

COVER SHEET FOR SUBMISSIONS

OVERVIEW

The independent review of the *Environment Protection and Conservation Act 1999* (EPBC Act) welcomes your submissions in response to the discussion paper.

SUBMISSIONS INSTRUCTIONS

Submissions are due by **5pm (AEST) Friday 17 April 2020**. Please contact the EPBC Act Review Secretariat regarding late submissions.

All submissions that include this cover sheet will be considered by the review. You are **required to answer Question 1**, all other questions are optional.

Submissions should be sent to:

Email: epbcreview@environment.gov.au

Post: GPO Box 787

Canberra ACT 2601

Australia

PUBLISHING SUBMISSIONS AND PRIVACY (REQUIRED)

Unless you indicate that your contribution is confidential, or the review considers that your contribution is offensive, potentially defamatory or includes irrelevant or personal information, your contribution will be published on the review website along with your name or organisation. Your submission may be referred to, or quoted from in review reports.

Before making a submission, please read the information on how your privacy will be protected and how the information that you provide will be treated. The Department of Environment and Energy's Privacy Policy (www.environment.gov.au/privacy-policy) contains information about how to access or correct your personal information or make a complaint about a breach of the Australian Privacy Principles.

The review is committed to treating confidential information responsibly and in accordance with the law. In some circumstances, the review may be legally required to produce confidential information. Any request made under the Freedom of Information Act 1982 for access to a submission marked confidential will be determined in accordance with that Act. Please read the [Submissions Guidelines](#) on the review website for more information on how your submission will be handled.

1. Do you give permission for your submission to be published? (Required)

Yes – with my name and organisation (if applicable)

Yes – anonymously

No – please keep my submission confidential

ABOUT YOU (OPTIONAL)	
First name	
Last name	
2. Are you making this submission as an individual or on behalf of an organisation?	
<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Organisation	
Organisation name: Central Land Council	
3. If an organisation, what is its scope?	
<input checked="" type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> National <input type="checkbox"/> International	
4. What sector best represents you or your organisation?	
<input type="checkbox"/> Agriculture <input type="checkbox"/> Environment <input type="checkbox"/> Legal Services <input type="checkbox"/> Transport	
<input type="checkbox"/> Academia and Research <input type="checkbox"/> Financial and Professional Services <input type="checkbox"/> Manufacturing <input checked="" type="checkbox"/> Other	
Please describe: Indigenous land rights	
<input type="checkbox"/> Construction <input type="checkbox"/> Forestry and Fishing <input type="checkbox"/> Mining	
<input type="checkbox"/> Education <input type="checkbox"/> Government <input type="checkbox"/> Scientific and Technical Services	
<input type="checkbox"/> Electricity, Gas, Water and Waste Services <input type="checkbox"/> Health Care and Social Services <input type="checkbox"/> Tourism	
5. Where are you from?	
<input type="checkbox"/> ACT <input type="checkbox"/> NSW <input checked="" type="checkbox"/> NT <input type="checkbox"/> QLD <input type="checkbox"/> TAS	
<input type="checkbox"/> VIC <input type="checkbox"/> SA <input type="checkbox"/> WA <input type="checkbox"/> Outside Australia	

6. Do you identify as Aboriginal or Torres Strait Islander?

We collect this information so that we can observe levels of engagement with Aboriginal and Torres Strait Islander people and organisations during the review, and to assess whether we need to alter our processes to encourage greater engagement.

The Reviewer of the EPBC Act, the Expert Panel and staff from the Department of the Environment and Energy working on the review will be permitted access to this information. Information about individual participants' Indigenous origin status will not be disclosed or published for any reason. However, we may publish the final total numbers or proportions of Indigenous engagement in the review.

You can seek access to our records of this information, and ask us to correct the information we hold about you, at any time. For more information, see the Privacy Policy of the Department of the Environment and Energy (www.environment.gov.au/privacy-policy).

Yes No Prefer not to disclose

7. What are your key areas of interest in the EPBC Act?

- | | | | |
|--|---|---|--|
| <input type="checkbox"/> The objects of the Act | <input type="checkbox"/> Threatened species | <input type="checkbox"/> International obligations | <input checked="" type="checkbox"/> Indigenous Australians |
| <input checked="" type="checkbox"/> Heritage | <input type="checkbox"/> Matters of National Environmental Significance | <input type="checkbox"/> Environmental Impact Assessments | <input type="checkbox"/> Great Barrier Reef |
| <input type="checkbox"/> Cumulative impacts | <input type="checkbox"/> Climate Change | <input type="checkbox"/> Compliance and enforcement | <input type="checkbox"/> Decision making |
| <input type="checkbox"/> Public participation in decision making | <input type="checkbox"/> Biodiversity | <input type="checkbox"/> Conservation | <input type="checkbox"/> Wildlife trade |

Independent review of
the **EPBC Act**

Commonwealth

Nuclear

Water

National parks

8. Can the EPBC Act Review Secretariat contact you about your submission?

Yes

If Yes, please enter your email: cerys.lloyd@clc.org.au

No

LIABILITY

The views contained in published submissions are the responsibility of the authors and should not be taken to represent the views of the review, the Department of the Environment and Energy or the Australian Government. Publication does not in any way constitute endorsement of the views of the authors.

The review and the Department of the Environment and Energy does not verify the information contained in published submissions and makes no representation or warranty about the accuracy, reliability, currency or completeness of any material contained in submissions.

The review and the Department of the Environment and Energy disclaims liability, to the extent permitted by law, for any liabilities, losses, damages and costs arising from any information contained in published submissions

Independent review of
the **EPBC Act**

The review acknowledges the Traditional Owners of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to their elders both past and present.

Contact EPBC Act Review at: GPO Box 787 Canberra ACT 2601 | Telephone 1800 803 772 | Web
www.epbcactreview.environment.gov.au



CENTRAL LAND COUNCIL

CENTRAL LAND COUNCIL

Submission to the Independent Reviewer

Independent Review of the *Environment Protection and Biodiversity Conservation Act (Cth) 1999*

16 April 2020



CENTRAL LAND COUNCIL

TABLE OF CONTENTS

1. SUMMARY OF RECOMMENDATIONS	3
2. ABBREVIATIONS AND ACRONYMS	4
3. OVERVIEW	5
4. INTRODUCTION	5
5. MODERNISING CONSULTATION AND INPUT	7
5.1. Consultation processes	8
5.2. Consultation timing	9
5.3. Permits to take or impact listed threatened species or communities	10
6. CULTURAL HERITAGE AND SITE PROTECTION	11
7. BILATERAL AGREEMENTS	12
8. INDIGENOUS PEOPLE'S LAND	12
9. ALIGNING OBJECTS	14
10. STRENGTHENING OPPORTUNITIES FOR INVOLVEMENT IN ENVIRONMENTAL MARKETS	14
11. EXTENDING ABORIGINAL KNOWLEDGE PROVISIONS	15
ATTACHMENT A – PUBLIC COMMENTS – ASSESSMENT PROCESS	16
ATTACHMENT B – PUBLIC COMMENTS – ENVIRONMENTAL PROVISIONS	25
ATTACHMENT C – PUBLIC COMMENTS – PERMIT APPLICATIONS	29
ATTACHMENT D – PUBLIC COMMENTS – HERITAGE PROCESSES	33



CENTRAL LAND COUNCIL

1. SUMMARY OF RECOMMENDATIONS

Recommendation 1: Consultation and input should be modernised so that public consultation provisions set out in **Attachments A – D** require consultation with Land Councils (for Aboriginal Land) or NTRBs and PBCs (for Native Title Land).

