritage' AIATSIS Research Discussion Paper No. 37, AIATSIS Research Publications, Canberra 2018, p.4

Introduction

Aboriginal and Torres Strait Islander peoples are the first peoples of this continent and as such have a unique and essential relationship to the lands and waters we now share as a nation. Retaining connection to country is critical to the identity and cultural continuity of Aboriginal and Torres Strait Islander societies and as a consequence, for the wellbeing and freedom of individual Aboriginal and Torres Strait Islander people. Indigenous peoples' laws and philosophical traditions, kinship, language and art are all connected through their relationship with lands and waters. As such, the rights of Aboriginal and Torres Strait Islander peoples are recognised under international law and reflected in Australia's obligations under the United Nations Human Rights framework, in particular, the United Nations Declaration on the Rights of Indigenous Peoples 2007.⁵

Indigenous Knowledges inherently include environmental or land-based knowledge because they stress the importance of the holistic connection of all living beings to Creation and the Earth, as well as all relationships between these forces —relationships of humans to humans, to animals, to plants, to the elements, to the spirit world, and to the cosmos.⁶ The multiple forms and subjects of Indigenous Knowledges create a policy context where AIATSIS can play a key role in mapping the scope and content of knowledges as well as interrogating new regimes and processes for their recognition, protection and use by and for the benefit of Indigenous communities⁷. An examination of land and sea management programs administered by traditional owners reveals success in threatened species conservation; the eradication of feral animals, pests and weeds; and the improved ecological health of the environment and the Aboriginal political communities who administer these programs.

It is imperative that legislation conferring land rights and native title be reformed to enable Indigenous people to take full advantage of the emerging environmental land management opportunities as a springboard for economic development.⁸ It is also important for economic development to be firmly grounded on principles of self-determination and sustainable development which will have the dual outcomes of sustainable economic development and environmental conservation.⁹ Controlling feral animal populations is critical in the efforts to preserve endangered species. Traditional owner ranger groups in regional and remote areas are best placed to ensure that this occurs effectively.

This submission focuses on the Indigenous Estate¹⁰ which encompasses the lands and waters for which Aboriginal people assert responsibility, control, ownership or management

⁵ United Nations General Assembly: *Declaration on the Rights of Indigenous People*. 2007 A/RES/61/295 (UNDRIP). See also, United Nations General Assembly International Convention on the Elimination of All Forms of Racial Discrimination 1966 Treaty Series 660, 195 (CERD); United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights, 1966, United Nations, Treaty Series 993, 3.

⁶ Kapyrka, J., Dockstator, M. *Indigenous Knowledges and Western Knowledges in Environmental Education: Acknowledging the Tensions for the Benefits of a "Two-Worlds" Approach* Canadian Journal of Environmental Education, Issue 17 (2012) 97, p98

⁷ Tran, T. and Barcham, C. '(Re) defining Indigenous Intangible Cultural Heritage' AIATSIS Research Discussion Paper No. 37, AIATSIS Research Publications, Canberra 2018, p21

⁸ Strelein, L., Hassing, C., Tran, T., Burbidge, B., Barcham, C., Little, S. *AIATSIS Submission into Reforms to the Native Title Act 1993 (Cth)* available at: https://aiatsis.gov.au/sites/default/files/products/submission/aiatsis_submission_native_title_amendment_act_reforms_2018.pdf

⁹ Collings, Neva 'Native title, economic development and the environment' [2009] Australian Law Reform Commission Journal 45: p46

¹⁰ The Indigenous estate has been formed through five key mechanisms: (1) Creation of Aboriginal reserves in the protectionist era (2) Land rights legislation passed since the 1960s (3) Other land legislation which allows for transfers or

over: an estate that Aboriginal political communities have managed for tens of thousands of years.¹¹

The Indigenous Estate and Threatened Species Management

The ongoing decline in the population and conservation of Australia's nearly 500 threatened species

The conservation of Australia's biodiversity is founded on an extensive reserve system, good environmental legislation and stable governance.¹² The Australian human population density is comparatively low, yet more plant and mammal species have been rendered extinct in Australia than any other country. Since European settlement, thirty Australian native mammals have become extinct. To put this in a global context, one out of every three mammal extinctions in the past four hundred years have occurred in Australia. And the rate of decline continues unabated. More than 1,700 species of animals and plants are listed by the Australian Government as being at risk of extinction.¹³ AIATSIS submits that to redress Australia's faunal extinction crisis, traditional owners are the most appropriate groups to manage feral animal eradication programs and undertake weed and pest control programs whilst simultaneously promoting the conservation of threatened species.

Whilst the pursuit of mainstream economic development on the Indigenous Estate by its Indigenous owners continues to be constrained institutionally by the legal rules of the settler society and culture, Indigenous owners prioritise caring for country as part of their overarching obligations and spiritual relationships with their lands and waters because of their interconnectedness with all aspects of the natural environment.¹⁴

The key distinctive assumption of an Indigenous worldview is that the cosmos is a living being and that the cosmos and all its parts have consciousness. Because of this assumption, the relationship between humans and all parts of the cosmos inherently speak to notions of reciprocity and respect.¹⁵ As Janet Oobagooma, one of the traditional owners of the North West Kimberley and part of the Woddordda, Yawjabai, Oomeday and Oonggarddangoowai community who call their country Lalai has stated:

Dambeemba is home. It represents our land. Dambeemba is where you come from, where your Wandjina come from. We have a map in our brain. Dambeemba can be a big place or a small place; it can be as big as the whole country from Oobagooma to

leasing to Indigenous groups (4) land acquisition programs since the late 1960s and (5) Native title processes' 'The Environmental Significance of the Indigenous Estate: Natural Resource Management as Economic Development in Remote Australia' Altman, J.C; Buchanan G.J; Larsen, L. (CAEPR Discussion Paper No.286/2007) p5

¹¹ 'Most of us probably heard recently of the discoveries in Kakadu National Park which demonstrate the presence of Aboriginal people in Australia for at least 65,000 years, about 25,000 years more than previously believed based on other archaeological evidence.' Justice Jagot in *Western Bundjalung People v Attorney General for New South Wales* [2017] FCA 992 at [16]

¹² Bauman, T., Haynes, C. and Lauder, G. 'Pathways to the co-management of protected areas and native title in Australia' (AIATSIS Research Discussion Paper, Number 32, May 2013, Canberra) p64

¹³ *Science for Saving Species Journal, Issue 7, Autumn 2018 -Threatened Species Recovery Hub*—accessed 24 July 2018 <http://www.nespthreatenedspecies.edu.au/>

¹⁴ 'The Environmental Significance of the Indigenous Estate: Natural Resource Management as Economic Development in Remote Australia' Altman, J.C; Buchanan G.J; Larsen, L. (CAEPR Discussion Paper No.286/2007) p5

¹⁵ Kapyrka, J., Dockstator, M. *Indigenous Knowledges and Western Knowledges in Environmental Education: Acknowledging the Tensions for the Benefits of a "Two-Worlds" Approach* Canadian Journal of Environmental Education, Issue 17 (2012) 97, p100

*nearly the Hunter River, and it can be where you put your swag with your family. Dambeemangaddee means all the people from the dambeema.*¹⁶

Likewise in the recent *Yi Manawatu Ngurrara* native title determination, the Chief Executive Officer of the Yanunijarra Aboriginal Corporation, Peter Murray said this about his country, Ngurrara Country:

'That country has been our Ngurrara, our home and country since the time of the Dreaming. I know that from the stories my old people who were told by their old people. As a young person I walked all across our Ngurrara country with the old people. They showed me special places. They showed and told me things like where the jilas (water places) are right through that country.

