

**Submission to the Senate Select Committee on the
Administration of Indigenous Affairs**

By

**Yamatji Marlpa Barna Baba Maaja Aboriginal
Corporation**

July 2004

Introduction

The Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation (YMBBMAC) is a Native Title Representative Body (NTRB) for the purposes of the *Native Title Act 1993*, and is incorporated under the *Aboriginal Councils and Associations Act 1976*.

Our Corporation welcomes the opportunity to make a submission to the Committee as we believe that the outcomes of the Committee's deliberations will have a vital impact on the way that services are delivered to the Indigenous community and consequently on the well being and quality of life of Indigenous Australians.

We would like to advise the Committee that the pressure of other commitments has limited the time available to us to prepare our submission. We therefore resolved to lodge this short outline submission by the Committee's submission deadline of 30th July 2004 and to prepare a more detailed submission, which we will lodge with the Committee as soon as practicable.

Our constituents and our role

The YMBBMAC has two operational service divisions. In the Geraldton region it operates as the Yamatji Land and Sea Council (YLSC) and in the Pilbara as the Pilbara Native Title Service (PNTS). Each region has an elected regional committee that is empowered to make decisions about operational and policy matters within their respective areas. Each native title claim represented by the YMBBMAC nominates a representative to the Pilbara Regional Committee. Representatives on the Yamatji Regional Committee are elected from the eligible YLSC membership, most of whom are from claims represented by the Corporation. Six representatives from both regional committees come together to form a twelve-member governing committee which provides the overall policy direction for the YMBBMAC.

Our operational areas of Yamatji and Pilbara coincide approximately with the historical boundaries of the Geraldton and South Hedland ATSIC regions. The Commonwealth Grants Commission reported that these areas generally fell into the lower half of the scale an assessment of standard socio-economic indicators for Indigenous people. Both areas displayed the low Indigenous socio-economic status that is common to remote areas of Australia (Commonwealth Grants Commission, 2003, Chap. 2, p.30 et seq). In a ranking of socio-economic disadvantage generated by the Commission for all ATSIC areas Geraldton fell into the less disadvantaged group and South Hedland fell into the more disadvantaged group – see Table 1.

Membership of our organisation is open to all adult Yamatji people and all adult Pilbara people. We have a current membership of almost 900 Aboriginal people, though our activities as a native title representative body impact on the interests of the majority of the approximately 10,000 Indigenous people recorded at Census 2001 in our operational area. Access to our services is not contingent on membership and we have numerous clients and stakeholders who nevertheless do not elect to be members.

Table 1 RANKING OF ATSIC REGIONS BASED ON EXPERIMENTAL INDEX OF INDIGENOUS SOCIO-ECONOMIC DISADVANTAGE (a)

Most disadvantaged		More disadvantaged		Less disadvantaged		Least disadvantaged	
	Rank		Rank		Rank		Rank
Apatula	36	Port Augusta	27	Cairns	18	Ballarat	9
Nhulunbuy	35	Broome	26	Alice Springs	17	Rockhampton	8
Tennant Creek	34	Torres Strait	25	Narrogin	16	Sydney	7
Jabiru	33	Bourke	24	Tamworth	15	Perth	6
Cooktown	32	South Hedland	23	Geraldton	14	Adelaide	5
Derby	31	Ceduna	22	Coffs Harbour	13	Queanbeyan	4
Katherine	30	Mount Isa	21	Roma	12	Wangaratta	3
Warburton	29	Townsville	20	Darwin	11	Brisbane	2
Kununurra	28	Kalgoorlie	19	Wagga Wagga	10	Hobart	1

(a) Index based on data from 1996 Census, 1994 National Aboriginal and Torres Strait Islander Survey, and National Perinatal Data.

Source: ABS *Experimental Indigenous Socio-Economic Disadvantage Indexes*, Report to Commonwealth Grants Commission, November 2000.

