



murchisonshire

Ancient land under brilliant skies

Ordinary Council Meeting

24 September 2020

Attachments

From: Destruction of Wreath Flower by Visitors
To: Monday, 31 August 2020 8:25:45 AM
Subject:
Date:

-----Original Message-----

From: Steve Squires <jjsquiz@bigpond.com>
Sent: Saturday, 29 August 2020 2:44 PM
To: Corporate Services Officer <admin@murchison.wa.gov.au>; admin@uppergascoyne.wa.gov.au;
council@cgg.wa.gov.au; reception@perenjori.wa.gov.au; enquiries@mingenew.wa.gov.au;
admin@morawa.wa.gov.au; shire@yalgoo.wa.gov.au; shire@mtmagnet.wa.gov.au
Subject: Destruction of Wreath Flower by Visitors

Dear Councillors,

On the 24th August 2020, my wife and I did a Caravan tour of your districts to see the wild flowers in bloom especially the Wreath Flower at Pindar. Imagine our dismay upon arriving at their location, seeing tourists walking and driving over them and children running over the small new plants coming through the soil. Imagine also the scene of lots and lots of little flowers which had been picked and discarded next to these beautiful and rare plants. I even saw a large shoe print which had been pushed down hard on the plant itself leaving it flattened whether it will continue to grow I do not know.

This plant is a rare species and should be better protected. With more people travelling this vast state due to Covid 19, more and more visit areas such as this and with it comes a monetary boost to your local economy. This will certainly disappear in the next couple of years unless something is drastically done to preserve this species of plant.

Out of all the wild flowers that bloom in your area, this one is the biggest draw card to your Shire.

An interpretive sign needs to be erected at the Pindar location as well as the fine that can be imposed for picking the flowers which I am told is \$2000.00.

The area where most of the flowers grow also needs to be better protected from pedestrian traffic, even if its chicken wire and steel posts.

So perhaps if you attend regional meetings this matter can be raised, discussed and an consensus reached as to the funding for protecting this unique wild flower otherwise as previously stated this flower will just become a thing of the past very quickly.

Yours sincerely

Steve Squires

Wreath Flowers Access

15.1.1 - September 2020

Legend



Pindar, Kyun Rd

Google Earth

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1 km



MID WEST REGION REGIONAL ROAD GROUP
ROADS 2030–Road Justification and Development Strategy Submission/Amendment
Assessment Form

Technical Committee Determination Accepted Rejected
Office Use Only

Local Government Authority Name & No: Shire of Murchison **LGA No** 705

Road Description and Location

Include as much information as possible in all areas to allow the TWG to assess each submission on its full merits

Road / Route Name:	Beringarra-Pindar Road (Wreath Flowers Access)
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Road Name	Road Number	Start SLK	Finish SLK	Length (km)	Is this road currently in the Roads 2030 document
Beringarra-Pindar Rd	7050006	311.36	317.42	6.06	No
Wreath Flowers Access Rd	7050068	0.00	0.61	0.61	No

Road Justification

Road Function: Include road hierarchy category, RAV Network No (if applicable) and a comment on how the road makes a positive contribution to the economic and/or social wellbeing of the region and WA as a whole. **Traffic count data must be included** – average daily vehicles over a two-week period and % of heavy vehicles using the road.

Beringarra- Pindar is a Local Distributor Road providing local access to pastoral stations between Pindar and Beringarra as well as gold mine at A-Zone and Mixy at Yuin.

The lower portion including Wreath Flowers Access Road serves as a major traffic generator for tourists visiting a Wreath Flowers attraction. During wildflower season traffic volumes spike, well over and above the functioning capacity of this formed road. It therefore also fits the freight and community access and tourism / recreation criteria

There is a regular and continuing safety issue with very high tourist numbers as illustrated by the following weekly traffic count summary. (Details attached)



Date	Min	Av	Max
6/08/2018	21	49	69
13/08/2018	62	101	193
20/08/2018	78	165	309
27/08/2018	9	245	441
3/09/2018	208	328	553
10/09/2018	83	353	504
17/09/2018	234	370	436
24/09/2018	249	312	500
1/10/2018	68	176	290
8/10/2018	54	84	118

Road Development Need: Provide details of the road's future use

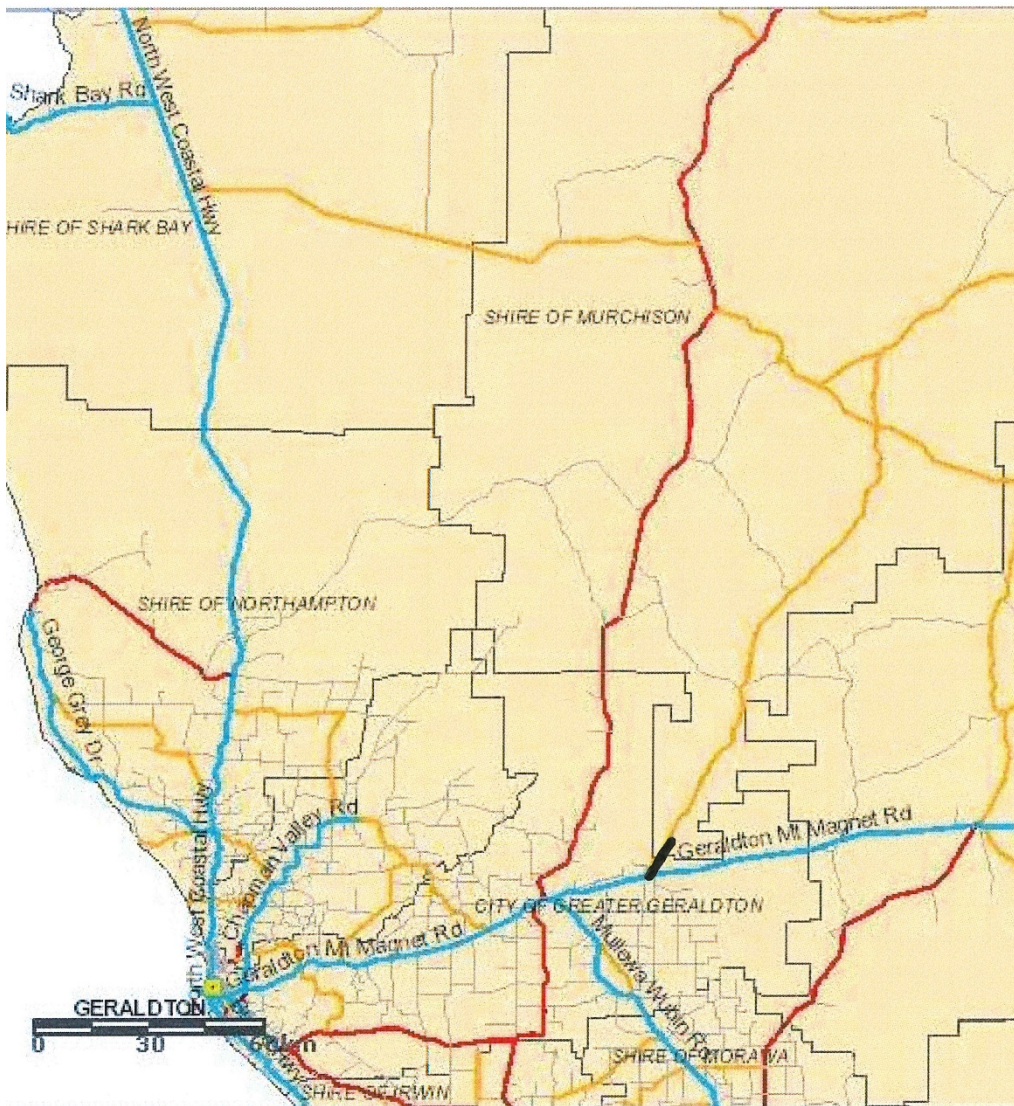
The surface of this road and formation is such that when this is mixed with some heavy vehicle movements, it can pose a serious safety risk.

Road Development Strategy: Provide a brief high-level summary for the future development of the road including proposed funding sources (i.e. Road Project Grant, Black Spot)

Rather than the current Type 2 – Formed Road that more or less exists a combination of a Type 5 Sealed 6m Road and Type 6 Sealed Road is considered justified to improve the safety and amenity of what is a relatively short section of this road in the southern part of the Murchison Shire and abutting City of Greater Geraldton. Use of the Wreath Flower Access Road as part of the solution should be also considered.

Funding via Main Roads WA, Roads to Recovery and Local Council.

Locality Plan:



CHECK LIST – please tick applicable criteria(s)

APPENDIX 1 –CRITERIA FOR SIGNIFICANT ROADS

1. Freight & Community Access

- 1.1 Roads connecting areas of significant population (>500).
- 1.2 A road which performs a district distributor function in major urban centres.
- 1.3 A road which forms part of an inter-regional route.
- 1.4 A road which links inter-regional or regional routes.
- 1.5 The development of parallel routes should be avoided.
- 1.6 A road which connects major transport terminals or connects a major transport terminal to a major route.
- 1.7 A road which serves a major resource or industrial site.
- 1.8 A road providing access to regional institutions or community service centres.
- 1.9 A road used for hauling grain from an off road rail bin to a rail head.
- 1.10 A road which forms part of a regional heavy haulage route.
- 1.11 A road which provides access to a remote community with a population of more than 250.
- 1.12 A road which is the only land access between a remote community (population more than 50) and at least one town centre.

2. Tourism/Recreation

- 2.1 Roads which provide access to tourist attractions or recreation areas of State or regional significance.
- 2.2 Roads which form part of a State or regionally significant tourist drive.
- 2.3 Roads which have a high visual quality proven through a formal visual assessment using a methodology approved by the Australian Institute of Landscape Architects.
- 2.4 Roads which connect the region with a significant tourist destination and give travel time and distance savings.

3. Road Function

Whether the road services predominantly through traffic or local traffic.

DEFINITIONS

Regional Route: Shall be defined as a road that provides a connection between inter-regional routes or between areas of significant population.

Inter-Regional Route: Shall be defined as a road that provides the main connection between this region, other regions in the State and interstate.

Major Route: A road which provides both regional and inter-regional access.

Berringarra / Cue Seal Pickup Program 2020							
SLK from	SLK to		Option 1		Option 2		Width
			All Floodways	Treatment	Min Floodways	Treatment	
83.62	84.00	Pindabam Creek Crossing	0.38	Reseal	0.38	Reseal	8.00
70.95	73.38	Rise leading into Floodway: Bitumen condition good.	2.43	Reseal			8.00
-	-	Corners 2nd Floodway					
69.90	70.58	Floodway Bitumen varies in Condition	0.68	Reseal			8.00
57.55	58.28	Floodway on corner, Bitumen condition varies	0.73	Reseal			8.00
56.48	57.21	Floodway on corner	0.73	Reseal			8.00
55.47	55.67	Floodway Bitumen good	0.20	Reseal			8.00
54.55	54.66	Floodway Bitumen good	0.11	Reseal			8.00
54.14	54.36	Floodway Bitumen good	0.22	Reseal			8.00
53.44	53.54	Floodway Bitumen Poor	0.10	Reseal			8.00
53.08	53.26	Floodway Bitumen Poor	0.18	Reseal			8.00
51.95	52.04	Floodway Bitumen Poor	0.09	Reseal			8.00
51.15	51.41	Floodway Bitumen Good - Combine these two)	0.26	Reseal			8.00
51.02	51.09	Floodway Bitumen Good - Combine these two)	0.07	Reseal			8.00
50.32	50.55	Floodway Bitumen Poor	0.23	Reseal			8.00
48.33	48.40	Bitumen Poor	0.07	Reseal			8.00
47.95	48.05	Bitumen Good	0.10	Reseal			8.00
47.10	47.32	Bitumen Poor	0.22	Reseal			8.00
45.09	45.14	Bitumen Reasonable	0.05	Reseal			8.00
33.58	33.70	Unsealed Floodway Pavement Good	0.12	Two Coat Seal	0.12	Two Coat Seal	8.00
31.85	33.38	Floodway Creek Crossing's x 2	1.53	Two Coat Seal	1.53	Two Coat Seal	8.00
-	-	Sweeping Corner Bitumen Reasonable					
30.99	31.34	Floodway x2 Bitumen Poor	0.35	Reseal			8.00
28.55	28.66	Unsealed Floodway Pavement Good	0.11	Two Coat Seal	0.11	Two Coat Seal	8.00
27.90	27.97	Unsealed Floodway Pavement Average	0.07	Two Coat Seal	0.07	Two Coat Seal	8.00
26.99	27.08	Floodway Bitumen Average	0.09	Reseal			8.00
26.21	26.31	Unsealed Floodway Pavement Good	0.10	Two Coat Seal	0.10	Two Coat Seal	8.00
25.55	25.63	Floodway Bitumen Average	0.08	Reseal			8.00
24.77	24.86	Floodway Bitumen good	0.09	Reseal			8.00
23.76	23.90	Floodway Bitumen Average	0.14	Reseal			8.00
23.37	23.51	Unsealed Floodway Pavement Good	0.14	Two Coat Seal	0.14	Two Coat Seal	8.00
21.98	22.14	Unsealed Floodway Pavement Good	0.16	Two Coat Seal	0.16	Two Coat Seal	8.00
20.37	20.44	Floodway Bitumen Average	0.07	Reseal			8.00
19.06	19.22	Unsealed Floodway Pavement Good	0.16	Two Coat Seal	0.16	Two Coat Seal	8.00
18.31	18.37	Unsealed Floodway Pavement Good	0.06	Two Coat Seal	0.06	Two Coat Seal	8.00
16.74	16.85	Unsealed Floodway Pavement Good	0.11	Two Coat Seal	0.11	Two Coat Seal	8.00
15.25	15.41	Unsealed Floodway Pavement Good	0.16	Two Coat Seal	0.16	Two Coat Seal	8.00
12.20	13.65	Floodway x 2 Bitumen Average S Bend	1.45	Reseal	1.45		8.00
10.87	11.40	Floodway Corner Bitumen Average	0.53	Reseal			8.00
8.76	8.98	Floodway Bitumen Good	0.22	Reseal			8.00
8.36	8.50	Unsealed Floodway Pavement Good	0.14	Two Coat Seal	0.14	Two Coat Seal	8.00
6.71	6.77	Unsealed Floodway Pavement Good	0.06	Two Coat Seal	0.06	Two Coat Seal	8.00
4.08	4.21	Unsealed Floodway Pavement Good	0.13	Two Coat Seal	0.13	Two Coat Seal	8.00
2.17	2.24	Unsealed Floodway Pavement Good	0.07	Two Coat Seal	0.07	Two Coat Seal	8.00
1.42	1.67	Floodway Bitumen good	0.25	Reseal			8.00
0.43	0.68	Unsealed Floodway x2 Pavement Good	0.25	Two Coat Seal	0.25	Two Coat Seal	8.00
			13.49		5.20		
0.00	85.50	Sealed Road Length	85.50		85.50		
		Floodways	13.49		5.20		
		Gravel Road Length	72.01		80.30		

Murchison Shire - Beringarra-Cue Rd Analysis - OPTION 1 - Seal Reconstructed Floodways - Reseal All Existing Floodways													year>>> 2021		674,400	250,838	255,855	260,972	266,192	271,516	0		
										1	expenses inflation>>>												
											*												
Road	Treatment	Slk Start	Slk End	Length (km)	Pavement width (m)	Seal width (m)	Area (m2)	Rate (\$/m2)	Cost (\$)	Cost (\$)	Life	1st Replac	2nd Replac	3rd Replac	4th Replac	5th Replac	2021	2022	2023	2024	2025	2026	2027
																	0.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%
																	100.0%	102.0%	104.0%	106.1%	108.2%	110.4%	112.6%
Floodway x 2 Bitumen Average S Bend	Reseal	12.20	13.65	1.45	10.6	8.0	11,600	5.00	58,000	58,000	15	2021	2036	2051	2066	2081	58,000						
Floodway Corner Bitumen Average	Reseal	10.87	11.40	0.53	10.6	8.0	4,240	5.00	21,200	21,200	15	2021	2036	2051	2066	2081	21,200						
Floodway Bitumen Good	Reseal	8.76	8.98	0.22	10.6	8.0	1,760	5.00	8,800	8,800	15	2021	2036	2051	2066	2081	8,800						
Unsealed Floodway Pavement Good	Two Coat Seal	8.36	8.50	0.14	10.6	8.0	1,120	10.00	11,200	11,200	15	2021					11,200						
	Reseal	8.36	8.50	0.14	10.6	8.0	1,120	5.00	5,600	5,600	15	2036	2051	2066	2081	2096							
Unsealed Floodway Pavement Good	Two Coat Seal	6.71	6.77	0.06	10.6	8.0	480	10.00	4,800	4,800	15	2021					4,800						
	Reseal	6.71	6.77	0.06	10.6	8.0	480	5.00	2,400	2,400	15	2036	2051	2066	2081	2096							
Unsealed Floodway Pavement Good	Two Coat Seal	4.08	4.21	0.13	10.6	8.0	1,040	10.00	10,400	10,400	15	2021					10,400						
	Reseal	4.08	4.21	0.13	10.6	8.0	1,040	5.00	5,200	5,200	15	2036	2051	2066	2081	2096							
Unsealed Floodway Pavement Good	Two Coat Seal	2.17	2.24	0.07	10.6	8.0	560	10.00	5,600	5,600	15	2021					5,600						
	Reseal	2.17	2.24	0.07	10.6	8.0	560	5.00	2,800	2,800	15	2036	2051	2066	2081	2096							
Floodway Bitumen good	Reseal	1.42	1.67	0.25	10.6	8.0	2,000	5.00	10,000	10,000	15	2021	2036	2051	2066	2081	10,000						
Unsealed Floodway x2 Pavement Good	Two Coat Seal	0.43	0.68	0.25	10.6	8.0	2,000	10.00	20,000	20,000	15	2021					20,000						
	Reseal	0.43	0.68	0.25	10.6	8.0	2,000	5.00	10,000	10,000	15	2036	2051	2066	2081	2096							
Year 1 Bitumen to Gravel Program	Bitumen to Gravel			14.50	10.6		153,700	1.60	245,920	245,920		2022						250,838					
Year 1 Future Resheet	Resheet			14.50	10.6		153,700	3.50	537,950	537,950	25	2047	2072	2097	2122	2147							
Year 2 Bitumen to Gravel Program	Bitumen to Gravel			14.50	10.6		153,700	1.60	245,920	245,920		2023							255,855				
Year 2 Future Resheet	Resheet			14.50	10.6		153,700	3.50	537,950	537,950	25	2048	2073	2098	2123	2148							
Year 3 Bitumen to Gravel Program	Bitumen to Gravel			14.50	10.6		153,700	1.60	245,920	245,920		2024								260,972			
Year 3 Future Resheet	Resheet			14.50	10.6		153,700	3.50	537,950	537,950	25	2049	2074	2099	2124	2149							
Year 4 Bitumen to Gravel Program	Bitumen to Gravel			14.50	10.6		153,700	1.60	245,920	245,920		2025									266,192		
Year 4 Future Resheet	Resheet			14.50	10.6		153,700	3.50	537,950	537,950	25	2050	2075	2100	2125	2150							
Year 5 Bitumen to Gravel Program	Bitumen to Gravel			14.50	10.6		153,700	1.60	245,920	245,920		2026										271,516	
Year 5 Future Resheet	Resheet			14.50	10.6		153,700	3.50	537,950	537,950	25	2051	2076	2101	2126	2151							
									4,616,150	4,616,150							674,400	250,838	255,855	260,972	266,192	271,516	0
Cost without Inflation																	674,400	245,920	245,920	245,920	245,920	245,920	0
Reserve Start Balance	3,430,426	2021															3,430,426	2,797,191	2,579,919	2,355,023	2,122,311	1,881,587	1,632,650
Transfer to Reserve																	41,165	33,566	30,959	28,260	25,468	22,579	19,592
Transfer from Reserve																	674,400	250,838	255,855	260,972	266,192	271,516	0
Reserve Balance	1,274,509	2022															2,797,191	2,579,919	2,355,023	2,122,311	1,881,587	1,632,650	1,652,242