Recommendation 2: Appropriate processes should be put in place to allow the involvement of Aboriginal people in all EPBC Act processes that affect their cultural heritage sites, prior to the Minister making a decision.

Recommendation 3: Cultural heritage issues should be dealt with earlier in the assessment process.

Recommendation 4: Australian World Heritage management principles in Schedule 5 to the EPBC Regulations should be amended to adequately reflect that traditional owners should be intimately involved in management decisions where a criteria for listing is Indigenous heritage.

Recommendation 5: The Minister should be required to consult the Land Councils, NTRBs and relevant PBCs prior to developing bilateral agreements, and the extensive provisions in Chapter 3, Pt 5, Division 2, Subdivision B requiring consultation on draft bilateral agreements should be extended to reviews occurring under section 65(2) with specific requirements to consult Land Councils in the Northern Territory.

Recommendation 6: The definition of Indigenous people's land should be expanded to include land that is subject to a determination of native title.

Recommendation 7: The EPBC Act should be harmonised with the ALRA and the Native Title Act by broadening the objects in EPBC Act section 3(1)(a)-(g) to include the recognition of Indigenous governance and management systems that are recognised on Aboriginal Land and Native Title Land.

Recommendation 8: In implementing the EPBC Act the Australian Government should give preference to offsetting proposals that provide co-benefits to traditional owners or Indigenous ranger groups. EPBC Act policies and guidance should clarify that reserve management arrangements (including IPAs) are capable of attracting environmental offsets for value (for example advanced offsetting or 'banking' of environmental benefits for later use).

Recommendation 9: The definition of 'access to biological resources' be broadened to include use of natural and biological resources for the purposes of climate change mitigation activities, environmental offsets and activities subject to an environmental accounting regime and commercial use and these requirements should apply to land where there is a determination of native title.



CENTRAL LAND COUNCIL

2. ABBREVIATIONS AND ACRONYMS

Aboriginal Land	Land granted as Aboriginal Land under the ALRA
ALRA	<i>Aboriginal Land Rights (Northern Territory) Act (Cth) 1979</i>
ALT	Aboriginal Land Trust, a statutory land trust created under the ALRA.
ATSIHP Act	<i>Aboriginal and Torres Strait Islander Heritage Protection Act (Cth) 1994</i>
CLC	Central Land Council (ABN: 71 979 619 393)
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act (Cth) 1999</i>
EPBC Regulations	<i>Environment Protection and Biodiversity Conservation Regulations (Cth) 2000</i>
IPA	Indigenous Protected Area
Native Title Act	<i>Native Title Act (Cth) 1993</i>
Native Title Land	Land either subject to a registered native title claim or a determination that native title exists under the Native Title Act.
NTRB or Native Title Representative Body	A body accredited as a Native Title Representative Body
PBC or Prescribed Body Corporate	A prescribed body corporate (or registered native title body corporate) that holds native title in trust or as agent for the common law holders once a determination has been achieved under the Native Title Act.



CENTRAL LAND COUNCIL

3. OVERVIEW

The Central Land Council (*CLC*) is a Commonwealth Statutory Authority established under the *Aboriginal Land Rights (Northern Territory) Act (Cth) 1976 (ALRA)*, with statutory responsibilities for approximately 780,000 square kilometres of land in the southern half of the Northern Territory. Under section 23(1)(a) ALRA, the Central Land Council (*CLC*) has the function of ascertaining and expressing the wishes and the opinion of Aboriginal people living in its region as to appropriate legislation concerning their land.

The CLC has existing functions under the EPBC Act in relation to the joint management of Uluru-Kata Tjuta National Park. It also has significant land management expertise and employs over 90 Indigenous Rangers to manage areas of importance, including Indigenous Protected Areas (*IPAs*). The CLC is also a Native Title Representative Body (*NTRB*) for the purposes of the *Native Title Act (Cth) 1993 (Native Title Act)* for the southern portion of the Northern Territory.

This submission to the independent review of the *Environment Protection and Biodiversity Conservation Act (Cth) 1999 (EPBC Act)*, focusses on terms of reference (c) “Indigenous people’s knowledge and role in the management of the environment and heritage.” It responds to question 19 of the Discussion Paper, being:

- How should the EPBC Act support the engagement of Indigenous Australians in environment and heritage management?
- How can we best engage with Indigenous Australians to best understand their needs and potential contributions?
- What mechanisms should be added to the Act to support the role of Indigenous Australians?

The comments in this submission also relate to the following part of question 12 of the Discussion Paper:

- How can the EPBC Act adequately represent Indigenous culturally important places?

This submission is based on the CLC’s long history and experience working with the Aboriginal people of Central Australia.

4. INTRODUCTION

The ALRA was the first attempt by an Australian government to legally recognise the Aboriginal system of land ownership and to create beneficial legislation facilitating traditional



CENTRAL LAND COUNCIL

Aboriginal ownership of an inalienable form of statutory freehold (*Aboriginal land*). The ALRA causes Aboriginal land to be held by Aboriginal Land Trusts (*ALTs*) created by statute. ALTs have the power to grant rights and interests in land (including licences) on direction from the CLC.

Before undertaking certain functions pursuant to the ALRA, the CLC must undertake consultations with traditional Aboriginal owners (those persons with primary spiritual affiliation for a site or sites on the land) and other interested and affected Aboriginal people (such as members of the Aboriginal community living in the area), thus ensuring traditional owner control of land management and development decisions.

The ALRA provides superior outcomes for Aboriginal people as it gives traditional owners a measure of control over their land that allows them to determine the pace and extent of developments and management of cultural heritage. Further, it provides a platform for joint management of national and world heritage areas, as discussed below.

The CLC has performed these consultation functions for over 40 years. In that time it has developed a significant body of expertise in identifying traditional Aboriginal owners and other interested and affected Aboriginal people for large parts of arid Central Australia, and in undertaking culturally appropriate consultations with them in relation to country. The CLC undertakes its functions over approximately 417,318 square kilometres of mostly remote land in the southern portion of the Northern Territory, including areas surrounding Alice Springs, Tennant Creek, Ali Curung (Alekareng), Alpurrurulam (Lake Nash), Finke, Yuendumu, Docker River, Mutitjulu, Harts Range, Kalkaringi, Alparra and Papunya.

In addition to its statutory role under the ALRA, the CLC is an NTRB for the purposes of the Native Title Act. Native title and land rights regimes often apply alongside each other. Whether country is Aboriginal Land or land subject to a native title claim or determination (*Native Title Land*) is a product of historical tenure and is unrelated to Aboriginal conceptions of continuous estates or boundaries between clans.