Our primary role is conducting facilitation, certification, notification, dispute resolution, and agreement making functions under the (Cwth) Native Title Act 1993. We currently service thirty two native title claim groups which are at various stages of the claim process. Over time we anticipate that the number of serviced groups will be rationalised to approximately twenty five, each representing a discrete and inclusive Indigenous society.

Many of our claims involve areas of high proven mineral resource value or prospectivity and our organisation faces the need to conduct extensive and complex negotiations with resource development companies, including Australian resource majors. Like all native title representative bodies, we have inadequate resources to meet the challenges that we face. However, resource constraints notwithstanding, we are very proud of the professional standard that we have achieved in our operations and the services that we continue to deliver to our constituents.

As our role as an NTRB matures, the Corporation's officers are increasingly being called upon to respond to our constituents' needs for advice and assistance in fields such as:

- Community development;
- Economic development and small business establishment;
- Management of natural resources and country; and
- Shortfalls and needs in the delivery of services that are the reasonable expectations of all Australians.

Copies of the Corporation's annual report for 2002-2003 are attached for the Committee's reference.

Governance

We recognise the unequivocal link between the general wellbeing and economic and social development of Indigenous people and the good operation and management of a mature, competent, culturally appropriate, and truly representative and self-determining Indigenous organisation. We have focussed on the development of good governance arrangements and good management for our Corporation.

Our particular concern has been to develop a model of governance that:

- Is closely directed by, and responsive to, our constituents, the Aboriginal people of our operational area;
- Provides responsible and accountable management of public funds; and
- Facilitates fair and productive engagement between our members and their communities and agencies at all levels of Government and the private sector.

Roles, responsibilities and powers of the members, Governing Committee, regional committees and Executive Director are clearly stated in the constitution. The constitution provides that the objects of the organisation include dealing and negotiating with government departments and agencies, and supporting self-determination and social, political and self-management. It provides the organisation with the power to do all lawful things necessary to carry out the objects. The constitution allows the organisation to integrate economic activity, social concerns, cultural priorities and legal rights with effective governance systems. Day-to-day management of the organisation is the responsibility of the Executive Director, who is a salaried employee and ex-officio member of the Governing Committee.

The YMBBMAC (in conjunction with ATISIS) regularly conducts training with regional and governing committee members in the areas of administrative law and corporate governance for NTRB's. This ensures that all committee members are aware of their legal roles and responsibilities.

We believe that the Corporation is achieving results in its approach to governance and meeting some of the challenges set out in the recommendations of the House of Representatives inquiry into capacity building and service delivery in Indigenous communities (HORSCATSIA, 2004, p.xxviii et seq).

The need for engagement with the Indigenous community

There is widespread acknowledgement that many of the examples of poor performance and failure in service delivery to Indigenous communities arise from a lack of understanding of the cultural context of Aboriginal people's lives; inadequate knowledge

of needs and priorities; duplication and competition between service agencies; and poor support for community based operations.

These shortcomings are largely based on a failure to engage in a meaningful way with the target Indigenous community and to vest in the community a level of control and ownership in resource allocation and service delivery decisions. The Council of Australian Governments has recognised this lack of engagement as a key element in poor service delivery performance to the Indigenous community. A key element of the COAG Indigenous whole-of-government initiative for service delivery is the need for partnerships between government and Indigenous communities, to share responsibility for achieving outcomes and working towards community self-management (Indigenous Communities Coordination Taskforce, 2003, p.1).

Our Corporation is a strong advocate of active engagement with the Indigenous community and we promote this commitment in all our operations.

The working group model

Our Corporation's success in promoting active engagement between our client communities and external agencies as a part of a sound system of Indigenous governance is founded on the development of a grassroots system of Indigenous representation through working groups.

Each of the native title claims represented by the Corporation is administered by a working group. The groups usually have twelve members who are broadly representative of the claimants and are chosen by them. They are authorised by the claimant group to give instructions and advice to officers of the Corporation and to take part in negotiations. Some complex decisions are referred to larger community meetings for ratification.