Murchison Shire - Beringarra-Cue Rd Analysis - OPTION 2 - Seal Reconstructed Floodways - Reseal Minimum Existing Floodways																	year>>> 2021		359,200	284,157	289,840	295,637	301,549	307,580	0
										1	expenses inflation>>>					0.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%			
											*	100.0%	102.0%	104.0%	106.1%	108.2%	110.4%	112.6%							
Road	Treatment	Slk Start	Slk End	Length (km)	Pavement width (m)	Seal width (m)	Area (m2)	Rate (\$/m2)	Cost (\$)	Cost (\$)	Life	1st Replac	2nd Replac	3rd Replac	4th Replac	5th Replac	2021	2022	2023	2024	2025	2026	2027		
Floodway x 2 Bitumen Average S Bend	Reseal	12.20	13.65	1.45	10.6	8.0	11,600	5.00	58,000	58,000	15	2021	2036	2051	2066	2081	58,000								
Floodway Corner Bitumen Average	Reseal	10.87	11.40		10.6	8.0	0	5.00	-	-	15	2021	2036	2051	2066	2081									
Floodway Bitumen Good	Reseal	8.76	8.98		10.6	8.0	0	5.00	-	-	15	2021	2036	2051	2066	2081									
Unsealed Floodway Pavement Good	Two Coat Seal	8.36	8.50	0.14	10.6	8.0	1,120	10.00	11,200	11,200	15	2021					11,200								
	Reseal	8.36	8.50	0.14	10.6	8.0	1,120	5.00	5,600	5,600	15	2036	2051	2066	2081	2096									
Unsealed Floodway Pavement Good	Two Coat Seal	6.71	6.77	0.06	10.6	8.0	480	10.00	4,800	4,800	15	2021					4,800								
	Reseal	6.71	6.77	0.06	10.6	8.0	480	5.00	2,400	2,400	15	2036	2051	2066	2081	2096									
Unsealed Floodway Pavement Good	Two Coat Seal	4.08	4.21	0.13	10.6	8.0	1,040	10.00	10,400	10,400	15	2021					10,400								
	Reseal	4.08	4.21	0.13	10.6	8.0	1,040	5.00	5,200	5,200	15	2036	2051	2066	2081	2096									
Unsealed Floodway Pavement Good	Two Coat Seal	2.17	2.24	0.07	10.6	8.0	560	10.00	5,600	5,600	15	2021					5,600								
	Reseal	2.17	2.24	0.07	10.6	8.0	560	5.00	2,800	2,800	15	2036	2051	2066	2081	2096									
Floodway Bitumen good	Reseal	1.42	1.67	0.25	10.6	8.0	2,000	5.00	10,000	10,000	15	2021	2036	2051	2066	2081	10,000								
Unsealed Floodway x2 Pavement Good	Two Coat Seal	0.43	0.68	0.25	10.6	8.0	2,000	10.00	20,000	20,000	15	2021					20,000								
	Reseal	0.43	0.68	0.25	10.6	8.0	2,000	5.00	10,000	10,000	15	2036	2051	2066	2081	2096									
Year 1 Bitumen to Gravel Program	Bitumen to Gravel			16.43	10.6		174,116	1.60	278,585	278,585		2022						284,157							
Year 1 Future Resheet	Resheet			16.43	10.6		174,116	3.50	609,405	609,405	25	2047	2072	2097	2122	2147									
Year 2 Bitumen to Gravel Program	Bitumen to Gravel			16.43	10.6		174,116	1.60	278,585	278,585		2023							289,840						
Year 2 Future Resheet	Resheet			16.43	10.6		174,116	3.50	609,405	609,405	25	2048	2073	2098	2123	2148									
Year 3 Bitumen to Gravel Program	Bitumen to Gravel			16.43	10.6		174,116	1.60	278,585	278,585		2024								295,637					
Year 3 Future Resheet	Resheet			16.43	10.6		174,116	3.50	609,405	609,405	25	2049	2074	2099	2124	2149									
Year 4 Bitumen to Gravel Program	Bitumen to Gravel			16.43	10.6		174,116	1.60	278,585	278,585		2025										301,549			
Year 4 Future Resheet	Resheet			16.43	10.6		174,116	3.50	609,405	609,405	25	2050	2075	2100	2125	2150									
Year 5 Bitumen to Gravel Program	Bitumen to Gravel			16.43	10.6		174,116	1.60	278,585	278,585		2026											307,580		
Year 5 Future Resheet	Resheet			16.43	10.6		174,116	3.50	609,405	609,405	25	2051	2076	2101	2126	2151									
									4,918,748	4,918,748							359,200	284,157	289,840	295,637	301,549	307,580	0		
Cost without Inflation																	359,200	278,585	278,585	278,585	278,585	278,585	0		
Reserve Start Balance	3,430,426	2021															3,430,426	3,112,391	2,865,583	2,610,130	2,345,815	2,072,416	1,789,704		
Transfer to Reserve																	41,165	37,349	34,387	31,322	28,150	24,869	21,476		
Transfer from Reserve																	359,200	284,157	289,840	295,637	301,549	307,580	0		
Reserve Balance	1,920,282	2022															3,112,391	2,865,583	2,610,130	2,345,815	2,072,416	1,789,704	1,811,181		



murchisonshire

Ancient land under brilliant skies

Disability Access & Inclusion Plan

2021-2025

Draft

Initial Adoption

June 2008

Revisions

February 2016

Prepared for Public Consultation

September 2020

Adopted by Council on

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Introduction

The Western Australia Disability Services Act requires all Local Governments to develop and implement a Disability Access and Inclusion Plan (DAIP) to ensure that people with disability have equal access to its facilities and services.

Other legislation underpinning access and inclusion includes the Western Australia Equal Opportunity Act (1984) and the Commonwealth Disability Discrimination Act 1992 (DDA), both of which make discrimination on the basis of a person's disability unlawful.

This Disability Access and Inclusion Plan is available in alternative formats upon request and includes in electronic format by email, in hard copy in both large and standard print, in audio on cassette or compact disc and on the website at www.murchison.wa.gov.au.

Development and Maintenance of the Disability Access and Inclusion Plan

The Chief Executive Officer, who reports directly to the Murchison Shire Council, is responsible for the ongoing development and implementation of the Plan.

Facilities & Services Provided by the Murchison Shire

The Murchison Council serves 29 stations and a population up to 123. The Shire is approximately 49,500 square kilometres in size. The predominant land use, by area, in the region is pastoral stations which produce wool and meat, from sheep, cattle, goats and kangaroos. High technology radio astronomy facilities are being developed at Boolardy Station, stimulating development at the Murchison Settlement.

The Murchison Shire is often referred to as the "Shire with no Town" this is because no gazetted town site exists within the Shire and it is believed to be the only Shire in Australia where this exists.

Council provides an extensive variety of services for the community under authority of a wide range of legislation. Services provided include –

- ~ building control
- ~ cemetery
- ~ bush fire control
- ~ fire prevention
- ~ dog control
- ~ environmental health
- ~ demolition permits
- ~ drainage
- ~ parks & reserves
- ~ citizenship ceremonies
- ~ playground equipment
- ~ water supply
- ~ electricity supply
- ~ library services
- ~ public toilets
- ~ media releases
- ~ planning control
- ~ public buildings for hire
- ~ recreational/sporting facilities
- ~ street lighting
- ~ roads, footpaths, kerbing
- ~ street tree planting
- ~ vehicle licencing agency
- ~ caravan park
- ~ roadhouse (contract managed)

Planning for Better Access

Through the implementation of this DAIP, the Shire of Murchison aims to offer people with disability the same opportunities as other people to access the services of public authority.

The Shire is committed to achieve the following desired outcomes:

- 1 People with disability have the same opportunities as other people to access the services of and any events organised by a public authority.
- 2 People with disability have the same opportunities as other people to access the buildings and other facilities of public authority.
- 3 People with disability receive information from a public authority in a format that will enable them to access the information as readily as other people are able to access it.
- 4 People with disability receive the same level and quality of service from the staff of a public authority as other people receive from the staff of that public authority.
- 5 People with disability have the same opportunities as other people to make complaints to public authority.
- 6 People with disability have the same opportunities as other people to participate in any public consultation by a public authority.
- 7 People with disability have the same opportunity as other people to obtain and maintain employment with public authority.

Evaluation & Review of the DAIP

The Disability Services Act requires that DAIPs be reviewed at least every five years. Whenever the DAIP is amended, a copy of the amended plan must be lodged with the Disability Services Commission.

An evaluation will occur as part of the five-yearly review of the DAIP.

Community Consultation

Public notice will be given that the DAIP will be reviewed and evaluated and an invitation extended to the community to offer advice, opinion or comment on the plan, and to provide comment or details on previously unidentified access issues or ongoing access issues.

On each review of the Plan, the invitation to submit will be posted on the website and advertised in a newspaper that circulates in the local area. However, submissions will be accepted at any time.

Dealing with Submissions

In assessment of any submissions it is possible that matters that require significant capital investment will only be able to be addressed when significant capital works are planned for refurbishing or recycling a building. However, all due care will be taken to ensure that the opportunities for access improvement that can be carried out within current recurrent expenditure are not lost or deferred in the consideration of a larger project.

Reporting on the DAIP

The Disability Services Act requires the Shire to report on the implementation of the DAIP in its annual report outlining:

- ~ progress towards the desired outcomes of its DAIP
- ~ progress of its agents and contractors towards meeting the seven desired
- ~ outcomes
- ~ the strategies used to inform agents and contractors of its DAIP

The Shire is also required to report on progress in the prescribed format to the Disability Services Commission by July 4 each year.

Strategies to Improve Access and Inclusion

The following overarching strategies have been developed to address each of the seven desired outcome areas of the Plan. These will form the basis of the implementation plan.

Strategy	Timeline
Outcome 1 People with disability have the same opportunities as other people to access the services of and any events organised by a public authority	
1.1 Ensure that people with disability are consulted on their needs for services and the accessibility of current services	On review of the DAIP
1.2 Monitor Shire services to ensure equitable access and inclusion	Ongoing
1.3 Develop links between the DAIP and other Shire plans and strategies	Ongoing
1.4 Ensure that events, whether organised or funded are accessible to people with disability	Ongoing
Outcome 2 People with disability have the same opportunities as other people to access the buildings and other facilities of public authority.	
2.1 Ensure that all buildings and facilities meet the standards for access and any demonstrated additional need	Ongoing
2.2 Ensure that all new or redevelopment works provide for access to people with disability, where practicable	Ongoing
2.3 Ensure that all recreational areas are accessible	Ongoing
Outcome 3 People with disability receive information from a public authority in a format that will enable them to access the information as readily as other people are able to access it.	
3.1 Ensure that the community is aware that Shire information is available in alternative formats upon request	Ongoing
3.2 Improve staff awareness of accessible information needs and how to provide information in other formats	Ongoing
3.3 Ensure that the Shire's website meets contemporary good practice	Ongoing
Outcome 4 People with disability receive the same level and quality of service from the staff of a public authority as other people receive from the staff of that public authority.	
4.1 Ensure that all employees, existing and new and Elected Members are aware of disability and access issues and have the skills to provide appropriate services	Ongoing
Outcome 5 People with disability have the same opportunities as other people to make complaints to public authority.	
5.1 Ensure that grievance mechanisms are accessible for people with disability	Ongoing
Outcome 6 People with disability have the same opportunities as other people to participate in any public consultation by a public authority.	
6.1 Ensure that people with disability are actively consulted about the DAIP and any other significant planning processes	Ongoing
Outcome 7 People with disability have the same opportunities as other people to obtain and maintain employment within a public authority.	
7.1 Ensure policies and procedures are regularly reviewed	Ongoing
7.2 Commit to using inclusive recruitment practices when advertising new positions	Ongoing

Progress since 2008 under the DAIP

- 1.1 Ensure that people with disability are consulted on their needs for services and the accessibility of current services
The Shire is currently calling for submissions on its DAIP as part of this review. People with disability are encouraged to make a submission.
- 1.3 Develop links between the DAIP and other Shire plans and strategies
The DAIP is considered a living document and is inclusive to all shire plans and strategies.
- 1.4 Ensure that events, whether organised or funded are accessible to people with disability
All events held at the Murchison Settlement by the Shire are accessible to people with disability and staff and community are supportive of people with special needs.
- 2.1 Ensure that all buildings and facilities meet the standards for access and any demonstrated additional need
All buildings at the Shire of Murchison are accessible to people with disability. There are public facilities available for people with disability.
- 2.2 Ensure that all new or redevelopment works provide for access to people with disability, where practicable
A new laundry and new accommodation units constructed in April 2015 have been built to be accessible to people with disability. Consideration is given to provide wheelchair access for all new developments
- 2.3 Ensure that all recreational areas are accessible
All recreation areas within the Murchison Settlement are accessible to people with disability
- 3.1 Ensure that the community is aware that Shire information is available in alternative formats upon request
This is promoted to the community via the DAIP
- 3.3 Ensure that the Shire's website meets contemporary good practice
The Shire's website undergoes regular professional updates to ensure that it meets contemporary best practice
- 5.1 Ensure that grievance mechanisms are accessible for people with disability
Council ensure that grievance mechanisms are flexible enough to ensure that people with disability have the opportunity to lodge a complaint
- 6.1 Ensure that people with disability are actively consulted about the DAIP and any other significant planning processes
The DAIP is currently under review and the community has been consulted through requests for submissions.
Community consultation is an important part of our Integrated Planning process and review.
People with disability are actively encouraged to make a submission as part of the community consultation process.
- 7.2 Commit to using inclusive recruitment practices when advertising new positions
Council have committed to inclusive recruitment practices through their Equal Opportunity Policy Statement.
- 7.1.13 *Equal Opportunity Policy Statement*
- 1) *The Shire of Murchison recognises its legal obligations under the Equal Opportunity Act 1984 and will actively promote equal employment opportunity based solely on merit to ensure that discrimination does not occur on the grounds of gender, marital status, pregnancy, race, disability, religious or political convictions.*

- 2) *All employment training with the Council will be directed towards providing equal opportunity to all employees providing their relevant experience, skills and ability meet the minimum requirements for such training.*
- 3) *All promotional policies and opportunities with this Council will be directed towards providing equal opportunity to all employees provided their relevant experience, skills and ability meet the minimum requirement for such promotion.*
- 4) *All offers of employment within the Council will be directed towards providing equal opportunity to all employees providing their relevant experience, skills and ability meet the minimum requirements for such engagement.*
- 5) *This Council will not tolerate harassment within its workplace. Harassment is defined as any unwelcome, offensive action or remark concerning a persons' race, colour, language, ethnicity, political or religious convictions, gender, marital status or disability.*

Hon Ben Wyatt LLB MSc MLA

Treasurer; Minister for Finance; Aboriginal Affairs; Lands

Final consultation on modern Aboriginal Cultural Heritage Bill begins

Wednesday, 2 September 2020

- McGowan Government releases draft Aboriginal Cultural Heritage Bill 2020 for consultation
 - Proposed laws align with native title rights and resets the relationship between Traditional Owners and industry
 - Draft Bill delivering an election commitment to empower Aboriginal voices, protect and respect Aboriginal heritage and support better decision making
 - Final consultation includes Aboriginal groups, key stakeholders and public comment
- Aboriginal people will be empowered to make agreements and negotiate outcomes in relation to activities that may impact their cultural heritage under new laws proposed by the McGowan Government.

The draft Aboriginal Cultural Heritage Bill 2020 reflects the feedback of Aboriginal people across the State, industry and stakeholders gathered over two years of consultation.

The Bill addresses the shortcomings of the antiquated Aboriginal Heritage Act 1972 and removes the controversial Section 18 process that doesn't give Aboriginal voices the opportunity to be heard.

A new approach to protecting Aboriginal cultural heritage focuses on agreement making and establishes a tiered approvals system that considers the proposed land use and the level of potential heritage impact.

The Bill reflects contemporary Aboriginal cultural heritage management principles and practices and includes:

- early engagement and meaningful consultation with Aboriginal people in the identification, management and protection of their cultural heritage;
- a new Aboriginal Cultural Heritage Council to facilitate agreements between Aboriginal people and proponents, and provide advice and strategic oversight to the Minister on management of Aboriginal heritage;
- the creation of local Aboriginal Cultural Heritage Services to ensure the right people speak for country and make agreements regarding their cultural heritage;
- introduce measures to address unauthorised impacts and provide for new offences and penalties (up to \$10 million); and
- improve transparency in decision-making with reasons for decisions to be published and the same rights of appeal available to Aboriginal people and land users.

Over the coming weeks, briefings will be held with Aboriginal groups and industry stakeholders. Information sessions will also be held from September 21, 2020 in communities across the State.

For more information, visit <http://www.dplh.wa.gov.au/aha-review>

Comments attributed to Aboriginal Affairs Minister Ben Wyatt:

"The Aboriginal Cultural Heritage Bill 2020 will deliver law for Western Australia that will protect and respect one of the world's oldest continuous living cultures.

"This Bill will reset the relationship between Aboriginal people and land users and align our legislation with Commonwealth native title laws that respect the right of Aboriginal people to negotiate outcomes for projects and opportunities on their lands.

"It will ensure Aboriginal people determine the importance and significance of their heritage sites and empower traditional owners to make agreements regarding the management and impact on their cultural heritage sites.

"Cultural heritage is central to the health and vitality of Aboriginal communities with knowledge passed from generation to generation, providing a strong connection to their past, present and future.

"We have seen recently how grossly inadequate the current legislation is to protect Aboriginal heritage and the appeals by Traditional Owners and land users to modernise our system.

"The McGowan Government is committed to reforming this system. I am very grateful to everyone who has helped shape these new laws.

"This legislation will better protect Aboriginal heritage in Western Australia, place Aboriginal people at the centre of our heritage protection regime and deliver better decision making in land use proposals for stakeholders, industry and the community."

Minister's office - 6552 5900

Information Sessions Aboriginal Cultural Heritage Bill 2020

The Aboriginal Cultural Heritage Bill 2020 will replace the outdated and inadequate *Aboriginal Heritage Act 1972*. Key changes proposed in the Bill are across three key themes – empowering Aboriginal voices, improved protection and better decisions. A program of information sessions are being held for Aboriginal people in communities across the State.

LOCATION	DATE	TIME	VENUE/ADDRESS
Albany	21 September 2020	10:30 am to 2:30 pm	Albany Aboriginal Corporation 365 Serpentine Road, Mount Melville
Moora	22 September 2020	11:30 am to 3:30 pm	Moora Recreation Centre Roberts Street, Moora
Broome	22 September 2020	10:30 am to 2:30 pm	Mangrove Hotel 47 Carnarvon Street, Broome
Bunbury	23 September 2020	10:30 am to 2:30 pm	Bunbury Regional Entertainment Centre 2 Blair Street, Bunbury
Midland	24 September 2020	10:30 am to 2:30 pm	Midland Town Hall 312 Great Eastern Highway, Midland
Fitzroy Crossing	24 September 2020	10:30 am to 2:30 pm	Karayili Community Resource Centre Flynn Drive, Fitzroy Crossing
Geraldton	25 September 2020	11:00 am to 3:00 pm	Geraldton Yacht Club 214 Marine Terrace, Geraldton
Kununurra	25 September 2020	10:30 am to 2:30 pm	MG Corporation (Conference Room) 19 Chestnut Avenue, Kununurra
Karratha	29 September 2020	10:30 am to 2:30 pm	Tambrey Pavilion Tambrey Drive, Karratha
Warburton	29 September 2020	10:30 am to 2:30 pm	Warburton College Warburton Community
Kalgoorlie	30 September 2020	10:30 am to 2:30 pm	Railway Hotel (Conference Room) 51 Forrest Street, Kalgoorlie
Port Hedland	30 September 2020	10:30 am to 2:30 pm	Wanangkura Stadium (Jimblebar Room) Hamilton Road, South Hedland
Leonora	1 October 2020	10:30 am to 2:30 pm	Leonora Community Resource Centre 25 Tower Street, Leonora
Newman	1 October 2020	10:30 am to 2:30 pm	Senior Sports Pavilion Boomerang Oval Corner of Mindarra and Newman Drive, Newman
Esperance	2 October 2020	10:30 am to 2:30 pm	Esperance Bay Yacht Club The Esplanade, Esperance
Carnarvon	2 October 2020	10:30 am to 2:30 pm	Gwoonwardu Mia (Gascoyne Aboriginal Heritage and Cultural Centre) 146 Robinson Street, Carnarvon

Register your attendance:



<https://www.dplh.wa.gov.au/achb-rsvp>



AHAreview@dplh.wa.gov.au

Notice of Information Session

The new **Aboriginal Cultural Heritage Bill 2020** will replace the *Aboriginal Heritage Act 1972* to protect Aboriginal cultural heritage in Western Australia. It reflects the feedback from more than two years of consultation with Aboriginal people, industry and stakeholders.

Local Aboriginal community members and residents are invited to attend an information session in **Geraldton** on **Friday, 25 September 2020**.

The session will provide detail about how the Bill will:

- Empower Aboriginal voices and prioritise early and meaningful consultation with Aboriginal people.
- Establish a new process for agreement making between Aboriginal people and proponents, including new Local Aboriginal Cultural Heritage Services to ensure the right people speak for country.
- Create a new Aboriginal Cultural Heritage Council to support agreement making and provide advice and strategic oversight on how Aboriginal heritage is managed in Western Australia.

- Set new offences and new penalties (up to \$10 million).
- Improve transparency of decision making.

The State Government intends to introduce the Bill into State Parliament this year.

Friday, 25 September 2020

11:00 am to 3:00 pm

Geraldton Yacht Club

214 Marine Terrace, Geraldton

Register your attendance:

online at www.dplh.wa.gov.au/achb-rsvp

by email AHAreview@dplh.wa.gov.au

If you have any questions or would like to talk to someone about the Bill, please contact **Kym Suckling**, Senior Heritage Officer on **(08) 9920 9606**.