The CLC has existing functions under the EPBC Act related to the joint management of Uluru-Kata Tjuta National Park. The CLC also has significant land management expertise, as the employer of over 90 land and sea management rangers who are employed across twelve Indigenous ranger programs. These are the following, and operate on a variety of ALTs and Indigenous Protected Areas (*IPAs*):

- Anangu Rangers (Angas Downs IPA, Imanpa community);
- Anangu Luritjiku Rangers (Papunya and surrounding Haasts Bluff ALT);
- Anmatyerr Rangers (Ahakeye ALT (Ti Tree) and wider Anmatyerr region);
- Arltarpilta Inelye Rangers (Atitjere, Harts Range region, Huckitta Station and surrounds);



CENTRAL LAND COUNCIL

- Kaltukatjara Rangers (Docker River and Kaṯiṯi Petermann IPA);
- Ltyentye Apurte Ranges (Santa Teresa ALT and surrounds);
- Murnkurrumurnkurru Rangers (Daguragu ALT and surrounds);
- Muru-warinyi Ankkul Rangers (Tennant Creek region);
- North Tanami Rangers (Lajamanu and Northern Tanami IPA);
- Tjuwanpa Rangers (Ntaria, Hermannsberg ALTs and adjoining national parks);
- Warlpiri Rangers (Yuendumu, Willowra, Nyirripi and Southern Tanami IPA); and
- Tjakura Rangers (Mutitjulu).

Based on the CLC's experience, Aboriginal people are often supportive of sustainable development and willing to allow their land to be used to provide opportunities for employment and income for their benefit, when they are confident that sacred sites are protected and the environment will be well managed. Australia's landscapes, water and unique biodiversity are of deep spiritual and cultural significance to the CLC's constituents. Protection and good intergenerational management of these natural assets are vital for the continuation of religious and cultural traditions and Aboriginal wellbeing. Further, the knowledge and understanding held by Indigenous peoples, accrued over tens of thousands of years, provides rich expertise that should be more appropriately valued and engaged in protecting and managing Australia's environment. The current legislative regime only partly achieves these outcomes.

The EPBC Act does not adequately recognise Indigenous peoples' connection to country or rich expertise. There is limited specific opportunity for input and involvement in activities impacting on their interests and cultural heritage. For these and the reasons set out in this submission, the CLC welcomes this EPBC Act review and would be pleased to discuss any aspect of this submission with Professor Samuel and the review team.

5. MODERNISING CONSULTATION AND INPUT

The CLC has extensive experience in identifying traditional owners and other interested and affected Aboriginal communities and groups, and undertaking culturally appropriate consultations. International human rights instruments clearly identify the rights of Indigenous people to be fully engaged in government processes that impact, either directly or indirectly, on them.

The EPBC Act provides for public comment in relation to a number of matters and procedures. However, these processes are not sensitive to the unique interests and resources of Indigenous peoples. In addition to the provision of culturally appropriate materials, modernising and creating a more appropriate opportunities for involvement of Aboriginal people involves matters of (i) process and (ii) timing.



CENTRAL LAND COUNCIL

The provisions for which the CLC suggests there should be a modernisation of consultation and input are set out in the Attachments, being:

- **Attachment A** (Public Comments and Assessment Processes);
- **Attachment B** (Environmental Provisions);
- **Attachment C** (Permits); and
- **Attachment D** (Heritage Provisions).

The CLC's proposed amendments are detailed in each Attachment and give clarity to consultation functions and requirements in the context of EPBC Act processes. Under section 23(1)(a) ALRA, the CLC has the function of ascertaining and expressing the wishes and the opinion of Aboriginal people living in its region as to the management of Aboriginal land. Under s203BB(1)(b)(v) of the Native Title Act the CLC has facilitation and assistance functions in relation to matters relating to native title. The CLC's proposed amendments also supplement the work of the Indigenous Advisory Committee (*IAC*) that is established under section 505A of the EPBC Act and tasked with advising the Minister on the operation of the EPBC Act, taking into account Indigenous peoples' knowledge of land management and conservation and sustainable use of biodiversity, allowing input from Indigenous rangers with an intimate knowledge of land management.

5.1. Consultation processes

The EPBC Act requires public consultation or comment to be invited on various applications and processes, including the stages associated with the referral, assessment and approval of proposed actions (controlled actions) set out in **Attachment A** and other provisions set out in **Attachments B - D**.

Despite having significant and unique interests, there is no express provision for comment from, or consultation with, Indigenous bodies or persons. Specific processes can be included in the EPBC Act to enable localised comment on key procedures and proposed decisions using existing statutory bodies such as land councils, NTRBs and PBCs.

Recommendation 1: Public consultation and comment provisions and requirements under the EPBC Act (see attachments A to D) be updated to include specific requirements to engage with and seek comment from:

- the relevant Land Council if Aboriginal Land is impacted; and
- the NTRB and PBC if Native Title Land is impacted.



CENTRAL LAND COUNCIL

Such a process could borrow from the similar process in the EPBC Regulations for access to biological resources for commercial purposes (informed consent checks – see Reg8A.10(2)(c) and 2(d)).

In addition, the existing regulatory framework includes an example of diverse consultation provisions. EPBC Regulation 3.04 requires bilateral agreements to provide special arrangements, if appropriate, to ensure that affected groups with particular communication needs have adequate opportunity to comment on actions to be assessed under the manner of assessment specified in the region.

It should be uncontroversial to include in the EPBC Act express provision and opportunity for comment from Land Councils, NTRBs and PBCs where public participation processes are already required.

A more tailored process for obtaining and considering comments from locally affected Indigenous people could also be encouraged as part of an early engagement requirement to address cultural heritage matters (discussed further at section 5.3 below).

5.2. Consultation timing

Public consultation or comment on various applications and processes, including the stages associated with the referral, assessment and approval of proposed actions (controlled actions) under the EPBC Act, are generally brief (frequently 10 business days). Currently, traditional owners who want to provide comment on a proposal must do so as part of a general public process, within the timeframe afforded for members of the public.

For remote area Aboriginal people, the general timeframe for comment is inadequate. The statutory periods assume readily available telecommunications and internet access and literacy in English, among other things. These assumptions are restrictive and mean that many Aboriginal people in remote areas cannot make or be involved in submissions relating to matters that will significantly affect them. The current requirements are particularly inadequate given the special relationship with land, waters, plants and animals that Aboriginal people have.

While more time is afforded for public comment in relation to more intensive assessment approaches (public environment report and environmental impact statement (as well as an inquiry)), all timeframes should be sensitive to the unique challenges and resources of Aboriginal experts and communities. The CLC understands the need to balance many stakeholders in referral, assessment and approval processes under the EPBC Act. However, the CLC considers there are measures that can be taken to better enable Indigenous peoples to provide input on proposals that affect them without creating unnecessary administration and delay.



CENTRAL LAND COUNCIL

In proposing suggested timeframes CLC has tried to balance the interests of all stakeholders while being sensitive to the cross cultural context and the importance of Indigenous input. CLC has largely kept timeframes for comment congruent with the ordinary public timeframes. However, consultations with traditional owners on country ordinarily require a longer turnaround (ideally 60 business days, but minimum 30 business days). Due to climatic and cultural reasons in the Northern Territory, consultations cannot progress in December, January and February. Where we have made suggestions as to amended timeframes these are set out in the Attachments in underline.

