



## **CORPORATE POLICY STATEMENT NO. 25**

### **PROTECT AND CONSERVE ABORIGINAL CULTURAL HERITAGE**

December 2023

#### **1. OBJECTIVE**

This policy will guide the operations of the Department of Biodiversity, Conservation and Attractions (the department) in protecting and conserving Aboriginal cultural heritage.

#### **2. SCOPE**

This policy applies to all departmental functions on land and water that the department manages, including the statutory authorities of Botanic Gardens and Parks Authority, Rottnest Island Authority and Zoological Parks Authority. It also applies to activities regulated under the *Biodiversity Conservation Act 2016* on departmental land and water.

This policy complements requirements under the *Aboriginal Heritage Act 1972* (AH Act).

#### **3. CONTEXT**

##### *Requirements under the AH Act*

The AH Act recognises Aboriginal sites are of immense cultural, scientific, educational and historic interest and provide Aboriginal people with an important link to their present and past culture. The AH Act includes provisions for managing activities that may impact Aboriginal sites. This is applicable across the department.

##### *Requirements under the Conservation and Land Management Act 1984 (CALM Act)*

The CALM Act provides the legal framework for Traditional Owners to have a formal role in the management of Western Australia's conservation estate and recognises the intrinsic connection that Aboriginal people have with the land and sea. Specifically, the CALM Act provides for:

- formal joint management and joint vesting of CALM Act land and water;
- Aboriginal people to carry out customary activities on CALM Act land and water; and
- a management objective to protect and conserve the value of the land to the culture and heritage of Aboriginal persons particularly from material adverse effect, which is included in all new and updated CALM Act management plans.

It is through these management arrangements that the value of the land to the culture and heritage of Aboriginal persons is given effect.

The CALM Act and the AH Act have separate but complementary regimes. While it is noted that the terms "*the value of the land to the culture and heritage of Aboriginal persons*" and "*Aboriginal sites and objects*" are different between the two Acts, it is reasonable to consider that the Acts deal with sufficiently similar subject matters such that the definitions in one Act are relevant to the other. Therefore, for the purposes of this policy, the two terms will be referred to as "**Aboriginal cultural heritage**".

*Requirements under the Botanic Gardens and Parks Authority Act 1998 (BGPA Act)*

The BGPA Act has the purpose of enabling Aboriginal cultural heritage to be conserved, enhanced and promoted. It is through this statutory function that gives effect to its strategic guidance for the management of Bold Park and Kings Park and Botanic Garden, articulated in its management plans.

*Requirements under the Swan and Canning Rivers Management Act 2006 (SCRM Act)*

The SCRM Act management objective is to recognise the interests of the Whadjuk Noongar Traditional Owners and to provide for Whadjuk Noongar participation in the management of the development control area and the Swan Canning Riverpark, including activities affecting the ecological and community benefits and amenity of those areas.

*Requirements under the Rottnest Island Authority Act 1987 (RIA Act)*

While the RIA Act does not specifically recognise Aboriginal culture or heritage interests, since 2017 there has been a Cabinet-established Wadjemup Aboriginal Reference Group. This reference group provides advice to the Authority on the implementation of the Reconciliation Action Plan (RAP) and broader Aboriginal consultation across the island. The Whadjuk Wadjemup Cultural Authority provides advice on the conservation and interpretation of Rottnest Island's Aboriginal Burial Ground and the former prison known as The Quod.

**Definitions**

*Aboriginal cultural heritage*

Aboriginal cultural heritage means the same as "Aboriginal site" under section 5 of the *AH Act* and includes the following —

- (i) any place of importance and significance where persons of Aboriginal descent have, or appear to have, left any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of the Aboriginal people, past or present;
- (ii) any sacred, ritual or ceremonial site, which is of importance and special significance to persons of Aboriginal descent;
- (iii) any place which, in the opinion of the Committee, is or was associated with the Aboriginal people and which is of historical, anthropological, archaeological or ethnographical interest and should be preserved because of its importance and significance to the cultural heritage of the State;
- (iv) any place where objects to which the *AH Act* applies are traditionally stored, or to which, under the provisions of the *AH Act*, such objects have been taken or removed.

For the purposes of this Policy, the term Aboriginal cultural heritage also includes "Aboriginal cultural material" classified under section 40 of the *AH Act* and includes an object of Aboriginal origin that has been declared to be so.

*Aboriginal person*

An Aboriginal person means a person wholly or partly descended from the original inhabitants of Australia.

*Impact*

Impact means the act of excavating, destroying, damaging, concealing or altering an Aboriginal site, consistent with the AH Act.

*Material adverse effect*

Material adverse effect as referred to in the CALM Act means an event or activity that is significant and real, which results in, or could reasonably result in, or may cause an adverse alteration or change to the value of the land to the culture and heritage of Aboriginal persons. Depending on the circumstance, such an event or activity could adversely impact or could reasonably be expected to adversely impact a cultural landscape/seascape (tangible and intangible value), or the ability of Aboriginal people to continue to practice their customs and traditions (restricts access) on CALM Act land and water. This is considered different to offences relating to Aboriginal sites under section 17 of the AH Act, which are specific to an Aboriginal place or object as per section 5 of the AH Act. Refer to definition of “impact” (above).