This session will be held in accordance with COVID-19 protocols. Please help us ensure the health and wellbeing of your community by registering your attendance in advance. We also recommend that you download the COVIDsafe app as an additional safety measure. More information about the app can be found at www.health.gov.au.



Western Australia

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Western Australia

LEGISLATIVE ASSEMBLY/LEGISLATIVE COUNCIL

Aboriginal Cultural Heritage Bill 2020

A Bill for

An Act —

- **about Aboriginal cultural heritage; and**
- **to repeal the *Aboriginal Heritage Act 1972*; and**
- **to make consequential and other amendments to various Acts; and**
- **for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary**1. Short title**

This is the *Aboriginal Cultural Heritage Act 2020*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 16 (other than Division 1 Subdivision 3 and Division 2) — on the day after assent day;
- (c) Part 15 (other than Division 1) and Part 16 Division 1 Subdivision 3 — on the day on which Part 7 Division 2 comes into operation;
- (d) Part 15 Division 1 and Part 16 Division 2 — on the day after the period of 6 months beginning on the day on which Part 7 Division 2 comes into operation;
- (e) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — Overview of Act

3. Overview of this Act

This Part is intended —

- (a) to give a general indication of what this Act is about; and
- (b) to assist readers to identify the provisions of this Act that are relevant to them; and
- (c) to indicate how this Act is arranged.

4. What this Act is about

- (1) This Act is about valuing and protecting Aboriginal cultural heritage and managing activities that may harm that heritage.
- (2) Through its terms, this Act recognises the special interest Aboriginal people have in protecting, preserving and managing Aboriginal cultural heritage.

5. The main topics dealt with in this Act and where to find them

- (1) Part 4 provides for the following bodies to assist in the administration of this Act —
 - (a) the ACH Council — see Part 4 Division 1;
 - (b) local ACH services — see Part 4 Division 2.
- (2) Rights and duties in relation to Aboriginal cultural heritage is dealt with in Part 5, and includes the following —
 - (a) providing that Aboriginal people are the custodians of Aboriginal ancestral remains and are entitled to the possession and control of those remains — see Part 5 Division 2;
 - (b) providing that Aboriginal people are the custodians and rightful owners of secret or sacred objects and are entitled to the possession and control of those objects — see Part 5 Division 3;

Aboriginal Cultural Heritage Bill 2020**Part 2** Overview of Act**s. 5**

- 1 (c) providing a process for the return of Aboriginal
2 ancestral remains and secret or sacred objects to
3 Aboriginal people — see Part 5 Divisions 2 and 3;
- 4 (d) imposing a duty to report Aboriginal cultural heritage to
5 the ACH Council — see Part 5 Division 4.
- 6 (3) The protection of areas with outstanding significance for
7 Aboriginal cultural heritage is dealt with in Part 6, and includes
8 the following —
- 9 (a) enabling knowledge holders to apply for orders to be
10 made declaring those areas to be protected areas — see
11 Part 6 Division 2;
- 12 (b) providing a higher level of protection for that Aboriginal
13 cultural heritage of outstanding significance — see
14 Part 6 Divisions 5 and 6;
- 15 (c) providing that those orders cannot be repealed without a
16 resolution passed by both Houses of Parliament — see
17 Part 6 Division 5.
- 18 (4) Offences and penalties to assist in achieving the objects of this
19 Act are provided in Part 7, and include the following —
- 20 (a) that serious harm to Aboriginal cultural heritage is a
21 crime — see Part 7 Division 2;
- 22 (b) offences for other harm to Aboriginal cultural
23 heritage — see Part 7 Division 2;
- 24 (c) defences for these offences — see Part 7 Division 3.

Note for this subsection:

26 Under Part 7 Division 2, a person who harms Aboriginal cultural
27 heritage commits an offence. Exemptions (see sections 90 and 100)
28 and defences are provided. In particular, it is a defence if the activity
29 that harmed the Aboriginal cultural heritage is authorised under Part 8
30 Division 4: if for example, the activity is carried out under an ACH
31 permit or ACH management plan. Part 8 Divisions 6 and 7 set out how
32 to get an ACH permit or an ACH management plan.

- 1 (5) The management of activities that may harm Aboriginal cultural
2 heritage is dealt with in Part 8, and includes the following —
- 3 (a) authorities to carry out activities that may harm
4 Aboriginal cultural heritage generally — see Part 8
5 Division 4;
- 6 (b) the undertaking of due diligence assessments to assess
7 the impact of activities on Aboriginal cultural
8 heritage — see Part 8 Division 2;
- 9 (c) notifying and consulting Aboriginal parties and other
10 persons about proposed activities that may harm
11 Aboriginal cultural heritage — see Part 8 Division 3;
- 12 (d) authorising activities that could harm Aboriginal cultural
13 heritage —
- 14 (i) for exempt activities — see section 100 and the
15 definition of exempt activity in section 90;
- 16 (ii) for minimal impact activities — see Part 8
17 Division 5;
- 18 (iii) ACH permits authorising low impact
19 activities — see Part 8 Division 6;
- 20 (iv) ACH management plans authorising activities
21 that may harm Aboriginal cultural heritage
22 (including medium to high impact activities and
23 harm to Aboriginal cultural heritage of State
24 significance) — see Part 8 Division 7;
- 25 (v) determining if Aboriginal cultural heritage is of
26 State significance — see Part 8 Division 7
27 Subdivision 4.
- 28 (6) Providing for mechanisms to assist in achieving the objects of
29 this Act is dealt with in Part 10, and includes the following —
- 30 (a) allowing for stop activity orders and prohibition orders
31 to be made to protect —
- 32 (i) Aboriginal cultural heritage from harm due to the
33 carrying out of activities that are not authorised

s. 6

- 1 under Part 8 Division 4 — see Part 10
2 Divisions 2 and 3;
- 3 (ii) Aboriginal cultural heritage where any new
4 information has emerged about Aboriginal
5 cultural heritage, or about the significance of
6 Aboriginal cultural heritage, since the granting of
7 a permit or the approval or authorisation of a
8 ACH management plan — see Part 10
9 Divisions 2 and 3;
- 10 (b) allowing for remediation orders to be made to remediate
11 Aboriginal places and cultural landscapes where
12 Aboriginal cultural heritage has been harmed — see
13 Part 10 Division 4.

6. Other things dealt with in this Act and where to find them

14 **6. Other things dealt with in this Act and where to find them**
15 This Act also does the following things —

- 16 (a) sets out the objects of this Act and provides that, in
17 pursuit of those objects, regard must be had in particular
18 to the principles set out in sections 46 and 91 — see
19 Part 3 Division 1;
- 20 (b) gives defined meanings to key words and phrases used
21 in this Act — see Part 3 Division 2;
- 22 (c) sets out some general matters, including, importantly,
23 how this Act applies in relation to native title rights and
24 interests — see Part 3 Division 3;
- 25 (d) establishes an ACH Directory of information and
26 documents relevant to Aboriginal cultural heritage,
27 including information about protected areas, Aboriginal
28 cultural heritage of State significance, ACH permits and
29 ACH management plans — see Part 9;
- 30 (e) provides mechanisms aimed at ensuring compliance
31 with this Act, including the appointment of inspectors
32 and Aboriginal inspectors, and powers of inspection,
33 entry and seizure — see Part 11;

- 1 (f) provides for miscellaneous matters, including the
2 following —
- 3 (i) the role of the State Administrative Tribunal,
4 including in the review of certain decisions —
5 see Part 13;
- 6 (ii) the making of regulations and guidelines — see
7 Part 14 Division 2;
- 8 (iii) that the Act cannot be contracted out of — see
9 Part 14 Division 3;
- 10 (g) amends the *Aboriginal Heritage Act 1972* —
- 11 (i) firstly, immediately after the commencement of
12 this Act — to provide that consents given under
13 section 18 of that Act after that commencement
14 are limited in duration to a maximum period of
15 5 years — see Part 16 Division 1 Subdivision 2;
- 16 (ii) secondly, on the commencement of the main
17 provisions of this Act (for example, Part 8
18 Division 7) — for a period of 6 months, to
19 enable decisions to be made on notices for
20 section 18 consents given, and applications for
21 other approvals made, before that
22 commencement — Part 16 Division 1
23 Subdivision 3;
- 24 (h) repeals the *Aboriginal Heritage Act 1972* and provides
25 arrangements to assist in the transition to this Act — see
26 Part 15;
- 27 (i) amends various other Acts — see Part 16 Division 2.

28 **7. Overview is a guide**

29 The overview in this Part is intended only as a guide to the
30 general scheme and effect of this Act, and does not limit or
31 otherwise affect the other provisions of this Act.

Aboriginal Cultural Heritage Bill 2020**Part 3** Provisions of general application**Division 1** Objects of Act**s. 8**

1 **Part 3 — Provisions of general application**2 **Division 1 — Objects of Act**3 **8. Objects of Act**

4 (1) The objects of this Act are as follows —

5 (a) to recognise —

6 (i) the fundamental importance to Aboriginal people
7 of Aboriginal cultural heritage and the central
8 role of Aboriginal cultural heritage in Aboriginal
9 communities past, present and future; and10 (ii) that Aboriginal people have custodianship over
11 Aboriginal cultural heritage; and12 (iii) the value of Aboriginal cultural heritage to
13 Aboriginal people and the wider Western
14 Australian community;15 (b) to recognise, protect and preserve Aboriginal cultural
16 heritage;17 (c) to manage activities that may harm Aboriginal cultural
18 heritage so as to achieve clarity, confidence and
19 certainty in providing balanced and beneficial outcomes
20 for Aboriginal people and the wider Western Australian
21 community;22 (d) to promote an appreciation of Aboriginal cultural
23 heritage.24 (2) In order to achieve the objects of this Act, the Act provides for
25 the following —26 (a) rights and duties in relation to Aboriginal cultural
27 heritage;28 (b) assembling, organising and maintaining information and
29 documents about Aboriginal cultural heritage, and
30 providing for access to those information and
31 documents;

- 1 (c) a statutory role for Aboriginal people in regulatory
2 processes and actions relating to Aboriginal cultural
3 heritage;
- 4 (d) consultation with Aboriginal people to be undertaken in
5 a manner that is fair, transparent and culturally
6 appropriate;
- 7 (e) regulatory processes and actions for the protection and
8 preservation of Aboriginal cultural heritage;
- 9 (f) regulatory processes for managing activities that may
10 harm Aboriginal cultural heritage.
- 11 (3) In the pursuit of the objects of this Act, particular regard must
12 be had to the following —
- 13 (a) the principles relating to custodianship, ownership,
14 possession and control of Aboriginal cultural heritage,
15 set out in section 46;
- 16 (b) the principles of cooperation and mutual advantage
17 relating to the management of activities that may harm
18 Aboriginal cultural heritage, set out in section 91.

19 **Division 2 — Interpretation**

20 **9. Terms used**

- 21 In this Act —
- 22 *Aboriginal ancestral remains* has the meaning given in
23 section 10(1)(d);
- 24 *Aboriginal cultural heritage* has the meaning given in
25 section 10(1);
- 26 *Aboriginal inspector* means a person appointed under
27 section 204;
- 28 *Aboriginal object* has the meaning given in section 10(1)(b);
- 29 *Aboriginal party*, in relation to an ACH management plan,
30 means each person determined to be an Aboriginal party to the
31 ACH management plan in accordance with section 98;

Aboriginal Cultural Heritage Bill 2020

Part 3 Provisions of general application

Division 2 Interpretation

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- 1 **Aboriginal person** means a person who —
- 2 (a) is wholly or partly descended from the original
- 3 inhabitants of Australia; and
- 4 (b) identifies as an Aboriginal person, and
- 5 (c) is accepted as an Aboriginal person by an Aboriginal
- 6 community in which the person lives, or with which the
- 7 person identifies, as an Aboriginal person;
- 8 **Aboriginal place** has the meaning given in section 10(1)(a);
- 9 **Aboriginal tradition** has the meaning given in section 10(2);
- 10 **ACH Council** means the Aboriginal Cultural Heritage Council
- 11 established under section 16(1);
- 12 **ACH Directory** means the Aboriginal Cultural Heritage
- 13 Directory established and maintained under section 162(1);
- 14 **ACH management plan** has the meaning given in section 90;
- 15 **ACH permit** has the meaning given in section 90;
- 16 **approved form** means a form approved under section 278;
- 17 **approved or authorised ACH management plan** means an
- 18 ACH management plan —
- 19 (a) approved under section 134(1); or
- 20 (b) authorised under section 147(1);
- 21 **area** means an area of land;
- 22 **CEO** means the chief executive officer of the Department;
- 23 **consult** means to consult in accordance with the consultation
- 24 guidelines;
- 25 **consultation guidelines** means guidelines about how
- 26 consultation is to be conducted;
- 27 **cultural landscape** has the meaning given in section 10(1)(c);
- 28 **culturally sensitive information** means information that, in
- 29 accordance with Aboriginal tradition, is information that is not
- 30 to be shared with people who are not the knowledge holders for
- 31 the Aboriginal cultural heritage to which the information
- 32 relates;

- 1 **Department** means the department of the Public Service
2 principally assisting in the administration of this Act;
- 3 **due diligence assessment** has the meaning given in section 90;
- 4 **guidelines** means guidelines issued in accordance with Part 14
5 Division 2 Subdivision 2;
- 6 **harm**, in relation to Aboriginal cultural heritage, has the
7 meaning given in section 81;
- 8 **in the interests of the State** includes —
- 9 (a) for the social or economic benefit of the State, including
10 Aboriginal people; and
- 11 (b) the interests of future generations;
- 12 **inspector** means a person designated as an inspector under
13 section 203;
- 14 **instrument** means any of the following —
- 15 (a) an ACH permit;
- 16 (b) an approved or authorised ACH management plan;
- 17 (c) a protected area order;
- 18 (d) a Part 10 order;
- 19 **knowledge holder** —
- 20 (a) for an area, means an Aboriginal person who, in
21 accordance with Aboriginal tradition —
- 22 (i) holds particular knowledge about the Aboriginal
23 cultural heritage of the area ;or
- 24 (ii) has rights, interests and responsibilities in respect
25 of Aboriginal places located in, or Aboriginal
26 objects located in or reasonably believed to have
27 originated from, the area;
- 28 (b) for Aboriginal cultural heritage, means an Aboriginal
29 person who, in accordance with Aboriginal tradition —
- 30 (i) holds particular knowledge about the Aboriginal
31 cultural heritage; and

Aboriginal Cultural Heritage Bill 2020**Part 3** Provisions of general application**Division 2** Interpretation**s. 9**

1 (ii) has rights, interests and responsibilities for the
2 Aboriginal cultural heritage;

3 *land* has the meaning given in the *Land Administration*
4 *Act 1997* section 3(1);

5 *landholder*, in relation to land, means an owner as defined in
6 the *Heritage Act 2018* section 6;

7 *local ACH service*, for an area, means the person appointed
8 under Part 4 as the local Aboriginal cultural heritage service for
9 the area;

10 *material*, in relation to harm to Aboriginal cultural heritage, has
11 the meaning given in section 82(2);

12 *Native Title Act* means the *Native Title Act 1993*
13 (Commonwealth);

14 *native title agreement* has the meaning given in section 90;

15 *native title party*, in relation to an area, means each of the
16 following —

- 17 (a) a registered native title holder for the area;
- 18 (b) a registered native title claimant for the area;
- 19 (c) a person who was a registered native title holder for the
20 area or a registered native title claimant for the area
21 but —
- 22 (i) has, under a native title agreement, surrendered
23 their native title in respect of the area; or
- 24 (ii) the person's native title had been compulsorily
25 acquired or has otherwise been extinguished;

26 *native title representative body* means —

- 27 (a) a body that is recognised as a representative body under
28 the *Native Title Act* section 203AD; or
- 29 (b) a person or body that is funded under the *Native Title*
30 *Act* section 203FE to perform all, or specified, functions
31 of a body referred to in paragraph (a);

32 *occupier*, in relation to land, means a person who is in
33 occupation or control of the land, or is entitled to be in

1 occupation or control of the land, whether or not the person is a
 2 landholder of the land;

3 ***offence*** means an offence under this Act;

4 ***outstanding significance***, has the meaning given in section 63;

5 ***Part 10 order*** means —

6 (a) a stop activity order; or

7 (b) a prohibition order; or

8 (c) a remediation order;

9 ***prescribed*** means prescribed by regulations made under this
 10 Act;

11 ***prohibition order*** means an order under Part 10 Division 3;

12 ***proponent*** has the meaning given in section 90;

13 ***protected area*** means an area declared to be a protected area
 14 under section 75;

15 ***protected area order*** means an order under section 75 or 76;

16 ***public authority*** means —

17 (a) a Minister of the State; or

18 (b) an agency or an organisation as those terms are defined
 19 in the *Public Sector Management Act 1994* section 3(1);
 20 or

21 (c) an entity listed in the *Public Sector Management*
 22 *Act 1994* Schedule 1; or

23 (d) a local government or a regional local government; or

24 (e) an agency, authority, instrumentality or other body
 25 (whether or not a body corporate) established or
 26 continued for a public purpose —

27 (i) under a written law; or

28 (ii) for a public purpose;

Aboriginal Cultural Heritage Bill 2020**Part 3** Provisions of general application**Division 2** Interpretation**s. 10**

1 (f) to the extent not covered by paragraph (e), a government
 2 trading enterprise as defined in the *Infrastructure*
 3 *Western Australia Act 2019* section 3;

4 ***public notice*** means a notice published under section 260;

5 ***registered native title body corporate*** has the meaning given in
 6 the Native Title Act section 253;

7 ***registered native title claimant*** has the meaning given in the
 8 Native Title Act section 253;

9 ***registered native title holder*** means the following —

10 (a) a registered native title body corporate;

11 (b) an entity, other than a registered native title body
 12 corporate, that is —

13 (i) the subject of a determination of native title
 14 under the Native Title Act; and

15 (ii) registered on the National Native Title Register
 16 that is established and maintained under the
 17 Native Title Act Part 8;

18 ***remediation order*** means an order under Part 10 Division 4;

19 ***secret or sacred object*** means an Aboriginal object that is secret
 20 or sacred to Aboriginal people in accordance with Aboriginal
 21 tradition;

22 ***serious***, in relation to harm to Aboriginal cultural heritage, has
 23 the meaning given in section 82(1);

24 ***State significance*** has the meaning given in section 90;

25 ***stop activity order*** means an order under Part 10 Division 2;

26 ***WA Museum*** means The Western Australian Museum
 27 constituted under the *Museum Act 1969*.

28 **10. Aboriginal cultural heritage and related terms**

29 (1) ***Aboriginal cultural heritage*** means the tangible and intangible
 30 elements that are important to the Aboriginal people of the
 31 State, recognised through social, spiritual, historical, scientific
 32 or aesthetic perspectives (including contemporary perspectives),

- 1 as part of their traditional and living cultural heritage and
2 includes —
- 3 (a) an area that is composed of or contains tangible
4 elements of that cultural heritage (an *Aboriginal place*);
- 5 (b) an object that is a tangible element of that cultural
6 heritage (*Aboriginal object*);
- 7 (c) a group of areas (a *cultural landscape*) interconnected
8 through tangible or intangible elements of that cultural
9 heritage;
- 10 (d) any bodily remains of a deceased Aboriginal person
11 (*Aboriginal ancestral remains*), other than remains
12 that —
- 13 (i) are buried in a cemetery where non-Aboriginal
14 persons are also buried; or
- 15 (ii) have been dealt with or are to be dealt with under
16 a law of the State relating to the burial of the
17 bodies of deceased persons.
- 18 (2) *Aboriginal tradition* means the traditions, observances,
19 customs, beliefs, values, knowledge and skills of Aboriginal
20 people of the State generally, or of a particular community or
21 group of Aboriginal people of the State, and includes any such
22 traditions, observances, customs, beliefs, values, knowledge and
23 skills relating to particular persons, areas, objects or
24 relationships.

Division 3 — Application**11. Native title rights and interests**

(1) In this section —

affect has the meaning given in the Native Title Act section 227;

native title rights and interests has the meaning given in the Native Title Act section 223.

(2) This Act is not intended to affect native title rights and interests otherwise than in accordance with the Native Title Act.

(3) This Act must be interpreted in a way that does not prejudice native title rights and interests to the extent those rights and interests are recognised and protected by the Native Title Act.

12. Coroners Act 1996 not affected

Subject to section 53, nothing in this Act affects the operation of the *Coroners Act 1996*.

13. Act does not apply to certain objects

This Act does not apply to or in relation to an object that —

(a) is part of a collection made and preserved by the WA Museum under the *Museum Act 1969* section 9; or

(b) was made for the purpose of sale, unless the object is, or has been, a secret or sacred object.

14. Act binds Crown

(1) This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act makes the State, or the Crown in any of its other capacities, liable to be prosecuted for an offence.