The Corporation services the working groups with secretariat and technical support. A lawyer and an Aboriginal liaison officer and other professional advice as required are allocated to each group. A more detailed discussion of the working group model, including suggestions for the wider application of the model in the region, is in Appendix 1.

The track record and the potential of the working group model

We believe that our model of governance and service delivery is a success. It is resilient and Aboriginal people actively support it as a way of doing business. The oldest working group has been operational for seven years. The working groups can be recognised as genuine structures of governance enmeshed in a system with checks and balances and some clear separations of power (Ritter, 2003, p.1). Working groups consult with their community members; consider issues that arise from Aboriginal law; take independent advice from the Corporation's lawyers and other professionals; and then take decisions.

The rapport and relationships established in working group meetings can be vital to the success of private sector proposals or government initiatives (Ibid. p.1)

The working groups have demonstrated that they are able to deal promptly and efficiently with local and state government and the private sector and it is usual for a multiplicity of agreements to be entered into during an operational year. Apart from matters directly concerned with the processes of native title claim administration and determination, the working groups deal routinely with local and state government agencies on resource allocation, development, land release, and heritage protection issues. Many working groups have an ongoing involvement with the mining industry and other major private sector resource development entities.

Resource development in our operational region is gathering pace and there will be an unprecedented workload for working groups and the Corporation in this sector in the coming months. We look forward to supporting our working groups to achieve constructive and timely outcomes to these discussions.

It is worthy of note that our governance approach is delivering strongly in two of the three priority areas identified by COAG as the basis for government action in Indigenous affairs:

- Investing in community leadership and governance initiatives; and
- Forging greater links between the business sector and Indigenous communities to help promote economic independence. (Ibid, 2003, p.1)

We believe that the model that we have established and successfully trialed deserves close examination in any discussion of models for service delivery for Indigenous communities. We do not suggest that the model will have universal application but there is no doubt that it is a way of doing business with which Aboriginal people in our very large region of Western Australia are comfortable. The model need not be restricted to the native title field and could be applied in more traditional service delivery fields such as municipal services and resource management. The model could provide one avenue for delivering the regionally based service delivery approach recommended by the House of Representatives capacity building and service delivery inquiry (HORSCATSIA, 2004, p.xxviii).

It is also a model that could articulate harmoniously with existing service delivery agencies at the local, state and commonwealth government level and with existing Indigenous organisations.

Future directions for our organisation

Our organisation has a clearly defined role that arises from our responsibilities in terms of the *Native Title Act 1993*. As we indicated earlier there are increasing demands and identified needs for additional services in our operational area beyond those that arise from native title issues. The Corporation's Indigenous leadership and senior staff have

begun to discuss future directions for the Corporation, particularly in the light of the significant changes that are currently proposed for service delivery to Indigenous community.

We believe that there is potential for our organisation to expand its activities in a number of areas. Some of this potential could lie in direct service delivery and partnerships in the fields of economic development, small business initiatives, community planning, and development and natural and cultural resource management activities. There is additional potential for the Corporation to provide a brokering service for major service delivery agencies in fields such as health, education and housing. Our Corporation would only be interested in expanding its current role if the expansion supports and strengthens our current system of Indigenous governance and our members' involvement in regional service delivery decision-making.

In our view there is a system of Indigenous governance in operation in our region that:

- Is representative of, and enjoys strong support from, the Indigenous community;
- Provides a portal for direct engagement with the Indigenous community; and
- Has demonstrated that it can work effectively with Government and the private sector.

It would be distressing to the Indigenous community and wasteful of time, resources and social capital if this system is bypassed in any restructure of service delivery arrangements for our region's communities.

An invitation to the Committee

We invite the Committee to visit our operational area on the Yamatji and Pilbara lands and we would welcome the opportunity to give evidence to the Committee.

If the Committee is unable to visit Western Australia, we would be very pleased to arrange for a delegation from the Corporation to visit Canberra to give evidence before the Committee.

