

14 October 2020

Email: [AHAreview@dplh.wa.gov.au](mailto:AHAreview@dplh.wa.gov.au)



Environment Institute  
of Australia and  
New Zealand Inc.

Dear Sir / Madam

**RE: Submission on the Aboriginal Cultural Heritage Bill**

The Environment Institute of Australia and New Zealand (EIANZ or Institute) Western Australia Division (EIANZ-WA) is pleased to provide feedback on the Aboriginal Cultural Heritage (ACH) Bill 2020 which was released for public comment on 2 September 2020.

EIANZ is a not-for-profit, professional association for environmental practitioners. The Institute promotes independent and interdisciplinary discussion on environmental issues and advocates good practice environmental management delivered by competent and ethical environmental practitioners. The definition of "Environment" under the Western Australian *Environmental Protection Act 1986 (EP Act)* includes social surroundings and therefore, consideration of social and heritage values is an important component of conducting our role as environmental practitioners.

We forward this submission on behalf of the Western Australian EIANZ members. Currently, we have 170 members in WA while across Australia and New Zealand we have over 2111 members. Our members come from a range of technical disciplines including certified environmental practitioners (CEnVP), ecological consultants, environmental advocates, heritage consultants, researchers, and environmental specialists working in government, industry and the community.

Overall, EIANZ-WA views the ACH Bill 2020 as a positive step towards empowering Aboriginal people in the process of protecting Aboriginal culture through mandated consultation. We provide the following commentary on key aspects of the Bill for your consideration.

**Recognition of Representative Aboriginal Bodies and Procedural Fairness**

EIANZ supports the inclusion of mandatory consultation with Aboriginal parties when proposing to undertake work that may harm Aboriginal heritage. We further support the inclusion of rights of appeal for both Aboriginal parties and proponents in relation to decisions made under the proposed legislation.

To assist in facilitating the consultation process, EIANZ-WA supports the integration and incorporation of recognised representative bodies as the Local Aboriginal Cultural Heritage Services (LACHS).

However, uncertainty remains around the minimum standards of consultation and the form and content of ACH Management Plans.

The period for reaching agreement between Aboriginal parties and proponents on an ACH Management Plan (five days) is considered unrealistic and there is particular concern around the potential for smaller, less established and under-resourced LACHS to be disadvantaged when negotiating the terms of an ACH Management Plan.

Further clarification is required on the scope of consultation to ensure a fair approach is taken that is recognised under the provisions of the ACH Bill, as well as being consistent with other legislation and guidance.

### **Definition of Aboriginal Cultural Heritage**

EIANZ-WA broadly supports the definition of ACH in the Bill, in particular the recognition that Aboriginal heritage is both an historical and living culture, and includes cultural landscapes, with tangible and intangible elements. However, the broadening of the definition also poses uncertainties when undertaking environmental assessments and/or applications and requires clarification to enable environmental practitioners to be able to adequately address impacts to intangible elements of ACH, which may cover vast landscapes. To this end, we recommend that detailed guidance is developed, in consultation with recognised anthropological, archaeological and ethnographical professional organisations, that outlines the requirements of heritage surveys, assessments and authorisation processes, in a similar manner to the Environmental Protection Authority's technical guidelines, which apply to environmental impact assessment under the EP Act.

### **Management of Activities that may cause harm to Aboriginal Cultural Heritage**

While EIANZ-WA broadly supports three-tiered management framework, there are concerns about the practicalities of this being implemented, and the vast expanse of activities that fall within the "Low" impact activity definition. For example, several activities that are undertaken as part of environmental baseline data gathering and monitoring (terrestrial fauna surveys, short-range endemic fauna surveys, subterranean fauna surveys, soil sampling, geotechnical assessments and some geophysical surveys) appear likely to trigger the requirement for consultation with Aboriginal parties to obtain a permit prior to undertaking activities. This is likely to result in the ACH Council being inundated with permit applications and has the potential to result in significant delays to environmental assessments, if the ACH Council is not adequately resourced and supported.

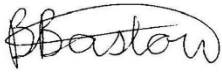
There is also potential that activities considered beneficial to the environment will require permitting under the Bill. For example, rehabilitation of degraded areas, pest control programs (e.g. fencing) and hazard reduction burns. We would encourage further consultation around the definition of low impact activities to ensure that other intrinsic values are not compromised.

### **Development of Clear Guidance**

EIANZ-WA supports the principle of good governance in the delivery of environment and heritage protection. To this end, we highlight the vital importance of the supporting Regulations, Cultural Heritage Management Code, Technical Guidance on Cultural Heritage Management Plans and Technical Consulting Guidelines. Without these documents, it is difficult to determine how the Bill will be practically implemented and consequently there remains a significant amount of uncertainty for the community as to how the Bill will effectively achieve intergeneration protection of Aboriginal culture as well as facilitating sustainable development in reasonable timeframes.

We thank you for the opportunity to comment the ACH Bill. If there are any queries regarding this submission, please contact Belinda Bastow, President EIANZ-WA Division on [wa@eianz.org](mailto:wa@eianz.org).

Yours sincerely

A handwritten signature in black ink that reads "Bastow". The signature is written in a cursive style with a large, looped initial "B".

Belinda Bastow  
President  
EIANZ – WA Division

## Role of the EIANZ

The EIANZ, as the leading membership based professional organisation for environmental practitioners in Australia and New Zealand and is an advocate for good practice environmental management. The Institute supports environmental practitioners and promotes independent and interdisciplinary discussion on environmental issues. The Institute also advocates environmental knowledge and awareness, advancing ethical and competent good practice environmental management.

EIANZ members agree to abide by the Code of Ethics and Professional Conduct in their professional practice. Compliance with the code is central to sound environmental practice and credibility of the profession. The Code commits environmental practitioners to:

- Promote environmental principles
- Demonstrate integrity
- Represent and promote the profession
- Practice competently.

A Certified Environmental Practitioner Scheme ([www.cenvp.org](http://www.cenvp.org)) is also in place to assess and certify competent experienced environmental practitioners working in government, industry and the community. This includes specialist competencies such as Impact Assessment, Ecology, Land Rehabilitation and Contaminated Lands.

The EIANZ is an advocate for environmental assessment, management and monitoring investigations and reports being certified by suitably qualified and experienced persons for the completeness and scientific rigor of the documents. One of the ways of recognising a suitably qualified practitioner is through their membership of, and certification by, an organisation that holds practitioners accountable to a code of ethics and professional conduct, such as the EIANZ.

The EIANZ is a not-for-profit, charitable organisation incorporated in Victoria, and a registerable Australian body under the Corporation Act 2001 (Cwth), allowing it to operate in all Australian jurisdictions.