The CLC understands the need for ongoing certainty of process and acknowledges that if comments are not received within the required timeframe, the decision maker will not be required to take them into account.

5.3. Permits to take or impact listed threatened species or communities

Part 13 of the EPBC Act sets out a process for permit applications to allow certain actions in respect of protected, listed or threatened species or communities to occur. Reasons to allow species to be taken includes that the specified action is of particular significance to Indigenous tradition and will not adversely affect the survival or recovery of the listed threatened species or listed threatened ecological community concerned.

However, there are other reasons a permit to take or impact protected species or communities may be justified. Similar to the processes and timing issues discussed at sections 5.1 and 5.2 above, applications for a permit under Part 13 should include specific consultation and comment requirements for Indigenous peoples. The CLC recommends specific consultation requirements are added to cause an express requirement to consult and take into account comments from:

- the Land Council (if Aboriginal land affected); or
- Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected),

See **Attachment C**. These consultations will allow comment by tradition owners and Indigenous Rangers who know the country intimately.

As set out in section 5.1, these additional provisions are not designed to extend beyond the rights afforded to the general public, but to allow Aboriginal people to more readily avail themselves of those same rights provided to the public. However timeframes will need to be longer to give effect to these rights.



6. CULTURAL HERITAGE AND SITE PROTECTION

In addition to our recommendation that key public consultation provisions for cultural heritage matters (see **Attachment D**) should be modernised in accordance with our submission at 5.1 and 5.2, the CLC suggests that:

Recommendation 2: appropriate processes should be put in place to allow the involvement of Aboriginal people in all EPBC Act processes that affect their cultural heritage sites, prior to the Minister making a decision.

In the CLC's experience there are significant gaps in relation to environmental approvals for controlled actions (particularly major infrastructure, mining or other activities with high levels of ground disturbance) and unlisted Aboriginal cultural sites. Environmental assessments can be completed before sacred site surveys or clearances have been undertaken. Managing the details identified during cultural heritage assessments and site clearances after environmental approvals have been obtained can create uncertainty, as well as schedule and cost pressures for proponents and relationship stress and damage for all interest holders. This has the potential to lead to materially adverse outcomes.

Recommendation 3: It would be beneficial if cultural heritage issues could be dealt with earlier in the assessment process. Examples of more proactive approaches exist elsewhere in Australia, such as Victoria, where cultural heritage management must be addressed before certain other approvals and authorisations can be granted.

Recommendation 4: The Australian World Heritage management principles in Schedule 5 to the EPBC Regulations should be amended to adequately reflect that traditional owners should be intimately involved in management decisions where a criteria for listing is Indigenous heritage. A precedent clause is contained in clause 6 of Schedule 5B – National Heritage Management Principles and states:

Indigenous people are the primary source of information on the value of their heritage and the active participation of Indigenous people in identification, assessment and management is integral to the effective protection of Indigenous heritage values.

These reforms are important as traditional owners are sometimes hesitant to have important cultural areas that fall on Aboriginal Land placed on the World Heritage List or National Heritage List for a number of reasons, including cultural protocols relating to restrictions on the knowledge and location of places and sites, and additional limitations that may apply to activities in areas that become listed. Indigenous peoples generally want to determine for themselves what happens in these places and are concerned not to further limit their power to make decisions in relation to those areas, where possible. Improving decision making processes



CENTRAL LAND COUNCIL

and powers, ongoing rights to benefit from ecosystem services and expertise and joint management arrangements may address some of these concerns.

7. BILATERAL AGREEMENTS

The Minister must consider the ‘role and interests of Indigenous peoples in promoting the conservation and ecologically sustainable use of natural resources’ when developing proposed bilateral agreements (see section 49A EPBC Act). However, the provision does not require the Minister to engage with Indigenous people in determining their ‘role and interests.’

Recommendation 5: Similar to the consultation and comment recommendations above, the Minister should be required to consult the Land Councils, NTRBs and relevant PBCs prior to developing bilateral agreements in a given jurisdiction. The extensive provisions in Chapter 3, Pt 5, Division 2, Subdivision B requiring consultation on draft bilateral agreements, should be extended to reviews occurring under section 65(2) with specific requirements to consult Land Councils in the Northern Territory.

EPBC Regulation 3.04 provides that bilateral agreements must provide that special arrangements should be made, if appropriate, to ensure that affected groups with particular communication needs have adequate opportunity to comment on actions to be assessed under the manner of assessment specified in the region.

While EPBC Regulation 3.04 provides some ability to include processes relevant to Indigenous peoples, the framework should expressly include specific processes for Indigenous peoples. In the Northern Territory the Land Councils and in all parts of Australia NTRBs and PBCs should be given the opportunity to provide specific input into all reviews of bilateral arrangements so as to provide advice as to whether the needs and interests of Indigenous peoples are adequately considered.

8. INDIGENOUS PEOPLE’S LAND

Commonwealth reserves can be declared over areas of land or sea that the Commonwealth owns or leases. This includes “Indigenous people’s land”.

The EPBC Act defines ‘Indigenous people’s land’ by reference to section 363(3), which provides:

*What is **Indigenous people’s land**?*

*(3) Land is **Indigenous people’s land** if:*

(a) a body corporate holds an estate that allows the body to lease the land to the Commonwealth or the Director; and



CENTRAL LAND COUNCIL

(b) *the body corporate was established by or under an Act for the purpose of holding for the benefit of Indigenous persons title to land vested in it by or under that Act.*

Aboriginal Land in the Northern Territory leased to the Director of National Parks falls in this category. However, the definition is restrictive in the context of native title. The term 'lease' is not defined under the EPBC Act, so applying a common legal meaning, the above definition likely excludes native title areas, even where the native title rights and interests have been recognised include the right to exclude others.

Consistent with submissions relating to broadening the meaningful involvement of Indigenous peoples in activities and processes under the EPBC Act, a new definition of *Indigenous people's land* is needed.

Recommendation 6: The definition of Indigenous people's land be expanded to include Native Title Land that is subject to a determination of native title.

Such an approach can be seen in the definitions of 'land rights land' and 'native title land' in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth). However, the CLC suggests the definition of native title land could include land subject to a registered claim.

Expanding the definition in this way, will enable Commonwealth managed Native Title Land to attract the same provisions for the management of land that apply if a Commonwealth reserve is declared over Aboriginal Land. These included that a Board is established for the reserve under Subdivision F and joint management arrangements apply (see section 363(5)). The CLC works with these arrangements at Uluru Kata-Tjuta National Park.

It would also give meaning to regulation 8A.10(1) which states:

(1) If the biological resources to which access is sought are in an area that is indigenous people's land and an access provider for the resources is the owner of the land or a native title holder for the land, the owner or native title holder must give informed consent to a benefit-sharing agreement concerning access to the biological resources.

This regulation clearly intends to apply to indigenous people's land which includes native title land but currently does not due to the restrictive definition.

Consideration should also be given to whether an Indigenous land use agreement under the Native Title Act could provide a suitable basis for joint management arrangements of Commonwealth Reserves on Native Title Land.