As a Ngurrara Ranger I make sure that these places are not destroyed by the invasion of feral plants and animals. This helps keep these places strong, helps keep the stories strong, and this keeps our culture strong. I have a responsibility both as a Ngurrara Ranger and a traditional owner to protect and care for these places that are special to us. That is why our old people tell us about these places, the paintings, the songs and the stories. They tell us so we know what to protect and how to protect it.'¹⁷

Native title and environmental management

Native title is now formally recognised over 37 per cent of the Australian land mass with 12 per cent recognised as exclusive possession native title. As at 1 July 2018 there were 349 registered determinations of native title covering a total area of approximately 2,626,521 sq km or 37 per cent of the land mass of Australia and approximately 100,217 sq km of sea.¹⁸ There are 1227 Indigenous Land Use Agreements (ILUAs) on the Register of Indigenous Land Use Agreements.¹⁹ These significant land holdings are managed by over 186 registered native title bodies' corporate (RNTBCs) also known as native title corporations.

Native title never was and never will be a panacea for all or even most of the sources of Indigenous disadvantage. Nor will land rights. But each scheme has provided a platform for recognising and respecting Indigenous Australians and, as a by-product, is creating economic and other opportunities for some groups.²⁰

Since 2006, the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) has been carrying out research on the structure and operation of native title corporations noting that they are not appropriately equipped or supported via policy or resourcing to meet the increasing demands of managing the legal responsibilities associated

¹⁶ Janet Oobagooma in *'Dambeemangaddee Country, Culture and People: Our Country is where our ancestors come from'* in Blundell, V., Doohan, K., Vachon, D., Allbrook, M., Jebb, Mary Anne and Bornman, J. *Barddabardda Wodjenangorddee: We're Telling all of you: The Creation, History and People of Dambeemangaddee Country* : compiled and written in collaboration with Dambeemangaddee People: published by Dambimangari Aboriginal Corporation, Derby, WA, 2017) p26

¹⁷ *Forrest on behalf of the Ngurrara People v State of Western Australia* [2018] FCA 289 at [49]

¹⁸ See http://www.nntt.gov.au/Maps/Schedule_and_Determinations_A0_map.pdf accessed 20 July 2018

¹⁹ National Native Title Tribunal statistics accessed 20 July 2018: <http://www.nntt.gov.au/Pages/Statistics.aspx>

The statistics provided above may include a greater number of determinations than those provided under 'National Native Title Register (NNTR)' due to the following: the determination may not take effect until a certain condition is met, such as the registration of an ILUA or the nomination of a Prescribed Body Corporate (PBC) or the determination may be in the administrative process of being registered on the NNTT

²⁰ Neate, G. 'Land rights native title and the limits of recognition' *Indigenous Australians, Social Justice and Legal Reform* (Editors Hossein, E., Worby, G., Tur, S. (Federation Press, Sydney 2016.) p206

with their native title land and waters.²¹ Moreover, some governments have been slow to change and adapt legislation, policies and programs to recognise the change in legal and governance arrangements in the management of land and waters or to harness the opportunity that native title recognition presents the Australian society and economy. With the Indigenous Estate ever increasing in size and the responsibilities of traditional owners ever increasing, AIATSIS submits that in order to address the faunal extinction crisis facing Australia, traditional owners and in particular native title corporations and other traditional owner groups with land and sea management responsibilities are the most appropriate groups, corporations and organisations resources to achieve best practice outcomes in threatened species recovery programs.

Despite the need for additional resources, native title corporations have been very successful in asserting and implementing their land management aspirations via programs such as Indigenous Protected Areas and ranger employment programs. Indigenous ecological knowledge and Indigenous Knowledges²² more broadly, have gained currency as an essential key to the management of Australian landscapes. These programs heavily subsidise the effectiveness of the post determination management of native title lands and have been highly successful²³ in providing a positive contribution to the Council of Australian Governments' Closing the Gap targets.²⁴ The resource needs of native title corporations will vary depending on the number of factors including the nature and extent of native title rights and interests, the remoteness of the determination area, the geographic dispersal of the native title holders and the level and type of future act or activity.²⁵ It is important that native title corporations and other traditional owner groups exercising responsibilities over vast areas of country are provided with the opportunity to effectively employ Indigenous Knowledges discharge their positive obligations efficiently.

Caring for Country improves wellbeing and economic outcomes

Evidence has shown that ranger programs and opportunities for threatened species management not only assist with species conservation and recovery, it also promotes the wellbeing of Indigenous communities by reaffirming their special relationship to their lands and waters. When traditional owners are given control over their lands and waters, their wellbeing²⁶ improves as does the health of the environment.²⁷

²¹ Living with native title: The experiences of registered native title corporations (eds L M Strelein Jessica K Weir and T Bauman, AIATSIS Research Publications, Canberra 2013) Chapter 1

²² Blair, Nerida *Privileging Australian Indigenous knowledge : sweet potatoes, spiders, waterlilys & brick walls* (Common Ground Publishing Illinois, 2015)

²³ Altman, J, Buchanan, G and Larsen, L 2007, 'The Environmental Significance of the Indigenous Estate: Natural Resource Management as Economic Development in Remote Australia.' CAEPR Discussion Paper No. 286/2007. (Centre for Aboriginal Economic Policy Research, ANU: Canberra.); Wohling, M 2009. 'The problem of scale in indigenous knowledge: a perspective from northern Australia. 14(1) Ecology and Society' 1; Memmott, P 1998. 'The Significance of Indigenous Place Knowledge to Australia Cultural Heritage' 4(16) Indigenous Law Bulletin 83, p9.

²⁴ *The National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017-2023* is available online: <https://pmc.gov.au/resource-centre/indigenous-affairs/national-strategic-framework-mental-health-social-emotional-wellbeing-2017-23> The report identifies that control over country improves the physical, mental, and spiritual wellbeing of Indigenous peoples-p16. See also Larson, S., Stoeckl, N., Jarvis, D., Addison, J., Prior, S., Esparon, M. 'Using Measures of wellbeing for impact evaluation: Proof of concept developed with an Indigenous community undertaking land management programs in northern Australia.'(2018) Royal Swedish Academy of Sciences 2018, published online: <https://doi.org/10.1007/s13280-018-1058-3> pp9-10

²⁵ Living with native title: The experiences of registered native title corporations (eds L M Strelein Jessica K Weir and T Bauman, AIATSIS Research Publications, Canberra 2013) p47

²⁶ *The National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017-2023* is available online: <https://pmc.gov.au/resource-centre/indigenous-affairs/national-strategic-framework-mental-health-social-emotional-wellbeing-2017-23> The report identifies that control over country improves the physical, mental, and spiritual wellbeing of Indigenous peoples-p16

