



CORPORATE POLICY STATEMENT NO. 86

ABORIGINAL CUSTOMARY ACTIVITIES

September 2015

1. OBJECTIVE

To establish the framework for decision making in relation to recognising activities undertaken by Aboriginal people for customary purposes, and in the application of relevant regulations.

2. SCOPE

This policy guides staff of the Department of Parks and Wildlife (the department) who deal with Aboriginal customary activities on land to which the *Conservation and Land Management Act 1984* (CALM Act) applies. The policy will also guide staff required to apply the provisions of the *Wildlife Conservation Act 1950* (Wildlife Act) and the *Wildlife Conservation Regulations 1970* (Wildlife Regulations) on other lands.

3. CONTEXT

Aboriginal people have expressed long standing aspirations to be able to carry out customary activities 'on country' which is largely within reserved estate. The CALM Act and Wildlife Act now provides rights for Aboriginal people to undertake certain activities for customary purposes by providing them with a defence against certain offences under those Acts. It recognises the special connection Aboriginal people have to the land and sea, and the existence or otherwise of native title rights of Aboriginal people. The department has the ability to restrict or exclude Aboriginal people from undertaking these activities where required through regulation.

4. LEGISLATION

Section 103A of the CALM Act and section 23 of the Wildlife Act provide a defence for Aboriginal people to do 'relevant acts' or take flora and fauna for an Aboriginal customary purpose in accordance with regulations. Aboriginal customary purposes means 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 undertaken by Aboriginal people or other activities incidental to those purposes. Part 10 of the *Conservation and Land Management Regulations 2002* (CALM Regulations), regulation 131 of the *Forest Management Regulations 1993* (Forest Regulations) and regulation 63 of the Wildlife Regulations restrict and exclude the operation of these defences.

5. POLICY

5.1 The department will enter into collaborative discussions with Aboriginal people in relation to activities undertaken for customary purposes, and will respect the values and rights of Aboriginal people when culturally sensitive information or activities is disclosed.

- 5.2 Department staff shall assume, unless otherwise demonstrated, that Aboriginal people will maintain their cultural responsibility to care for country and harvest and hunt sustainably, in accordance with their traditional laws.
- 5.3 The department shall, wherever possible, in accordance with this policy, the CALM Regulations, the Forest Regulations and the Wildlife Regulations, assist and facilitate the needs and aspirations of Aboriginal people to access and undertake customary activities on CALM land, or to take flora and fauna on other lands for customary purposes.
- 5.4 The department may refuse to provide written permission to carry out certain activities if it is evident there is a real and significant risk to:
- a) public safety; or
 - b) the protection of flora and fauna; or
 - c) other uses, users or values of CALM land.
- 5.5 The interests of native title holders/traditional owners will hold precedence over non-native title holders.
- 5.6 At the request of the native title holders/claimants, the department may refuse access to CALM land, refuse permission for an Aboriginal person to carry out certain activities, or take action against an Aboriginal person if it is evident that the Aboriginal person is undertaking activities inconsistent with the existence, enjoyment or exercise of any native title rights and interests.
- 5.7 The department shall address any issues of concern which may arise, or identifiable impacts which have occurred as a result of Aboriginal people carrying out activities for customary purposes, through open dialogue with Aboriginal people and negotiating solutions in the first instance.
- 5.8 Each region and district of the department shall pursue opportunities to discuss with Aboriginal people their rights and responsibilities under legislation and the opportunities that are provided through this policy.
- 5.9 Each region and district of the department shall actively seek appropriate opportunities to involve local Aboriginal communities in land management activities.
- 5.10 Aboriginal people who camp in designated camping sites where fees are payable, are granted a partial waiver on camping fees so that they are only required to pay the concession rate.

6. STANDARDS

- 6.1 Risk assessment for departmental staff will take place in accordance with Corporate Policy No. 60 - Work Health and Safety and the Aboriginal Customary Activities: Firearm Use and Employee Safety Guideline. Customary activities will be implemented according to the standards set out in Corporate Guideline No. 22 - Guidelines regarding Aboriginal customary activities.

7. POLICY IMPLEMENTATION STRATEGIES

- 7.1 The department will apply a consistent and equitable approach to the enforcement of the regulations and when dealing with Aboriginal customary activities. Departmental staff should be cognisant of the special rights and interests of native title holders and native title applicants under the *Native Title Act 1993*.

- 7.2 This policy will be implemented through the establishment of local area arrangements, and in accordance with Corporate Guideline No. 22 - Guidelines regarding Aboriginal customary activities.
- 7.3 Guidance to assist in determining real and significant risks associated with customary activities and the issue of written permissions is contained in Appendix 4 of Corporate Guideline No. 22.
- 7.4 Each region and district of the department shall endeavour to establish and maintain local area arrangements with the Aboriginal people of their area in order to implement this policy and to foster positive relationships with local Aboriginal communities.
- 7.5 The department will provide staff involved in administering Aboriginal customary activities with the appropriate skills, knowledge and resources necessary to meet the objectives of this policy.

8. CUSTODIAN

Director Parks and Visitor Services.

9. PUBLICATION

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

10. KEY WORDS

Aboriginal customary activities; native title; Aboriginal heritage; Aboriginal customary purpose.

11. REVIEW

This policy will be reviewed no later than 1 September 2018.

12. DIRECTOR GENERAL APPROVAL

Approved by



Jim Sharp
DIRECTOR GENERAL

Effective date: 1 September 2015