9. ALIGNING OBJECTS

There is significant overlap between the EPBC Act and elements of the ALRA and Native Title Act. Each act provides for recognition of traditional systems of land management, and preserves traditional rights of access and use. Each act also contains cultural heritage protection provisions.

Recommendation 7: The EPBC Act should be harmonised with the ALRA and the Native Title Act by broadening the objects in section 3(1)(a)-(g) to include the recognition of Indigenous governance and management systems that are recognised on Aboriginal Land and Native Title Land.

Specifically:

- object (1)(f) should be extended beyond recognising the role of Indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity, to recognising Indigenous systems of governance and management of land that have provided for protection of the environment since time immemorial;
- the objects should be amended to reflect articles 8(j) and 10(c) of the Convention of Biological Diversity by insertion of an additional object that recognizes that environmental health, the health of Indigenous people and places of cultural and spiritual significance are intimately intertwined; and
- Discussion Paper page 22 considers changing the wording of the objects in (1)(g) from "to promote the use of Indigenous people's knowledge" to "to provide for the use of Indigenous people's knowledge". The CLC supports this amendment.

10. STRENGTHENING OPPORTUNITIES FOR INVOLVEMENT IN ENVIRONMENTAL MARKETS

As discussed above, the CLC employs and manages over 90 land and sea management rangers associated with 12 ranger groups in Central Australia.

Environmental markets allow an opportunity for Aboriginal people, particularly Aboriginal ranger groups, to undertake economic development in a manner that is sustainable and often supportive of cultural and spiritual practices and associations. However, implementation of the EPBC Act does not adequately prioritise and promote Aboriginal peoples' involvement in environmental offsets. Current environmental offset policies note the benefits of involving Indigenous people in offset projects, however implementation of the EPBC Act should go further and prioritise or incentivise Indigenous peoples' involvement.

Recommendation 8: In implementing the EPBC Act the Australian Government should give preference to offsetting proposals that provide co-benefits to traditional owners or Indigenous



CENTRAL LAND COUNCIL

ranger groups. Further, EPBC Act policies and guidance should clarify that reserve management arrangements, such as the creation of an IPA, is capable of attracting environmental offsets for value (for example advanced offsetting or ‘banking’ of environmental benefits for later use).

Such innovation is important in protecting and appropriately valuing the interests and experience of Indigenous peoples, and provides a means to attract private sector funding to public land management outcomes.

11. EXTENDING ABORIGINAL KNOWLEDGE PROVISIONS

Part 8A of the EPBC Regulations sets out a process for regulating access to biological resources on Commonwealth land.

Regulation 8A.06 provides that biological resources in a Commonwealth area can only be accessed under a permit issued under Part 17. Regulation 8A.10 provides that the Minister must consider whether an Aboriginal access provider (including traditional owners on Aboriginal land or native title holders on Native Title Land) have provided informed consent to benefit sharing arrangements.

The CLC supports these provisions, however submits that the category of resources to which access and benefit sharing agreements should apply to be expanded.

Recommendation 9: The definition of ‘access to biological resources’ should be broadened to include use of natural and biological resources for the purposes of climate change mitigation activities, environmental offsets and activities subject to an environmental accounting regime and commercial use. The area to which these requirements should apply should be extended to include all Native Title Land. There is a useful definition for ‘native title land’ in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth)), however the CLC submits that the definition could be broadened to include land subject to a registered claim.

Expanding the operation of access and benefit sharing arrangements in this way ensures that emerging commercial exploitation of natural and biological resources on land subject to Indigenous interests is done in a way that engages with and better respects Indigenous knowledge and protocols.



CENTRAL LAND COUNCIL

ATTACHMENT A – PUBLIC COMMENTS – ASSESSMENT PROCESS

Section	Key elements	Recommendation
<p>74(3)</p> <p>Public comment – whether an action is a controlled action.</p>	<p>(3) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must cause to be published on the internet:</p> <p>(a) the referral; and</p> <p>(b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the action is a controlled action.</p> <p>Minister must consider the comments in making decision: s75(1A).</p>	<p>Insert additional requirement to cause Minister to invite:</p> <p>(a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected),</p> <p>to give the Minister comments within 10 business days (measured in Canberra) of receipt of invitation, on whether the action is a controlled action.</p> <p>Minister must consider the comments in making decision.</p>
<p>74D(2)(c)</p> <p>Decision that action is clearly unacceptable – Minister requested to reconsider referral.</p>	<p>The Minister must, within 10 business days after receiving the request, publish on the internet:</p> <p>(c) an invitation for anyone to give the Secretary, within 10 business days (measured in Canberra), comments in writing on:</p>	<p>Insert additional requirement to cause Secretary to provide invitation to provide comments to:</p> <p>(c) the Land Council (if Aboriginal Land affected); or (d) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected),</p>



CENTRAL LAND COUNCIL

Section	Key elements	Recommendation
	<p>(i) the impacts that the action would have on a matter protected by a provision of Part 3; and</p> <p>(ii) the Minister's proposal to refuse to approve the taking of the action.</p> <p>Secretary to prepare a written report about the relevant impacts and provide a copy of comments to the Minister: s 74D(3).</p>	<p>within 10 business days of the date of receipt of invitation.</p> <p>Such comments to form part of the Secretary's report under 74D(3).</p>
<p>78B(6)</p> <p>Matters going to revocation and substitution of a decision about an action</p>	<p>(6) The Environment Minister must publish on the internet:</p> <p>(a) the request; and</p> <p>(b) an invitation for anyone to give the Environment Minister, within 10 business days (measured in Canberra), comments in writing on whether a matter referred to in any of paragraphs 78(1)(a) to (ca) (matters going to revocation and substitution of decision about an action) is applicable in relation to the action.</p>	<p>Insert additional requirement to cause Minister to invite comment from:</p> <p>(a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected),</p> <p>within 10 business days of the date the invitation is received in relation to whether a matter referred to in any of paragraphs 78(1)(a) to (ca) is applicable in relation to the action.</p> <p>Minister must consider these comments in reconsidering decision.</p>



CENTRAL LAND COUNCIL

Section	Key elements	Recommendation
<p>93(3)</p> <p>Comments on draft recommendation report or action where Minister decides under s 87 that relevant impacts of the action must be assessed by assessment on referral information under Division 3A.</p>	<p>(3) The Secretary must publish on the internet:</p> <p>(a) the draft recommendation report; and</p> <p>(b) an invitation for anyone to give the Secretary, within 10 business days (measured in Canberra), comments in writing relating to the draft recommendation report or the action.</p> <p>The Secretary must take such comments into account under s 93(4) in finalising the report.</p>	<p>Insert additional requirement to cause Secretary to provide invitation to provide comments to:</p> <p>(a) the Land Council (if Aboriginal Land affected); or</p> <p>(b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected),</p> <p>Such comments to be provided to the Secretary <u>within a period specified in the invitation, being at least 10 business days of the date of invitation.</u></p> <p>The Secretary must take such comments into account under s 93(4) in finalising the report.</p>
<p>95(2)</p> <p>Minister satisfied had sufficient information where Minister decides under s 87 that the relevant impacts of the action must be</p>	<p>(2) At the same time as the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must give the designated proponent a written direction to publish, within the period specified in the direction (not being less than 10 business days), in accordance with the regulations:</p>	<p>Insert additional requirement to cause proponent to provide invitation to comment to:</p> <p>(a) the Land Council (if Aboriginal Land affected); or</p> <p>(b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected).</p> <p>Such comments to be provided in writing within <u>30 business days or the period specified by the Minister (whichever is</u></p>



