



Yamatji Marlpa

ABORIGINAL CORPORATION

National Native Title Conference 2017 *Speaker:* Simon Hawkins CEO

Summary

Section 1 introduces Yamatji Marlpa Aboriginal Corporation (YMAC) and lists 10 opportunities for reform that YMAC has identified to advance positive change for Aboriginal people. The remaining sections provide contextual information and examples to support the reform priorities.

Section 2 and 3 describes YMAC's partnership with the Martu people in a corporate services model to address the challenges of post native title determination autonomy.

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1. About YMAC

Yamatji Marlpa Aboriginal Corporation (YMAC) is the Native Title representative body (NTRB) for the Pilbara, Murchison and Gascoyne regions of Western Australia, an area covering over one million square kilometres. YMAC currently represents over 20 native title claims. In 2014, it celebrated our 20th anniversary. YMAC is recognised as an advocate and subject matter expert on Aboriginal Affairs, Aboriginal Heritage and Native Title. It has achieved nine successful native title determinations for stakeholders and continues to work with them to document their legacy for future generations.

YMAC was at the centre of WA's iron ore mining boom. Our work was heavily influenced by the external pressures from industry to negotiate Indigenous Land Use Agreement (ILUA's) with Traditional Owners. Concurrently, YMAC managed the native title claim process and the urgency to get Connection Research completed to allow for determinations to progress through the court system. At the height of the mining boom, YMAC achieved the following between 2007 and 2013:

- Facilitated 1,571 agreements
- Submitted to the federal court over 18 connection, supplementary and expert reports
- Held 1,669 (376 meetings in the 2008-2009 financial year).
- Took part in 1,250 heritage surveys, and
- Three positive native title determinations between 2007-2013.

These statistics demonstrate that YMAC is an efficient, dynamic and effective organisation that delivers results for its members and claimants.

YMAC is making excellent progress to resolve the 16 claims remaining in its regions. These claims will require intense heritage and legal work by YMAC staff to achieve either a consent determination or other resolution of the claims (alternate settlement negotiations which are likely in the Geraldton region).

This is in addition to the modest but continuing future act work associated with the claims and Prescribed Body Corporate (PBC) entities that YMAC represents. The steady pipeline of heritage work may suggest further investment in mining.

YMAC has become sophisticated in its support of claims. This has led to post-determination PBC development projects, which then lead to assistance on Department of Prime Minister and Cabinet (DPMC) work (future acts) and to other native title matters. YMAC provides advice to Aboriginal Corporations and PBCs on matters concerning membership and entitlement to be on the register of Traditional Owner groups for the purposes of the direct benefits trust. These matters are native title related and YMAC's assistance ensures there is adequate representation for these corporations.

YMAC's work with claim groups and their transition to become PBC entities post-determination has provided a unique insight into how NTRB can develop PBCs and the role we can have in advocating for PBCs at the Commonwealth Level.

YMAC's reform priorities

The legislative, procedural and bureaucratic framework within which NTRBs and PBCs operate is becoming even more complex with native title rights, alternative settlements, the new efforts toward national constitutional recognition, and the reform of Aboriginal Affairs in WA. Many organisations struggle to comprehend and execute their roles and responsibilities in this operating environment. A whole of government approach to approvals is essential to create an environment of transparency, consistency and equity. YMAC is of the view that primary consideration should be given to the creation of a clear native title policy framework within which parties can operate.

YMAC believes that the following are important reform priorities:

1. Timely native title recognition for the balance of claims in WA through a clearly articulated native title policy.
2. Recognising exclusive native title rights to strengthen Aboriginal peoples move towards self-determination.
3. Disregarding historic extinguishment in State and National Parks for the purposes of native title determination.
4. Development of alternative land tenures.
5. The structure of Alternative Settlements.
6. Divestment of Aboriginal Lands Trust assets, the application of exclusive native title, and the potential for state lands to form part of settlements.
7. "Fairness" in approvals processes and "Quality" in heritage protection including incentives to creating efficiency, and cost recovery.
8. The role of NTRBs, the State and the Commonwealth in supporting and improving PBCs and the potential for regional support hubs for PBCs.
9. Identification of common issues affecting PBC functioning.
10. Defining a healthy policy environment for long term PBC functioning and growth.



