



Connecting with country:

legislative changes
protect Aboriginal
connection to land

Recent changes to state legislation have enabled Aboriginal people to better connect with their traditional lands by allowing greater access to conduct traditional activities and giving them a formal say in how the areas are managed.



by Judith White and
Rozanne van der Heijden

Aboriginal people of Western Australia have a deep connection to the lands that have nurtured their people across the generations. Many not only have a cultural need to spend time in these areas, but they also wish to play a role in shaping the future of the land's management.

The Department of Environment and Conservation (DEC) is aware of these aspirations and for the past decade has been working to involve Aboriginal people in the management of reserves where they overlay with traditional lands. Indeed, using the philosophy 'dan-joo dabacaan' ('working together, steady, steady' in Nyoongar language), much has been achieved in on-ground cooperative management of protected areas, and within DEC's organisational

systems. In this time the department has initiated various formal strategies such as the Mentored Aboriginal Training and Employment Scheme and, in January 2011, finalisation of DEC's Acknowledgment of Aboriginal traditional custodians policy. DEC also played a role in the formalisation of the Burrup and Maitland Industrial Estates Agreement of 2003, the Ord Final Agreement of 2005, and the Yawuru Agreement in February 2010. These and many other achievements have brought both parties closer to true partnership to create a better future for Aboriginal people and the state.

DEC's experience over this time working with Aboriginal people has fostered an understanding of the intrinsic connection between Aboriginal people and country, and highlighted the need for the government to protect Aboriginal culture and heritage. However, joint management efforts have often been hindered by legal technicalities and other complications associated with conflicting land interests.

Of particular contention is the way native title works on areas of land gazetted for environmental protection.

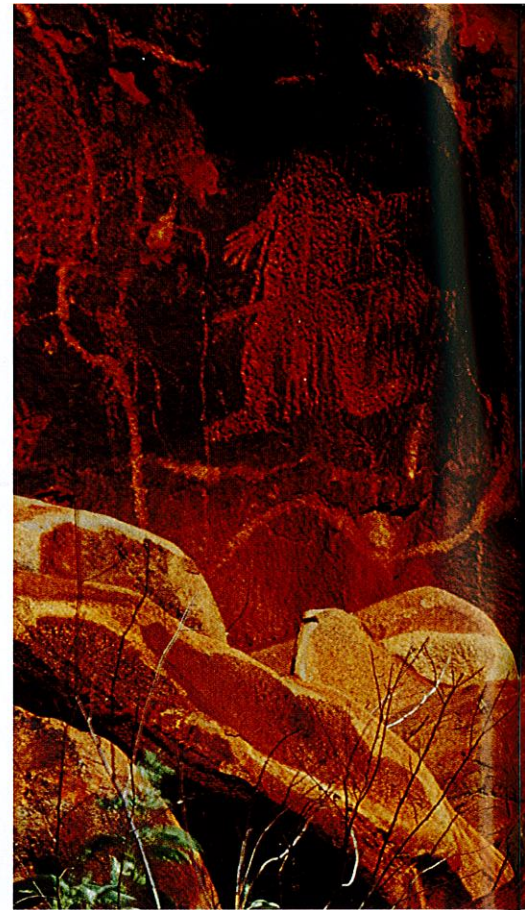
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Main The parakeelya (*Calandrinia balonensis*), in the foreground, is a type of bush tucker.

Photo - Stuart Roper/Lochman Transparencies

Below Aboriginal people now have a greater say in how their lands are managed through joint management with DEC.

Photo - Alison McGilvray/DEC



After fighting so long for native title recognition, some Aboriginal people have been reluctant to allow these areas to join the conservation estate due to difficulties in establishing a tenure that will afford environmental protection without limiting the native title rights Aboriginal people had fought hard to obtain. Something had to be done to help prevent such stalemates.

Breaking new ground

In September 2011 a significant milestone in the journey towards reconciliation was reached when the Western Australian Parliament passed the *Conservation Legislation Amendment Act 2011*. This Act amends the *Conservation and Land Management Act 1984* (CALM Act) and the *Wildlife Conservation Act 1950* to overcome some of the legal roadblocks which were delaying Aboriginal people and the state from reconciling some key issues over protected areas.

The legislative changes give rise to three main outcomes. They create a legal framework so that Aboriginal people can work in partnership with the Western Australian Government to jointly manage protected areas by voluntary agreement. They also formalise the protection of Aboriginal culture and heritage values as an objective for land management of





Above Aboriginal rock engravings near Burrup Peninsula, which is site to WA's newest national park, Murujuga.

Photo – John Kleczkowski/Lochman
Transparencies

protected areas. And they provide the legal means for Aboriginal people to access protected areas to carry out customary activities such as hunting, gathering, camping, and using fire for traditional, medicinal and ceremonial purposes.