These programs subsidise the effectiveness of the post determination native title system and have been highly successful in providing a positive contribution to the major aims of the Federal Government's *Closing the Gap Initiative*.²⁸

The Commonwealth Government's *National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017-2023* states that:

Understanding social and emotional wellbeing and good mental health for Indigenous communities' means acknowledging the interconnectedness of body, mind and emotions, family and kin, community, culture and spirituality and ancestors²⁹

A Case Study from Ewamiam Country

Research has demonstrated that having traditional lands and waters returned as part of the Indigenous Estate improves the wellbeing of Aboriginal political communities undertaking caring for Country and Land and Sea management programs.³⁰ The Ewamiam people originate from the Agwamin society with traditional lands in the Einasleigh Ulands region, inland from what Europeans describe as Cairns in Northern Queensland. James Cook University has undertaken a quantitative and qualitative assessment of the improvements in the well-being in the Ewamiam community as a result of land and sea management programs. A specific finding of the case study was that knowing that country is being looked after the right way and having control over country showed significant improvements in wellbeing for the community.³¹

For Indigenous peoples to move from cultural protection and survival, to cultural thriving and resurgence, a transformative policy framework is required that empowers individuals and communities to make both unconscious and deliberate choices to secure their aspirations through Indigenous ways of being in the world.³² The shared values approach to Indigenous land management has also seen greater success with state government organisations, businesses and more recently private land holders acknowledging the benefits of using

²⁷ 'ILMPs [Indigenous Land and Sea Management Programs] in general and the ranger program[s] in particular appear to be well recognised and regarded as having a significant positive impact on factors deemed critically important to wellbeing'. Larson, S., Stoeckl, N., Jarvis, D., Addison, J., Prior, S., Esparon, M. 'Using Measures of wellbeing for impact evaluation: Proof of concept developed with an Indigenous community undertaking land management programs in northern Australia,' (2018) Royal Swedish Academy of Sciences 2018, published online: <https://doi.org/10.1007/s13280-018-1058-3> P5

²⁸ Altman, J., Buchanan, G and Larsen, L (2007) *The Environmental Significance of the Indigenous Estate: Natural Resource Management as Economic Development in Remote Australia*. CAEPR Discussion Paper No. 286/2007. (Centre for Aboriginal Economic Policy Research, ANU: Canberra.) Wohling, M. 2009. 'The problem of scale in indigenous knowledge: a perspective from northern Australia. *Ecology and Society*' 14(1): 1. Memmott, Paul, "The Significance of Indigenous Place Knowledge to Australia Cultural Heritage" [1998] (1998) 4(16) *Indigenous Law Bulletin* 83:9

²⁹ *The National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017-2023* is available online: <https://pmc.gov.au/resource-centre/indigenous-affairs/national-strategic-framework-mental-health-social-emotional-wellbeing-2017-23> p16. See also [Mayi Kuwaya](#): the National Study of Aboriginal and Torres Strait Islander wellbeing: ANU.

³⁰ Kingsley, J., Townsend, M., Henderson-Wilson, C., Bolam, B. Developing an Exploratory Framework Linking Australian Aboriginal Peoples' Connection to Country and Concepts of Wellbeing *Int. J. Environ. Res. Public Health* 2013, 10, 678: available at: <http://dro.deakin.edu.au/eserv/DU:30058738/kingsley-developingan-2013.pdf>

³¹ Larson, S., Stoeckl, N., Jarvis, D., Addison, J., Prior, S., Esparon, M. 'Using Measures of wellbeing for impact evaluation: Proof of concept developed with an Indigenous community undertaking land management programs in northern Australia,' (2018) Royal Swedish Academy of Sciences 2018, published online: <https://doi.org/10.1007/s13280-018-1058-3> p9

³² T Alfred & J Corntassel, 2005 'Being Indigenous: Resurgences against Contemporary Colonialism' Government and Opposition Blackwell, Oxford, p. 599 cited in: Strelein, L. Tran, T., Barcham, C. 'AIATSIS Submission: Closing the Gap Refresh *Public Discussion Paper*' (2018) p5 https://closingthegaprefresh.pmc.gov.au/sites/default/files/submissions/aiatsis_ctg_refresh_submission_-_final_publish.pdf

traditional Indigenous knowledges³³ to improve environmental management to urgently address Australia's faunal extinction crisis.

The Indigenous Estate

Contemporary Indigenous land ownership is now often referred to as the Indigenous Estate.³⁴ Given the diversity of Indigenous rights and interests in land the Indigenous Estate is not a homogenous set of landholdings.³⁵ The diversity of rights and interests that exists today on the Indigenous Estate flows from diverse systems of Indigenous land ownership; colonial processes of removal, protection, dispossession, assimilation and development; and post-colonial processes of returning land to Indigenous people and of Indigenous people returning to land.³⁶ AIATSIS submits that alignment of Indigenous land management with western legal obligations is required to facilitate and achieve a meaningful recognition space that is supported by Indigenous owners, policy makers, legislators and the judiciary.³⁷ Accommodating Indigenous law obligations including important obligations towards the environment³⁸ and thereby ameliorating the ongoing extinction of threatened species is an effective Indigenous led strategy to address Australia's faunal extinction crisis.

Enhancing Indigenous engagement in threatened species

Indigenous scholars have reflected that western thinking environmentalists tend to think of the land in terms of protectionism and conservation (no resource extraction and limited or regulated use of the land) while Indigenous peoples look to the land in terms of engaging with it by upholding relationships and responsibilities (hunting, gathering foods and medicines, and engaging in ceremony with the land). Despite these differences, Western environmentalism and Indigenous environmentalism can work together and utilise ideologies from both systems of thought as a "two-worlds" approach: protect and conserve the land for activities that espouse (Indigenous) respectful, reciprocal engagement in relationship with it.³⁹

The native title sector is now well established in Australia, which has, despite its limitations, seen a maturing of the authorising environment for decision making on Indigenous lands. Native title jurisprudence imports the ontological and epistemological perspectives of Indigenous political communities. The judgments of the Federal Court of Australia often set

³³ 'There is no set definition for Indigenous knowledge although it has been reflected in international instruments as a form of intangible cultural heritage, in intellectual property law as Indigenous Cultural and Intellectual Property (ICIP) and in native title as a system of laws and customs. Accordingly, there are multiple regimes of recognition in place that have multiple definitions of Indigenous knowledge (or heritage).' Tran, T. and Barcham, C. [\(Re\)defining Indigenous Intangible Cultural Heritage](#), AIATSIS Research Discussion Paper No. 37, 2018

³⁴ Lane, P. (2005). Chapter 25, in Butt, P. (Eds.), *Land Law* (5th edition); Sydney: Thomson Lawbook Co. (Thomson Reuters).