2. YMAC and WDLAC partnership example

YMAC continues to offer value in a post-determination environment to its stakeholders. Most PBC structures and governance arrangements require some support (especially in the early formation stages). YMAC has been supporting PBCs with governance design, legal support and strategic planning. YMAC's strong values and the trust engendered with Traditional Owner groups is the foundation of evolving working relationships as they transition from claimants to form PBCs and Corporations. To date, YMAC has assisted 14 PBCs / Aboriginal Corporations in its representative area. Our tenure as the Executive Office for the Western Desert Lands Aboriginal Corporation (WDLAC) demonstrates the strength and merit of this type of partnership.

Western Desert Lands Aboriginal Corporation (WDLAC) was put under special administration by the Office of the Registrar of Indigenous Corporations (ORIC) following unscrupulous management of funds. YMAC tendered to supply Executive Office support to WDLAC and was successful in its bid in February 2016. YMAC supports WDLAC through the following services:

- Chief Executive Officer services
- Chief Financial Officer services and financial services (e.g. accounts, administration)
- Legal services – including Native Title future act processes
- Heritage services
- Other forms of Executive Office support for WDLAC including developing a Strategic Plan and Communications

YMAC is led by 12 Aboriginal Board of Directors supported by our highly skilled staff to provide a strong structure and administrative support system that enables WDLAC to better serve their members. Under YMAC's Executive Office support, WDLAC has completed a change management process focussed on:

- Redirection of the use of resources - including vehicles and staff.
- Implementing strong business processes such as a Strategic Plan.
- Introduction of financial and governance actions – policies, procedures and the Rule Book.

This has significantly reshaped the way WDLAC operates, leading to the following critical achievements demonstrating the success of YMAC's influence:

1. Less expensive salary structure through Executive Office contract.
2. Access to varied skills through secondment positions.
3. Economies of scale in Future Act and Heritage work.
4. Bad debts pursued and recovered.
5. Governance training with emphasis on Director duties and good governance principles.
6. Board decision making includes proper consultation with members on native title matters.
7. Settling the membership lists and confirming and updating ORIC records.
8. WDLAC Agreement database established to ensure compliance.
9. Board adopting a strategic three-year plan.
10. WDLAC as sole member of Martu United Pty Ltd regained control of two Martu trusts.
11. WDLAC office subleased to mitigate expensive rental agreement.
12. Establishing an office in Newman, as the closest town for Martu people.



13. Jiji education program with Curtin University successfully presented in two Martu communities during 2016, and ongoing in 2017.
14. Martu School Alliance forum held to progress Martu aspirations for education in their communities.
15. Commenced work on the Rudall River tenure issue to address the long-standing question around post-determination native title rights within a National Park.
16. Lore planning meeting with Elders involved in deciding the use of Lore Business funding.
17. Joint Board meeting between WDLAC and Kanyirninpa-Jukurrpa (KJ) board members to strategise the management of Martu Country.
18. Indigenous Protected Area (IPA) consultation with community and study trip to Groote Eylandt.
19. Newsletters and website communication ensuring transparency of operations.
20. Transparency in financial reporting.

YMAC is supporting WDLAC to become a strong and financially stable PBC, and providing the strong governance and structure that will enable the Martu people will continue to after YMAC's tenure is complete. At this time WDLAC would recruit the CEO position from within WDLAC. The CEO would be based in Newman and YMAC would mentor, train and guide this person to achieve continued success for the Martu.