CENTRAL LAND COUNCIL

Section	Key elements	Recommendation
<p>assessed by preliminary documentation on under Division 4.</p>	<p>(a) specified information included in the referral to the Minister of the proposal to take the action; and</p> <p>(b) specified information relating to the action that was given to the Minister after the referral but before the Minister made the assessment approach decision; and</p> <p>(c) an invitation for anyone to give the designated proponent, within the period specified in the direction, comments in writing relating to the information or the action.</p> <p>If comments are received the proponent must prepare and provide to the Minister a document that sets out a summary of the comments received and how they have been addressed: s95B(1).</p>	<p><u>longer</u>), but must <u>not include any period during December, January or February in the Northern Territory.</u></p> <p>If comments are received the proponent must prepare and provide to the Minister a document that sets out a summary of the comments received and how they have been addressed: s95B(1).</p>
<p>95A(3)</p> <p>Minister not satisfied had sufficient information, where Minister decides under s 87 that the relevant impacts of</p>	<p>(2) At the same time as the Minister gives notice of the assessment approach decision to the designated proponent of the action under paragraph 91(1)(a), the Minister must give the designated proponent a written direction to publish, within the period specified in the direction (not being less than 10 business days), in accordance with the regulations:</p>	<p>Insert additional requirement to cause proponent to provide invitation to comment to:</p> <p>(a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected).</p> <p>Such comments to be provided in writing within <u>30 business days or the period specified by the Minister (whichever is</u></p>



CENTRAL LAND COUNCIL

Section	Key elements	Recommendation
<p>the action must be assessed by assessment on preliminary documentation under Division 4.</p>	<p>(a) specified information included in the referral to the Minister of the proposal to take the action; and</p> <p>(b) specified information relating to the action that was given to the Minister after the referral but before the Minister made the assessment approach decision; and</p> <p>(c) an invitation for anyone to give the designated proponent, within the period specified in the direction, comments in writing relating to the information or the action.</p> <p>If comments are received the proponent must prepare and provide to the Minister a document that sets out a summary of the comments received and how they have been addressed: s95B(1).</p>	<p><u>longer) but must not include any period during December, January or February in the Northern Territory.</u></p> <p>If comments are received the proponent must prepare and provide to the Minister a document that sets out a summary of the comments received and how they have been addressed: s95B(1).</p>
<p>97(5)</p> <p>Tailored guidelines (preparation of a draft Public Environment Report if standard guidelines not appropriate).</p>	<p>(5) In preparing tailored guidelines, the Minister may:</p> <p>(a) invite anyone to comment on a draft of tailored guidelines within a period specified by the Minister; and</p> <p>(b) take account of the comments received (if any).</p>	<p>Insert additional requirement to cause Minister to invite:</p> <p>(a) the Land Council (if Aboriginal Land affected); or</p> <p>(b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected),</p> <p>to provide comment on a draft of tailored guidelines within the period (not less than 10 business days) specified by the Minister, and to take into account the comments received.</p>



CENTRAL LAND COUNCIL

Section	Key elements	Recommendation
<p>98(c)</p> <p>Invitation provide comments to proponent on PER.</p>	<p>A proponent must:</p> <p>(c) publish in accordance with the regulations:</p> <p>(i) the draft report; and</p> <p>(ii) an invitation for anyone to give the designated proponent comments in writing relating to the draft report or the action within the period specified in the invitation.</p> <p>These must be provided to the Minister: s 99(3).</p> <p>98(3) The period specified in the invitation to comment must be the period specified in writing given by the Minister to the designated proponent. The Minister must not specify a period of less than 20 business days.</p>	<p>Insert additional requirement to cause Minister to invite:</p> <p>(a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected),</p> <p>To give the designated proponent comments in writing relating to the draft report or the action within <u>30 business days or the period specified by the Minister (whichever is longer), but must not include any period during December, January or February in the Northern Territory.</u></p>
<p>102(5)</p> <p>Tailored guidelines, drafting EIS if standard guidelines insufficient.</p>	<p>(5) In preparing tailored guidelines, the Minister may:</p> <p>(a) invite anyone to comment on a draft of tailored guidelines within a period specified by the Minister; and</p> <p>(b) take account of the comments (if any) received.</p>	<p>Insert additional requirement to cause Minister to invite:</p> <p>(a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected),</p>



CENTRAL LAND COUNCIL

Section	Key elements	Recommendation
	The Minister may take account of the comments (if any) received: 102(5)(b).	to provide comment on a draft of tailored guidelines within the period specified by the Minister (<u>which must not be less than 10 business days from receipt of the invitation</u>). The Minister may take account of the comments (if any) received: 102(5)(b).
103(1)(c) Invitation provide comments to proponent on EIS.	A proponent must: (c) publish in accordance with the regulations: (i) the draft statement; and (ii) an invitation for anyone to give the designated proponent comments in writing relating to the draft statement or the action within the period specified in the invitation. 103(3): The period specified in the invitation to comment must be the period specified in writing given by the Minister to the designated proponent. The Minister must not specify a period of less than 20 business days.	Insert additional requirement to cause proponent to invite: (a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected), to give the designated proponent comments in writing relating to the draft statement or the action. The period specified must be not less than <u>30 business days, but must not include any period during December, January or February in the Northern Territory.</u>
131A	131A Inviting public comment before decision	Insert additional requirement to cause Minister to invite: (a) the Land Council (if Aboriginal Land affected); or



CENTRAL LAND COUNCIL

Section	Key elements	Recommendation
<p>Decisions on approval and conditions - Inviting public comment before decision on proposed action</p>	<p>Before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action, and what conditions (if any) to attach to an approval, he or she may publish on the internet:</p> <p>(a) the proposed decision and, if the proposed decision is to approve the taking of the action, any conditions that the Minister proposes to attach to the approval; and</p> <p>(b) an invitation for anyone to give the Minister, within 10 business days (measured in Canberra), comments in writing on the proposed decision and any conditions.</p>	<p>(b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected),</p> <p>to provide comments in writing on the proposed decision and any conditions within a specified period. The period specified must be not less than <u>30 business days, but must not include any period during December, January or February in the Northern Territory.</u></p> <p>The Minister should be required to take such comments into account.</p>
<p>134A(1) Inviting public comment before approving action management plan.</p>	<p>(1) Before approving an action management plan, the Minister may publish:</p> <p>(a) the plan; and</p> <p>(b) an invitation for anyone to give the Minister, within 11 business days, written comments on the plan.</p>	<p>Insert additional requirement to cause Minister to invite:</p> <p>(a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected),</p> <p>To provide written comments on the plan, within 11 business days of the date the invitation is received.</p> <p>The Minister should be required to take any comments into account prior to making a decision.</p>