³⁵ Chapter 1 Aboriginal and Torres Strait Islander Social Justice Report (2005) <https://www.humanrights.gov.au/publications/social-justice-report-2005> accessed 2 July 2018

³⁶ 'The Indigenous estate has been formed through five key mechanisms: (1) Creation of Aboriginal reserves in the protectionist era (2) Land rights legislation passed since the 1960s (3) Other land legislation which allows for transfers or leasing to Indigenous groups (4) land acquisition programs since the late 1960s and (5) Native title processes' Altman, J.C.; Buchanan G.J.; Larsen, L. (CAEPR Discussion Paper No.286/2007) p5

³⁷ See Recognition and the Property Law Focus in Mantziaris, C and Martin D *Native title corporations: a legal and anthropological analysis* (Federation Press, Sydney, 1999) pp7-43

³⁸ O'Faircheallaigh, Ciaran. Chapter 18: 'Evaluating agreements between Indigenous Peoples and resource developers' in Langton, M; Palmer, Lisa; Tehan, Maureen; Shain, Kathryn. [Honour Among Nations?: Treaties and Agreements with Indigenous People](#) (Melbourne University Press, Carlton, 2004 pp303-328)

³⁹ Kapyrka, J., Dockstator, M. *Indigenous Knowledges and Western Knowledges in Environmental Education: Acknowledging the Tensions for the Benefits of a "Two-Worlds" Approach* Canadian Journal of Environmental Education, Issue 17 (2012) 97, p103

out in great detail Indigenous worldviews and belief systems as part of the recognition of Indigenous law and native title that followed the *Mabo*⁴⁰ decision.

In *Western Bundjalung People v Attorney General for New South Wales* [2017] FCA 992 at [1] her Honour Justice Jagot states:

First and foremost today is a day of celebration for the Western Bundjalung People. Today, by force of the making of orders of this Court, the law of Australia formally recognises what has always been the case under the traditional laws and customs of the Western Bundjalung People, that the land they claimed in this Northern Rivers area of New South Wales is the land of the Western Bundjalung People, that the Western Bundjalung People have rights and interests in that land possessed under their traditional laws and customs, and by which they have a connection to this land.

Her Honour goes on to address the evidence of the native title applicants:

Lindsay Gordon was born on the Clarence River in the claim area in 1939. He had nine siblings most of whom were also born on the Clarence River. His grandparents are both apical ancestors of the claim group. They moved to Baryulgil when he was five or six. He still returns to Baryulgil for holidays. He was taught hunting by his father and hunted porcupine, goanna, turtles and kangaroo, as well as bush turkey, wild pigeons, parrots and *djulawong* (like a small magpie). His elders taught him about the land, vegetation and seasons, and bush remedies. He was taught where his father's land was for which his father was responsible, his father having gone through the fifth and final stage of initiation. He was taught what places he could go and not go, places for men and women, and sacred places. He was taught who the Western Bundjalung people were and how they kept to their place and about their neighbours including the Githabul. He was taught who to marry and not. He was taught about ceremonies and spiritual activities which he would not reveal. He was taught his totem which could not be touched when hunting but would say no more.⁴¹

In this and many other judgements of the Federal Court of Australia in native title matters: Indigenous ontologies and epistemologies encompassing ancient systems of environmental and ecological management are received as part of the developing common law of native title in Australia: and this now forms part of our shared knowledge base.

As Justice Bromberg states in the *Yi Manawatu Ngurrara* native title determination⁴²:

Ngurrara people identify themselves and their forebears as *Jiwaliny*, *Mangala*, *Manyjilyjarra*, *Walmajarri*, and *Wangkajungka*. These are also language groupings, although they are not marked by fixed boundaries. Ngurrara people may identify with more than one language group, depending on their connection to particular *ngurrara* and to particular ancestors. Ngurrara cultural identity is defined in part by acknowledgement of the laws and customs of the *jila-kalpurtu* rainmaking ritual. Through a commonly observed and acknowledged system of traditional laws and customs, the Ngurrara identify as *jila piyirn* (*jila* people), who are descended from known ancestors who were also *jila piyirn*. All *jila piyirn* will have

⁴⁰ *Mabo and ors v State of Queensland* (1992) 175 CLR 1

⁴¹ *Western Bundjalung People v Attorney General for New South Wales* [2017] FCA 992 at [29]

⁴² *Forrest on behalf of the Ngurrara People v State of Western Australia* [2018] FCA 289

their own *ngurrara* areas, in respect of which they will hold, and be recognised as holding, particular rights and interests under traditional laws and customs.

It is not possible in these reasons to do more than summarise some of the important traditions of Ngurrara people, as described in the joint submissions, the evidence of the claim group members quoted in those submissions and Dr Vachon's work. Describing them in a summary form is not intended to diminish their complexity or importance.⁴³

The Indigenous Estate encompasses the recognised land and sea base of Aboriginal and Torres Strait Islander peoples and this has provided the infrastructure for increasing Indigenous land and sea management: arguably one of the most successful Indigenous policy programs to date, contributing to wellbeing, employment and education, environmental management priorities and providing the 'best fit' for Indigenous aspirations to manage country within a cultural framework.

As Strelein, Tran and Barcham have stated:

RNTBCs have been very successful in asserting and implementing their land management aspirations via programs such as Indigenous Protected Areas and ranger employment programs. Indigenous ecological knowledge and Indigenous knowledges more broadly, have gained currency as an essential key to the management of Australian landscapes.⁴⁴

Indigenous Knowledges and Threatened Species Conservation

Currently, academics and practitioners are rethinking their disciplines and knowledge traditions in response to environmental devastation, to consider why we are not better able to value and respond to our ecological relationships. The wider significance of this work is to consider how we should live in this time of global climate change and widespread environmental destruction. In Australia, this intellectual rethink is informed by Indigenous peoples' knowledge about country. Indigenous people have knowledge systems and concepts, territories, cultures and customary activities centred on living with country.⁴⁵

In recognition of the valuable ecological knowledge that Indigenous people and groups can bring to the management of threatened species, the Threatened Species Recovery Hub at the Australian National University (TSR Hub) established an Indigenous Reference Group (IRG) in mid-2017. The IRG provides advice and guidance to the Hub's leadership group and project teams to help ensure that Hub projects are delivering research that aligns with Indigenous needs. The IRG also ensures that research outputs are culturally appropriate for Indigenous end-users and stakeholders. This is an important initiative because most of Australia's threatened species overlaps with the Indigenous Estate; and many threatened species occur on Indigenous lands and waters. In addition, Indigenous people have deep cultural and spiritual obligations towards their land and waters and fauna. This makes engagement with Indigenous people vital to the conservation of many threatened species.

⁴³ Ibid. at [38] to [39]

⁴⁴ Strelein, L. Tran, T., Barcham, C. 'AIATSIS Submission: Closing the Gap Refresh Public Discussion Paper' (2018) p5 https://closingthegaprefresh.pmc.gov.au/sites/default/files/submissions/aiatsis_ctg_refresh_submission_-_final_publish.pdf p13

⁴⁵ Weir, J. *Country native title and ecology* (Aboriginal History Monograph 24, ANU, Canberra 2012) available at: <http://press-files.anu.edu.au/downloads/press/p175041/pdf/book.pdf?referer=152>; 1

As Jessica Weir has stated: '[T]raditional indigenous skills in land and fire management could be augmented by a role in threatened species management and exotic flora and water control to create a natural resource management economy that would be an integral part of the multiplex economy of remote Australia'. With much potential for Indigenous engagement in these fields, it is necessary to canvass the factors that coalesce to produce the structural and governance changes associated with market environmentalism.⁴⁶