3. Addressing PBC challenges

YMAC's experience with WDLAC and many other PBCs/Aboriginal Corporations has revealed a need for NTRBs and service providers to actively participate in the development of PBCs. This reduces compliance costs, improves regulation, introduces safeguards for continuity, ensures proper consultation, brings the right skill sets and enhances efficiencies.

As funding arrangements change for PBCs, opportunities for abuse arise for dishonest private consultants to engage with PBCs in ways where the cost is disproportionate to the benefits. In many cases PBCs lack the experience, capacity and relevant governance skill sets to ensure that value for money is considered when selecting a service provider.

NTRBs such as YMAC are not for profit charitable entities motivated by the desire to improve the lives of the communities which they serve. There is no desire to seek to derive profits from vulnerable people. NTRBs operate in a heavily regulated framework, having existing contractual obligations to the Commonwealth, through their Native Title funding, and have the resources and experience to ensure compliance.

YMAC works directly with Aboriginal Organisations and PBCs from inception to maturation and is best placed to identify broader issues and advocate for resolution of common problems on a national scale. Problems such as:

- Intervention and administration on a struggling PBC.
- Lack of financial literacy and scrutiny of Trustees engaged to manage funds.
- Lack of service provider's knowledge and skills in Aboriginal people's needs.



Early intervention and executive office services

Special Administrators are appointed during a time of crisis for a PBC or corporation. YMAC believes that intervention should occur much sooner. Waiting for signs of insolvency before intervention occurs puts PBCs and corporations (and their members) in a much worse position. Introducing an option for a struggling PBC or corporation to submit a request for assistance could provide an opportunity for ORIC to intervene through a mentoring relationship (rather than an audit and change process). The “mentor” could be a NTRB such as YMAC working with the PBC to advise on governance and other issues.

YMAC has experienced that the real work of intervention (the Executive Office function) happens after the Special Administrator has left an organisation. This is a pivotal piece of work for NTRBs to complete and critical to the long-term success of a PBC that has been through Administration.

Ideally, a period of overlap between the Special Administrator departing and the Executive Office being appointed would provide opportunity for NTRB input into aspects such as appropriate changes to the corporation Rule Book. Making changes after Special Administration is complete is very difficult. NTRBs have much to offer Special Administrators in the form of industry background and best practices proven from experience. If this can be incorporated early in the Special Administration process, the subsequent restructure and turnaround process is much easier.

The Executive Office service provides new and struggling organisations with the expertise and skills needed without the cost of full time staff. NTRBs have the skills and experience needed and economies of scale to deliver these services.

Reforming the Professional Trustees system

YMAC has identified the need to overhaul the Professional Trustees system in Australia. There is a notable lack of response to Traditional Owners by the existing Trustees and very little ability for individuals to monitor or manage funds. There is no independence to search the financial market for product options to obtain the best possible return on investment of funds.

WDLAC is a PBC that has been around for 14 years with the highest level of native title exclusive possession. It generated an income stream from land access arrangements but had very little available for its members due to financial mismanagement. Even a well-resourced PBC may still have capacity issues. Fortunately, WDLAC is now benefiting from YMACs expertise.

In WDLAC’s example:

- A Professional Trustee was not set up to receive Martu members at their office; or staffed properly to assist with the completion of forms; there was the expectation that the PBC and other service providers complete this function without charge.
- The distribution policies were not practical or feasible, and were abused because the Trustee lacked knowledge/understanding of Aboriginal people and their funding requirements.
- The lack of communication to people trying to access funding caused frustration.
- There was no transparency and reporting from the Trustee to the PBC on how much funding was used and for what purpose.
- The Trustee was using Future Fund money to invest in their own products and then incurring losses.
- There was no transparency on how the Trustee charged their fees.

The fact that such practices were permitted and PBC members had little recourse is a demonstration of the vulnerability of these new corporations to unscrupulous practitioners and the gaps in the Trustee system that need to be addressed.

Yule River Bush Meeting – influencing outcomes

As a responsible NTRB, YMAC focuses its efforts on PBC design and system intervention through legitimate forums and working groups. The evolving working relationship between Traditional Owners and NTRBs creates opportunities to collaborate in new and different ways.