1 **Part 4 — Aboriginal Cultural Heritage Council and**
2 **local Aboriginal cultural heritage services**

3 **Division 1 — Aboriginal Cultural Heritage Council**

4 **Subdivision 1 — Terms used**

5 **15. Terms used**

6 In this Division —

7 *committee* means a committee of the ACH Council established
8 under section 27(1);

9 *member* means a member of the ACH Council.

10 **Subdivision 2 — ACH Council established**

11 **16. ACH Council**

12 (1) A body called the Aboriginal Cultural Heritage Council is
13 established.

14 (2) The ACH Council is an agent of the State and has the status,
15 immunities and privileges of the State.

16 **17. Membership**

17 (1) The ACH Council is to consist of —

18 (a) a chairperson, who is an Aboriginal person, appointed
19 by the Minister; and

20 (b) a deputy chairperson appointed by the Minister;

21 (c) between 4 and 9 other members appointed in accordance
22 with the regulations.

23 (2) The Minister is to seek nominations, in accordance with the
24 regulations, of persons for appointment as members of the ACH
25 Council.

Aboriginal Cultural Heritage Bill 2020

Part 4 Aboriginal Cultural Heritage Council and local Aboriginal cultural heritage services

Division 1 Aboriginal Cultural Heritage Council

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- 1 (3) The Minister is to ensure that —
- 2 (a) the members of the ACH Council have, between them,
- 3 such knowledge, skills and experience as the Minister
- 4 considers appropriate to enable them to effectively carry
- 5 out the functions of the ACH Council under this Act;
- 6 and
- 7 (b) as far as practicable, preference is given to appointing
- 8 Aboriginal people as members of the ACH Council; and
- 9 (c) as far as practicable, the gender composition of the ACH
- 10 Council is balanced.

11 **Subdivision 3 — Functions and powers**

12 **18. Functions of ACH Council**

- 13 (1) The ACH Council has the following functions —
- 14 (a) to promote public awareness, understanding and
- 15 appreciation of Aboriginal cultural heritage in the State;
- 16 (b) to promote the role of Aboriginal people in —
- 17 (i) the recognition, protection and preservation of
- 18 Aboriginal cultural heritage; and
- 19 (ii) the management of activities that may harm
- 20 Aboriginal cultural heritage; and
- 21 (iii) the administration of this Act;
- 22 (c) to proactively assist in the identification, protection,
- 23 preservation and management of Aboriginal cultural
- 24 heritage, including, where relevant, by developing
- 25 guidance materials;
- 26 (d) to provide advice to the Minister as described in
- 27 subsection (2);
- 28 (e) to perform other functions given to the ACH Council
- 29 under this Act;
- 30 (f) to perform any other functions prescribed for the
- 31 purposes of this section.

- 1 (2) The ACH Council is to provide advice to the Minister, at the
2 Minister's request or on its own initiative —
- 3 (a) generally in relation to the recognition, protection,
4 preservation and management of Aboriginal cultural
5 heritage; and
- 6 (b) on any other matter relating to the exercise of the
7 powers of the Minister under this Act.

8 **19. Powers of ACH Council**

9 The ACH Council has all the powers it needs to perform its
10 functions.

11 **20. Delegation by ACH Council**

- 12 (1) The ACH Council may delegate any power or duty of the
13 Council under another section of this Act, other than any power
14 or duty under a section listed in the Table to this section, to any
15 of the following —
- 16 (a) a member; or
17 (b) a member of staff provided to the ACH Council under
18 section 21; or
19 (c) a committee.
- 20 (2) A delegation must be in writing executed by the ACH Council.
- 21 (3) Notice of the delegation is to be published in the *Gazette*.
- 22 (4) A person to whom, or a committee to which, a power or duty is
23 delegated under this section cannot delegate that power or duty.
- 24 (5) A person or committee exercising or performing a power or
25 duty that has been delegated to the person or committee under
26 this section is taken to do so in accordance with the terms of the
27 delegation unless the contrary is shown.

Aboriginal Cultural Heritage Bill 2020**Part 4** Aboriginal Cultural Heritage Council and local Aboriginal cultural heritage services**Division 1** Aboriginal Cultural Heritage Council**s. 21**

- 1 (6) This section does not limit the ability of the ACH Council to
 2 perform a function through —
- 3 (a) a member of staff provided to the Council under
 4 section 21; or
- 5 (b) an agent of the Council.

Table

s. 31(1)	s. 37(2)
s. 38	s. 42(2)
s. 69	s. 72(1)
s. 135	s. 137(1)
s. 138	s. 144
s. 145	s. 152
s. 179	s. 186

Subdivision 4 — Staff and assistance**21. Facilities and services**

- 7
- 8
- 9 (1) The Minister is to ensure that the ACH Council is provided with
 10 the facilities and services, and other resources and support, that
 11 are reasonably necessary to enable the Council to perform its
 12 functions.
- 13 (2) Without limiting subsection (1), the Minister may, by
 14 arrangement with the Department, and on such terms and
 15 conditions as may be mutually arranged with the ACH Council,
 16 allow the ACH Council to make use, either full-time or
 17 part-time, of —
- 18 (a) the services of any officer or employee employed in the
 19 Department; and

1 (b) any services or facilities of the Department.

2 (3) This section does not limit section 22.

3 **22. Use of staff and facilities of other departments, agencies and**
4 **instrumentalities**

5 (1) In this section —

6 *employing authority* has the meaning given in the *Public Sector*
7 *Management Act 1994* section 3(1).

8 (2) The ACH Council, may by arrangement with the relevant
9 employing authority, make use, either full-time or part-time, of
10 the services of any officer or employee —

11 (a) in the Public Service; or

12 (b) in a State agency; or

13 (c) of a public authority.

14 (3) The ACH Council may, by arrangement with the employing
15 authority of a department of the Public Service or a State
16 agency, make use of any facilities of the department or agency.

17 (4) An arrangement under subsection (2) or (3) is to be made on
18 terms agreed to by the parties.

19 (5) This section does not limit section 21.

20 **23. Assistance**

21 (1) The ACH Council, with the approval of the Minister, may
22 co-opt any person with special knowledge, skills or experience
23 to assist the Council in a particular matter.

24 (2) A person who has been co-opted to assist the ACH Council may
25 attend meetings of the Council and participate in its
26 deliberations but cannot vote at a meeting of the Council.

27 (3) A person co-opted to assist the ACH Council is entitled to be
28 paid the remuneration and allowances determined by the

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Part 4 Aboriginal Cultural Heritage Council and local Aboriginal cultural heritage services

Division 1 Aboriginal Cultural Heritage Council

s. 24

1 Minister on the recommendation of the Public Sector
2 Commissioner.

3 **Subdivision 5 — Accountability**

4 **24. Minister may give directions**

- 5 (1) The Minister may give a written direction to the ACH Council
6 with respect to the performance of its functions, and the ACH
7 Council must give effect to the direction.
- 8 (2) However, a direction under subsection (1) cannot be about the
9 performance of a function in relation to any of the following —
- 10 (a) a particular person or matter;
- 11 (b) a particular ACH permit or approved or authorised ACH
12 management plan;
- 13 (c) a particular application for an ACH permit or an ACH
14 management plan;
- 15 (d) evaluating the Aboriginal cultural heritage of an object
16 or place;
- 17 (e) evaluating the significance of an Aboriginal place or
18 Aboriginal object;
- 19 (f) giving advice or making a recommendation to the
20 Minister under this Act.
- 21 (3) Subsection (2) does not apply to a direction of the Minister with
22 respect to the performance of the ACH Council's functions that
23 is referred to in section 111(4), 116(3), 134(4) or 145(4).
- 24 (4) The Minister must cause a direction given under subsection (1)
25 to be laid before each House of Parliament, or dealt with under
26 section 279, within 14 days after the direction is given.
- 27 (5) The text of a direction under subsection (1) is to be included in
28 the relevant annual report submitted under section 26(1).

- 1 **25. Minister to have access to information**
- 2 (1) In this section —
- 3 *document* includes any tape, disk or other device or medium on
4 which information is recorded or stored;
- 5 *information* means information specified, or of a description
6 specified, by the Minister that relates to the functions of the
7 ACH Council.
- 8 (2) The Minister is entitled —
- 9 (a) to have access to information in the possession of the
10 ACH Council; and
- 11 (b) if the information is in or on a document — to have
12 access to, and make and retain copies of, that document.
- 13 (3) However, the Minister is not entitled to have access to —
- 14 (a) personal information about a person unless the person
15 has consented to the disclosure of the information; or
- 16 (b) information about Aboriginal cultural heritage that the
17 ACH Council has determined is culturally sensitive
18 information, unless a knowledge holder for the cultural
19 heritage has consented to the disclosure of the
20 information.
- 21 (4) For the purposes of subsection (2), the Minister may —
- 22 (a) request the ACH Council to give information to the
23 Minister; and
- 24 (b) request the ACH Council to give the Minister access to
25 information; and
- 26 (c) for the purposes of paragraph (b), make use of staff and
27 facilities provided to the ACH Council under section 21
28 to obtain the information and give it to the Minister.
- 29 (5) The ACH Council must comply with a request under
30 subsection (4) and make staff and facilities provided to the
31 Council available to the Minister for the purposes of
32 subsection (4)(c).

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Part 4 Aboriginal Cultural Heritage Council and local Aboriginal cultural heritage services

Division 1 Aboriginal Cultural Heritage Council

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Subdivision 6 — Miscellaneous matters**26. Annual report of ACH Council**

(1) As soon as practicable after 1 July, and in any event before 31 October, in each year the ACH Council is to prepare and submit to the Minister an annual report on activities, operations and proceedings carried out by the Council during the previous financial year.

(2) The Minister is to cause the report to be laid before each House of Parliament, or dealt with under section 279, within 14 days after it is prepared.

27. Committees

(1) The ACH Council may establish committees to assist it in performing its functions.

(2) The ACH Council may discharge, alter or reconstitute a committee.

(3) The ACH Council may —

(a) determine the functions, membership and constitution of a committee; and

(b) appoint any members of the ACH Council or other persons as it thinks fit to be members of a committee.

(4) The ACH Council may give directions to a committee on the following matters —

(a) the functions to be performed by the committee;

(b) the committee's procedures;

(c) reporting by the committee on the performance of its functions.

(5) A committee must comply with a direction of the ACH Council.

(6) A committee may determine its own procedures but they must be consistent with any directions of the ACH Council and the terms of any delegation under which the committee is acting.

- 1 (7) A committee must —
- 2 (a) keep minutes of its meetings to a standard approved by
- 3 the ACH Council; and
- 4 (b) provide the ACH Council with a copy of the minutes of
- 5 each meeting.

6 **28. Procedures**

7 Subject to the regulations, the ACH Council may determine its

8 own procedures.

9 **29. Remuneration of members of ACH Council or a committee**

10 A member of the ACH Council, or a committee, is entitled to be

11 paid the remuneration and allowances determined by the

12 Minister on the recommendation of the Public Sector

13 Commissioner unless the member is a public service officer.

14 **Division 2 — Local Aboriginal cultural heritage services**

15 **Subdivision 1 — Preliminary**

16 **30. Terms used**

17 In this Division —

18 **CATSI Act** means the *Corporations (Aboriginal and Torres*

19 *Strait Islander) Act 2006* (Commonwealth);

20 **CATSI Act corporation** means a corporation registered under

21 the CATSI Act;

22 **Corporations Act corporation** means a corporation that —

- 23 (a) is registered under the *Corporations Act 2001*
- 24 (Commonwealth); and
- 25 (b) satisfies the Indigeneity requirement under the CATSI
- 26 Act section 29-5.

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Part 4 Aboriginal Cultural Heritage Council and local Aboriginal cultural heritage services

Division 2 Local Aboriginal cultural heritage services

s. 31

1 **31. ACH Council to appoint local ACH services**

- 2 (1) The ACH Council is, as far as practicable, to appoint local ACH
3 services for different areas of the State.
- 4 (2) A person may be appointed by the ACH Council as a local ACH
5 service for more than 1 area of the State.

6 **32. Functions of local ACH service**

7 A local ACH service has the following functions in relation to
8 its area —

- 9 (a) to facilitate consultation with native title parties and
10 other knowledge holders who have relevant knowledge
11 of Aboriginal cultural heritage in the area;
- 12 (b) to make, or to facilitate the making of, agreements about
13 the management of Aboriginal cultural heritage in the
14 area;
- 15 (c) to give effect to agreements about the management of
16 Aboriginal cultural heritage that apply in respect of the
17 area, whether or not the local ACH service is a party to
18 the agreement;
- 19 (d) to provide evidence to the ACH Council of Aboriginal
20 cultural heritage in the area and the importance of that
21 heritage;
- 22 (e) to make submissions, and to provide information, to the
23 ACH Council about proposals for activities to be carried
24 out in the area and the management of those activities so
25 as to avoid, or minimise, the risk of harm being caused
26 to Aboriginal cultural heritage;
- 27 (f) to assist in improving the accuracy of the ACH
28 Directory by providing accurate evidence and data about
29 Aboriginal cultural heritage in the area;
- 30 (g) to consult with other local ACH services, native title
31 parties and knowledge holders who are not native title
32 parties about Aboriginal cultural heritage that extends
33 beyond the geographic boundaries of the area;

- 1 (h) to undertake, either directly or indirectly, on-ground
 2 identification, maintenance and conservation of
 3 Aboriginal cultural heritage in the area;
- 4 (i) to report to the ACH Council about matters related to
 5 the performance of the functions of the local ACH
 6 service as required by the regulations;
- 7 (j) other functions, if any, that are prescribed.

8 **Subdivision 2 — Appointment of local ACH service**

9 **33. Application to be appointed as local ACH service**

- 10 (1) Any of the following persons may apply, in the approved form,
 11 to the ACH Council to be appointed as the local ACH service
 12 for an area —
- 13 (a) a native title party for the area;
- 14 (b) a CATSI Act corporation —
- 15 (i) that represents the Aboriginal community in the
 16 area; or
- 17 (ii) the majority of the members of which are
 18 knowledge holders for the area;
- 19 (c) a Corporations Act corporation —
- 20 (i) that represents the Aboriginal community in the
 21 area; or
- 22 (ii) the majority of the members of which are
 23 knowledge holders for the area;
- 24 (d) a native title representative body for the area.
- 25 (2) If more than 1 application is received in relation to an area, the
 26 ACH Council is to consider the applications in the following
 27 order of priority —
- 28 (a) an application by a native title party;
- 29 (b) an application by a CATSI Act corporation or a
 30 Corporations Act corporation;
- 31 (c) an application by a native title representative body.

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Part 4 Aboriginal Cultural Heritage Council and local Aboriginal cultural heritage services

Division 2 Local Aboriginal cultural heritage services

s. 34

1 **34. Appointment of local ACH service**

2 (1) The ACH Council may appoint a person as a local ACH service
3 for an area if —

4 (a) there is no other person appointed as a local ACH
5 service for any part of the area; and

6 (b) the Council determines that the person satisfies the
7 requirements set out in subsection (2) for the area.

8 (2) The requirements for a person to be appointed as a local ACH
9 service for an area are that, in the opinion of the ACH Council,
10 the person —

11 (a) has comprehensive knowledge of the local Aboriginal
12 community in the area; and

13 (b) has the endorsement of any native title party, or parties,
14 for the area or part of the area; and

15 (c) has sufficient support of the local Aboriginal community
16 in the area to ensure that all the persons to be consulted
17 are consulted as required; and

18 (d) has the necessary skills to promote negotiations between
19 people who propose to carry out activities in the area
20 and knowledge holders for the area where it is proposed
21 that the activities will be carried out; and

22 (e) is impartial; and

23 (f) has sufficient skills and resources to undertake the
24 functions of a local ACH service; and

25 (g) has in place a reasonable fee structure for the fees to be
26 charged in connection with the carrying out of the
27 functions of a local ACH service; and

28 (h) satisfies other requirements, if any, that are prescribed.

29 (3) If the ACH Council decides not to appoint a person who has
30 applied under section 33(1) to be appointed as a local ACH
31 service for an area, the Council is to advise the Minister in
32 writing of its decision and the reasons for the decision.

1 **35. ACH Council to give notice of appointment**

- 2 (1) The ACH Council is to give public notice of the appointment of
3 a person as a local ACH service for an area.
- 4 (2) The notice is to include the following —
- 5 (a) details of the area for which the person is appointed as a
6 local ACH service;
- 7 (b) the name of the person appointed;
- 8 (c) details of how the person may be contacted;
- 9 (d) other information, if any, that is prescribed.

10 **36. Duration of appointment as local ACH service for area**

11 The appointment of a person as a local ACH service for an
12 area —

- 13 (a) comes into force on the day on which the ACH Council
14 gives notice under section 35(1), or on a later day, if
15 any, specified in the notice; and
- 16 (b) is in force until —
- 17 (i) if the person is a CATSI Act corporation — the
18 person is deregistered under the CATSI Act; or
- 19 (ii) if the person is a Corporations Act
20 corporation — the person is deregistered under
21 the *Corporations Act 2001* (Commonwealth); or
- 22 (iii) the appointment is cancelled under section 37(2).

23 **37. Suspension or cancellation of appointment of local ACH
24 service for area**

- 25 (1) The ACH Council may, on the written request of a local ACH
26 service for an area, cancel the appointment.
- 27 (2) The Minister or the ACH Council may by written notice given
28 to a person who is appointed as a local ACH service for an area
29 take either of the following actions —
- 30 (a) suspend the appointment for a specified period;

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Part 4 Aboriginal Cultural Heritage Council and local Aboriginal cultural heritage services

Division 2 Local Aboriginal cultural heritage services

s. 38

- 1 (b) cancel the appointment.
- 2 (3) A notice under subsection (2) may be given only if the Minister
3 or the ACH Council is no longer satisfied that the person meets
4 the requirements to be appointed as local ACH service set out in
5 section 34(2).
- 6 (4) A notice given under subsection (2) —
- 7 (a) is to set out the grounds on which the action is taken;
8 and
- 9 (b) takes effect on the day specified in the notice.
- 10 (5) Before taking action under subsection (2) the Minister or the
11 ACH Council is to —
- 12 (a) give to the person written notice of the action that the
13 Minister or the Council proposes to take and the grounds
14 on which the Minister or the Council proposes to take
15 that action; and
- 16 (b) give the person a reasonable opportunity to be heard on
17 the matter.
- 18 (6) If the appointment of a person as a local ACH service is
19 suspended the appointment is of no effect during the period of
20 the suspension.

21 **38. Change to area for local ACH service**

- 22 (1) The ACH Council may amend the area for which a person is
23 appointed as a local ACH service.
- 24 (2) An amendment of the area may be —
- 25 (a) made at the request of the person appointed; or
26 (b) initiated by the ACH Council.

- 1 (3) If the proposed amendment is not at the request of the person
2 appointed, the ACH Council is to give to the service —
- 3 (a) written notice of its intention to amend the area for
4 which the person is appointed and the reasons for the
5 proposed amendment; and
- 6 (b) a reasonable opportunity to make submissions to the
7 Council about the proposed amendment.
- 8 (4) The ACH Council may only amend the area for which a person
9 is appointed as a local ACH service if the Council is satisfied
10 that —
- 11 (a) the person satisfies the requirements set out in
12 section 34(2) in relation to the amended area; and
- 13 (b) there is no other person appointed as a local ACH
14 service for any part of the amended area.
- 15 (5) If the ACH Council amends the area for which a person is
16 appointed as a local ACH service, the Council is to give public
17 notice of the amended area for which the person is appointed.
- 18 **39. Change to details of local ACH service**
- 19 (1) The ACH Council may, on the request of a person appointed as
20 a local ACH service, amend any of the following —
- 21 (a) the name of the person;
- 22 (b) any other details that are set out in the public notice
23 given under section 35(1).
- 24 (2) The ACH Council may only amend the details if it is satisfied
25 that, following the proposed amendments to the details, the
26 person still meets the requirements set out in section 34(2) in
27 relation to the area for which the person is appointed.
- 28 (3) If, on a request made under subsection (1), the ACH Council
29 amends the details the Council is to give public notice of the
30 amended details.

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Division 2 Local Aboriginal cultural heritage services

s. 40

- 1 **40. Objection to decision of ACH Council**
- 2 (1) A person who applies to be appointed as a local ACH service
3 for an area may, in writing, object to the Minister if the ACH
4 Council refuses to appoint the person as a local ACH service.
- 5 (2) A person appointed as a local ACH service may, in writing,
6 object to the Minister if the ACH Council —
- 7 (a) suspends or cancels the appointment; or
8 (b) refuses to amend the area for which the person is
9 appointed; or
10 (c) refuses to change the details on a request made under
11 section 39(1).
- 12 (3) On receipt of an objection made under this section, the Minister
13 is to request the ACH Council to provide to the Minister the
14 information that had been provided to the Council at the time
15 the decision was made.
- 16 (4) The Minister may request a person who objects to do any of the
17 following —
- 18 (a) provide the Minister with such further information
19 relevant to the application as the Minister requires;
20 (b) verify any further information by statutory declaration.
- 21 (5) Having considered the information provided by the ACH
22 Council and any further information provided under
23 subsection (4) the Minister may —
- 24 (a) confirm the decision made by the ACH Council; or
25 (b) make another decision.
- 26 (6) The Minister is to ensure that a person who objects is given
27 notice of a decision made under subsection (5).