Indigenous people and communities are already achieving positive biodiversity outcomes, often without recognition.⁴⁷ Three quarters of Australia's 272 terrestrial or freshwater vertebrate species listed as threatened under national legislation overlap Indigenous lands. On average this overlap represents 45% of the range of each threatened species while Indigenous land is 52% of the country.⁴⁸

The TSR Hub at the Australian National University is currently undertaking or developing collaborations with Aboriginal political communities across Australia including: Arakwal, Olkola, Martu, Tiwi, Larrakia, Ngannawal, Kakadu and Wreck Bay people and other groups. Partnerships cover a wide variety of threatened species from shorebirds to parrots, and bilbies and other mammals to orchids. Most of these are local collaborations with an overarching look at the ways to increase and formalise Indigenous involvement in threatened species management. The projects will develop a cross-cultural approach to plan, deliver and monitor on-ground threatened species recovery activities. They will also produce a framework for a national Indigenous people's threatened species strategy. As the case study projects develop, the teams are also identifying barriers to Indigenous participation in threatened species research and conservation activity, and ways to overcome them. Another outcome will be a more detailed understanding of the range of views that Indigenous peoples hold towards threatened species.⁴⁹

AIATSIS submits that enhanced engagement with Indigenous peoples helps to provide formal recognition of the work these groups are doing. It also provides opportunities for these groups to participate in broader planning and discussions about threatened species conservation with researchers, government agencies and other conservation groups. This is of benefit to Indigenous groups who can have a greater say in the management of species of significance to them, and also to non-Indigenous groups, who benefit from their knowledge and experience.

It is vital that the Australian Parliament and the Executive via its Departments and Agencies engages and collaborates with traditional owner groups and researchers to ensure that traditional owners are resourced to manage and undertake threatened species conservation programs as part of an emerging environmental service delivery economy. It is imperative that Aboriginal and Torres Strait Islander groups are at the forefront of positive engagement to appropriately navigate the complexity of Indigenous policy including inconsistencies and

⁴⁶ Weir, J. *Country native title and ecology* (Aboriginal History Monograph 24, ANU, Canberra 2012) p117 citing Gerritsen, R. (2007). *A case for Indigenous employment in NRM*. In M. Luckert; B. Campbell; J. Gorman & S. Garnett (eds.), *Investing in Indigenous Natural Resource Management*. Darwin: CDU Press., 2007: 79, 81-82 available at: <http://press-files.anu.edu.au/downloads/press/p175041/pdf/book.pdf?referer=152> citing Gerritsen, R. 2007: 79, 81-82

⁴⁷ Garnett, ST and CZ Woinarski 2007, 'A case for Indigenous threatened species management', in *Investing in Indigenous Natural Resource Management*, MK Luckert, BM Campbell, JT Gorman and ST Garnett (eds), Charles Darwin University Press, Darwin: 227-259.

⁴⁸ Renwick AR, Robinson CJ, Garnett ST, Leiper I, Possingham HP, Cawardine J (2017) *Mapping Indigenous land management for threatened species conservation: An Australian case-study*. PLoS ONE 12(3): e0173876

⁴⁹ [Science for Saving Species, Issue Number 7, Autumn 2018](#) pp14-15

conflicts that have been generated by poor historical policy design⁵⁰. In environmental and land management it is important that Indigenous landowners and custodians are resourced efficiently to meet their obligations and are engaged with meaningfully and in a culturally appropriate manner from the beginning, in terms of the design of the policy initiative and the design of the evaluation of land and sea management programs that take place on their traditional lands and waters.

The Indigenous Estate, native title and ecology

Returning traditional lands and waters to Indigenous groups often comes with positive land and environmental obligations.⁵¹ Therefore, within the broader moves to encapsulate Indigenous peoples' relationships with country within an agreement framework, 'ecology' as it manifests in various levels will be the subject of agreement either explicitly, as for example in co-management terms for identified areas of land and waters, or more diffusely as part of a general stewardship accorded to native title holders.⁵²

Agreement-making, native title and Indigenous environmental governance are firmly enmeshed in structural changes that are being promoted for Indigenous communities which hinge upon economic development discourses. These discourses emphasise local Indigenous community capacity and the need to provide sustainable, economic opportunities.⁵³ Integral to the multiple intersecting dimensions of native title, ecology and agreement-making are the economic opportunities provided by agreements in emerging areas of environmental 'service' provision⁵⁴. In the North West Kimberley, and throughout Australia, many traditional owner groups undertake the environmental and ecological management of their estate and manage a fee for service environmental management program in addition to their conservation responsibilities.

Ngurrara Country

In the traditional country of the Ngurrara peoples described by Europeans as the West Kimberley and Great Sandy Desert region, the Yanunijarra Aboriginal Corporation was established to manage the Ngurrara people's approximately 77,595 square kilometres of exclusive possession native title lands. Once the Ngurrara native title claims are resolved, the Yanunijarra Aboriginal Corporation (YAC) will manage an estate of close to 100,000 square kilometres.

In 2017 the YAC was one of 13 Aboriginal organisations to successfully receive funding as part of the WA state government's five-year Aboriginal Ranger Program. Yanunijarra Aboriginal Corporation (YAC) currently employs and manages a team of 12 rangers, as well as a Women's Ranger Coordinator, Men's Ranger Coordinator and a Ngurrara Country Manager.

YAC rangers implement a blend of both Western and traditional conservation and land management techniques to maintain the health of Ngurrara country. This includes the

⁵⁰ T Tran & Stacey, C 2016 'Wearing two hats: The conflicting governance roles of native title corporations and community/shire councils in remote Aboriginal and Torres Strait Islander communities', *Land, Rights, Laws: Issues of Native Title*, vol. 6, no. 4 AIATSIS Research Publications, Canberra 2016.

⁵¹ Weir, J. *Country native title and ecology* (Aboriginal History Monograph 24, ANU, Canberra 2012) available at: <http://press-files.anu.edu.au/downloads/press/p175041/pdf/book.pdf?referer=152>

⁵² Godden, Lee *Native title and ecology* (ANU Press, Canberra) p113: available at: <http://press-files.anu.edu.au/downloads/press/p175041/pdf/ch06.pdf>

⁵³ *Ibid*, p115

⁵⁴ *Ibid*, p116

effective management of the Warlu Jilajaa Jumu Indigenous Protected Area (IPA). The Warlu Jilajaa Jumu Indigenous Protected Area was declared in 2007 and is cared for by its traditional owners the Ngurrara People. It covers 1.6 million hectares of arid scrub and desert wetlands in the north west of Western Australia's Great Sandy Desert. The YAC ranger work includes fire management, feral camel and pig management and maintenance of significant cultural sites.

YAC's CEO Peter Murray says he welcomes [the] funding for the opportunity it provides to work with Ngurrara's Karajarri neighbours on an area of special cultural and conservation significance. "The area we're talking about is home to the federally vulnerable bilby and it's one of three refugia that are free of foxes and rabbits. It also borders the Paraku IPA, where the elusive and critically endangered night parrot was recently spotted. This will have a bearing on our fire management of the area," Mr Murray says.