#### 4. LEGISLATION

Specific statutory provisions under legislation that the department administers and that support this policy include:

CALM Act

- the management functions of the CEO under Part IV;
- the preparation of management plans under section 14 and Part V; and
- the authorisation functions under Part VIII.

BGPA Act

- the management functions of the Authority under Part III.

SCRM Act

- the management objective under Part I.

The legislation listed below also has relevance to this policy:

- *Biodiversity Conservation Act 2016*
- RIA Act
- *Zoological Parks Authority Act 2001*
- *Aboriginal Heritage Act 1972*
- *Land Administration Act 1997*
- *Environmental Protection Act 1986*
- *Bush Fires Act 1954*
- *Native Title Act 1993 (Cth)*

#### 5. POLICY

To protect and conserve Aboriginal cultural heritage on departmental land and water, the department will:

- 5.1 Acknowledge the presence of intangible and tangible Aboriginal cultural heritage.
- 5.2 Plan and implement management activities to avoid or minimise the risk of causing material adverse effects or impact on Aboriginal cultural heritage.

- 5.3 Coordinate management activities in partnership with Aboriginal people where joint management arrangements and cooperative management arrangements, or similar, exist to enable decisions about Aboriginal cultural heritage to be made by Traditional Owners.
- 5.4 Ensure the granting of any licence, lease, permit or other authority does not result in material adverse effect on Aboriginal cultural heritage.
- 5.5 Consult with Aboriginal people in a meaningful, respectful and purposeful manner.
- 5.6 Recognise, and where possible, facilitate access for Aboriginal people to conduct customary activities as a way of maintaining ongoing connection to country in accordance with *Corporate Policy Statement 86 – Aboriginal Customary Activities*.
- 5.7 Continue to invest in the cultural competence of staff and understanding of Aboriginal cultural heritage through inductions, training and experiences.
- 5.8 Develop reporting processes on the protection of Aboriginal cultural heritage.
- 5.9 Inform internal and external stakeholders and the community about the requirement to protect and conserve Aboriginal cultural heritage.

## 6 STANDARDS

The department is guided by a range of documents, strategies, systems and programmes that support this policy, including:

- Reconciliation Action Plan (the department).
- Disturbance Approval System (the department).
- Aboriginal Cultural Heritage Inquiry System (Department of Planning, Lands and Heritage).
- Aboriginal Heritage Due Diligence Guidelines (Department of Planning, Lands and Heritage).
- Aboriginal Empowerment Strategy 2021-2029 (Department of the Premier and Cabinet).

This policy is also guided by any relevant joint management agreements, cooperative management agreements, Indigenous Land Use Agreements and Government Standard Heritage Agreements, and joint management plans in place between the department and an Aboriginal Prescribed Body Corporate.

## 7 POLICY IMPLEMENTATION STRATEGIES

- 7.1 This policy will be implemented using the procedures set out in *Corporate Guideline 45: Protect and Conserve Aboriginal Cultural Heritage*, or where applicable, procedures developed by the statutory authorities.
- 7.2 The department will follow the provisions of the AH Act, where applicable, to avoid or minimise the risk of causing material adverse effects or impact to Aboriginal cultural heritage.
- 7.3 The department will apply a risk-based approach to management activities to ensure potential impacts are considered and appropriate treatments applied to avoid or minimise the risk of causing material adverse effect or impact on

Aboriginal cultural heritage in accordance with management plans established under the CALM Act, BGPA Act, RIA Act and SCRM Act.

- 7.4 Where there is disparity between the views of Traditional Owners regarding a proposal that the department considers to be in the broader community or State interest, the department will facilitate negotiations in good faith with relevant parties consistent with any joint management agreements or cooperative management agreements in place for the area, and, if applicable, seek authorisation under the AH Act.
- 7.5 Where joint management and cooperative management agreements apply, the department will seek advice from Traditional Owners on how the department and the relevant Joint Management Body or Regional Corporation will work together to determine, conserve, protect and rehabilitate Aboriginal cultural heritage.
- 7.6 The department will actively engage with the joint management working group, joint management bodies and cooperative management committees on the performance of how the department is protecting and conserving Aboriginal cultural heritage every five years.
- 7.7 To guide the operations in protecting and conserving Aboriginal cultural heritage and to coordinate the implementation of this policy a working group will be established.

## **8 CUSTODIAN**

Executive Director Parks and Visitor Services Division.

## **9 PUBLICATION**

This policy will be made available on the department's internet and intranet.

## **10 KEY WORDS**

Aboriginal people – Aboriginal cultural heritage – value of the lands to the culture and heritage of Aboriginal persons – consultation – partnerships – customary activities – joint management – cooperative management

## **11 REVIEW**

This policy will be reviewed every 12 months for the next three years.

## **12 DIRECTOR GENERAL APPROVAL**

Approved by



Stuart Smith  
DIRECTOR GENERAL

Effective date: 19 December 2023