Conclusion

We will provide additional material to the Committee in a subsequent submission and we look forward to giving evidence to the Committee in person. If it is helpful to the Committee we could delay finalising our supplementary submission until we have met the Committee and identified areas in which additional material and information could be provided.

Appendix 1

The Working Group Model

THE WORKING GROUP MODEL:

Bridging the gap between Aboriginal people and government

Traditionally, government has provided services to Aboriginal communities through a 'top down' approach. Administrative structures are often imposed upon Aboriginal communities without any consideration given to:

- Their specific requirements;
- Cultural and communal expectations;
- The impact that such decisions could make on the community;
- The role that Aboriginal people will play within the structure; or
- The best ways of helping communities achieve genuine self-government.

This problem has been especially apparent in regional communities, where decisions can be made by politicians and bureaucrats based thousands of kilometres away.

THE WORKING GROUP SYSTEM

One of the most significant challenges facing native title representative bodies is taking instructions from a community of traditional owners. The primary way that the Yamatji Marpla Barna Baba Maaaja Aboriginal Corporation has addressed this is through the establishment of 'working groups'. These groups are an initiative of the Yamatji Marpla Corporation, based on a similar - and very effective - concept in the Kimberley region.

Members of working groups are nominated and authorised by the native title claim group at a community or claimant meeting. These meetings are widely advertised so that all claimants have the opportunity to participate actively in the decision-making process. Commonly a working group will consist of a dynamic mix of young people and elders - as well as both men and women.

The Yamatji Marpla Barna Baba Maaaja Aboriginal Corporation is a native title representative body open to all adult Aboriginal people who hold, or claim to hold, native title rights and interests within the Geraldton or Pilbara regions.

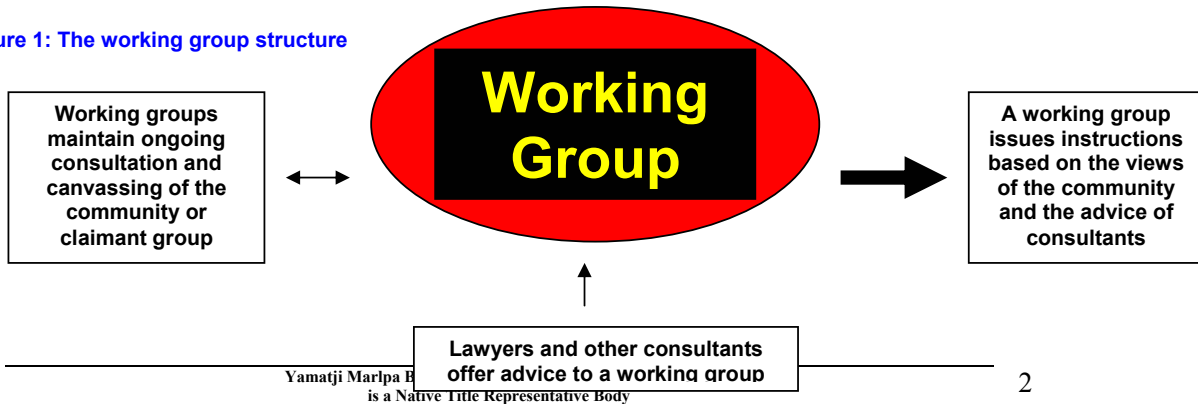
The Corporation represents almost one million square kilometres - around 21 times the size of Switzerland.

At present it acts for 32 registered native title claims. In doing so, it has a fundamental aim to avoid litigation wherever possible. By pursuing this policy, the Corporation has become a clear illustration of the success that native title representative bodies can achieve for the communities they represent.

Outside Perth, there are two operation centres. In Geraldton - the head office - the Corporation operates as the Yamatji Land and Sea Council; in the Pilbara it works as the Pilbara Native Title Service.

The Corporation celebrates its 10th anniversary in 2004.