A key concern of the project is to reduce late season wildfires which can cause devastation to country. This will be done through controlled burns, where Ngurrara rangers will travel by foot, car, helicopter and plane, to ensure the protection of cultural sites, threatened species and ecological communities.⁵⁵

YAC rangers also offer fee-for-service work in the following areas: rehabilitation of country, tourism, plant and animal surveys, feral animal control and contracting. The Yanunijarra Rangers Cultural Awareness handbook⁵⁶ sets out the important work that rangers undertake on their Warlu Jilajaa Jumu IPA, which was declared in 2007.

Our Warlu Jilajaa Jumu Indigenous Protected Area is managed by Traditional Owners, with the Ngurrara rangers carrying out important maintenance work. YAC rangers ensure that all of their work 'combines modern scientific land and water management techniques, with traditional knowledge.' A key part of their land management practice, is looking after their 'jila' (springs), 'jumu' (soaks) and other freshwater places. Water is important to everyone, but it's especially important in the desert. YAC rangers also practise 'right way' fire, which means undertaking prescribed and culturally appropriate burns to protect biodiversity.⁵⁷

Ngurrara rangers manage wells and also the 1850km Canning Stock Route that runs from Halls Creek in the Kimberley to Wiluna in the mid-west. Their traditional knowledge ecological management system brings together Indigenous Knowledges and western science to achieve better outcomes for threatened species management with respect to the bilby. The Ngurrara people's management of their estate is replicated across the continent by many traditional owner groups who make caring for country a priority and are contributing to great success in terms of threatened species management and the eradication of pest, weeds and feral animals.

Martu People

Martu People, who are the traditional owners of a large part of central Western Australia which extends from what Europeans describe as the Great Sandy Desert in the north, to around Wiluna in the south, share country in certain areas with Ngurrara people and

⁵⁵ <http://www.yanunijarra.com/news> accessed 15 July 2018

⁵⁶ Available at: <http://www.yanunijarra.com>: accessed 15 July 2018

⁵⁷ Yanunijarra Rangers Cultural Awareness handbook Available at: <http://www.yanunijarra.com>: accessed 15 July 2018

exercise shared responsibility for those areas. The Martu and Ngurrara Peoples were some of the last of Australia's Indigenous people to make contact with European Australians with many migrating from their desert lands into neighbouring pastoral stations and missions in the 1950s and 1960s.⁵⁸ Martu People's country is a part of the most intact arid ecosystem anywhere on Earth.⁵⁹ In Martu Country, native fauna and flora are largely intact and include 19 animal and 16 plant species of international, national or state significance. Martu Country is 'alive' with thousands of cultural sites (many of them water sources), songlines, stories, ceremonies, history and tangible materials such as occupation sites, objects and artefacts.⁶⁰

Martu lands have significant conservation values globally, nationally and locally. Martu lands provide one of the last wild havens for some of Australia's iconic but highly threatened desert species, including the bilby, marsupial mole and the great desert skink. Ongoing land management by the Martu people, especially via the maintenance of traditional hunting and fire-burning practices, and the fact that the determination is over unallocated Crown land which has generally not been impacted by other land uses, such as pastoral activities, means that habitat quality is exceptionally high compared with other Australian arid lands.

Caring for country via ranger programs has seen a significant improvement in wellbeing for Martu People. The most significant outcomes for Martu were: reinforcement of traditional authority structures; maintaining connection to country; and spending less time in jail. The Australian and Western Australian Governments, private investors, and not-for-profit organisations operating in Martu communities have also benefited from the programs through the ability to achieve their social, economic and cultural objectives, potential government cost savings (particularly in the justice system and employment services), and tax revenue increases. The value of these outcomes has been modelled using financial proxies and other judgements including deadweight (what would have happened anyway), attribution (who else contributed to the change) and duration (how long does the change last for) to calculate the unique value created by the investment.⁶¹

The social value associated with the outcomes was estimated to be \$55m for FY10-14 (\$11m per annum). Two-thirds of value accrued to Martu (\$39m or 68%), including \$17m (or 29%) was attributed directly to KJ rangers. The social value generated was approximately \$48k for each ranger and \$24k for each Martu community member over the five year period. The Western Australian (WA) and Australian Governments collectively accrued almost a quarter of the value created (\$13m or 23%). The WA Government benefited significantly from a reduction in the number of Martu in jail (estimated \$3.7m) – through community orders or reduced sentences – and a reduction in alcohol related crime (estimated \$4.2m). The remainder of the valued generated accrued to other stakeholders (\$5m or 9%).⁶²

AIATSIS submits that when Indigenous people have control over their lands and their lives they are the most effective managers of their estate and provide positive benefits to the community. Control over their lands and waters and futures significantly improves the wellbeing of the community and the health of the environment.

⁵⁸ *James on behalf of the Martu People v State of Western Australia* [2002] FCA 1208; per French J

⁵⁹ Kanyirninpa Jukurrpa Martu Cultural Knowledge project <http://www.kj.org.au/martucountry/> accessed 24 July 2018

⁶⁰ Ibid.

⁶¹ Kanyirninpa Jukurrpa Martu Cultural Knowledge project www.kj.org.au accessed 24 July 2018

⁶² Ibid.

If the Australian Parliament is sincere about arresting Australia's faunal extinction crisis it is imperative that Indigenous people are empowered to reverse a trend of environmental destruction that accompanied colonisation and continues to the present day. Aboriginal political communities must be allowed to lead and design projects with research partners so that the benefits of Traditional Ecological Knowledge (TEK) and western environmental techniques are fully realised as part of our shared knowledge base.⁶³

Indigenous Protected Areas

Indigenous Protected Areas (IPAs) are areas of land and sea country owned and managed by Indigenous groups on a voluntary basis as a protected area for biodiversity conservation through an agreement with the Australian Government. Indigenous Protected Areas emerged from the Australian Government's 1992 commitment to establish a system of protected areas that is comprehensive, adequate and representative of all the terrestrial bioregions of Australia.⁶⁴

The IPA program was established in the mid-1990s within the Commonwealth government department responsible for the environment at the time, as a way of providing financial assistance and advice to Indigenous people to enable them to look after their traditional land and sea country.⁶⁵ IPAs are: entered voluntarily; Indigenous controlled; dedicated by traditional owners; based on Indigenous values, commitment and acknowledged management capacity; and independent of national, state or territory conservation legislation. IPAs are included as a part of the National Reserve System (NRS). Management plans, a requirement for the declaration of an IPA, must recognise the unique interests of traditional owners in the area, while also meeting national and international standards for protected area management.⁶⁶ As at 1 January 2017 there are 75 declared IPAs covering over 67,312,453 hectares forming more than 44.6% of the National Reserve System.⁶⁷

Mandingalbay Yidinji Indigenous Protected Area

Mandingalbay Yidinji Country lies just east of what Europeans describe as Cairns in North Queensland. Much of it has been divided into protected areas managed by multiple government agencies. An IPA management plan is in place that provides for the recognition of Mandingalbay Yidinji cultural rights, interests and values across all tenures within the IPA.⁶⁸ Some of the innovative features of this IPA include:

- Its establishment over multiple tenures based on traditional Aboriginal estates.
- The IPA incorporates existing government protected areas.