1 **Subdivision 3 — Fee for services provided by local ACH service**

2 **41. Fee for services provided by local ACH service**

- 3 (1) A local ACH service may charge a fee for services that it
4 provides in connection with the functions set out in section 32.
- 5 (2) The fee is to be in accordance with —
- 6 (a) the fee structure that the local ACH service had in place
7 at the time it was appointed; or
- 8 (b) if a variation of the fee structure is later approved by the
9 ACH Council under section 42(2) — the fee structure as
10 varied.
- 11 (3) However, a local ACH service may not charge a fee for services
12 that it provides to the Department or the ACH Council in
13 connection with the functions set out in section 32.
- 14 (4) If a fee for services charged by a local ACH service under
15 subsection (1) is not paid, the local ACH service may recover
16 the fee as a debt due in a court of competent jurisdiction.

17 **42. Variation of fee structure for services provided by local**
18 **ACH service**

- 19 (1) A local ACH service may request the ACH Council to approve
20 a variation of the fee structure for services that it provides in
21 connection with the functions set out in section 32.
- 22 (2) On a request under subsection (1), the ACH Council may
23 approve the variation of the fee structure if the Council is
24 satisfied that the fee structure as so varied is reasonable.

Aboriginal Cultural Heritage Bill 2020

Part 4 Aboriginal Cultural Heritage Council and local Aboriginal cultural heritage services

Division 3 Miscellaneous

s. 43

Division 3 — Miscellaneous**43. Impersonation**

A person must not impersonate a member of the ACH Council.

Penalty: a fine of \$5 000.

44. Regulations: ACH Council

(1) The regulations may make provision for or in relation to the ACH Council.

(2) Without limiting subsection (1), regulations may provide for or in relation to the following —

- (a) the nomination, appointment, term of office, resignation and removal from office of members of the ACH Council or of a committee;
- (b) alternate members of the ACH Council, to deputise for members who are temporarily unable or unavailable to act;
- (c) committees;
- (d) managing conflicts of interest of members —
 - (i) of the ACH Council; or
 - (ii) of a committee of the ACH Council;
- (e) the meetings and proceedings of the ACH Council, including the holding of remote meetings and the making of resolutions without meetings.

45. Regulations: local ACH services

(1) The regulations may make provision for or in relation to local ACH services.

(2) Without limiting subsection (1), regulations may make provision for or in relation to the following —

- (a) reports to be provided by a local ACH service about matters related to the performance of its functions;

- 1 (b) the giving of notice about the appointment of a local
2 ACH service or variation to such an appointment.

Consultation Draft

Aboriginal Cultural Heritage Bill 2020**Part 5** Rights and duties in relation to Aboriginal cultural heritage**Division 1** Preliminary**s. 46**

1 **Part 5 — Rights and duties in relation to Aboriginal**
2 **cultural heritage**

3 **Division 1 — Preliminary**

4 **46. Principles relating to custodianship, ownership and**
5 **possession of Aboriginal cultural heritage**

6 The principles relating to the custodianship, ownership,
7 possession and control of Aboriginal cultural heritage are as
8 follows —

- 9 (a) Aboriginal people should be recognised as having a
10 continuing living relationship with, and as being the
11 primary custodians of, Aboriginal cultural heritage;
- 12 (b) Aboriginal people should, where practicable, be
13 involved in —
- 14 (i) the recognition, protection and preservation of
15 Aboriginal cultural heritage; and
- 16 (ii) the management of activities that may harm
17 Aboriginal cultural heritage;
- 18 (c) Aboriginal ancestral remains should, where practicable,
19 be under the custodianship, possession and control of
20 Aboriginal people;
- 21 (d) secret or sacred objects should, where practicable, be
22 under the custodianship, ownership, possession and
23 control of Aboriginal people;
- 24 (e) all Aboriginal ancestral remains and secret or sacred
25 objects should, where practicable, be returned to
26 Aboriginal people;
- 27 (f) it is important for Aboriginal people and the wider
28 community that Aboriginal cultural heritage is protected
29 and preserved.

1 **47. Terms used**

2 In this Part —

3 *custodian* means an Aboriginal person who is a person, or a
4 member of a group or community, that —

- 5 (a) in relation to Aboriginal ancestral remains — is a
6 custodian of the ancestral remains as described in
7 section 49(1);
- 8 (b) in relation to secret or sacred objects — is a custodian
9 and rightful owner of the secret or sacred objects as
10 described in section 57(1);

11 *organisation* means any person other than the following —

- 12 (a) an individual;
- 13 (b) the WA Museum.

14 **48. No compensation**

15 A person is not entitled to any compensation for loss resulting
16 from the operation of this Part.

17 **Division 2 — Aboriginal ancestral remains**

18 **49. Rights of Aboriginal people in relation to Aboriginal**
19 **ancestral remains**

- 20 (1) An Aboriginal person, group or community that has, in
21 accordance with Aboriginal tradition, rights, interests and
22 responsibilities in respect of an area in which Aboriginal
23 ancestral remains are located, or are reasonably believed to have
24 originated from, is a custodian of the ancestral remains and is
25 entitled to possession and control of those remains.
- 26 (2) This section applies to Aboriginal ancestral remains regardless
27 of who may have possession or control of the ancestral remains
28 before the commencement of this section.

Aboriginal Cultural Heritage Bill 2020**Part 5** Rights and duties in relation to Aboriginal cultural heritage**Division 2** Aboriginal ancestral remains**s. 50**

1 **50. ACH Council to be notified about Aboriginal ancestral**
2 **remains**

3 An organisation or individual that is in possession of Aboriginal
4 ancestral remains must give written notice to the ACH Council
5 within the prescribed period —

- 6 (a) to the effect that they are in possession of the ancestral
7 remains; and
8 (b) describing the ancestral remains; and
9 (c) containing any other information in their possession
10 about the ancestral remains, including information about
11 how they came to be in possession of the ancestral
12 remains.

13 Penalty:

- 14 (a) for an individual — a fine of \$10 000;
15 (b) for a body corporate — a fine of \$50 000.

16 **51. Duties of organisations to return Aboriginal ancestral**
17 **remains**

18 (1) An organisation that is in possession of Aboriginal ancestral
19 remains must take reasonable steps within the prescribed period
20 to —

- 21 (a) return the ancestral remains to a custodian of the
22 ancestral remains; or
23 (b) at the request of a custodian of the ancestral remains,
24 continue to hold the ancestral remains on behalf of the
25 custodians of the ancestral remains.

26 Penalty for this subsection: a fine of \$20 000.

27 (2) It is a defence to a charge of an offence under subsection (1) to
28 prove that the organisation transferred the Aboriginal ancestral
29 remains in its possession to the ACH Council where —

- 30 (a) the organisation could not identify a custodian of the
31 ancestral remains in the organisation's possession, after
32 taking reasonable steps to do so; and

1 (b) the Council agreed to take the ancestral remains into its
2 custody.

3 (3) An organisation must give written notice to the ACH Council
4 within the prescribed period after the organisation, in
5 accordance with subsection (1), has —

6 (a) returned Aboriginal ancestral remains to a custodian of
7 the ancestral remains; or

8 (b) been requested by a custodian of the ancestral remains
9 to continue to hold the ancestral remains on behalf of the
10 custodians of the ancestral remains.

11 Penalty for this subsection: a fine of \$10 000.

12 **52. Duties of individuals to return Aboriginal ancestral remains**

13 An individual who is in possession of Aboriginal ancestral
14 remains must take reasonable steps within the prescribed period
15 to transfer the ancestral remains into the custody of the ACH
16 Council as soon as practicable.

17 Penalty: a fine of \$20 000.

18 **53. Transfer of Aboriginal ancestral remains by Coroner**

19 A coroner who has reported to the ACH Council under the
20 *Coroners Act 1996* section 19B that human remains are, or are
21 likely to be, Aboriginal ancestral remains must, as soon as
22 practicable, transfer the ancestral remains into the custody of the
23 ACH Council if the remains are Aboriginal ancestral remains.

24 Note for this section:

25 A coroner is required under section 19B of the *Coroners Act 1996* to
26 report to the ACH Council if, in investigating a death, the coroner
27 believes that the human remains are, or are likely to be, Aboriginal
28 ancestral remains.

Aboriginal Cultural Heritage Bill 2020**Part 5** Rights and duties in relation to Aboriginal cultural heritage**Division 2** Aboriginal ancestral remains**s. 54**

1 **54. Duty of ACH Council in relation to Aboriginal ancestral**
2 **remains transferred to it**

3 The ACH Council may arrange for Aboriginal ancestral remains
4 transferred to it under this Part, as is appropriate in relation to
5 particular ancestral remains, to be —

- 6 (a) returned to a custodian of the ancestral remains; or
7 (b) at the request of a custodian of the ancestral remains —
8 held by the Council in safekeeping on behalf of the
9 custodians of the ancestral remains; or
10 (c) if the ACH Council cannot identify a custodian of the
11 ancestral remains — dealt with in an appropriate
12 manner.

13 **55. Aboriginal ancestral remains not to be disturbed or**
14 **removed**

- 15 (1) A person must not disturb or remove Aboriginal ancestral
16 remains on any land.

17 Penalty for this subsection:

- 18 (a) for an individual — a fine of \$20 000;
19 (b) for a body corporate — a fine of \$100 000.

- 20 (2) Subsection (1) does not apply to an Aboriginal person dealing
21 with the remains in accordance with the person's rights,
22 interests and responsibilities in accordance with Aboriginal
23 tradition.

- 24 (3) It is a defence to a charge of an offence under subsection (1) to
25 prove that the person charged —

- 26 (a) was carrying out an activity authorised under Part 8
27 Division 4; or
28 (b) was carrying out a function under this Act or another
29 written law; or

- 1 (c) was lawfully on the land where the Aboriginal ancestral
 2 remains were located and had no reasonable grounds to
 3 suspect, and in fact did not suspect —
- 4 (i) that Aboriginal ancestral remains were present
 5 on the land; or
- 6 (ii) that the person's actions would disturb or remove
 7 the Aboriginal ancestral remains.

8 Division 3 — Secret or sacred objects

9 56. Term used: prescribed public authority

10 In this Division —

11 *prescribed public authority* means any public authority other
 12 than the following —

- 13 (a) the WA Museum;
- 14 (b) a university listed in the *Public Sector Management*
 15 *Act 1994* Schedule 1.

16 57. Rights of Aboriginal people in relation to secret or sacred 17 objects

- 18 (1) An Aboriginal person, group or community that has, in
 19 accordance with Aboriginal tradition, rights, interests and
 20 responsibilities in respect of a secret or sacred object is a
 21 custodian and rightful owner of the object and entitled to
 22 possession and control of the object.
- 23 (2) This section applies to a secret or sacred object regardless of
 24 who may have possession or control of the object before the
 25 commencement of this section.

26 58. ACH Council to be notified about secret or sacred objects

27 A person that is in possession of a secret or sacred object is to
 28 give written notice to the ACH Council within the prescribed
 29 period —

- 30 (a) to the effect that it is in possession of the object; and

Aboriginal Cultural Heritage Bill 2020**Part 5** Rights and duties in relation to Aboriginal cultural heritage**Division 3** Secret or sacred objects**s. 59**

- 1 (b) describing the object; and
2 (c) containing any other information in their possession
3 about the object, including information about how they
4 came to be in possession of the object.

5 Penalty:

- 6 (a) for an individual — a fine of \$10 000;
7 (b) for a body corporate — a fine of \$50 000.

8 **59. Duties of prescribed public authorities to return secret or**
9 **sacred objects**

- 10 (1) A prescribed public authority that is in possession of a secret or
11 sacred object is to take reasonable steps to —
12 (a) return the object to a custodian of the object; or
13 (b) at the request of a custodian of the object, continue to
14 hold the object on behalf of the custodians of the object.

15 Penalty for this subsection: a fine of \$20 000.

- 16 (2) The prescribed public authority may request the advice of the
17 ACH Council in relation to complying with subsection (1).
- 18 (3) It is a defence to a charge of an offence under subsection (1) to
19 prove that a prescribed public authority transferred a secret or
20 sacred object in its possession to the ACH Council where —
21 (a) the authority could not identify a custodian of the object,
22 after taking reasonable steps to do so; and
23 (b) the ACH Council agreed to take the object into its
24 custody.
- 25 (4) A prescribed public authority must give written notice to the
26 ACH Council within the prescribed period after the
27 organisation, in accordance with subsection (1), has —
28 (a) returned a secret and sacred object to a custodian of the
29 object; or

- 1 (b) been requested by a custodian of the object to continue
2 to hold the object on behalf of the custodians of the
3 object.

4 Penalty for this subsection: a fine of \$10 000.

5 **60. Duty of ACH Council in relation to secret or sacred objects**
6 **transferred to it**

7 The ACH Council may arrange for secret or sacred objects
8 transferred to it under this Part, as is appropriate in relation to
9 the particular object, to be —

- 10 (a) returned to a custodian of the object; or
11 (b) at the request of a custodian of the object — held by the
12 Council in safekeeping on behalf of the custodians of
13 the object; or
14 (c) if the ACH Council cannot identify a custodian of the
15 object — dealt with in an appropriate manner.

16 **61. Secret or sacred objects not to be sold or removed from the**
17 **State**

18 (1) A person must not —

- 19 (a) sell, exchange or otherwise dispose of a secret or sacred
20 object; or
21 (b) remove a secret or sacred object from the State, or
22 (c) cause or permit a secret or sacred object to be removed
23 from the State; or
24 (d) conceal a secret or sacred object.

25 Penalty for this subsection:

- 26 (a) for an individual — a fine of \$10 000;
27 (b) for a body corporate — a fine of \$100 000.

Aboriginal Cultural Heritage Bill 2020**Part 5** Rights and duties in relation to Aboriginal cultural heritage**Division 4** Duty to report Aboriginal cultural heritage to ACH council**s. 62**

- 1 (2) Subsection (1) does not apply to a secret or sacred object being
2 dealt with by —
- 3 (a) an Aboriginal person in accordance with the person's
4 rights, interests and responsibilities in accordance with
5 Aboriginal tradition; or
- 6 (b) a person in accordance with this Part.

7 **Division 4 — Duty to report Aboriginal cultural heritage to**
8 **ACH council**

9 **62. Reporting Aboriginal cultural heritage**

- 10 (1) Subject to subsection (2), a person who knows, or becomes
11 aware, of any of the following must report it to the ACH
12 Council as soon as practicable after making the discovery —
- 13 (a) an Aboriginal place;
14 (b) an Aboriginal object;
15 (c) Aboriginal ancestral remains.
- 16 Penalty for this subsection:
- 17 (a) for an individual — a fine of \$20 000;
18 (b) for a body corporate — a fine of \$100 000.
- 19 (2) Subsection (1) does not apply to —
- 20 (a) an Aboriginal person acting in accordance with the
21 person's rights, interests and responsibilities in
22 accordance with Aboriginal tradition; or
- 23 (b) a person who had reasonable cause to believe, and did in
24 fact believe, that the ACH Council was already aware of
25 the existence of the Aboriginal place, Aboriginal object
26 or Aboriginal ancestral remains.
- 27 (3) A report under subsection (1) may be given orally or in writing.
- 28 (4) The ACH Council may arrange for Aboriginal ancestral remains
29 or secret or sacred object reported to it under subsection (1) to
30 be transferred to the Council.

- 1 (5) It is a defence to a charge of an offence under subsection (1) to
2 prove that the person charged did not know, and could not
3 reasonably have known, that the discovery was —
4 (a) an Aboriginal place; or
5 (b) an Aboriginal object; or
6 (c) Aboriginal ancestral remains.

Consultation Draft

1

Part 6 — Protected areas

2

Division 1 — Preliminary

3

63. Terms used

4

In this Part —

5

application area means the area described in an application made under section 65;

6

7

outstanding significance, in relation to Aboriginal cultural heritage, means —

8

9

(a) that the cultural heritage is of outstanding significance to Aboriginal people including to an individual, community or group; and

10

11

12

(b) that the significance is recognised through social, spiritual, historical, scientific or aesthetic perspectives (including contemporary perspectives).

13

14

15

64. Purpose of protected area order

16

The purpose of declaring an area as a protected area is —

17

(a) to recognise that the area is, contains, or is part of, Aboriginal cultural heritage of outstanding significance; and

18

19

20

(b) to provide for that Aboriginal cultural heritage to have a higher level of protection.

21

22

Division 2 — Application for area to be declared as protected area

23

24

65. Application for area to be declared as a protected area

25

(1) An application for an area to be declared as a protected area may be made by a knowledge holder for the area.

26

27

(2) An application under subsection (1) is to —

28

(a) be made to the ACH Council in the approved form; and

- 1 (b) describe the application area; and
- 2 (c) describe the nature of the Aboriginal cultural heritage in
- 3 the area and the outstanding significance of it; and
- 4 (d) if the application area includes any area to which an
- 5 ACH permit relates — be accompanied by evidence of
- 6 the agreement of the holder of the ACH permit referred
- 7 to subsection (3); and
- 8 (e) if the application area includes any area to which an
- 9 approved or authorised ACH management plan
- 10 relates — be accompanied by evidence of the agreement
- 11 of the parties to the plan referred to in subsection (4);
- 12 and
- 13 (f) be accompanied by any other documents or evidence, if
- 14 any, that are prescribed.
- 15 (3) The application area must not include any area to which an
- 16 ACH permit relates unless the holder of the ACH permit agrees
- 17 to request that the ACH Council amend the area to which the
- 18 permit relates to exclude any area that is included in the
- 19 application area.
- 20 (4) The application area must not include any area to which an
- 21 approved or authorised ACH management plan relates unless
- 22 the parties to the ACH management plan agree to request the
- 23 ACH Council to amend the area to which the ACH management
- 24 plan relates to exclude any area that is included in the
- 25 application area.

26 **66. ACH Council may refuse to consider some applications**

27 The ACH Council may refuse to consider, or consider further,

28 an application made under section 65(1) if —

- 29 (a) it is not made in accordance with this Act; or
- 30 (b) the Council is of the opinion that the application is
- 31 substantially the same as an application that —
- 32 (i) was made within the previous 2 years; and

Aboriginal Cultural Heritage Bill 2020**Part 6** Protected areas**Division 2** Application for area to be declared as protected area**s. 67**

1 (ii) was refused.

2 **67. Further information in support of application**

3 (1) The ACH Council may, in writing, request an applicant under
4 section 65(1) to do any of the following —

5 (a) provide the Council with such further information
6 relevant to the application as the Council requires;

7 (b) verify any information by statutory declaration.

8 (2) The ACH Council is to specify the period within which the
9 request is to be complied with.

10 (3) The Council may refuse an application if the applicant does not
11 comply with a request made under this section.

12 **68. ACH Council to notify certain Aboriginal persons about**
13 **application**

14 (1) The ACH Council is to give written notice of an application
15 made under section 65 to the following persons —

16 (a) each local ACH service for the application area or part
17 of the application area;

18 (b) each native title party for the application area or part of
19 the application area;

20 (c) each person who —
21 (i) is identified in accordance with the guidelines as
22 a knowledge holder for the application area or
23 part of the application area; and

24 (ii) is not a native title party for any part of the
25 application area.

26 (2) The notice is to give —

27 (a) details of the application area; and

28 (b) details about the Aboriginal cultural heritage to which
29 the application relates to the extent that the details do
30 not disclose culturally sensitive information; and

- 1 (c) an opportunity to make submissions to the ACH Council
2 within the prescribed period about whether the
3 application area should be declared as a protected area.

4 **69. Preliminary assessment by ACH Council**

- 5 (1) Following the period for submissions referred to in a notice
6 given under section 68, the Council is to —
- 7 (a) consider the application made under section 65; and
8 (b) consider any submissions made to the Council in
9 response to the notice; and
10 (c) consider the nature of the Aboriginal cultural heritage
11 and the significance of it to the knowledge holders for
12 the cultural heritage; and
13 (d) form a preliminary view about whether or not the area
14 should be declared as a protected area.
- 15 (2) The ACH Council may form a preliminary view that an area
16 should be declared as a protected area only if the Council is
17 satisfied that the Aboriginal cultural heritage is of outstanding
18 significance to the knowledge holders for the cultural heritage.