For example, every year, YMAC facilitates a two day on-Country bush meeting at Yule River just outside of Port Hedland. YMAC uses the on-Country bush meeting to focus on the issues and the people. YMAC is best placed to organise the meeting due to its regional coverage and interfaces with stakeholders and Traditional Owners. The Yule River meeting brings together community members to discuss legislative changes that impact them, and to give them the chance to speak directly to members of Parliament. For some who attend, it is the first time they are given this type of opportunity. This platform allows YMAC to drive outcomes from the momentum gained on the ground. YMAC has received very positive support from other Aboriginal Corporations in the area on the forum.

Minister for Aboriginal Affairs, Hon. Ben Wyatt MLA and Minister for Environment, Hon. Stephen Dawson MLC have confirmed their attendance at the 2017 Bush Meeting to be held 20-21 September.

Early in 2017, Hon. Ben Wyatt invited the Pilbara communities to present three priorities on which they would seek action from him as the Minister for Aboriginal Affairs. These priorities have been collated from the community and presented to Pilbara Aboriginal Corporations and Enterprises Inc. (PACE). PACE is the leading association of Pilbara Aboriginal organisations and a platform for coordinating Aboriginal businesses and services across the region. PACE has distilled the issues and will submit “A Treaty and Three Priority Requests” to the Minister at the Yule River meeting in September.

The **Treaty** is a request for direct representation with the State to influence the development of solutions to the following high impact issues (some are discussed further in other sections of this document):

- Heritage protection
- Aboriginal Lands Trust (ALT) land reform
- Native Title negotiation and agreement-making framework
- Remote and regional services reform with an emphasis on funding transparency and clarification of no further proposed community closures
- Child protection
- Connection to country

The three priority requests are:

1. Languages co-investment: government contribution of funding to language projects that capture and preserve Aboriginal language. This would include funding for dictionaries, school language programs and access to jobs in schools and interpreter roles.



2. Learning/education co-design: allowing Aboriginal co-design of schools in the Pilbara to address the regionally and culturally specific roadblocks to successful learning. Ideas range from catch-up education programs for young mothers, to specific campuses for young men and options for children of school age but at risk of dropping out early.
3. Investment co-design: allowing Aboriginal co-design of State investment in economic initiatives in the Pilbara. This would involve Aboriginal people in the decisions about budget expenditure/allocation made by the Regional Aboriginal Advisory Board, the Royalties for Regions fund, redirecting funds from non-Aboriginal non-government organisations and consideration of population based expenditure multiples. Aboriginal people would also influence investment decisions into targeted employment programs and housing. When compared to other regions (e.g. the Kimberley) and other population demographics, the Pilbara Aboriginal community appears to be receiving less investment per capita.

The Yule River Bush Meeting, initiated by YMAC four years ago, has evolved to become an important forum for Aboriginal people to share knowledge and ideas, and influence the development agenda.

NTRBs as corporate service providers to PBCs

The Aboriginal Corporations that are set up as a result of mining agreements, and the PBCs created following positive native title recognition, are emerging as strong regional entities each with their own unique and sophisticated needs. These PBCs seek to establish their own plans for the future, and are undertaking community, cultural and commercial development. Their members are expecting high levels of service.

According to projections by the National Native Title Tribunal (NNTT), there are currently 39 PBCs registered in WA, 170 Australia wide and the NNTT predicts that there will be approximately 270–290 registered by 2027.

The fact that so many of these PBCs are dysfunctional, unfunded, and incapable of discharging their proper roles is evidence of policy failure, and a serious practical problem for Traditional Owners and for other partners and land users. Importantly, funding and support for PBCs should be high on the government agenda to empower these communities to achieve self-determination.