⁶³ Kingsford, R.T and Thomas, R.F *Destruction of wetlands and waterbird populations by dams and irrigation on the Murrumbidgee river in arid Australia (2004) Journal of Environmental Management, Volume 4, Issue 3. See also Australian Law Reform Commission Report 31 Recognition of Aboriginal Customary Law: Chapter 3: the impacts of settlement: available at: <https://www.alrc.gov.au/publications/report-31>*

⁶⁴ Smyth, D. Jaireth, H. 'Shared governance of protected areas and recent developments' *National Environmental Law Review Issue 2, 2012* p60

⁶⁵ Bauman, T., Haynes, C. and Lauder, G. 'Pathways to the co-management of protected areas and native title in Australia' (AIATSIS Research Discussion Paper, Number 32, May 2013, Canberra) p17

⁶⁶ Bauman, T., Haynes, C. and Lauder, G. 'Pathways to the co-management of protected areas and native title in Australia' (AIATSIS Research Discussion Paper, Number 32, May 2013, Canberra) p18

⁶⁷ Department of Prime Minister and Cabinet [Indigenous Protected Areas](#), accessed 1 August 2018; [National Native Title Tribunal](#) Geospatial data on Indigenous estates, prepared 17 July 2018, accessed 1 July 2018; National Native Title Tribunal Indigenous Protected Areas as at January 2017 [Map](#), accessed 1 August 2018;

http://www.nntt.gov.au/Maps/Indigenous_Estates_and_Determinations_A1L.pdf; see also Indigenous Protected Areas map as at January 2017, accessed 1 August 2018 https://www.pmc.gov.au/sites/default/files/files/ia/IEB/ipa_national_map.pdf

⁶⁸ <http://www.djunbunji.com.au/indigenous-protected-area/> See also *Mundraby on behalf of the Combined Mandingalbay Yidinji-Gungandji People v State of Queensland [2012] FCA 1039* –consent determination of native title

- The IPA recognises the traditional owner group's connection and responsibility to country.
- Management and planning is led by traditional owners.

Mandingalbay Yidinji peoples in exercising control over their country are demonstrating the success of Indigenous research methodologies and ecological management techniques.

Tom Calma has written:

The challenge I issue to Indigenous people is not to sit back and wait for government to come up with solutions to the issues you face. Take control of these processes.⁶⁹

AIATSIS further submits that having control over country is an important part of wellbeing for Mandingalbay Yidinji people and indeed all Indigenous political communities of native title holders and traditional owners who manage the Indigenous Estate. 'There must be a return to a vision that is based upon self-determination as Indigenous people see it. It cannot be dictated from the top down. It needs to be facilitated and nurtured from community.'⁷⁰

Bardi Jawi IPA

Bardi Jawi country is bounded by sea on the eastern, northern and western sides of what Europeans have described as the Dampier Peninsula, with the southern boundary about 160kms north from Broome in North Western Australia.⁷¹ Bardi Jawi people's country includes sea country. The main communities on Bardi country are Djarindjin, Lombadina and Ardyaloon (One Arm Point). Bardi and Jawi are two distinct groups of people. Bardi and Jawi people share and practise the same law. Nyul Nyul people's country is in the Beagle Bay area to the south of Bardi country.⁷²

The 95,000 hectare Bardi Jawi Indigenous Protected Area is surrounded by sea on three sides. Caring for their country since 2006, the Bardi Jawi rangers have won national awards for their efforts in protecting odorr (dugongs) and goorlil (turtles). In 2012, Bardi Jawi delegates went to the United Arab Emirates where they helped their peers develop dugong tagging techniques. Bardi Jawi community rangers have undertaken weed and feral animal control, seagrass monitoring, wildlife surveys and fire management surveys.⁷³

The Bardi Jawi Indigenous Protected Area includes eucalyptus forests, grasslands, mangroves, tidal mudflats and permanent and ephemeral wetlands. The area provides sanctuary for many species including the endangered Gouldian finch and bush stone curlew. Migratory birds include eastern curlews, oriental cuckoos and yellow wagtails.

In 2011, parts of Bardi Jawi were registered on the national heritage list. The reasons behind the listing include the historic usage of *galwa* (double log raft) for transport and *guwarn* (pearl shell) for trading. Like all of Australia's Indigenous Protected Areas, Bardi Jawi is part of the National Reserve System. Formally dedicated in May 2013, Bardi Jawi will be managed under the *International Union for Conservation of Nature (IUCN) Category IV*,

⁶⁹ Calma, Tom 'From Rhetoric to Reconciliation' in *Indigenous Australians, Social Justice and Legal Reform* (Editors Hossein, E., Worby, G., Tur, S. (Federation Press, Sydney 2016.) p147

⁷⁰ Behrendt, Larissa 'Power from the People' in *Indigenous Australians, Social Justice and Legal Reform* (Editors Hossein, E., Worby, G., Tur, S. (Federation Press, Sydney 2016.) p98

⁷¹ *Sampi v State of Western Australia (No 3)* [2005] FCA 1716 at [5] - [6] French J

⁷² [Bardi Jawi Indigenous Protected Area Management Plan](#) p3

⁷³ Ibid.

as a habitat and species management area and Category VI, as a protected area with sustainable use of natural resources.⁷⁴

Since the late 1970's, Bardi Jawi people have taken part in managing their natural assets and resources. In 1976 the Swan Island (Gardiny) Nature Reserve was gazetted as a nesting place for the lesser frigate bird. The West Australian Marine Turtle Project (WAMTP) concentrated on collecting information and tagging nesting turtles from key rookery sites within the state. Robert Prince led the efforts of the WAMTP and worked closely with Bardi Jawi people for over a decade, from the late 1980's to the late 1990's, taking interested community members for weeks at a time to the Lacepede Islands and other known turtle nesting rookeries in the Kimberley.⁷⁵

Conclusion

This submission only draws attention to a small number of the land and sea management programs and initiatives that traditional owner groups and native title corporations are undertaking to address Australia's faunal extinction crisis.⁷⁶ A comprehensive review of the number of programs being managed by native title corporations and traditional owner groups will take place over time by the Australian National University's Threatened Species Hub.

The exponential growth in Indigenous engagement in protected area management and other forms of community conservation results from government policy responses to pressure. It follows from Indigenous peoples reasserting their rights and responsibilities to culture and country, enabling the forging of a new economic niche within contemporary Australian society as managers of Australian environments —something their ancestors and cultures had done for millennia.⁷⁷

Today Indigenous landowners are able to pursue sustainable development opportunities on their land including ecotourism activities⁷⁸ and to use natural and cultural resources.⁷⁹ Some landowners are also pursuing carbon credit trading opportunities under the Carbon Farming Initiative⁸⁰. In recent years Indigenous ranger groups have reported significant improvements in wellbeing; particularly with respect to conservation and management of threatened species programs.⁸¹ These findings indicate that *Caring for Country* initiatives make a significant contribution to closing the gap between Indigenous and non-Indigenous populations with respect to social indicators *and* make significant improvements to environmental management of the national reserve system and conservation estate.⁸²

⁷⁴ See the [Bardi Jawi Indigenous Protected Area Management Plan](#) accessed 15 May 2018, see also [Commonwealth Department of Environment IPA](#), <https://www.environment.gov.au/indigenous/ipa/declared/bardijawi.html> page accessed 12 July 2018

⁷⁵ *Ibid.*

⁷⁶ For a list of programs see: <https://www.pmc.gov.au/indigenous-affairs/environment/indigenous-land-and-sea-management-projects>; accessed 22 July 2018