CENTRAL LAND COUNCIL

Section	Key elements	Recommendation
<p>146(1B)</p> <p>Strategic assessments</p>	<p>Minister may agree on strategic assessment: 146(1).</p> <p>Agreement must provide for:</p> <p>146(1B)(1)(b)(ii) the publication of the draft terms of reference for public comment for a period of at least 28 days that is specified by the Minister.</p> <p>146(1B)(2) publication of a draft report for public comment for a period of at least 28 days that is specified by the Minister.</p>	<p>Amend to cause express requirement to invite comment from:</p> <p>(a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected),</p> <p>In relation to draft terms of reference and the draft report for public comment.</p> <p>The timing for provision of comments for the draft terms of reference should be the period specified by the Minister.</p> <p><u>For comments on the draft report the Minister should not be able to specify a period less than 30 business days and such period should not include December, January or February in the Northern Territory.</u></p>



CENTRAL LAND COUNCIL

ATTACHMENT B – PUBLIC COMMENTS – ENVIRONMENTAL PROVISIONS

Section	Recommendation
Listed threatened species and ecological communities	
194M(3)(g) Listed threatened species and ecological communities – Scientific Committee to invite comments on items in finalised priority list.	Scientific Committee may invite people to comment on matters that the Scientific Committee considers appropriate. Suggest that the following are invited to comment: <ul style="list-style-type: none"> (a) the Land Council (if Aboriginal Land affected); (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected); (c) Land Councils and NTRBs (if customary use affected). This will allow input from traditional owners and Indigenous ranger groups. <u>Suggest cut-off date for comments is at least 30 business days after the date the notice has been published.</u>
Recovery Plans for species and communities	
269AA(5)(b) and (7) Minister must invite people to make comments to the Minister about the proposed decision not to have a recovery plan for a species or community. Cut-off date for comments is at least 30 business days after the notice has been published: 7(d)	Amend to cause express requirement to cause Minister to invite: <ul style="list-style-type: none"> (a) the Land Council (if Aboriginal Land affected); (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected); (c) Land Councils and NTRBs (if customary use affected), to comment within the timeframe afforded to the public.



CENTRAL LAND COUNCIL

Section	Recommendation
<p>275 Making a plan</p> <p>Minister must allow public comment prior to making a recovery plan or threat abatement plan. Due date for comments must not occur within 3 months after notice is published in the Gazette: 275(3). Minister may revise the plan to take account of comments: 276.</p>	<p>Amend to cause express requirement to cause Minister to invite:</p> <ul style="list-style-type: none"> (a) the Land Council (if Aboriginal Land affected); (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected); (c) Land Councils and NTRBs (if customary use affected), <p>to comment within the timeframe afforded to the public.</p>
<p>279(7) Variation of plan.</p> <p>Causes consultation provisions in s 275 to apply.</p>	<p>As above (see s 275).</p>
<p>Wildlife conservation plans</p>	
<p>290 (Proposed wildlife conservation plan)</p> <p>Minister must allow public comment prior to making a wildlife conservation plan. Due date for comments must not occur within 3 months after notice is published in the Gazette: s290(3).</p> <p>Minister must consider comments: 291</p>	<p>Amend to cause express requirement to cause Minister to invite:</p> <ul style="list-style-type: none"> (a) the Land Council (if Aboriginal Land affected); (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected); (c) Land Councils and NTRBs (if customary use affected), <p>to comment within the timeframe afforded to the public.</p>
<p>294(7) Variation of plans by Minister – consultation provisions in s 290, 291, 293 apply.</p>	<p>As above (see s 290)</p>



CENTRAL LAND COUNCIL

Section	Recommendation
Declaring and revoking Commonwealth reserves	
<p>351(2)</p> <p>Governor-General may, by proclamation, declaring and revoke Commonwealth Reserves. Before doing so the Minister must consider a report prepared by the Director of National Parks. In preparing the report the Director must invite public comment: 351(2). The time for comments must be at least 60 days after the last day on which the notice is published in the Gazette: 351(5).</p>	<p>Amend to cause express requirement to cause Minister to invite:</p> <p>(d) the Land Council (if Aboriginal Land affected); (e) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected);</p> <p>to comment within the timeframe afforded to the public.</p>
Proposed remediation determinations	
<p>480F(1)(c) (Proposed remediation determination).</p> <p>Before a Minister makes a remediation determination that requires action to be taken on land that is not owned or occupied by the person proposed to be specified in the order, the Minister must: identify owners/ occupiers and give them at least 20 business days to comment</p>	<p>Amend to cause express requirement to cause Minister to notify:</p> <p>(a) the Land Council (if Aboriginal Land affected); (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected),</p> <p>so that they can provide comment, and they require at least <u>30 business days to comment.</u></p>



CENTRAL LAND COUNCIL

Section	Recommendation
in writing to the Minister on the proposed remediation.	



CENTRAL LAND COUNCIL

ATTACHMENT C – PUBLIC COMMENTS – PERMIT APPLICATIONS

Section	Key elements	Recommendation
<p>200(3)</p> <p>Application for permits – listed and threatened species</p>	<p>(3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:</p> <p>(a) details of the application; and</p> <p>(b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.</p> <p>The Minister may issue a permit if the specified action is of particular significance to Indigenous tradition and will not adversely affect the survival or recovery in nature of the listed threatened species or community:201(c).</p> <p>The Minister must consider comments under s 200(3) in making his or her decision: s201(5).</p>	<p>Amend to cause express requirement to cause Minister to invite to comment:</p> <p>(a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected).</p> <p>Such comments to be provided <u>within 30 business days, but must not include any period during December, January or February in the Northern Territory.</u></p>



CENTRAL LAND COUNCIL

Section	Key elements	Recommendation
<p>215(3)</p> <p>Permits to take certain actions – listed migratory species</p>	<p>(3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:</p> <p>(a) details of the application; and</p> <p>(b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.</p> <p>The Minister may issue a permit if the specified action is of particular significance to Indigenous tradition and will not adversely affect the conservation status of the listed migratory species a population of that species:216(c).</p> <p>The Minister must take such comments into account: s 216(4).</p>	<p>Amend to cause express requirement to cause Minister to invite to comment:</p> <p>(a) the Land Council (if Aboriginal Land affected); or</p> <p>(b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected).</p> <p><u>Such comments to be provided within 30 business days, but must not include any period during December, January or February in the Northern Territory.</u></p>
<p>237(3)</p> <p>Permits related to cetaceans</p>	<p>(3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:</p> <p>(a) details of the application; and</p>	<p>Amend to cause express requirement to cause Minister to invite to comment:</p> <p>(a) the Land Council (if Aboriginal Land affected); or</p> <p>(b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected).</p>