19 **70. Giving public notice of intention to seek that area be
20 declared as protected area**

- 21 (1) If the ACH Council forms a preliminary view that an area
22 should be declared as a protected area the Council is to —
- 23 (a) give public notice as described in subsection (2); and
24 (b) notify the following persons that the public notice has
25 been given —
- 26 (i) each local ACH service for the area or part of the
27 area;
28 (ii) each native title party for the area or part of the
29 area;

Aboriginal Cultural Heritage Bill 2020**Part 6** Protected areas**Division 2** Application for area to be declared as protected area**s. 71**

- 1 (iii) each person who —
- 2 (I) is identified in accordance with the
- 3 guidelines as a knowledge holder for
- 4 the area or part of the area; and
- 5 (II) is not a native title party for any part of
- 6 the area;
- 7 (iv) each landholder of land within the area;
- 8 (v) each public authority that the Council considers
- 9 has an interest in the area or part of the area;
- 10 (vi) any other person the Council considers has an
- 11 interest in the area or part of the area.
- 12 (2) The public notice is to give —
- 13 (a) details of the application area and of the intention of the
- 14 ACH Council to seek that the area be declared a
- 15 protected area; and
- 16 (b) an opportunity to make submissions to the ACH Council
- 17 within the prescribed period about the intention of the
- 18 ACH Council to seek that the area be declared a
- 19 protected area.

20 **71. Review of preliminary view of ACH Council that area not**

21 **be declared as protected area**

- 22 (1) If the ACH Council forms a preliminary view that an area
- 23 should not be declared as a protected area the Council is to give
- 24 to the applicant and each person notified under section 68(1)
- 25 written notice —
- 26 (a) setting out the Council's preliminary view; and
- 27 (b) setting out the reasons for forming that view; and
- 28 (c) containing a statement that the person may have a right
- 29 to request the Minister to consider the matter.
- 30 (2) A person who is given notice under subsection (1) may, in
- 31 writing, request the Minister to consider the matter.

- 1 (3) On receipt of a request made under subsection (2), the Minister
2 is to request the ACH Council to provide to the Minister the
3 information that had been provided to the Council at the time
4 the preliminary view was formed.
- 5 (4) Having considered the information provided by the ACH
6 Council the Minister may —
- 7 (a) confirm the preliminary view formed by the ACH
8 Council that the area should not be declared as a
9 protected area; or
- 10 (b) if the Minister is satisfied that the Aboriginal cultural
11 heritage is of outstanding significance to the knowledge
12 holders for the cultural heritage — in writing, request
13 the Council to give notice under section 70 as if the
14 Council had formed a preliminary view that the area
15 should be declared as a protected area.
- 16 (5) If the Minister confirms the preliminary view formed by the
17 ACH Council that an area should not be declared as a protected
18 area, the Minister is to ensure that the applicant and each person
19 notified under section 68(1) is given notice of the Ministers
20 decision.

21 **Division 3 — Recommendation of ACH Council**

22 **72. Recommendation of ACH Council**

- 23 (1) Following the period for making submissions referred to in the
24 public notice given under section 70 the ACH Council is to —
- 25 (a) consider the application made under section 65; and
26 (b) consider any submissions made to the Council in
27 response to the public notice; and
28 (c) make a recommendation to the Minister under
29 subsection (2).

Aboriginal Cultural Heritage Bill 2020**Part 6** Protected areas**Division 3** Recommendation of ACH Council**s. 72**

- 1 (2) The ACH Council may recommend to the Minister —
- 2 (a) that the application area, or part of the application area,
- 3 be declared as a protected area; or
- 4 (b) that no part of the application area be declared as a
- 5 protected area.
- 6 (3) If the ACH Council makes a recommendation that an area be
- 7 declared as a protected area the Council may also recommend
- 8 that an order declaring the area as a protected area should be
- 9 made subject to conditions relating to any of the following —
- 10 (a) the management of the area;
- 11 (b) access to the area;
- 12 (c) any other matters, if any, that are prescribed.
- 13 (4) The ACH Council may make a recommendation under
- 14 subsection (2)(a) only if satisfied —
- 15 (a) that the area is, contains, or is part of Aboriginal cultural
- 16 heritage that is of outstanding significance for the
- 17 knowledge holders for the area; and
- 18 (b) that the Aboriginal cultural heritage requires a level of
- 19 protection that is afforded by the area being declared as
- 20 a protected area; and
- 21 (c) if the area overlaps with an area to which an ACH
- 22 permit or approved or authorised plan relates — that
- 23 there are measures in place to ensure that the permit or
- 24 plan is amended to exclude from the area to which the
- 25 permit or management plan relates any area that is
- 26 included in the area to be declared as a protected area;
- 27 and
- 28 (d) in relation to other matters, if any, that are prescribed.
- 29 (5) A recommendation to the Minister is to be accompanied by —
- 30 (a) the reasons for the recommendation; and
- 31 (b) the application made under section 65; and

- 1 (c) any submissions made to the Council following —
2 (i) the notice given under section 68(1); and
3 (ii) the public notice given under section 70.
- 4 (6) The ACH Council is to ensure that a recommendation made
5 under this section is published on a website maintained by the
6 Council.

7 **Division 4 — Decision of Minister**

8 **73. Minister may request further information**

9 If the ACH Council makes a recommendation to the Minister
10 under section 72, the Minister may, in writing, request the ACH
11 Council or any other person to provide the Minister with such
12 further information as the Minister requires to assist in making a
13 decision about whether an area should be declared as a
14 protected area.

15 **74. Decision of Minister**

- 16 (1) If the ACH Council makes a recommendation to the Minister
17 under section 72(1), the Minister is to consider the application
18 for the area to be declared as a protected area and the
19 recommendation of the Council and may decide that —
20 (a) that the application area, or part of the application area,
21 be declared as a protected area; or
22 (b) that no part of the application area be declared as a
23 protected area.
- 24 (2) The decision of the Minister under subsection (1) is to be made
25 on the grounds of —
26 (a) whether or not the Minister is satisfied as to the matters
27 set out in section 72(4); and
28 (b) what is in the interests of the State.
- 29 (3) If the Minister makes a decision that an area should be declared
30 as a protected area the Minister may make any direction that the

Aboriginal Cultural Heritage Bill 2020**Part 6** Protected areas**Division 5** Declaration of protected area**s. 75**

- 1 Minister considers necessary to ensure that, before a protected
2 area order comes into effect in respect of the area —
- 3 (a) any relevant ACH permit is amended to exclude the area
4 to be declared as a protected area from the area to which
5 the permit relates; and
- 6 (b) any relevant approved or authorised ACH management
7 plan is amended to exclude the area to be declared as a
8 protected area from the area to which the plan relates.
- 9 (4) If the Minister makes a decision that an area should be declared
10 as a protected area the Minister may determine that an order
11 declaring the area as a protected area should be made subject to
12 conditions relating to any of the following —
- 13 (a) the management of the area;
14 (b) access to the area;
15 (c) any other matters, if any, that are prescribed.
- 16 (5) If the Minister makes a decision that an area should be declared
17 as a protected area the Minister is to recommend to the
18 Governor that the Governor declare the area to be a protected
19 area for the purposes of this Act.

Division 5 — Declaration of protected area**75. Protected area orders**

- 22 (1) The Governor may, on a recommendation of the Minister under
23 section 74(5), declare an area to be a protected area for the
24 purposes of this Act.
- 25 (2) The declaration is to be made by order.
- 26 (3) An order under subsection (1) must —
- 27 (a) define the protected area in a manner sufficient to
28 identify it; and
- 29 (b) state that the area is, contains, or is part of, Aboriginal
30 cultural heritage of outstanding significance; and

- 1 (c) state the conditions to which the order is subject; and
2 (d) if made in relation to a cultural landscape comprised of
3 more than one area —declare that several areas
4 comprise the protected area, even if the areas are not
5 contiguous.

6 **76. Amending and repealing orders**

- 7 (1) An application for the amendment or repeal of a protected area
8 order may be made by —
9 (a) a knowledge holder for the protected area; or
10 (b) a person who wants to carry out an activity in the
11 protected area.
- 12 (2) Other than as set out in this section, this Part applies, with all
13 necessary changes, in respect of an application for the
14 amendment or repeal of a protected area order.
- 15 (3) On an application for the amendment of a protected area order,
16 the ACH Council and the Minister are to consider the effect of
17 the amendment on the protected area and form a view as to
18 whether or not the amendment should be made.
- 19 (4) On an application for the repeal of a protected area order —
20 (a) the ACH Council and the Minister are to consider the
21 effect of the repeal on the Aboriginal cultural heritage in
22 the area to which the order relates; and
23 (b) the order cannot be made unless the Minister has
24 ensured that the recommendation to repeal the order —
25 (i) has been laid before each House of Parliament;
26 and
27 (ii) has been approved by a resolution passed by both
28 Houses of Parliament.

29 **77. Provisions about protected area orders**

- 30 (1) A protected area order is to be published in the *Gazette*.

Aboriginal Cultural Heritage Bill 2020

Part 6 Protected areas

Division 6 Miscellaneous

s. 78

- 1 (2) A protected area order is not subsidiary legislation for the
2 purposes of the *Interpretation Act 1984*.
- 3 (3) The *Interpretation Act 1984* section 43 (other than
4 subsections (4) and (6)), section 44 and Part VIII apply to a
5 protected area order as if it were subsidiary legislation.
- 6 (4) The CEO is to ensure that public notice is given of a protected
7 area order.
- 8 (5) A protected area order comes into effect on —
9 (a) the day on which it is published in the *Gazette*; or
10 (b) on a later day specified in the order.

Division 6 — Miscellaneous**78. Information about protected areas to be recorded on ACH Directory**

14 The ACH Council is to ensure that the information prescribed
15 about each protected area is recorded on the ACH Directory, in
16 accordance with Part 9.

79. Regulations: protected areas

- 18 (1) The regulations may make provision for or in relation to
19 protected areas.
- 20 (2) Without limiting subsection (1), regulations may provide for or
21 in relation to the following —
22 (a) activities, or classes of activities, that may be carried out
23 in a protected area;
24 (b) regulating, controlling or prohibiting the carrying out of
25 an activity, or a class of activities, in a protected area;
26 (c) signage, to identify an area as a protected area and to
27 provide information about activities in the area.

1 **Part 7 — Offences about harming Aboriginal cultural**
2 **heritage**

3 **Division 1 — Preliminary**

4 **80. Aboriginal cultural heritage to which this Part applies**

5 This Part applies to the following Aboriginal cultural heritage
6 only —

- 7 (a) an Aboriginal place;
- 8 (b) an Aboriginal object;
- 9 (c) Aboriginal ancestral remains;
- 10 (d) a cultural landscape, or a part of a cultural landscape,
11 that is —
 - 12 (i) a protected area; or
 - 13 (ii) within a protected area.

14 **81. What constitutes harm to Aboriginal cultural heritage**

15 (1) To *harm* Aboriginal cultural heritage includes the following —

- 16 (a) to destroy or damage the Aboriginal cultural heritage;
- 17 (b) to carry out any act in relation to the Aboriginal cultural
18 heritage, other than to express an opinion or belief,
19 that —
 - 20 (i) demonstrates disrespect for the importance of
21 Aboriginal cultural heritage to Aboriginal
22 people; or
 - 23 (ii) diminishes or otherwise affects the value of
24 Aboriginal cultural heritage to Aboriginal
25 people.

26 (2) However, harm cannot be caused to Aboriginal cultural heritage
27 by an act carried out by an Aboriginal person who, in
28 accordance with Aboriginal tradition, has rights, interests and
29 responsibilities for the Aboriginal cultural heritage.

Aboriginal Cultural Heritage Bill 2020**Part 7** Offences about harming Aboriginal cultural heritage**Division 2** Harm to Aboriginal cultural heritage: offences**s. 82**

1 **82. What constitutes serious harm and material harm to**
2 **Aboriginal cultural heritage**

- 3 (1) Harm to Aboriginal cultural heritage is *serious* if the harm is —
4 (a) irreversible or of a high impact or on a wide scale; or
5 (b) to Aboriginal cultural heritage that is —
6 (i) a protected area; or
7 (ii) within a protected area.
- 8 (2) Harm to Aboriginal cultural heritage is *material* if the harm is
9 neither trivial nor negligible.

10 **Division 2 — Harm to Aboriginal cultural heritage: offences**

11 **83. Serious harm to Aboriginal cultural heritage: offence**

12 A person commits a crime if —

- 13 (a) the person harms Aboriginal cultural heritage; and
14 (b) the harm is serious.

15 Alternative offence: s. 84(1), 85 or 86.

16 Penalty:

- 17 (a) for an individual —
18 (i) imprisonment for 5 years or a fine of
19 \$1 000 000, or both;
20 (ii) a fine of \$50 000 for each day or part of a day
21 during which the offence continues;
- 22 (b) for a body corporate —
23 (i) a fine of \$10 000 000;
24 (ii) a fine of \$500 000 for each day or part of a
25 day during which the offence continues.

1 **84. Serious harm to Aboriginal cultural heritage: strict liability**
2 **offence**

3 (1) A person commits a crime if —

- 4 (a) the person harms Aboriginal cultural heritage; and
5 (b) the harm is serious.

6 Alternative offence: s. 85 or 86.

7 Penalty for this subsection:

8 (a) for an individual —

- 9 (i) imprisonment for 4 years or a fine of
10 \$500 000, or both;
11 (ii) a fine of \$25 000 for each day or part of a day
12 during which the offence continues;

13 (b) for a body corporate —

- 14 (i) a fine of \$5 000 000;
15 (ii) a fine of \$250 000 for each day or part of a
16 day during which the offence continues.

17 (2) Despite *The Criminal Code* section 23B(2), it is immaterial for
18 the purposes of subsection (1) that any event occurred by
19 accident.

20 **85. Material harm to Aboriginal cultural heritage: offence**

21 A person commits an offence if —

- 22 (a) the person harms Aboriginal cultural heritage; and
23 (b) the harm is material.

24 Alternative offence: s. 86.

25 Penalty:

26 (a) for an individual —

- 27 (i) a fine of \$100 000;
28 (ii) a fine of \$5 000 for each day or part of a day
29 during which the offence continues;

Aboriginal Cultural Heritage Bill 2020**Part 7** Offences about harming Aboriginal cultural heritage**Division 3** When harm is allowed: defences**s. 86**

- 1 (b) for a body corporate —
2 (i) a fine of \$1 000 000;
3 (ii) a fine of \$50 000 for each day or part of a day
4 during which the offence continues.

86. Harm to Aboriginal cultural heritage: offence

6 A person commits an offence if the person harms Aboriginal
7 cultural heritage.

8 Penalty:

- 9 (a) for an individual —
10 (i) a fine of \$25 000;
11 (ii) a fine of \$1 250 for each day or part of a day
12 during which the offence continues;
13 (b) for a body corporate —
14 (i) a fine of \$250 000;
15 (ii) a fine of \$12 500 for each day or part of a day
16 during which the offence continues.

Division 3 — When harm is allowed: defences**87. Defence of authority under Part 8 Division 4**

19 It is a defence to a charge of an offence under Division 2 to
20 prove that carrying out the activity that harmed the Aboriginal
21 cultural heritage was authorised under Part 8 Division 4.

88. Additional defences that apply to protected areas

23 It is a defence to a charge of an offence under section 83
24 or 84(1) in relation to Aboriginal cultural heritage that is, or is
25 within, a protected area to prove that the act that harmed the
26 Aboriginal cultural heritage was carried out in accordance
27 with —

- 28 (a) the protected area order for the protected area; or

- 1 (b) regulations made for the purposes of section 79
2 applicable to the protected area.

3 **89. Other defences**

4 It is a defence to a charge of an offence under Division 2 to
5 prove that the act that harmed the Aboriginal cultural heritage
6 was carried out by a person —

- 7 (a) in accordance with a Part 10 order; or
8 (b) after the person —
9 (i) had undertaken a due diligence assessment in
10 relation to the activity that did not identify the
11 Aboriginal cultural heritage that was harmed;
12 and
13 (ii) had taken all reasonable steps to ensure that the
14 activity was managed so as to avoid or minimise
15 the risk of harm being caused to Aboriginal
16 cultural heritage by the activity;
17 or
18 (c) in accordance with the *Coroners Act 1996* in the course
19 of determining if human remains are Aboriginal
20 ancestral remains; or
21 (d) in accordance with the *Emergency Management*
22 *Act 2005* solely for the purposes of dealing with an
23 emergency within the meaning of that Act; or
24 (e) of a class prescribed, or in a situation or while
25 undertaking an activity prescribed, for the purposes of
26 this paragraph.

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Part 8 Managing activities that may cause harm to Aboriginal cultural heritage

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1 **Part 8 — Managing activities that may cause harm to**
2 **Aboriginal cultural heritage**

3 **Division 1 — Preliminary**

4 **90. Terms used**

5 In this Part —

6 **ACH impact statement**, in relation to an activity that is
7 proposed to be carried out in an area, means a statement,
8 prepared in accordance with the regulations, about the impact of
9 the proposed activity on Aboriginal cultural heritage in the area;

10 **ACH Management Code** means guidelines about the carrying
11 out of a due diligence assessment for a proposed activity;

12 **ACH management plan** means a plan for the management of an
13 activity that may harm Aboriginal cultural heritage;

14 **ACH permit** means a permit granted under section 111(1);

15 **Crown land** has the meaning given in the *Land Administration*
16 *Act 1997* section 3(1);

17 **due diligence assessment** has the meaning given in section 93;

18 **exempt activity** means any of the following activities —

- 19 (a) construction or renovation of a residential building or
20 ancillary building on a lot that is less than 1 100m² in
21 accordance with the *Planning and Development*
22 *Act 2005*;
- 23 (b) development of a prescribed type carried out in
24 accordance with the *Planning and Development*
25 *Act 2005*;
- 26 (c) a subdivision of not more than 5 lots in accordance with
27 the *Planning and Development Act 2005*;
- 28 (d) travelling on an existing road or track;
- 29 (e) taking photographs for a recreational purpose;
- 30 (f) recreational activities carried out on or in public waters
31 or on a public place;

- 1 (g) clearing of native vegetation in accordance with a
2 clearing permit granted and in force under the
3 *Environmental Protection Act 1986* Part V Division 2;
- 4 (h) burning that is done —
- 5 (i) for fire prevention or control purposes or other
6 fire management works on Crown land; and
- 7 (ii) by the FES Commissioner as defined in the *Fire*
8 *and Emergency Services Act 1998* section 3;
- 9 (i) reploughing or reclearing an established fire-break;
- 10 (j) any other prescribed activity;
- 11 ***informed consent*** has the meaning given in section 130;
- 12 ***lot*** has the meaning given in the *Planning and Development*
13 *Act 2005* section 4(1);
- 14 ***low impact activity*** means an activity that involves low level of
15 ground disturbance that is prescribed for the purpose of this
16 definition;
- 17 ***medium to high impact activity*** means an activity that involves
18 medium to high level ground disturbance that is prescribed for
19 the purpose of this definition;
- 20 ***minimal impact activity*** means an activity that involves no, or a
21 minimal level of, ground disturbance that is prescribed for the
22 purpose of this definition;
- 23 ***native title agreement*** means —
- 24 (a) an indigenous land use agreement registered on the
25 Register of Indigenous Land Use Agreements
26 established and maintained under the Native Title Act
27 Part 8A that contains provisions about the management
28 of Aboriginal cultural heritage; or
- 29 (b) an agreement mentioned in the Native Title Act
30 section 31(1)(b) that contains provisions about the
31 management of Aboriginal cultural heritage;

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1 *persons to be consulted*, in relation to an activity, means the
2 persons to be consulted in accordance with section 97(2) about
3 the intention to carry out the activity;

4 *persons to be notified*, in relation to an activity, means the
5 persons to be notified in accordance with section 97(1) about
6 the intention to carry out the activity;

7 *previous heritage agreement* means an agreement —

8 (a) between —

9 (i) a proponent and a native title party for an area; or

10 (ii) if there is no native title party for an area —
11 between a proponent and a knowledge holder for
12 the area —

13 (b) that contains provisions about the management of
14 Aboriginal cultural heritage in the area; and

15 (c) that was entered into before the commencement of this
16 section;

17 *proponent* means a person who —

18 (a) intends to carry out an activity that may harm
19 Aboriginal cultural heritage; or

20 (b) carries out an activity authorised under Division 4;

21 *State significance*, in relation to Aboriginal cultural heritage,
22 means that the heritage is of exceptional importance to the
23 cultural identity of the State.

24 **91. Principles of cooperation and mutual advantage relating to**
25 **management of activities that may harm Aboriginal cultural**
26 **heritage**

27 The principles of cooperation and mutual advantage relating to
28 the management of activities that may harm Aboriginal cultural
29 heritage are as follows —

30 (a) that places, objects and cultural landscapes have a range
31 of different values for different individuals,

- 1 communities or groups and those values may change for
2 an individual, community or group over time;
- 3 (b) that the range of values that should be recognised and
4 respected includes social, spiritual, historical, scientific,
5 environmental, economic and aesthetic values;
- 6 (c) that places and objects exist within cultural landscapes
7 and should be considered in that context;
- 8 (d) where possible, in utilising land for the maximum
9 benefit of the people of Western Australia, that valuing
10 Aboriginal cultural heritage should be prioritised in
11 managing activities that may harm that cultural heritage.