⁷⁷ Smyth, D. Jaireth, H. 'Shared governance of protected areas and recent developments' *National Environmental Law Review Issue 2*, 2012 p62

⁷⁸ Langton, M. *Welcome To Country: A Travel Guide to Indigenous Australia* (Hardie Grant Press 2018)

⁷⁹ *Akiba v Commonwealth of Australia* [2013] HCA 33; 250 CLR 209

⁸⁰ Gerrard, E. Maclean, K., May, T., Robinson, C.J. *Australia's Indigenous Carbon Economy: A snapshot (2014)* *Geographical Research* 52(2)

⁸¹ Larson, S., Stoeckl, N., Jarvis, D., Addison, J., Prior, S., Esparon, M. 'Using Measures of wellbeing for impact evaluation: Proof of concept developed with an Indigenous community undertaking land management programs in northern Australia,' (2018) Royal Swedish Academy of Sciences 2018, published online: <https://doi.org/10.1007/s13280-018-1058-3>

⁸² Smyth, D. Jaireth, H. 'Shared governance of protected areas and recent developments' *National Environmental Law Review Issue 2*, 2012 p57

AIATSIS submits that if we accept that Indigenous peoples have agency then we must also accept that Indigenous peoples can make good natural resource management decisions about their landscapes. Current Indigenous management regimes can best be described as contemporary with a mix of western science and Indigenous local knowledge.⁸³ The ability to care for country and return it to good ecological health also has a resulting benefit in terms of increased wellbeing and sustainable economic development that improves the lives of Aboriginal political communities.

We cannot return to the way landscapes were prior to European arrival. Rather we need to effect a good management technique that amalgamates western scientific and local Indigenous Knowledges⁸⁴. Indigenous Knowledges are diverse and differentiated. Undertaking scientific research on the Indigenous Estate means that for ecologists there must now be a requirement to facilitate understanding and transference between western scientific knowledge and Indigenous knowledges.⁸⁵

As Smith and Hinkson have stated: 'The day to day reality for Indigenous communities residing on the Indigenous Estate is one of interculturality⁸⁶ whereby Indigenous people, to varying degrees influenced by colonial history, abide by both western and customary cultural value systems and hold aspirations that comprise aspects of both.'⁸⁷ As the Indigenous Estate grows ever larger, Indigenous Peoples are becoming increasingly involved with threatened species recovery on their land and sea country. Many Indigenous people have been greatly distressed by the loss of small mammals that were abundant just a few decades ago given their interconnectedness to their lands and waters, seas, animals, stars and sky country.

Species of animals and plants are siblings or close relatives of human communities among many Indigenous peoples and thus must be treated respectfully as they too have rights and needs.⁸⁸ Threatened species conservation management is an essential part of wellbeing for Indigenous communities and individuals.⁸⁹

As Janet Oobagooma puts it:

Baree' means where your spirit got up and jumped on your father's shoulder. That is where your Woongudd is from. You get up with a name and call that name to your father. My name is that country, that Woongudd area. That is baree. And the baby might have a scar here the father speared it or stoned it. That leaves a mark so that we can see where it came from. 'What was she?' they ask; and then they say: 'Oh she was a snake or mullet or something like that'. They know from the mark what

⁸³Wohling, Marc 'The problem of scale in Indigenous Knowledge: a Perspective from Northern Australia' *Ecology and Society* (14(1)) (2009) www.ecologyandsociety.org/vol14/iss/art1 p11

⁸⁴Altman, J., Whitehead, P. 'Caring for country and sustainable Indigenous development: opportunities, constraints and innovation (CAEPR working paper no 20/2003)

⁸⁵Wohling, Marc 'The problem of scale in Indigenous Knowledge: a Perspective from Northern Australia' *Ecology and Society* (14(1)) (2009) www.ecologyandsociety.org/vol14/iss/art1 p13

⁸⁶ Hinkson, M and Smith, B. 'Introduction: Conceptual Moves towards Intercultural analysis' *Oceania, volume 75 (3) (2005)*

⁸⁷Altman, J, Buchanan, G and Larsen, L (2007) '*The Environmental Significance of the Indigenous Estate: Natural Resource Management as Economic Development in Remote Australia.*' CAEPR Discussion Paper No. 286/2007. (Centre for Aboriginal Economic Policy Research, ANU: Canberra.) p15

⁸⁸ Kapyrka, J., Dockstator, M. *Indigenous Knowledges and Western Knowledges in Environmental Education: Acknowledging the Tensions for the Benefits of a "Two-Worlds" Approach* Canadian Journal of Environmental Education, Issue 17 (2012) 97, p101

⁸⁹ Kingsley, J., Townsend, M., Henderson-Wilson, C., Bolam, B. Developing an Exploratory Framework Linking Australian Aboriginal Peoples' Connection to Country and Concepts of Wellbeing Int. J. Environ. Res. Public Health 2013, 10, 678, p698: available at: <http://dro.deakin.edu.au/eserv/DU:30058738/kingsley-developingan-2013.pdf>

they were and where they came from. There are lots of baby spirits that come from the same area; the sea bed, ocean, creek, land, river and waterholes. It could be another man's country or Wunambal country, even in the desert. It depends on where the father is travelling when that baby spirit sees him. The baby spirit might look at him a couple of times and then he says: 'Oh I like this man. I want him to be my father'. The baby spirit could turn into a lizard or a turkey or a kangaroo, even a snake.⁹⁰

AIATSIS submits that native title corporations; Indigenous ranger groups and traditional owner groups who manage the Indigenous Estate and land and sea environmental management programs are seizing the opportunities provided by threatened species management and a new environmental management and service delivery economy to bring country back to life.⁹¹ Acknowledging and recognising the value of Indigenous Knowledges and the appropriateness of localised Aboriginal political communities who have known country since time began must now be a priority for the Australian Government and State and Territory Governments in terms of urgently addressing Australia's faunal extinction crisis.

AIATSIS supports the inquiry into faunal extinction that includes consultation with Aboriginal and Torres Strait Islander stakeholder groups. Resourcing Aboriginal political communities who know the environment intimately are in place and on country to undertake ecological management and who recognise the power and effectiveness of Indigenous Knowledges will redress the destruction of the environment that has taken place to date and immediately address Australia's faunal extinction crisis. Recognising Indigenous Knowledges and the value of Aboriginal political communities who have been on country since time began will enable healing to take place within Aboriginal political communities and restore the health of the environment. It will also simultaneously promote the protection of all sentient beings in accordance with Indigenous ontologies and epistemologies on Indigenous terms.

⁹⁰ Janet Oobagooma in 'Dambeemangaddee Country, Culture and People: Our Country is where our ancestors come from' in Blundell, V., Doohan, K., Vachon, D., Allbrook, M., Jebb, Mary Anne and Bornman, J. *Barddabardda Wodjenangorddee: We're Telling all of you: The Creation, History and People of Dambeemangaddee Country* : compiled and written in collaboration with Dambeemangaddee People: published by Dambimangari Aboriginal Corporation, Derby, WA, 2017) p48

⁹¹ [Science for Saving Species, Issue Number 7, Autumn 2018](#) p3