

Aboriginal Heritage Act Review
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Dear Ms McGowan

ENVIRONMENTAL PROTECTION AUTHORITY SUBMISSION TO THE ABORIGINAL CULTURAL HERITAGE BILL 2020

Background

The Aboriginal Cultural Heritage Bill 2020 provides a significant opportunity for the State of Western Australia to provide greater protection of Aboriginal cultural heritage and to better manage activities that may harm that heritage. The Environmental Protection Authority (EPA) commends the Department of Planning, Lands and Heritage (DPLH) for its broad consultation to date on this important legislation.

The EPA welcome this opportunity to provide input to help build a constructive synergy between a future Aboriginal Cultural Heritage Act and the EPA's responsibilities for managing Aboriginal Cultural Heritage under the *Environmental Protection Act 1986* (EP Act).

The EPA's statutory objective is to use its best endeavours to protect the environment and to prevent, control and abate pollution and environmental harm. Section 3(1) of the EP Act defines environment as "*living things, their physical, biological and social surroundings, and interactions between all of these.*" Social surroundings are further defined in section 3(2) of the EP Act as including "*aesthetic, cultural, economic and social surroundings to the extent that those surroundings directly affect or are affected by [man's] physical or biological surroundings*". The EPA therefore has a statutory obligation to consider Aboriginal cultural heritage and European heritage issues as part of its assessment process.

When assessing proposals, schemes and scheme amendments, the EPA considers both European and Aboriginal cultural heritage through the lens of our Social Surroundings factor guidance. The objective of the Social Surroundings factor is to protect social surroundings from significant harm. Considerations include, for example:

- cases where actual physical protection of the environment is required to protect sites of heritage significance; and
- when matters of Aboriginal cultural associations, including traditional customs, directly linked to the physical or biological aspects of the environment are considered significant. This may include, for example, traditional hunting and gathering activities for native fauna and flora as bush tucker.

It is in this context that the EPA provide the following comments.

Aboriginal Cultural Heritage Bill 2020

The EPA commends that the Aboriginal Cultural Heritage Bill 2020 will provide:

- stronger protection for Aboriginal cultural heritage
- a broader definition of Aboriginal cultural heritage including cultural landscapes
- a stronger voice for Aboriginal people to manage land use proposals where impacts to their heritage have been identified
- a requirement for consultation and agreement making processes with Aboriginal people.

The EPA notes that the Aboriginal Cultural Heritage Bill 2020 is generally concerned with the management of activities that result in direct impacts on Aboriginal cultural heritage. This may include mechanised ground disturbance or clearing of native vegetation that may destroy or damage an Aboriginal place, object or ancestral remains within an activity area or a cultural landscape of a protected area. Through the EP Act, the EPA also has a statutory role in the management of these direct impacts but also has a further legislative mandate to ensure that the indirect or 'off site' impacts of any proposal under assessment (e.g. effects of industrial emissions on rock art or groundwater drawdown impacts on significant waterholes outside of a development footprint area) are appropriately managed.

For direct impacts, the EPA is supportive of the Aboriginal Cultural Heritage Bill 2020 being the primary legislation dealing with the protection of Aboriginal Cultural Heritage. It also supports the removal of unnecessary duplication in the environmental impact assessment (EIA) process where there are legislative overlaps between the new Bill and the EP Act. To this end, the EPA welcome a consequential amendment to the EP Act that provides for the removal of constraints that currently restrict the Minister for Aboriginal Affairs (acting as a Decision-Making Authority) from making decisions on Aboriginal cultural heritage issues during environmental assessments.

To further express the primacy of a future Aboriginal Cultural Heritage Act in consideration of direct impacts, the EPA also proposes to amend and update its key policies and guidance that outline how the EPA considers Aboriginal cultural heritage issues. These key policy documents include the Environmental Factor Guideline: Social Surroundings; Guidance Statement 41: Assessment of Aboriginal Heritage; and the EIA Procedures Manual. The EPA understand that staff from the Department of Water and Environmental Regulation (DWER) and DPLH have already commenced discussions on this issue.

The EPA believes that any review of key policies should also consider the EPA's role in managing direct, indirect or off-site impacts, and/or cumulative impacts on Aboriginal cultural heritage. This is particularly important as it incorporates areas that may be beyond the current scope of the Aboriginal Cultural Heritage Bill.

Conclusion

The introduction of the Aboriginal Cultural Heritage Bill 2020 comes at a significant time and offers all statutory authorities and regulators with responsibilities in this area an opportunity for reflection and review. The EPA welcome this opportunity and look forward to working with DPLH and DWER to deliver important changes to the legislation and policy that governs the way that Aboriginal cultural heritage is managed in Western Australia.

Yours sincerely



Tom Hatton
CHAIRMAN

1 October 2020