The legal provisions for joint management, and establishing the new management objective, came into effect in March 2012. The provisions permitting Aboriginal customary activities in protected areas came into effect in December 2012.

Management in partnership

DEC has already implemented successful joint management arrangements with Aboriginal people in Kununurra and Broome with the Miriwung and Gajerrong and Yawuru traditional owners (see 'Working together: righting wrongs on the way forward', *LANDSCOPE*, Autumn 2010). However, the recent formalising of legal joint management frameworks in legislation ensures a consistent statewide system for other joint management initiatives. It also

Aboriginal culture and conservation together

In its promotion of principles of best practice for management of protected areas, the International Union for the Conservation of Nature recognises the need for the involvement of Indigenous people in protected area management and development. Among these principles it states:

"Indigenous people have long associations with nature and a deep understanding of it. Often they have made significant contributions to the maintenance of many of the earth's most fragile ecosystems, through their traditional sustainable resource use practices and culture-based respect for nature. Therefore, there should be no inherent conflict between the objectives of protected areas and the existence, within and around their borders, of Indigenous people."

and,

"Agreements between conservation institutions and Indigenous people for establishment and management of protected areas should be based on full respect for the rights of Indigenous people to traditional sustainable use of their lands [and] based on the recognition by Indigenous people of their responsibility to conserve biodiversity, ecological integrity and natural resources harboured in those protected areas."

'Protected areas' in Western Australia are those lands and waters managed by the Department of Environment and Conservation under the *Conservation and Land Management Act 1984*.

ensures all parties understand the mechanisms for such arrangements to be effective.

The legislative changes enable DEC and Aboriginal partners to establish formal agreements on how the land will be managed and how decisions are made about land management. Where the land in question is not

already reserved and managed under the CALM Act, the parties can choose if the land will be managed as if it were State forest, a timber reserve, a national park, a conservation park or a nature reserve, or for a public purpose consistent with the CALM Act.

The land is then managed as if it were one of these reserves for the



Left A traditional Aboriginal shelter.
Photo – Jiri Lochman

Below left Children play in Cape Le Grand National Park near Esperance, which features several sites of particular importance to Aboriginal people of the area.
Photo – Tourism WA

Bottom left Members of the Badjaling Nyoongar community and DEC worked together in Badjaling Nature Reserve, near Quairading, to erect a shed, fencing and historical signs.
Photo – DEC



intentions and purposes of the CALM Act. These agreements do not, however, change the underlying tenure of the land. Any other laws which apply to that land, or any rights a person may already have on the land under other laws, such as the entitlement to graze under a pastoral lease, will not be affected by the agreement.

Where the land in question is already a protected area, the land is reserved and vested in either the Conservation Commission of Western Australia or the Marine Parks and Reserves Authority. DEC is responsible for managing these areas on behalf of these bodies and the people of Western Australia in accordance with the CALM Act. Joint management over these areas can occur if the management plan for the area instructs it to occur and identifies the joint management partner. The joint management agreement will also be attached to the management plan.

The joint management agreement establishes a joint management body to oversee the area and provides details of its members and procedures for decision-making. The joint management body may also be responsible for developing, and assessing the implementation of, a management plan for the area depending on the type of agreement.

No joint management agreement has effect until it is approved by the Minister for Environment. Other parties may also need to approve, be involved in, or be consulted on, the agreement. Where native title exists, an Indigenous Land Use Agreement



Above Rangers install boundary signage at Barrbem Conservation Park, one of the new parks jointly managed between DEC and the Miriwung and Gajerrong people. Photo – Steve Leeder/DEC

under the federal *Native Title Act 1993* may need to be negotiated and signed before a joint management agreement is entered into.

Aboriginal values in land management

Until now, protection of Aboriginal heritage in reserves has simply occurred alongside other listed objectives of the CALM Act, such as managing areas for recreation. Some management plans have sought to add further protection to Aboriginal culture and heritage by including park-specific objectives such as 'protect the Indigenous cultural heritage and cultural resources of the planning area'. While these objectives went some way to protecting Aboriginal heritage, there was no overarching specific requirement for this protection under the CALM Act.

Under the new legislative changes, the CALM Act now incorporates a specific management objective to ensure that DEC protects and conserves the value of the land to the culture and heritage of Aboriginal people from material adverse effect caused by entering land or undertaking other activities. This new objective overrides any other objective for managing lands and waters under the CALM Act, except for the objective of protecting and conserving plants and animals.

Increasing hunting, fishing and gathering rights

In 2000, the Law Reform Commission of Western Australia received a reference to 'inquire into and report upon Aboriginal customary laws in Western Australia' and consider whether, and if so how, Aboriginal customary laws should be recognised within the Western Australian legal system. One of the areas of inquiry was legislative recognition of customary hunting, fishing and gathering rights.

