



# Aboriginal Cultural Heritage Bill

A Bill is an idea for a law. The current law about Aboriginal cultural heritage in WA at the moment is called the *Aboriginal Heritage Act 1972* (1972 Act). It doesn't work, and needs to be replaced.

The Aboriginal Cultural Heritage Bill (the Bill) is a new way for managing Aboriginal cultural heritage in WA by giving Aboriginal people a much stronger say in managing their cultural heritage.

When the Bill becomes the law, there will be better protection for Aboriginal cultural heritage.

The main things the Bill wants to do:

- recognise how important Aboriginal cultural heritage is to Aboriginal people;
- recognise that Aboriginal cultural heritage is important to non-Aboriginal people as well;
- make sure it is Aboriginal people who decide what their cultural heritage is and how important it is to them;
- protect and preserve Aboriginal cultural heritage;
- provide a way to stop people from damaging Aboriginal cultural heritage and provide a good result for Aboriginal people and other people in WA; and
- make sure that people appreciate WA's Aboriginal cultural heritage.

## Main parts of the Bill:

### 1. Updated Aboriginal cultural heritage definition

- The Bill better defines Aboriginal cultural heritage as valued by Aboriginal people.
- One that includes things that you can see, for example stone tools, and things that you can't see, for example stories about places.
- The old laws concentrate on sites (special places) and artefacts, like tools. This kind of heritage management practice is old fashioned, and is designed to give people permission to impact heritage. The new definition recognises that living culture is part of Aboriginal cultural heritage and this is important to keep Aboriginal people healthy.
- Under the new laws more heritage that is important to Aboriginal people will be protected.
- The Bill allows for really important places to be named as Protected Areas. The important places can include cultural landscapes.

### 2. Recognising Aboriginal custodianship and control of cultural heritage

- The Bill says that Aboriginal people are keepers of their Aboriginal cultural heritage and are the right people to look after ancestral remains (bones from long ago) and secret and sacred objects.



- The Bill says that people and organisations holding ancestral remains (bones from long ago) must give them back to the right Aboriginal people. The Bill also says it is a good idea to give back secret and sacred objects to the right Aboriginal people.

### **3. A new directory of Aboriginal cultural heritage**

- The Bill says that a person must report Aboriginal cultural heritage (if they find it). This will be recorded in a computer database called the Aboriginal Cultural Heritage Directory. If it is a secret sacred site, such as a secret men's or women's Law site, then the Bill says Aboriginal people can stop it going on the Directory.
- The Aboriginal Cultural Heritage Directory will be somewhere where people can put a record of WA's Aboriginal cultural heritage. For example Aboriginal places, Aboriginal objects, Aboriginal cultural heritage permits and Aboriginal Cultural Heritage Management Plans.
- The Aboriginal Cultural Heritage Council will work out what kind of information has to be recorded in the Directory.

### **4. Giving Aboriginal people a say**

- The Bill will set up the Aboriginal Cultural Heritage Council (ACH Council) to run the Aboriginal Cultural Heritage system. There will be two chairpersons, one man and one woman, and both will have to be an Aboriginal person and the majority of other members, where possible, should also be Aboriginal. There will be a rule that board members will be chosen for their skills, knowledge and experience in Aboriginal cultural heritage.
- This Council will explain why WA's Aboriginal cultural heritage is important and must be protected, make sure Aboriginal people are consulted. The ACH Council will be involved in making sure Aboriginal Cultural Heritage Management Plans have all the right information.
- The Bill aims to set up local Aboriginal cultural heritage services (LACHS), which have local knowledge of Aboriginal people and heritage in each area in WA. Native Title groups through their PBCs will have first say to become a LACHS if they want to.
- This is what LACHS will do:
  - talk to Native Title groups and knowledge holders in the area about Aboriginal cultural heritage issues;
  - talk to people who want to do work on their country about Aboriginal cultural heritage and how to look after it;
  - organise heritage surveys and meetings;
  - make Aboriginal Cultural Heritage Management Plans;
  - help Aboriginal Cultural Heritage Management Plans to be carried out;
  - give Aboriginal cultural heritage information to the ACH Council and talk about how important it is in an area; and
  - other things.
- LACHS will be paid for their services.
- The Government will make sure there is money to help LACHS do their job.

### **5. Protecting really important areas**

- The Bill can protect really important areas from things that damage Aboriginal cultural heritage. There is no change for areas already protected by the 1972 Act, they stay protected.



- Aboriginal people can apply to have a really important area made a Protected Area.
- If an area is made a Protected Area, it will have the highest protection under the law. This will mean more really important places can be made into Protected Areas. Aboriginal people will be able to manage these Protected Areas.

## **6. Managing things that may damage Aboriginal Cultural Heritage**

- The Bill says that Aboriginal people will have a say about their heritage. The main part of this will be Aboriginal Cultural Heritage Management Plans between Aboriginal people and people who want to do things on country.
- People who want to do work on country that may impact Aboriginal cultural heritage have to talk to the right Aboriginal people for that area.
- The Bill will set up a system with different levels about using the land. This means there will be four different tiers or levels with different activities in each one. What kinds of activities fit into each level is something Aboriginal people, the Government, and industry still need to talk about and work out together.
- The Bill says people who want to do work on country should try as hard as they can to find out if their work will damage Aboriginal cultural heritage.