12 **92. Consultation about proposed activities**

13 For the purposes of this Part, the consultation that occurs in
14 relation to a proposed activity will depend on the circumstances
15 of the activity but should include the following —

- 16 (a) the proponent making a genuine attempt to contact and
17 consult, in a timely manner, with each person who is to
18 be consulted;
- 19 (b) the proponent providing sufficient information about the
20 proposed activity to each person consulted to enable
21 them to understand the proponent's reasoning and
22 intention;
- 23 (c) each person to be consulted having an opportunity to
24 clearly state their position on the proponent's proposal
25 and explain that position;
- 26 (d) the proponent and each person consulted disclosing
27 relevant and necessary information about their position
28 as reasonably requested;
- 29 (e) the proponent taking reasonable steps to follow up with
30 a person who is to be consulted if there is no response to
31 the initial contact or a reasonable request for further
32 information.

Aboriginal Cultural Heritage Bill 2020**Part 8** Managing activities that may cause harm to Aboriginal cultural heritage**Division 2** Due diligence assessment**s. 93**

1 **Division 2 — Due diligence assessment**2 **93. What is due diligence assessment**3 A due diligence assessment in relation to the carrying out of an
4 activity in an area is a preliminary determination about the
5 following —

- 6 (a) whether Aboriginal cultural heritage may be harmed by
-
- 7 the activity;
-
- 8 (b) whether the activity is —
-
- 9 (i) a minimal impact activity; or
-
- 10 (ii) a low impact activity; or
-
- 11 (iii) a medium to high impact activity;
-
- 12 (c) identification of the persons required to be notified or
-
- 13 consulted about the intention to carry out the activity.

14 **94. Responsibility for making due diligence assessment**15 It is the responsibility of a person intending to carry out an
16 activity in an area to undertake a due diligence assessment
17 unless the ACH Management Code provides to the contrary.18 **95. How to undertake due diligence assessment**19 A due diligence assessment is to be undertaken in accordance with
20 the ACH Management Code.21 **96. Native title agreement or previous heritage agreement may
22 be used to satisfy some due diligence requirements**23 Steps taken under a native title agreement or previous heritage
24 agreement to identify whether Aboriginal cultural heritage may
25 be harmed by an activity may be used to satisfy the requirement
26 referred to in section 93(a).

1 **Division 3 — Aboriginal parties and persons to be notified or**
2 **consulted about proposed activities**

3 **97. Who is to be notified or consulted about proposed activity**

- 4 (1) If a proponent intends to carry out a low impact activity in an
5 area, the persons to be notified are the persons set out in
6 subsection (3) in respect of the area.
- 7 (2) If a proponent intends to carry out a medium to high impact
8 activity in an area, the persons to be consulted are the persons
9 set out in subsection (3) in respect of the area.
- 10 (3) For the purposes of subsections (1) and (2) the persons to be
11 notified or consulted are the following —
- 12 (a) each local ACH service for the area or part of the area;
- 13 (b) if there is not a local ACH service for the area or for a
14 part of the area —
- 15 (i) each native title party for the area or the part of
16 the area; and
- 17 (ii) each person who —
- 18 (I) is identified in accordance with the
19 guidelines as a knowledge holder for
20 the area or the part of the area; and
- 21 (II) is not a native title party for the area or
22 the part of the area;
- 23 (c) if paragraph (b) applies but there is not a native title
24 party or a knowledge holder for the area or the part of
25 the area — each native title representative body for the
26 area or the part of the area.

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Division 3 Aboriginal parties and persons to be notified or consulted about proposed activities

s. 98

1 **98. Who is Aboriginal party to ACH management plan**

2 (1) The persons who are to be the Aboriginal parties to an ACH
3 management plan that relates to the carrying out of an activity in
4 an area are the following —

5 (a) each local ACH service for the area or part of the area;

6 (b) if there is not a local ACH service for the area or for a
7 part of the area —

8 (i) each native title party for the area or the part of
9 the area; or

10 (ii) if there is not a native title party for the area or a
11 part of the area — each person who is identified
12 in accordance with the guidelines as a knowledge
13 holder for the area or the part of the area;

14 (c) if paragraph (b) applies but there is not a native title
15 party or a knowledge holder for the area or the part of
16 the area — each native title representative body for the
17 area or the part of the area.

18 **99. Assistance to identify Aboriginal parties and persons to be**
19 **notified or consulted**

20 (1) A proponent may seek the assistance of the CEO to identify —

21 (a) the persons who are to be notified or consulted about an
22 activity that the proponent intends to carry out in an
23 area; or

24 (b) the persons who are to be the Aboriginal parties to an
25 ACH management plan.

26 (2) On a request under subsection (1), the CEO is to provide the
27 proponent with reasonable assistance to identify the persons or
28 groups.

1 **Division 4 — Authority to carry out activity that may harm**
2 **Aboriginal cultural heritage**

3 **100. Authority to carry out exempt activities**

4 A person is authorised to carry out an activity that may harm
5 Aboriginal cultural heritage if —

- 6 (a) the activity is an exempt activity; and
7 (b) the area where the activity is carried out is not a
8 protected area.

9 **101. Authority to carry out minimal impact activity that may**
10 **harm Aboriginal cultural heritage**

11 A person is authorised to carry out an activity that may harm
12 Aboriginal cultural heritage if —

- 13 (a) the activity is a minimal impact activity; and
14 (b) the area where the activity is carried out is not a
15 protected area; and
16 (c) the person has undertaken a due diligence assessment in
17 relation to the activity; and
18 (d) the person takes all reasonable steps to ensure that the
19 activity is carried out so as to avoid or minimise the risk
20 of harm being caused to Aboriginal cultural heritage.

21 **102. Authority to carry out low impact activity that may harm**
22 **Aboriginal cultural heritage**

23 A person is permitted to carry out an activity that may harm
24 Aboriginal cultural heritage if —

- 25 (a) the activity is a low impact activity; and
26 (b) the area where the activity is carried out is not a
27 protected area; and
28 (c) the person carries out the activity in accordance with —
29 (i) an ACH permit; or

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Division 5 Minimal impact activities

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- 1 (ii) an ACH management plan that has been
2 approved under section 134(1); or
3 (iii) an ACH management plan that has been
4 authorised under section 147(1);
5 and
6 (d) the person takes all reasonable steps to ensure that the
7 activity is carried out so as to avoid, or minimise, the
8 risk of harm being caused to Aboriginal cultural
9 heritage.

10 **103. Authority to carry out medium to high impact activity that**
11 **may harm Aboriginal cultural heritage**

12 A person is permitted to carry out an activity that may harm
13 Aboriginal cultural heritage if —

- 14 (a) the activity is a medium to high impact activity; and
15 (b) the area where the activity is carried out is not a
16 protected area; and
17 (c) the person carries out the activity in accordance with —
18 (i) an ACH management plan that has been
19 approved under section 134(1); or
20 (ii) an ACH management plan that has been
21 authorised under section 147(1).

22 **Division 5 — Minimal impact activities**

23 **104. Proponent may seek confirmation that activity is minimal**
24 **impact activity**

- 25 (1) A proponent who intends to carry out a minimal impact activity
26 in an area may request the CEO to provide a letter of advice that
27 the proposed activity is a minimal impact activity.
28 (2) A request under subsection (1) is to —
29 (a) be in writing; and

- 1 (b) contain details of —
- 2 (i) the activity that is intended to be carried out; and
- 3 (ii) the area where it is intended that the activity will
- 4 be carried out;
- 5 and
- 6 (c) be accompanied by the fee, if any, that is prescribed.
- 7 (3) On a request made under subsection (1) the CEO is to provide
- 8 the proponent with the letter of advice if the CEO is satisfied
- 9 that the proposed activity is a minimal impact activity.
- 10 (4) A letter of advice given under this section may be used in
- 11 evidence in proceedings for an offence under Part 7 Division 2.
- 12 (5) It is not a requirement for a proponent to request or obtain a
- 13 letter of advice under this section before carrying out a minimal
- 14 impact activity.

15 Division 6 — ACH permits

16 105. Notification of intention to carry out low impact activities

17 A proponent who intends to carry out a low impact activity in

18 an area is to give to each of the persons to be notified about the

19 activity —

- 20 (a) details of the intended activity; and
- 21 (b) an opportunity to submit to the proponent, within a
- 22 prescribed period, a statement about the person's views
- 23 on the impact of the proposed activity on Aboriginal
- 24 cultural heritage in the area.

25 106. Notification carried out under native title agreement or

26 previous heritage agreement

27 Notification carried out in accordance with a native title

28 agreement or a previous heritage agreement may be used to

29 satisfy the notification requirements in section 105 to the extent

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1 that the notification complies with the requirements in that
2 section.

3 107. Application for ACH permit

4 (1) At the end of the period for submissions referred to in
5 section 105(b), a proponent who intends to carry out a low
6 impact activity in an area may apply for an ACH permit to carry
7 out the activity.

8 (2) An application for an ACH permit is to —

- 9 (a) be made to the ACH Council in the approved form; and
10 (b) contain details of the activity that is intended to be
11 carried out and the area to which the permit is intended
12 to relate; and
13 (c) describe the nature of any Aboriginal cultural heritage in
14 the area that has been identified in accordance with the
15 ACH Management Code; and
16 (d) include details of the notification about the carrying out
17 of the activity including details of the persons who were
18 notified; and
19 (e) include any responses to the notification that have been
20 submitted to the proponent; and
21 (f) be accompanied by the documents or evidence, if any,
22 that are prescribed; and
23 (g) be accompanied by the ACH permit fee, if any, that is
24 prescribed.

25 (3) The fee referred to in subsection (2)(g) is not refundable.

26 108. ACH Council to give public notice of application

27 (1) On receipt of an application made under section 107(1) the
28 ACH Council is to give public notice of the application.

- 1 (2) The notice is to provide that any Aboriginal person may submit
2 to the ACH Council, within a prescribed period, a statement
3 about their views on the impact of the proposed activity on
4 Aboriginal cultural heritage.

5 **109. ACH Council may refuse to consider some applications**

6 The ACH Council may refuse to consider, or consider further,
7 an application for an ACH permit if it is not made in accordance
8 with this Act.

9 **110. Further information in support of application**

- 10 (1) The ACH Council may, in writing, request an applicant for an
11 ACH permit to do any of the following —
12 (a) provide the Council with such further information
13 relevant to the application as the Council requires;
14 (b) verify any further information by statutory declaration.
- 15 (2) A request made under subsection (1) is to specify the period
16 within which the request is to be complied with.
- 17 (3) The ACH Council may refuse an application if the applicant
18 does not comply with a request made under this section.

19 **111. Decision of ACH Council**

- 20 (1) The ACH Council is to assess each application made under
21 section 107(1) in accordance with section 112(1) and having
22 regard to any submissions made to the proponent under
23 section 105(b) and to any statements given to the Council under
24 section 108(2) and may decide to —
25 (a) grant an ACH permit; or
26 (b) refuse to grant an ACH permit.
- 27 (2) A decision on the application is to be made by the ACH Council
28 within the prescribed period.
- 29 (3) The period for making a decision on the application does not
30 include a period commencing on the day a request is made

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1 under section 110(1) and ending on the day when the first of the
2 following occurs —

- 3 (a) the request is complied with;
- 4 (b) the period specified for responding to the request
5 expires.
- 6 (4) If the ACH Council does not make a decision within the period
7 for making a decision on the application, the applicant may, in
8 writing, request the Minister to direct the Council to do anything
9 that the Minister considers necessary to expedite the matter.
- 10 (5) A direction made by the Minister in response to a request made
11 under subsection (4) is to —
- 12 (a) be in writing; and
13 (b) specify the period within which the direction is to be
14 complied with.
- 15 (6) If the ACH Council does not comply with a direction made by
16 the Minister, the Minister may stand in the place of the Council
17 and make a decision on the application in accordance with this
18 Division.
- 19 (7) The ACH Council is to give notice of the Council's decision
20 to —
- 21 (a) the applicant for the ACH permit; and
22 (b) each of the persons notified about the carrying out of the
23 activity to which the application relates.

24 112. Grant of ACH permit

- 25 (1) The ACH Council may grant an ACH permit only if satisfied —
- 26 (a) that the activity is a low impact activity; and
27 (b) that each of the persons to be notified about the activity
28 has been so notified; and
29 (c) that there are reasonable steps in place for the activity to
30 be carried out so as to avoid, or minimise, the risk of

- 1 harm being caused to Aboriginal cultural heritage by the
2 activity; and
- 3 (d) in relation to the other matters, if any, that are
4 prescribed.
- 5 (2) An ACH permit is to be in an approved form and is to include
6 details of the following —
- 7 (a) the person to whom the permit is granted;
8 (b) the activities to which the permit relates;
9 (c) the area to which the permit relates;
10 (d) when the permit is to come into effect;
11 (e) the other matters, if any, that are prescribed.
- 12 **113. Duration of ACH permit**
- 13 An ACH permit —
- 14 (a) comes into force when it is granted, or on a later day, if
15 any, specified in the permit; and
- 16 (b) is in force until the expiry of 2 years from the day when
17 the permit comes into force unless the permit is —
- 18 (i) earlier cancelled under section 120(1)(b); or
19 (ii) extended under section 116(1)(a).
- 20 **114. Application for extension of ACH permit**
- 21 (1) The holder of an ACH permit may apply to the ACH Council
22 for the term of the permit to be extended.
- 23 (2) However, an application under subsection (1) may not be made
24 later than 60 days before the ACH permit is due to expire.
- 25 (3) Before making an application under subsection (1), the permit
26 holder is to give to each of the persons to be notified about the
27 activity to which the permit relates —
- 28 (a) details of the proposed application; and

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- 1 (b) an opportunity to submit to the permit holder, within a
2 prescribed period, a statement about their views on the
3 proposed application.
- 4 (4) The application must —
- 5 (a) be made to the ACH Council in the approved form; and
6 (b) include details of the notification about the proposed
7 application including details of the persons who were
8 notified; and
9 (c) include any responses to the notification that have been
10 provided to the permit holder.

11 **115. ACH Council to give public notice of application for**
12 **extension**

- 13 (1) On receipt of an application made under section 114(1) the
14 ACH Council is to give public notice of the application.
- 15 (2) The notice is to provide that any Aboriginal person may submit
16 to the ACH Council, within a prescribed period, a statement
17 about their views on the impact of the proposed extension on
18 Aboriginal cultural heritage.

19 **116. Decision on application for extension of ACH permit**

- 20 (1) The ACH Council is to assess each application made under
21 section 114(1) having regard to any submissions made to the
22 permit holder under section 114(3)(b) and any statements made
23 to the Council under section 115(2) and may decide to —
- 24 (a) extend the permit if it is satisfied as to the matters set
25 out in section 112(1); or
26 (b) refuse to extend the permit.
- 27 (2) A decision on the application is to be made by the ACH Council
28 within the prescribed period.
- 29 (3) If the ACH Council does not make a decision within the
30 prescribed period the applicant may, in writing, request the

- 1 Minister to direct the Council to do anything that the Minister
2 considers necessary to expedite the matter.
- 3 (4) A direction made by the Minister in response to a request made
4 under subsection (3) is to —
- 5 (a) be in writing; and
6 (b) specify the period within which the direction is to be
7 complied with.
- 8 (5) If the ACH Council does not comply with a direction made by
9 the Minister within the period specified, the Minister may stand
10 in the place of the Council and make a decision on the
11 application in accordance with this section.
- 12 (6) The ACH Council is to give notice of the Council's decision
13 to —
- 14 (a) the applicant for the extension of ACH permit; and
15 (b) each of the persons notified about the application for the
16 extension of the permit.
- 17 (7) An ACH permit that is extended under subsection (1)(a) is in
18 force until the expiry of 2 years from the day on which the
19 permit is extended unless the permit is —
- 20 (a) earlier cancelled under section 120(1)(b); or
21 (b) further extended under this section.

22 **117. Transfer of ACH permit to be notified**

- 23 (1) If the holder of an ACH permit transfers the permit to another
24 person the permit holder and the person to whom the permit is
25 transferred must, in writing and within the prescribed period,
26 advise the ACH Council of the transfer.
- 27 Penalty for this subsection: a fine of \$10 000.
- 28 (2) On receipt of a notice under subsection (1) the ACH Council is
29 to —
- 30 (a) amend the ACH Directory to show the updated
31 information; and

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- 1 (b) notify the following persons that the Directory has been
2 updated —
- 3 (i) the original holder of the ACH permit;
- 4 (ii) the person to whom the ACH permit is
5 transferred;
- 6 (iii) each of the persons notified about the carrying
7 out of the activity to which the permit relates.

118. Conditions

- 9 (1) It is a condition of an ACH permit that the permit holder is to
10 notify the ACH Council if the permit holder becomes aware,
11 while the permit is in force, of any new information —
- 12 (a) that identifies Aboriginal cultural heritage in the area to
13 which the permit relates that was not identified at the
14 time the permit was granted; or
- 15 (b) about the significance of Aboriginal cultural heritage in
16 the area to which the permit relates that was identified at
17 the time the permit was granted.
- 18 (2) An ACH permit may be granted subject to any other conditions
19 that the ACH Council considers appropriate so as to avoid, or
20 minimise, the risk of harm being caused to Aboriginal cultural
21 heritage.
- 22 (3) If, in compliance with the condition on an ACH permit referred
23 to in subsection (1), the permit holder notifies the ACH Council
24 about any new information in relation to Aboriginal cultural
25 heritage, the Council may, by written notice given to the permit
26 holder, impose or amend a condition on the permit so as to
27 avoid, or minimise, the risk of harm being caused to the
28 Aboriginal cultural heritage.
- 29 (4) A notice under subsection (3) takes effect on the day specified
30 in it.

- 1 (5) The day specified in a notice under subsection (3) cannot be
2 before the permit holder has had a reasonable opportunity to —
- 3 (a) make submissions to the ACH Council in relation to the
4 condition or the amended condition; and
- 5 (b) take any action necessary to comply with the condition
6 or amended condition.
- 7 (6) The ACH Council may, at any time, by written notice given to a
8 permit holder, revoke a condition, other than the condition
9 referred to in subsection (1), that is imposed on the permit
10 holder's permit.
- 11 (7) The ACH Council may exercise a power under subsection (6)
12 on the Council's own initiative or on an application by the
13 permit holder.

14 **119. Amendment of permit area**

- 15 (1) The ACH Council may —
- 16 (a) on the written request of the holder of an ACH
17 permit — amend the area to which the permit relates to
18 exclude from that area any area that is to be declared as
19 a protected area; or
- 20 (b) at the direction of the Minister — amend the area to
21 which the permit relates to exclude from that area any
22 area the subject of a prohibition order.
- 23 (2) The ACH Council is to give notice of the amendment of an
24 ACH permit in the prescribed manner.

25 **120. Suspension or cancellation of ACH permit**

- 26 (1) The ACH Council may, by written notice given to the holder of
27 an ACH permit take either of the following actions —
- 28 (a) suspend the permit for a specified period; or
29 (b) cancel the permit.

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- 1 (2) A notice under subsection (1) may be given only if —
- 2 (a) the ACH Council is no longer satisfied about the matters
- 3 set out in section 112(1); or
- 4 (b) the permit holder carries out an activity in the area to
- 5 which the permit relates that is not authorised under the
- 6 permit; or
- 7 (c) the permit holder breaches a condition imposed on the
- 8 permit.
- 9 (3) A notice given under subsection (1) —
- 10 (a) is to set out the grounds on which the action is taken;
- 11 and
- 12 (b) takes effect on the day specified in it.
- 13 (4) Before taking action under subsection (1) the ACH Council is
- 14 to —
- 15 (a) give to the permit holder written notice of the action that
- 16 the Council proposes to take and specifying the grounds
- 17 on which it proposes to take that action; and
- 18 (b) give the permit holder a reasonable opportunity to be
- 19 heard on the matter.
- 20 (5) If a permit is suspended it is of no effect during the period of the
- 21 suspension.

121. Objection to decision of ACH Council

- 23 (1) The applicant for an ACH permit may, in writing, object to the
- 24 Minister if the ACH Council refuses to grant the permit under
- 25 section 112(1).
- 26 (2) The holder of an ACH permit may, in writing, object to the
- 27 Minister if the ACH Council —
- 28 (a) refuses to extend the ACH permit; or
- 29 (b) grants the ACH permit subject to conditions; or
- 30 (c) suspends or cancels the ACH permit; or

- 1 (d) imposes, amends or revokes a condition on the ACH
2 permit.
- 3 (3) On receipt of an objection made under this section, the Minister
4 is to request the ACH Council to provide to the Minister the
5 information that had been provided to the Council at the time
6 the decision was made.
- 7 (4) The Minister may request the applicant for the ACH permit to
8 do any of the following —
- 9 (a) provide the Minister with such further information
10 relevant to the application as the Minister requires;
- 11 (b) verify any further information by statutory declaration.
- 12 (5) Having considered the information provided by the ACH
13 Council and any further information provided under
14 subsection (4) the Minister may —
- 15 (a) confirm the decision made by the ACH Council; or
16 (b) make another decision.
- 17 (6) The decision of the Minister under subsection (5) is to be made
18 on the grounds of —
- 19 (a) whether or not the Minister is satisfied as to the matters
20 set out in section 112(1); and
- 21 (b) what is in the interests of the State.
- 22 (7) The Minister is to ensure that notice of the Minister's decision is
23 given to —
- 24 (a) the person making the objection; and
25 (b) each of the persons notified about the carrying out of the
26 activity to which the applicant or the ACH permit
27 relates.

