



**Yawuru Native Title Holders Aboriginal Corporation RNTBC ICN 7033**

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**Hon. Mr. Peter Garrett AM, MP**  
**Minister for the Environment, Heritage and the Arts.**  
**PO Box 6022**  
**House of Representatives**  
**Parliament House**  
**Canberra ACT 2600 AUSTRALIA**

Dear Minister,

**Proposed Reforms to The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984***

I am writing to you to express my concerns about the proposals to amend the *Aboriginal and Torres Strait Islander Heritage Protection Act* outlined in the Governments Discussion Paper of August 2009.

My principle concern is the proposal for the Commonwealth to vacate the field in relation to the protection of areas of significance to Indigenous peoples if the Commonwealth has accredited a State or Territory Indigenous Heritage Protection law. An accredited State/Territory Act despite the many commendable improvements that flow from Federal accreditation will still allow a State/Territory Government to approve the destruction of our law and culture.

As you are no doubt well aware regardless of the implementation of the best process in any legislation governments will still retain their political discretion to approve the destruction of Indigenous areas of significance in the midst of political controversy surrounding the approval of the latest "big development" said to be crucial to the economic well being of the nation or state.

I am acutely aware that these circumstances have also meant that at the Federal level there have been few protection orders made to date.

You will recall that the Act was originally created to ensure that the Commonwealth could intervene to protect Indigenous culture and heritage places in the face of often hostile State and Territory Governments that were determined to destroy our important and sacred places. Indeed the Indigenous position put in the 1980's to the Federal Labor Government in the context of the proposal for National Land Rights legislation was that the Commonwealth should occupy the field in this area and not only be a source of last resort protection.

The need for the maintenance of Commonwealth Ministerial power to make a protection order in both accredited and non – accredited situations is no better evident than when one reflects upon the events at Noonkanbah and Niltje/Tnere- Akerte (Junction Waterhole) near Alice Springs. In both situations State and Territory governments were simply not prepared to protect Indigenous culture and approved under their own legal processes the destruction of important Indigenous areas.

Under your current proposal in the Discussion paper if the Northern Territory Act was accredited then the Commonwealth Minister would not have the power to make a protection order in relation to Junction Waterhole, despite the fact that a 20-year protection order currently exists.

The *Native Title Act, 1993* despite the many unacceptable changes made in 1998 without our consent has to some extent relieved the pressure on the *Aboriginal and Torres Strait Islander Heritage Protection Act*, because Indigenous heritage protection agreements made prior to development taking place have in most places become accepted and this has been a welcome development resulting from the *Mabo* decision.

It is also necessary to raise with you the fact that the Federal Labor Opposition voted for and fully supported amendments to the Act that fully implemented the Evatt Review recommendations in 1999 when considering the previous governments *Aboriginal and Torres Strait Islander Heritage Protection Bill, 1998*. Importantly, those amendments maintained the Federal Ministers power to make a protection order with an accredited State/Territory Act.

I understand the logic of trying to provide strong incentives to the States and Territories to improve their legislation by offering your withdrawal from the field. Many of the proposed improvements to the Act need to be made but in my view it is unacceptable for the Government to abandon its responsibility to protect Indigenous heritage and culture in the face of a State or Territory that is intent upon its destruction in certain circumstances.

The whole point of the Act in my view is to provide you as the responsible Minister with the legal authority to protect Indigenous culture when it is under threat and there is no alternative means of protection. I therefore strongly urge you to reconsider this part of your proposals.

If you are prepared to reconsider this important issue I am sure that I and other Indigenous representatives would be prepared to negotiate with you a significantly improved and acceptable legislative outcome.

Yours Faithfully,

A handwritten signature in black ink that reads "Patrick Dodson". The signature is written in a cursive, flowing style.

Patrick Dodson  
Chairman  
11 November 2009