The four tiers (levels) are:

Exempt activities –

- These are things that you don't need permission to do and may be things like walking, taking photos and emergency activities.

Tier one activities –

- This may be things like metal detecting and weed control.
- People do not need approval for doing these things but can ask the Department of Planning, Lands and Heritage for a letter of advice. They also need to try as hard as they can not to impact Aboriginal cultural heritage.

Tier two activities -

- This may be digging of the ground with hand tools.
- This kind of work needs an Aboriginal Cultural Heritage Permit.
- People wanting to do work on country would have to let Aboriginal people know before applying for a permit.

Tier three activities –

- This kind of work involves digging of the ground by machines, like drilling and mining. People doing this kind of work need to agree on an Aboriginal Cultural Heritage Management Plan with the right Aboriginal people.
- Once the Plan is agreed, the ACH Council or the Minister will say if the Aboriginal Cultural Heritage Management Plans are approved. The plans need to say what to do when new Aboriginal cultural heritage is found and when there is new information about the importance of the cultural heritage.



- If an Aboriginal Cultural Heritage Management Plan will impact Aboriginal cultural heritage that is really important to the whole State, the Government will need to give special permission before this can happen, or the Government may say “no” and not give permission.
- If there are disagreements about an Aboriginal Cultural Heritage Management Plan, then the ACH Council can try to help get agreement between Aboriginal people and the person or company who wants to do the activity. If people can’t agree then the ACH Council can make its own plan for the Minister to decide.
- Native Title agreements and cultural heritage agreements between people wanting to do work on country and Aboriginal people can be used as part of an Aboriginal Cultural Heritage Management Plan if they meet the standard in the Bill.
- If people got permission to impact Aboriginal cultural heritage under the old rules (section 18s), but they haven’t started their project yet, they will need to have started within 10 years of the Bill becoming law, or they will lose their permission.

## **7. Better regulation and sticking to rules**

- The Bill says that if any person or organisation impacts Aboriginal cultural heritage they will get a fine. The fines are higher than in any other Aboriginal Cultural Heritage laws in Australia. For example, if someone badly impacts Aboriginal cultural heritage, the punishment for a company will be up to a \$10 million fine, and for a person a \$1 million fine or 5 years in prison or both.
- The Government can stop people from impacting Aboriginal cultural heritage with two things called a stop activity order and a prohibition order.
- The Bill will try to make people follow rules in the Bill using Aboriginal heritage inspectors. The time people can be charged after they commit an offence will be changed and extended from 1 year to 6 years.
- The Bill says that any recommendations or decisions made about impacting Aboriginal cultural heritage should be made public and given to any people affected by them.
- If Aboriginal heritage is harmed and someone is found guilty, compensation for that harm may be payable to Aboriginal people.

## **8. Other things to help the Bill work**

- Guidelines will be there to make it easier for everyone to understand and follow the rules for when they are consulting, planning, requesting to work or working on country of Aboriginal cultural heritage.
- Aboriginal people, industry and Government will talk further about what the Guidelines say.



## **9. How does the Bill stop Juukan Gorge from happening again?**

- The Bill has rules that would stop another Juukan Gorge that the 1972 Act does not have.
- The Bill gets rid of the 1972 Act's section 18 process, which gave permission for the destruction of sites at Juukan Gorge.
- The Bill's tiered assessment system means more activities will need permission if they will impact Aboriginal cultural heritage compared to the rules under the 1972 Act.
- The Bill says Aboriginal Cultural Heritage Management Plans should aim to protect Aboriginal cultural heritage and avoid harming cultural heritage.
- The Bill says that both Aboriginal people and industry must agree on what to do when new cultural heritage information comes up or new cultural heritage is found. No work can happen at the location of the cultural heritage until the Aboriginal people and industry have talked about the new information.
- The Bill gives the Minister the power to make people stop work if they are acting in a way that is not approved or authorised under the new law, or if there is new information about the heritage.
- The rules in the Bill say that people who want to do work on country that may impact Aboriginal cultural heritage will have to talk to the right Aboriginal people for that area. The 1972 Act does not tell people to talk to Aboriginal people about their cultural heritage.
- The Bill says it is up to Aboriginal people to say what their cultural heritage is and how important it is to them. This will give Aboriginal people power to make better agreements with miners and other land users.

## **10. What happens next?**

- There will be more talks with Aboriginal people, State Government and industry, even after the Bill is being talked about in Parliament.
- These talks will be about the important papers that will help people understand the Bill and how the rules will work.
- The 1972 Act will keep going for around 1 year after the Bill starts so the Bill can change over to the new Act.
- The Aboriginal Cultural Material Committee will keep running while the ACH Council is being set up during the transition (between the 1972 Act and the Bill).
- The Bill says that in five years everyone should talk about how the new rules have been working and talk about any changes that could be made.