



Government of **Western Australia**  
**Conservation and Parks Commission**

# **Position Statement No.18:**

## **Protect and conserve the value of the land to the culture and heritage of Aboriginal persons**

November 2022

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## **The Commission’s Position**

The Conservation and Parks Commission (Commission) acknowledges that Aboriginal people are the traditional owners of the lands and waters vested in it. The Commission recognises that past government policies and practices have limited the traditional rights, interests and access to land that enable Aboriginal people to fully exercise their culture and heritage and that amendments to the *Conservation and Land Management Act 1984* (CALM Act) have sought to address these impacts.

Aboriginal culture and heritage exists throughout the lands and waters of Western Australia. Protection and conservation of culture and heritage values over land and waters is important in maintaining the identity, health and well-being of Aboriginal people.

The Commission is committed to ensuring that any policies, plans or programs involving land and water vested in, or under the care, control and management of the Commission, whether solely with the conservation and parks commission or jointly with traditional owners, protects and conserves the value of the land to the culture and heritage of Aboriginal people.

The Commission will ensure the value of the land to the culture and heritage of Aboriginal persons is acknowledged, identified (if appropriate), protected and conserved to avoid or minimise material adverse effect via free, prior and informed consent:

### **Acknowledge and Identify**

- Aboriginal culture and heritage values are acknowledged and identified (if appropriate) when developing management plans and considered through their implementation;
- Developing joint management plans shall adopt the eight co-design principles (established by the Aboriginal Cultural Heritage Reference Group, comprising of four members from the Aboriginal community, industry and government) –
  - cultural sensitivity
  - empathy, respect, trust and safe participation
  - inclusiveness
  - iterative
  - solutions focussed
  - equal partnership
  - transparent
  - integrity.
- Aboriginal people must be consulted when preparing new or amending management plans;
- Management plans shall include objectives, strategies, and key performance indicators that contribute to the protection and conservation of the value of the land to the culture and heritage of Aboriginal persons; and
- Aboriginal people are the primary source of information on the value of their culture and heritage.

### **Protect and Conserve**

- Apply a risk-based approach to managing Aboriginal culture and heritage values, to ensure potential impacts for new disturbance activities are considered and appropriate steps are applied to avoid or minimise impacts to ensure there are no material adverse effects to Aboriginal culture and heritage values;
- Coordinate management activities in partnership with Aboriginal people where joint management arrangements exist;

- Free, prior and informed consent with Aboriginal people will be undertaken in a respectful and meaningful manner by involving Aboriginal people in problem-solving and decision making processes in relation to how Aboriginal culture and heritage values are best protected and conserved;
- Aboriginal people own and control intellectual property and other information relating specifically to their culture and heritage, as this may be an integral aspect of its value;
- Every effort should be made to clarify uncertainty about Aboriginal culture and heritage values at a place;
- All parties who have relevant interests should be consulted about Aboriginal culture and heritage matters consistent with established governance protocols in relevant joint management agreements or where a Government Standard Heritage Agreement or equivalent applies;
- Aboriginal people will have access to CALM Act lands and water and continue to fulfil their cultural obligations and protect and conserve their culture and heritage values; and
- The process and outcomes of planning for the protection and conservation of Aboriginal culture and heritage values must have regard to customary law, and abide by relevant Commonwealth and State laws, relevant international treaties and covenants and any other legally binding agreements.

## **Context and Background**

### **United Nations Declaration on the Rights of Indigenous Peoples**

Australia is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples. The declaration establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples.

Article 19 provides that states should consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 31, provides that Indigenous peoples have the right to maintain, control protect and develop their cultural heritage, traditional knowledge and traditional cultures expressions. This article also provides that States should, in conjunction with Indigenous peoples, take effective measures to recognise and protect the exercise of these rights.

UN Declarations are generally not legally binding; however, they represent the dynamic development of international legal norms and reflect the commitment of states to move in certain directions, abiding by certain principles.

### **Legislation**

In Australia, there are federal, state and territory laws that protect Aboriginal heritage.

The Commonwealth *Native Title Act 1993* enshrines the rights of native title holders to protect and maintain places of cultural significance to protect their culture and heritage and to maintain their connection to land and waters.

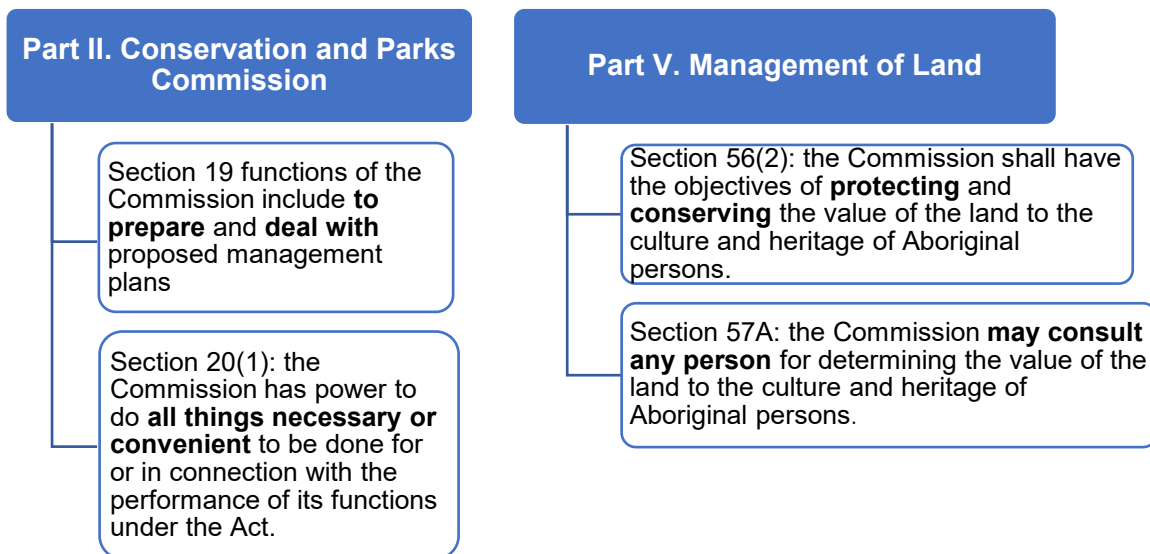
Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), the federal government is also responsible for protecting Aboriginal heritage places that are nationally or internationally significant, or that are situated on land that is owned or managed by the Commonwealth.

The EPBC Act establishes the National Heritage List, which includes natural, Aboriginal and historic places that are of outstanding heritage value to Australia. Under the EPBC Act there are penalties for anyone who takes an action that has or will have a significant impact on the Aboriginal heritage values of a place that is recognised in the National Heritage List. The EPBC Act also establishes the Commonwealth Heritage List, which includes places on Commonwealth lands and waters or under Australian Government control that have Aboriginal heritage significance.

In Western Australia (WA), there are four acts of parliament that deal with protection and conservation of Aboriginal heritage:

1. *Conservation and Land Management Act 1984* (CALM Act);
2. *Aboriginal Cultural Heritage Act 2021* (ACH Act);
3. *Environmental Protection Act 1986* (EP Act); and
4. *The Biodiversity Conservation Act 2016* (BC Act).

The Commission is established under the CALM Act and the relevant Commission responsibilities under the CALM Act relating to the protection and conservation of Aboriginal heritage are illustrated in Figure 1. The Department of Biodiversity, Conservation and Attractions is the management agency responsible for administering the CALM Act.



**Figure 1:** The Commission’s responsibilities in protecting and conserving the value of the land to the culture and heritage of Aboriginal persons under the CALM Act