CENTRAL LAND COUNCIL

Section	Key elements	Recommendation
	<p>(b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.</p> <p>The Minister must take such comments into account: s 238(3A)</p>	<p>Such comments to be provided <u>within 30 business days, but must not include any period during December, January or February in the Northern Territory.</u></p>
<p>257(3)</p> <p>Permits to take certain actions – listed marine species</p>	<p>(3) As soon as practicable after receiving the application, the Minister must cause to be published on the internet:</p> <p>(a) details of the application; and</p> <p>(b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the permit should be issued.</p> <p>The Minister may issue a permit if the specified action is of particular significance to Indigenous tradition and will not adversely affect the survival or recovery in nature of the listed marine species:258(3)(c).</p> <p>Minister must take such comments into account: s238(3A)</p>	<p>Amend to cause express requirement to cause Minister to invite to comment:</p> <p>(a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected).</p> <p>Such comments to be provided <u>within 30 business days, but must not include any period during December, January or February in the Northern Territory.</u></p>
303FR	<p>Before making a declaration under section 303FN (Approved wildlife trade operation), 303FO (Approved wildlife trade management plan) or 303FP (Accredited Wildlife Trade Management Plan), the Minister must invite persons and</p>	<p>Amend to cause express requirement to cause Minister to invite:</p>



CENTRAL LAND COUNCIL

Section	Key elements	Recommendation
	<p>organisations to give the Minister, within the period specified in the notice, written comments about the proposal: s303FR(1). A period specified in a notice under s 303FR(1) must not be shorter than 20 business days after the date the notice was published on the internet: s303FR(2). The Minister must consider comments: s303FR(3).</p>	<p>(a) the Land Council (if Aboriginal Land or customary use affected); (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected); (c) Land Councils and NTRBs (if customary use affected), to comment within the timeframe afforded to the public.</p>



CENTRAL LAND COUNCIL

ATTACHMENT D – PUBLIC COMMENTS – HERITAGE PROCESSES

Section	Recommendation
National Heritage List – Ordinary Listing Process	
324J and 324JA – Minister invites people to nominate places for inclusion in the National Heritage List and gives the nominations to the Australian Heritage Council.	Minister to provide a copy of nominations received to: <ul style="list-style-type: none"> (a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected).
324JG (Public comments – National Heritage List) Australian Heritage Council invites people to make comments about places in the finalised list. Cut-off date is at least 30 business days after the notice is published: 324JG(3)(d).	Insert requirement that Australian Heritage Council invite comment from: <ul style="list-style-type: none"> (a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected). <p>Such comments to be provided by the ordinary cut-off date.</p>
National Heritage List – Emergency Listing Process	
324JL – Emergency Listing – If a place is included in the National Heritage List as an emergency measure Minister must notify occupiers and owners.	Notification requirements should extend to NTRB and PBC if Native Title Land impacted.



CENTRAL LAND COUNCIL

Section	Recommendation
<p>324JN (Public comments – Australian Heritage Council assessment)</p> <p>Australian Heritage Council may invite comments on the listing of the place. The cut-off date for comments is at least 30 business days after the notice is published: 324JN(2)(d).</p>	<p>Insert requirement that Australian Heritage Council invite comment from:</p> <ul style="list-style-type: none"> (a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected). <p>Such comments to be provided by the ordinary cut-off date.</p>
<p>324M(1)(b)(ii) (Public comments regarding removal from National Heritage List under s 324L for loss of value).</p> <p>Comments to be provided within 20 business days on the proposed removal: 324M(1)(b).</p>	<p>Insert requirement that Australian Heritage Council invite comment from:</p> <ul style="list-style-type: none"> (a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected). <p>Such comments to be provided <u>within 30 business days, but must not include any period during December, January or February in the Northern Territory.</u></p>
<p>324S(6)(a) (Making, amending or revoking a Management Plan for a National Heritage place in a Commonwealth area).</p>	<p>Insert requirement that the Minister invite comment from:</p> <ul style="list-style-type: none"> (c) the Land Council (if Aboriginal Land affected); or (d) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected). <p>Such comments to be provided <u>within 30 business days, but must not include any period during December, January or February in the Northern Territory.</u></p>



CENTRAL LAND COUNCIL

Section	Recommendation
<p>324W Review of Management Plan for National Heritage Place.</p> <p>Person carrying out review must invite anyone to give comments within 20 business days on whether the plan is consistent with the National Heritage Principles and the effectiveness of the plan in protecting and conserving the National Heritage values of the place.</p>	<p>Insert requirement that the reviewer invite comment from:</p> <p>(a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected).</p> <p>Such comments to be provided <u>within 30 business days, but must not include any period during December, January or February in the Northern Territory.</u></p>
<p>Commonwealth Heritage List</p>	
<p>341H and 341J</p> <p>Minister invites people to nominate places for inclusion in the Commonwealth Heritage List, and gives the nominations to the Australian Heritage Council.</p>	<p>Minister to provide a copy of nominations received to:</p> <p>(a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected).</p>
<p>341JF (Public comments – Commonwealth Heritage List)</p> <p>Australian Heritage Council invites people to make comments on places in finalised priority assessment list).</p>	<p>Insert requirement that Australian Heritage Council invite comment from:</p> <p>(a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected).</p>



CENTRAL LAND COUNCIL

Section	Recommendation
<p>Australian Heritage Council invites people to make comments about places in the finalised list. Cut-off date is at least 30 business days after the notice is published: 341JF(3)(d).</p>	<p>Such comments to be provided by the ordinary cut-off date.</p>
<p>341JM (Public comments – Australian Heritage Council assessment)</p> <p>Australian Heritage Council may invite comments on the listing of the place. The cut-off date for comments is at least 30 business days after the notice is published: 341JM(2)(d).</p>	<p>Insert requirement that Australian Heritage Council invite comment from:</p> <ul style="list-style-type: none"> (a) the Land Council (if Aboriginal Land affected); or (b) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected). <p>Such comments to be provided by the ordinary cut-off date.</p>
<p>341M(1)(b)(ii) (Public comments regarding removal from Commonwealth Heritage List under s 341L for loss of value).</p> <p>Comments to be provided within 20 business days on the proposed removal: 341M(1)(b)(ii).</p>	<p>Insert requirement that Australian Heritage Council invite comment from:</p> <ul style="list-style-type: none"> (e) the Land Council (if Aboriginal Land affected); or (f) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected). <p>Such comments to be provided <u>within 30 business days, but must not include any period during December, January or February in the Northern Territory.</u></p>



CENTRAL LAND COUNCIL

Section	Recommendation
<p>341S (Making, amending or revoking a Management Plan for a Commonwealth Heritage place).</p>	<p>Insert requirement that before making, amending or revoking and replacing a plan, the agency must consult:</p> <p>(g) the Land Council (if Aboriginal Land affected); or (h) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected).</p> <p>Such comments to be provided <u>within 30 business days, but must not include any period during December, January or February in the Northern Territory.</u></p>
<p>341X Review of Management Plan for Commonwealth Heritage Place.</p> <p>Person carrying out review must invite anyone to give comments within 20 business days on whether the plan is consistent with the Commonwealth Heritage Management Principles and the effectiveness of the plan in protecting and conserving the Commonwealth Heritage values of the place.</p>	<p>Insert requirement that the reviewer invite comment from:</p> <p>(c) the Land Council (if Aboriginal Land affected); or (d) Prescribed Body Corporate and Native Title Representative Body (if Native Title Land affected).</p> <p>Such comments to be provided <u>within 30 business days, but must not include any period during December, January or February in the Northern Territory.</u></p>