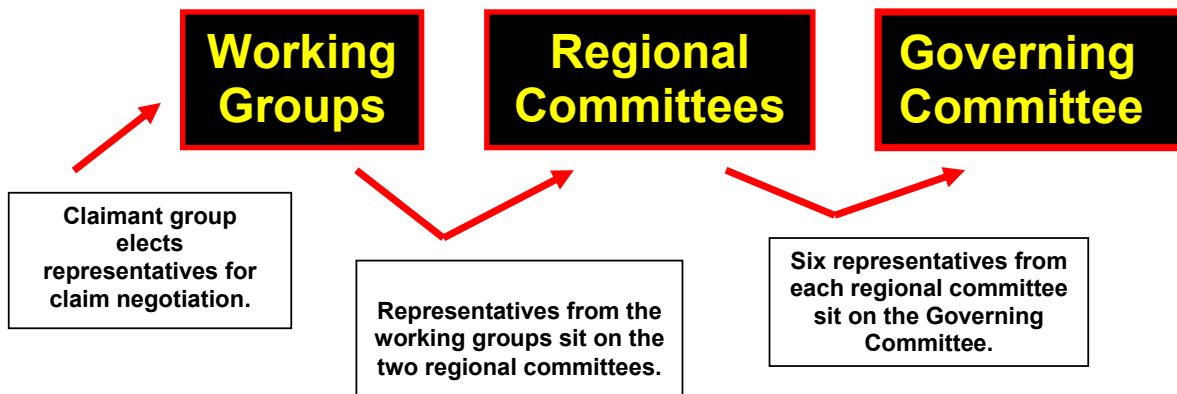
Figure 1: The working group structure



The working group has authority from the community to make decisions on its behalf. However, it must follow the instruction of the wider claim group which will be canvassed and consulted to achieve a fully representative decision. These groups are cohesive, functioning, and autonomous. They have their own traditional laws and customs, so each has a uniquely tailored decision-making process. While each working group receives legal, technical, and secretarial support from the Corporation, it is the working group that directs the lawyers and consultants – and not the other way around.

Working groups are the grass-roots level of an extended decision-making structure within the Yamatji Marpla Barna Baba Maaja Aboriginal Corporation. Both the Yamatji and Pilbara regions have elected regional committees, which make decisions on policy and operations. At the heart of the Corporation is the Governing Committee, which is made up of members of the regional committees; six members of both committees join to form the 12-member Governing Committee, which provides the over-all policy direction for the organisation.

Figure 2: The Yamatji Marpla governing structure



The advantage of the working group structure is that it has already been established across much of Western Australia. And these structures are not only used for native title claims – they are used for a number of purposes, including land management. This has enormous implications for both the Commonwealth and State Governments, which are looking for new frameworks in the wake of ATSIC.

In addition, many of the administrative bodies set up to manage successful native title claims - Prescribed Bodies Corporate - operate using the same working groups that they had in place during negotiation. The establishment of these corporate bodies means that government will inevitably have to work with existing groups. It seems logical for government to develop relationships with these groups now, in the early stages, so that a relationship will already be in place by the time a PBC is established.