In 2006 the commission released its *Aboriginal Customary Laws Final Report* which concluded that the ability of Aboriginal people to access country and carry out cultural activities is an important part of Aboriginal culture and connection to the land. It summarised 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".

The report also referred several recommendations for legislative review to the Department of Environment and Conservation, including the recommendation that the CALM Act be amended to provide the ability for Aboriginal people to access, hunt and harvest in protected areas. It also recommended that any statutory recognition or rights to do these activities remain subject to the interests of conservation of WA's biological resources. The legislative changes introduced by the *Conservation Legislation Amendment Act 2011* give effect to these recommendations.

Connecting with country

Aboriginal people now have legal entitlements to access protected areas to conduct traditional activities. This access is limited in certain cases by regulations where safety is a concern or where there may be significant impacts on the protection of plants and animals.

Aboriginal people have been permitted to take plants and animals anywhere in the state for food for themselves and their families without having to seek a licence since the Wildlife Conservation Act came into effect in 1952. This has now

been expanded to allow Aboriginal people to take plants and animals for medicinal, ceremonial and artistic purposes, but not rare flora, or fauna that is likely to become extinct, or is rare or otherwise in need of special protection. However, an exception is made to allow Aboriginal people to take dugongs, certain species of turtle, and crocodiles. Aboriginal people are now also permitted to take plants and animals in nature reserves.

In addition, the CALM Act now also provides entitlements for Aboriginal people to access protected areas and to



Above DEC staff and members of the Kimberley Aboriginal community at work on the waters of the far north.
Photo – DEC

Above right Aboriginal people lighting a fire for a smoking ceremony.
Photo – Robert Reynolds

Below Mulla mulla (*Ptilotus* sp.) in bloom.
Photo – DEC



camp, light fires, bring animals onto the land, and to drive vehicles or vessels in these areas for customary purposes. In some places or circumstances, however, these activities could pose significant risks to environmentally sensitive areas or to public safety. In these cases, regulations prescribe that Aboriginal people will need to negotiate access arrangements with DEC.

For example, it is an offence for any person to camp outside designated camp sites without appropriate authority. An Aboriginal person, because of his or her heritage and because it is customary as an Aboriginal person to camp on country, may camp anywhere in a reserve. However, an Aboriginal person will need permission from DEC if he or she wishes to camp within 500 metres of general visitor recreational areas, a car park or sealed road; in any reserve within a townsite boundary or within a metropolitan region, and if

he or she wishes to camp for longer than 28 days (or three months if it is for a cultural event such as law time or a funeral). Any activity undertaken for commercial purposes is not considered customary and is not permitted under the new entitlements.

Steady steady

The legislative changes are a significant milestone for both DEC and Aboriginal people. They provide a greater scope of legal tools to help Aboriginal people to connect with their traditional lands. Aboriginal people now have a means to secure interests in conservation lands and guarantee their future involvement in the joint management of those lands. Karim Khan, one of DEC's Aboriginal employees, explained how important these changes are to Aboriginal people and his community: "To be able to practise traditional activities on country without the fear of retribution is empowering for me personally; to be able to visit special places with my family knowing that I have the full support of DEC is great; and to know that through these changes our Aboriginal people will have a voice on how country is managed again through any joint management arrangements makes me feel good. I

feel the parallels of DEC's responsibility to the environment and Aboriginal people's rights and responsibilities in caring for country have been brought closer together. I equate it to two big rivers running parallel to each other and finally coming together to create one great river. I feel we are at that junction now."

Since the changes came into effect DEC has been working on establishing policies to support the legislative changes so that they are implemented effectively. At the same time, the government has been working with several native title claimant groups of the Kimberley and South West regions to develop joint management agreements under the CALM Act. Murujuga National Park, created on 17 January 2013 on the Burrup Peninsula, is WA's 100th national park and is the state's first jointly managed national park under the new provisions of the CALM Act.

Now more than ever, DEC and its Aboriginal partners need to remain steadfast on 'dan-joo dabacaan' as they continue to cooperatively work towards meaningful and sustainable change. By doing so, they will ensure the long-term protection of the environment, while also providing a better future for WA's Aboriginal people.



Judith White is an acting senior policy officer with the Department of Environment and Conservation's (DEC's) Parks and Conservation Executive Office. She can be contacted on (08) 9442 0310 or by email (judith.white@dec.wa.gov.au).

Rozanne van der Heijden is a project officer with DEC's Parks and Visitor Services Division, and can be contacted on (08) 9334 0567 or by email (rozanne.vanderheijden@dec.wa.gov.au).

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