YMAC is increasingly working in a service space for PBCs that require ongoing assistance. Many of those PBCs simply cannot afford to undertake the work themselves and do not have the funds to engage private consultants. They need support of organisations like YMAC to fulfill their obligations as PBCs. The Directors of these entities are also experiencing conflict in the management of the organisation. YMAC is best placed to offer conflict resolution services and help PBCs to learn to work better together. This is critical to enable the PBCs to get the most out of their resources.

NTRBs such as YMAC have worked alongside Traditional Owners to develop an understanding of the needs of Aboriginal Corporations, members and common law holders. They can respond honestly and practically in relation to the future needs of Aboriginal Corporations. YMAC has witnessed PBCs going to private consultants for advice only to come back to YMAC because it has the best practice knowledge and experience, charges modest fees as a not-for-profit and is willing to act as a partner to enable the PBCs to develop. This knowledge partnerships approach is being pursued by YMAC to empower PBCs to become self-reliant over time.

However, YMAC understands that the financial position of some PBCs means they will need ongoing assistance in the areas of legal advice, anthropological support, governance and financial administration to ensure the PBCs can succeed. The most effective way to empower PBCs to become self-reliant is with NTRBs acting as corporate service providers. DPMC funding will be

required to enable YMAC to continue to assist some PBCs because these types of services are not historically DPMC funded.

NTRBs and PBCs need to work together to ensure that State and Commonwealth Governments understand the issues facing PBCs and that the system is designed with the people in mind. The State and Commonwealth Governments are still taking an ideological approach in this space. The government does not recognise the gap in service and skills that would exist if NTRBs cease to exist to support PBCs.

The Registrar at ORIC indicated at the National Native Title Tribunal PBC Support Forum in May 2017, that it will be undertaking a formal review of the *Corporations (Aboriginal and Torres Strait Islander) (CATSI) Act 2006* from July 2017. A priority should be made to address the failure of PBCs to accept of common-law holders into membership. Section 144-10 of the CATSI Act requires that Directors have an obligation to consider but not necessarily admit common-law holders to membership. This part of the CATSI Act needs to be changed to ensure that all common-law holders are admitted to membership for the corporations.

PBCs need to consider progressing applications for compensation (although the application for compensation must be made on behalf of the common-law holders who become the claim group for the purposes of those compensation application). These will be critical processes that may provide some PBCs with the only opportunity to access compensation to enable the PBC to remain financially independent. DPMC funding will be required to progress these applications. NTRBs are best placed to do that work efficiently, with the knowledge base they already have in relation to the claims and with the relationships they have with key stakeholders like the State government.

YMAC welcomes the opportunity to participate in the CATSI Act review to offer amendments that would alleviate the well-intentioned provisions that have become burdensome compliance matters or have manifested themselves into opportunities for dishonest operators.

Corporations will always be in control of their vision, but they need to support from principled not for profit organisations specialising in native title and related services to fulfil their vision most effectively. NTRBs have the skills, staff and most importantly, the relationships with Traditional Owners to assist.

Native Title representation remains the core business of NTRB and YMAC has not lost focus of that responsibility. However, YMAC has identified the emerging area of work that offers enormous value and benefits. The evolution of NTRBs as a not for profit service provider is critical to ensure that the accountability, knowledge, understanding that has been built over decades remains accessible to Traditional Owners. YMAC is a partner with its Traditional Owners to fulfil their responsibilities for on-Country management, heritage protection, advocacy and additional projects.

Some of the projects that YMAC is involved in as a service provider to PBCs are:

- I. Geraldton Settlement Area claim
- II. Recent approval by State Cabinet of the land deal in Port Hedland for the Kariyarra people
- III. Stage 2 of the negotiations of Australian Square Kilometre Array Project.
- IV. Participation in the BHP Landcare project
- V. Recent determination of Yinhawangka, Ngarlawangga and Puutu Kunti Kurrama Pinikura with upcoming determination is for Budina and Wajarri. The State has expressed positive sentiment in relation to determination for other claims in Yamatji region.