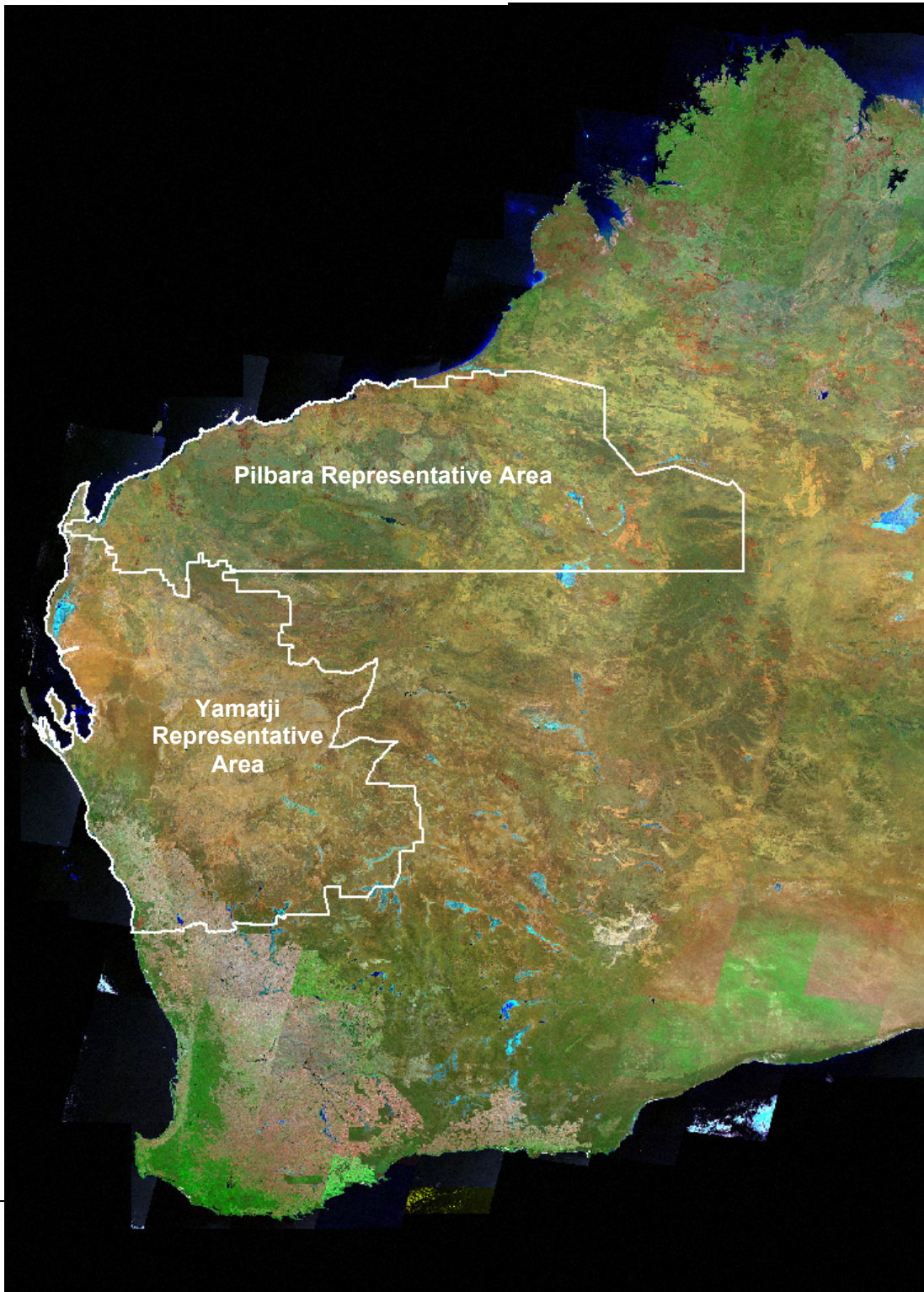
Working groups mean that governments do not have to re-invent the wheel. And minimal investment would be needed because much of the infrastructure already exists. Government can tap into the successes of working groups at little or no cost. Trial schemes of this system could be immediately put in place in parts of the Yamatji and Pilbara regions and the results would become quickly apparent.

If the government chose to use working groups, the current Yamatji Marlpa system would need to be broadened to include representation from historical leaders - Aboriginal people who live on the land, but do not have ancestral claim to it. But this can be easily overcome by, for example, establishing a system of traditional and historical working groups with an executive structure that consists of both groups.

A CHANCE FOR IMPROVEMENT

We have a system that has demonstrated, for some time, its success throughout much of the State. And with proper thought, and genuine consultation with Aboriginal people, this solution can be easily adapted by government. **Our working groups are a powerful voice for Aboriginal people to participate in decisions that affect them and their communities. They have proved their success over the past few years through their achievements in native title negotiations. They have also gained the trust and the backing of Aboriginal communities who have acknowledged the genuineness of their representation.**

Figure 3: The Yamatji and Pilbara representative areas



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