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Aboriginal customary activities

Introduction

The *Conservation and Land Management Act 1984* (CALM Act) and the *Wildlife Conservation Act 1950* (WC Act) will soon be amended by the *Conservation Legislation Amendment Act 2011* to enable Aboriginal people to do things on lands and waters for customary purposes.

The amendments will build on existing entitlements and are in recognition of Aboriginal people's intrinsic connection to the land.

1. What are the main components of the changes to the Acts in relation to Aboriginal customary activities?

The CALM Act and the WC Act will be amended in the near future to allow Aboriginal people to undertake certain activities for customary purposes on reserves, or to take flora and fauna usually protected under the WC Act for customary purposes.

These activities include entering the land, camping temporarily, driving or riding a vehicle, navigating a vessel, bringing an animal onto the land, lighting or kindling fire, and taking or removing flora, fauna or a protected thing (including hunting).

The changes give Aboriginal people the right to do the activities if it is for a customary purpose, unless the activities are otherwise restricted or excluded by regulation.

Aboriginal people will continue to need the approval of the occupier if taking fauna and flora on lands not managed by the Department of Environment and Conservation (DEC).

2. What is considered an Aboriginal customary purpose?

Activities will be considered to be done for an Aboriginal customary purpose if they involve:

- preparing or consuming food customarily eaten by Aboriginal people
- preparing or using medicine customarily used by Aboriginal people
- engaging in artistic, ceremonial or other cultural activities that are customarily carried out by Aboriginal people
- activities incidental to achieving one of these purposes, such as using water and other natural resources such as ochre, stones, and soil for ceremonies.

No activity is considered customary if it is undertaken for commercial purposes.

3. Who will be considered an 'Aboriginal person'?

Any person wholly or partially descended from the original inhabitants of Australia will be considered an Aboriginal person. If there is doubt as to a person's heritage in any particular case, appropriate verification may be sought.

4. Why will legislation be amended to allow for customary activities?

As a result of DEC's experience over many years working with Aboriginal people in the management of the state's public lands, it became clear that DEC could accommodate Aboriginal people's wishes to carry out cultural and customary activities on the land it manages without significant detriment to conservation and public safety.

The ability to carry out these activities is an important part of Aboriginal culture as it defines Aboriginal people's fundamental connection to the land. The *Aboriginal Customary Laws Final Report* by the WA Law Reform Commission in 2006 summarises its importance as:

"... (it) expresses the vital linkage of Aboriginal people to their country, reinforces their spiritual beliefs governing their existence and responsibility for their land, and provides a means for passing on social and cultural knowledge to their children".

5. Will Aboriginal customary activities have any effect on public access to parks and reserves, and activities within parks and reserves, that is, walking, camping, swimming or fishing?

The public will continue to have access to parks and reserves, and the activities allowed in each park or reserve will continue to be guided by the relevant management plan. There may be, on occasion, temporary control areas established for up to 90 days to protect the value of the land to the culture and heritage of Aboriginal people. Any closures will be publicly advertised.

6. Will public safety be an issue with customary activities such as hunting? That is, how will the use of firearms be managed?

Public safety is a key concern for DEC.

Any owner of a firearm or weapon must adhere to the provisions of the *Firearms Act 1973* and the *Weapons Act 1999*. Aboriginal people will continue to require lawful authority to use a firearm to hunt on DEC-managed land just like the rest of the public. DEC will also maintain its policy that only those who hold a firearm licence will be permitted to shoot on land managed by DEC.

7. Will Aboriginal customary activities have any effect on commercial activities, that is, forestry, commercial flora harvesting, or commercial tour operations?

Commercial activities will continue to be permitted on DEC-managed land, and it is envisaged that Aboriginal customary activities and commercial activities will be able to coexist. However, if an issue arises that cannot be resolved between two affected parties, then DEC may address the matter under regulations.

The preparation of management plans will also have to take into account whether an activity will have a material, adverse effect on the value of the land to Aboriginal culture and heritage.

8. Will Aboriginal customary activities have any effect on DEC management activities, that is, prescribed burning and fire suppression, or feral animal and weed control?

Lands will continue to be managed for the purpose of protecting and conserving the environment in accordance with the provisions of the CALM Act and Regulations. However, there will be an added statutory responsibility to allow for Aboriginal customary activities.

People undertaking Aboriginal customary activities will need to adhere to the CALM Act and Regulations, and any other relevant acts (for example, the *Bush Fires Act 1954*). There will be continued opportunities for DEC to learn from Aboriginal people, and to work collaboratively on land management.

9. Why will Aboriginal people be able to take flora and fauna when everyone else can't?

Aboriginal people have been permitted to take flora and fauna for food for themselves and their families without having to seek a licence since the WC Act came into effect in 1952. Amendments to the WC Act will extend this to also enable the taking of flora and fauna by Aboriginal people for medicinal, ceremonial and artistic purposes.

10. Will Aboriginal people have access to conduct customary activities to the exclusion of others?

Aboriginal people will have greater rights of access than the general public in order to conduct certain activities for customary purposes. This access may be limited or controlled through appropriate regulation where safety is of concern or where the access is considered to be detrimental to the conservation values of the area. In other cases temporary control areas may be established to protect the value of the land to the culture and heritage of Aboriginal people.

A temporary control area can be set aside for up to 90 days. Any closures will be publicly advertised.

These access rights are in recognition that Aboriginal people were the first occupiers of the land, and to allow them to continue to undertake traditional activities on country, where their activities do not significantly conflict with the conservation values of the land.

11. Will fire restrictions that are in place still be applied to Aboriginal customary activities?

Yes, restrictions under the *Bush Fires Act 1954* apply to all people. The lighting and use of fire for customary purposes outside these restrictions will be accommodated where the risk is minimal unless prohibited, where appropriate, by regulation.

12. Will Aboriginal customary activities be permitted on land where exclusive native title has been determined, but where the people performing the activities are not the holders of the exclusive native title on that land?

Yes, other Aboriginal people will be permitted to conduct activities for customary purposes on these lands if they have the consent of the exclusive native title holder(s).

13. Where can I find more information/detail on the amendments?

See the *Conservation Legislation Amendment Act 2011* which is available from the State Law Publisher website (www.slp.wa.gov.au). Alternatively, visit DEC's website at www.dec.wa.gov.au/aca/ or contact the department on (08) 9442 0300 or by email (info@dec.wa.gov.au).

This publication is available in alternative formats on request.

Information current at July 2012.