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1

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2

Subdivision 1 — Preliminary

3

122. When ACH management plan required

4

- (1) An ACH management plan that has been approved under section 134(1) or authorised under section 147(2) is required before carrying out a medium to high impact activity that may harm Aboriginal cultural heritage that is not of State significance.

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- (2) An ACH management plan that has been authorised under section 147(2) is required before carrying out a medium to high impact activity that may harm Aboriginal cultural heritage of State significance.

10

11

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13

- (3) An ACH management plan that has been approved under section 134(1) or authorised under section 147(2) may be in respect of a low impact activity.

14

15

16

123. Contents of ACH management plan

17

- (1) An ACH management plan must —

18

- (a) identify —

19

- (i) the proponent for the activity to which the plan relates; and

20

21

- (ii) each Aboriginal party to the plan; and

22

- (iii) the area to which the plan relates; and

23

- (iv) the activity to which the plan relates;

24

and

25

- (b) include an ACH impact statement about the impact of the activities to be carried out under the plan on Aboriginal cultural heritage; and

26

27

- 1 (c) set out the processes to be followed if, while the plan is
2 of effect, there is any new information —
- 3 (i) that identifies Aboriginal cultural heritage that
4 was not identified at the time the plan was made;
5 or
- 6 (ii) about the significance of Aboriginal cultural
7 heritage that was identified at the time the plan
8 was made;
- 9 and
- 10 (d) set out the methods by which the activity is to be
11 managed so as to avoid, or minimise, the risk of harm
12 being caused to Aboriginal cultural heritage; and
- 13 (e) set out the extent to which harm is authorised to be
14 caused to Aboriginal cultural heritage; and
- 15 (f) set out any conditions to be complied with before,
16 during and after the activity is carried out; and
- 17 (g) specify the period for which the plan is to have effect;
18 and
- 19 (h) include or set out other matters, if any, that are
20 prescribed.
- 21 (2) An ACH management plan is not required to set out details of
22 commercial arrangements between a proponent and an
23 Aboriginal party.

24 **124. Provisions in native title agreement or previous heritage**
25 **agreement**

26 A provision that is included in a native title agreement or a
27 previous heritage agreement may be incorporated in an ACH
28 management plan to the extent that the provision relates to any
29 matter specified in section 123(1).

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1 **125. Obligation to consult on ACH management plan**

2 (1) A proponent who intends to carry out an activity in an area in
3 accordance with an ACH management plan is to consult with
4 each of the persons to be consulted about the intended activity.

5 (2) Consultation is to be carried out within a reasonable time and in
6 accordance with the consultation guidelines.

7 **126. Consultation carried out under native title agreement or**
8 **previous heritage agreement**

9 Consultation carried out in accordance with a native title
10 agreement or a previous heritage agreement may be used to
11 satisfy the requirements set out in section 125 to the extent that
12 the consultation complies with the requirements in that section.

13 **127. Reaching agreement about ACH management plan**

14 (1) A proponent who intends to carry out an activity in an area in
15 accordance with an ACH management plan is to —

16 (a) give written notice to the Aboriginal parties of the
17 proponent's intention to seek an ACH management
18 plan; and

19 (b) use their best endeavours to reach agreement with the
20 Aboriginal parties about the terms of a proposed plan.

21 (2) The period for reaching agreement is the prescribed period
22 commencing on the day that is 5 days after the proponent gives
23 written notice under subsection (1)(a).

24 **128. Application if agreement reached on ACH management**
25 **plan**

26 An application for approval of an ACH management plan may
27 be made under Subdivision 2 if the proponent and each
28 Aboriginal party agree on the plan.

1 **129. Application if agreement not reached on ACH management**
2 **plan**

3 An application for authorisation of an ACH management plan
4 may be made under Subdivision 3 if the proponent and each
5 Aboriginal party do not agree on a plan within the period
6 specified under section 127(2).

7 **Subdivision 2 — Approval of ACH management plan**

8 **130. Informed consent**

9 For the purposes of this Subdivision, the consent of an
10 Aboriginal party to an ACH management plan is not informed
11 consent unless —

- 12 (a) the proponent has given to the Aboriginal party —
- 13 (i) full and proper disclosure of information about
14 the activity that the proponent intends to carry
15 out under the plan; and
 - 16 (ii) a clear explanation of the risk of reasonably
17 foreseeable harm to Aboriginal cultural heritage
18 posed by the activity and the nature of that harm;
19 and
 - 20 (iii) a clear explanation of the steps that are available
21 to be taken so as to avoid or minimise that risk;
- 22 and
- 23 (b) the consent is given voluntarily and without coercion,
24 intimidation or manipulation.

25 **131. Application for approval of ACH management plan**

- 26 (1) A proponent may apply to the ACH Council for approval of an
27 ACH management plan if the proponent and each of the
28 Aboriginal parties have agreed to the terms of the plan.

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- 1 (2) An application for approval of an ACH management plan is
2 to —
- 3 (a) be made to the ACH Council in the approved form; and
4 (b) include the ACH management plan agreed by the
5 proponent and each Aboriginal party; and
6 (c) include evidence that each Aboriginal party has given
7 informed consent to the plan; and
8 (d) include details of the consultation about the carrying out
9 of the activity that has been conducted with each of the
10 persons to be consulted; and
11 (e) include any responses to the proposal to carry out the
12 activity that have been provided to the proponent by a
13 person who has been consulted; and
14 (f) include an ACH impact statement for the activity that
15 the proponent intends to carry out under the plan; and
16 (g) be accompanied by the other documents and evidence, if
17 any, that are prescribed; and
18 (h) be accompanied by the ACH management plan approval
19 fee, if any, that is prescribed.
- 20 (3) The fee referred to in subsection (2)(h) is not refundable.

132. Information in support of application

- 21 (1) The ACH Council may, in writing, request the applicant for
22 approval of an ACH management plan or an Aboriginal party to
23 the plan to do either of the following —
24 (a) provide the Council with such further information
25 relevant to the application as the Council requires;
26 (b) verify any further information by statutory declaration.
- 27 (2) A request made under subsection (1) is to specify the period
28 within which the request is to be complied with.
29

- 1 (3) The ACH Council may refuse an application if a person does
2 not comply with a request made under this section.

3 **133. ACH Council may refuse to consider some applications**

4 The ACH Council may refuse to consider, or consider further,
5 an application for the approval of an ACH management plan if
6 it is not made in accordance with this Act.

7 **134. Decision of ACH Council**

- 8 (1) The ACH Council is to assess each application made under
9 section 131(1) in accordance with section 135 and may decide
10 to —
11 (a) approve the ACH management plan to which the
12 application relates; or
13 (b) refuse to approve the ACH management plan to which
14 the application relates.
- 15 (2) A decision on the application is to be made by the ACH Council
16 within the prescribed period.
- 17 (3) The period for making a decision on the application does not
18 include —
19 (a) a period commencing on a day when a request is made
20 under section 132(1) ending on a day when the first of
21 the following occurs —
22 (i) the request is complied with;
23 (ii) the period specified for responding to the request
24 expires;
25 or
26 (b) the period —
27 (i) commencing on the day when public notice is
28 given under section 153(2) in respect of the
29 Aboriginal cultural heritage that may be harmed
30 by the activity to which the plan relates; and

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- 1 (ii) ending on the day when the ACH Council makes
2 a determination under section 154(1)(c) that the
3 cultural heritage is not of State significance for
4 the purposes of this Act.

5 Note for this subsection:

6 If the ACH Council makes a determination that the Aboriginal cultural
7 heritage is of State significance for the purposes of this Act,
8 section 155(1)(b) provides that the application for approval of the ACH
9 management plan is to be considered as an application for the plan to
10 be authorised.

- 11 (4) If the ACH Council does not make a decision within the period
12 for making a decision on the application the applicant may, in
13 writing, request the Minister to direct the Council to do anything
14 that the Minister considers necessary to expedite the matter.
- 15 (5) A direction made by the Minister in response to a request made
16 under subsection (4) is to —
17 (a) be in writing; and
18 (b) specify the period within which the direction is to be
19 complied with.
- 20 (6) If the ACH Council does not comply with a direction made by
21 the Minister, the Minister may stand in the place of the Council
22 and make a decision on the application in accordance with this
23 Subdivision.
- 24 (7) The ACH Council is to give notice of the Council's decision to
25 each of the parties to the ACH management plan.

26 **135. Approval of ACH management plan**

27 The ACH Council may approve an ACH management plan only
28 if satisfied that —

- 29 (a) the activity to which the plan relates is an activity that
30 may harm Aboriginal cultural heritage; and
31 (b) the heritage is not of State significance; and
32 (c) there has been consultation with each person to be
33 consulted about the activity; and

- 1 (d) each Aboriginal party has given informed consent to the
2 plan; and
3 (e) in relation to the other matters, if any, that are
4 prescribed.

5 **136. Duration of ACH management plan approval**

6 The approval of an ACH management plan under
7 section 134(1) —

- 8 (a) takes effect on the day of the approval, or on a later day,
9 if any, specified in the approval; and
10 (b) is of effect until whichever of the following occurs
11 first —
12 (i) the approval of the plan is cancelled under
13 section 137;
14 (ii) the plan expires in accordance with its terms;
15 (iii) the activities to which the plan relates are
16 completed.

17 **137. Suspension or cancellation of ACH management plan
18 approval**

- 19 (1) The ACH Council may by written notice given to the parties to
20 an ACH management plan approved under section 134(1) take
21 either of the following actions —
22 (a) suspend the approval for a specified period; or
23 (b) cancel the approval.
24 (2) A notice under subsection (1) may be given only if the ACH
25 Council is no longer satisfied about the matters set out in
26 section 135.
27 (3) A notice given under subsection (1) —
28 (a) is to set out the grounds on which the action is taken;
29 and
30 (b) takes effect on the day specified in it.

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- 1 (4) Before taking action under subsection (1) the ACH Council is
2 to —
- 3 (a) give to the parties written notice of the action that the
4 Council proposes to take and specifying the grounds on
5 which it is proposed to take that action; and
- 6 (b) give the parties a reasonable opportunity to be heard on
7 the matter.
- 8 (5) If approval of an ACH management plan is suspended it is of no
9 effect during the period of the suspension.
- 10 (6) The ACH Council is to give notice of the Council's decision
11 to —
- 12 (a) the applicant for the ACH permit; and
13 (b) each of the persons notified about the carrying out of the
14 activity to which the application relates.

15 **138. Approval of amended ACH management plan**

16 On the request of a party to an ACH management plan, the
17 ACH Council may approve an amended ACH management plan
18 if —

- 19 (a) the plan was approved under section 134(1) or
20 authorised under section 147(1); and
- 21 (b) the Council is satisfied —
- 22 (i) that the proponent and each Aboriginal party
23 consent to the amended plan; and
- 24 (ii) as to the matters referred to in section 135 in
25 relation to the amended plan.

26 **139. Objection to decision of ACH Council**

- 27 (1) The applicant for the approval of an ACH management plan or
28 an Aboriginal party to the proposed plan may, in writing, object
29 to the Minister if the ACH Council refuses to approve an ACH
30 management plan.

- 1 (2) The parties to an ACH management plan may, in writing; object
2 to the Minister if the ACH Council —
- 3 (a) refuses to amend an ACH management plan; or
4 (b) suspends or cancels an ACH management plan.
- 5 (3) On receipt of an objection made under subsection (1), the
6 Minister is to request the ACH Council to provide to the
7 Minister the information that had been provided to the Council
8 at the time the decision was made.
- 9 (4) The Minister may request any of the parties to the ACH
10 management plan to do any of the following —
- 11 (a) provide the Minister with such further information
12 relevant to the application as the Minister requires;
13 (b) verify any further information by statutory declaration.
- 14 (5) Having considered the information provided by the ACH
15 Council and any further information provided under
16 subsection (4) the Minister may —
- 17 (a) confirm the decision made by the Council; or
18 (b) make another decision.
- 19 (6) The decision of the Minister under subsection (5) is to be made
20 on the grounds of —
- 21 (a) whether or not the Minister is satisfied as to the matters
22 set out in section 135; and
23 (b) what is in the interests of the State.
- 24 (7) The Minister is to ensure that notice of the Minister's decision is
25 given to each of the parties to the ACH management plan.

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1 **Subdivision 3 — Authorisation of ACH management plan by**
2 **Minister**

3 **140. Application for authorisation of ACH management plan**

4 (1) A proponent may apply to the ACH Council for the
5 authorisation of an ACH management plan by the Minister if —

- 6 (a) the period for negotiation referred to in section 127(2)
7 has ended; and
8 (b) the proponent has not been able to reach agreement with
9 each Aboriginal party about the terms of an ACH
10 management plan in respect of the activity.

11 (2) An application for an ACH management plan to be authorised
12 by the Minister is to —

- 13 (a) be made to the ACH Council in the approved form; and
14 (b) include any ACH management plan proposed by the
15 applicant; and
16 (c) identify the persons who are to be the Aboriginal parties
17 to the ACH management plan; and
18 (d) include details of the consultation about the carrying out
19 of the activity that has been conducted with each of the
20 persons to be consulted; and
21 (e) include any responses to the proposal to carry out the
22 activity that have been provided to the proponent by a
23 person who was consulted; and
24 (f) include details of the negotiation that has been carried
25 out between the applicant and the Aboriginal parties and
26 a summary of the issues which are in dispute between
27 the parties; and
28 (g) include an ACH impact statement for the activity that
29 the proponent intends to carry out under the plan; and
30 (h) be accompanied by the other documents or evidence, if
31 any, that are prescribed; and

- 1 (i) be accompanied by the ACH management plan
2 authorisation fee, if any, that is prescribed.
- 3 (3) The fee referred to in subsection (2)(i) is not refundable.

4 **141. Information in support of application**

- 5 (1) The ACH Council may, in writing, request the applicant for
6 authorisation of an ACH management plan or an Aboriginal
7 party to the plan to do any of the following —
- 8 (a) provide the Council with such further information
9 relevant to the application as the Council requires;
- 10 (b) verify any further information by statutory declaration.
- 11 (2) A request made under subsection (1) is to specify the period
12 within which the request is to be complied with.
- 13 (3) The ACH Council may recommend that the Minister refuse an
14 application if a request made under this section is not complied
15 with.

16 **142. ACH Council may refuse to consider some applications**

17 The ACH Council may refuse to consider, or consider further,
18 an application if it is not made in accordance with this Act.

19 **143. Assistance to reach agreement on ACH management plan**

- 20 (1) The ACH Council may —
- 21 (a) assist the parties to reach agreement about an ACH
22 management plan in respect of an activity to which an
23 application relates; and
- 24 (b) for that purpose, may act as a mediator.
- 25 (2) In assisting the parties to reach agreement the ACH Council
26 may —
- 27 (a) request the applicant to submit an amended ACH
28 management plan; or

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- 1 (b) request an Aboriginal party to submit an ACH
2 management plan; or
3 (c) propose an ACH management plan for the consideration
4 of the parties.

5 **144. ACH Council may approve ACH management plan if**
6 **agreement**

- 7 (1) If, during consideration of an application for authorisation of an
8 ACH management plan, the proponent and each Aboriginal
9 party advise the ACH Council that they have reached agreement
10 on the terms of an ACH management plan the Council may
11 consider the application as an application for approval of the
12 agreed plan made under section 131(1).
13 (2) If the ACH Council makes a decision under section 134(1) to
14 refuse to approve the agreed ACH management plan the
15 application is to continue as an application for the authorisation
16 of the plan.
17 (3) This section does not apply if the ACH Council has made a
18 determination under Subdivision 4 that the Aboriginal cultural
19 heritage to which the ACH management plan relates is of State
20 significance for the purposes of this Act.

21 **145. Recommendation of ACH Council**

- 22 (1) The ACH Council is to assess each application made under this
23 Subdivision in accordance with section 146(1) and may make a
24 recommendation that the Minister —
25 (a) authorise the ACH management plan set out in the
26 recommendation; or
27 (b) refuse to authorise an ACH management plan for the
28 activity to which the application relates.
29 (2) A recommendation is to be made by the ACH Council within
30 the prescribed period.

- 1 (3) The period for making a decision on the application does not
2 include —
- 3 (a) the period commencing on a day when a request is made
4 under section 141(1) and ending on a day when the first
5 of the following occurs —
- 6 (i) the request is complied with;
- 7 (ii) the period specified for responding to the request
8 expires;
- 9 or
- 10 (b) the period —
- 11 (i) commencing on the day when public notice is
12 given under 153(2) in respect of the Aboriginal
13 cultural heritage that is the subject of the
14 application; and
- 15 (ii) ending on the day when the ACH Council makes
16 a determination under section 154(1)(c) about
17 whether the cultural heritage is of State
18 significance for the purposes of this Act.
- 19 (4) If the ACH Council does not make a recommendation to the
20 Minister within the period for making a recommendation on the
21 application the applicant may, in writing, request the Minister to
22 direct the Council to do anything that the Minister considers
23 necessary to expedite the matter.
- 24 (5) A direction made by the Minister in response to a request made
25 under subsection (4) is to —
- 26 (a) be in writing; and
- 27 (b) specify the period within which the direction is to be
28 complied with.
- 29 (6) If the ACH Council does not comply with a direction made by
30 the Minister, the Minister may make a decision on the
31 application under section 147 without having received a
32 recommendation from the Council.

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1 **146. Recommendation of ACH management plan**

2 (1) The ACH Council may recommend to the Minister that an ACH
3 management plan be authorised in respect of an activity only if
4 the Council is satisfied —

- 5 (a) that the activity is an activity that may harm Aboriginal
6 cultural heritage; and
7 (b) that there has been consultation with each person to be
8 consulted about the activity; and
9 (c) that there are reasonable steps in place for the activity to
10 be carried out so as to avoid, or minimise, the risk of
11 harm to Aboriginal cultural heritage by the activity; and
12 (d) in relation to the other matters, if any, that are
13 prescribed.

14 (2) The ACH Council may recommend that the Minister authorise
15 an ACH management plan that is any of the following —

- 16 (a) the ACH management plan provided with the
17 application;
18 (b) an ACH management plan submitted under
19 section 143(2);
20 (c) another ACH management plan prepared by the
21 Council.

22 **147. Decision of Minister**

23 (1) If the ACH Council makes a recommendation to the Minister in
24 respect of an application for the authorisation of an ACH
25 management plan the Minister is to consider the application and
26 any recommendation made by the Council in accordance with
27 subsection (2) and may decide to —

- 28 (a) authorise the ACH management plan set out in the
29 recommendation; or
30 (b) authorise another ACH management plan; or
31 (c) refuse to authorise an ACH management plan for the
32 activity to which the application relates.

- 1 (2) The Minister may authorise an ACH management plan only on
2 the grounds of —
- 3 (a) whether or not the Minister is satisfied as to the matters
4 set out in section 146(1); and
- 5 (b) what is in the interests of the State.
- 6 (3) The ACH management plan that is authorised —
- 7 (a) may be in respect of all, or part of, the area to which the
8 application relates; and
- 9 (b) may be in respect of all, or some of, the activities to
10 which the application relates; and
- 11 (c) is to specify the period for which the authorisation is to
12 be in effect.

13 **148. Duration of ACH management plan authorisation**

14 The authorisation of an ACH management plan by the Minister
15 under section 147(1) —

- 16 (a) takes effect when the authorisation is made, or on a later
17 day, if any, specified in the authorisation; and
- 18 (b) is of effect until whichever of the following occurs
19 first —
- 20 (i) the authorisation of the plan is cancelled under
21 section 149(1);
- 22 (ii) the plan expires in accordance with its terms;
- 23 (iii) the activities to which the plan relates are
24 completed.

25 **149. Suspension or cancellation of authorisation of ACH
26 management plan**

- 27 (1) The Minister may by written notice given to the parties to an
28 ACH management plan authorised under section 147(1) take
29 either of the following actions —
- 30 (a) suspend the authorisation of the plan for a specified
31 period;

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- 1 (b) cancel the authorisation of the plan.
- 2 (2) A notice under subsection (1) may be given only if the Minister
3 is no longer satisfied about the matters set out in section 147(1).
- 4 (3) A notice given under subsection (1) —
- 5 (a) is to set out the grounds on which the action is taken;
6 and
- 7 (b) takes effect on the day specified in it.
- 8 (4) Before taking action under subsection (1) the Minister is to give
9 the parties to the plan —
- 10 (a) written notice of the action that the Minister proposes to
11 take and the grounds on which the Minister proposes to
12 take that action; and
- 13 (b) a reasonable opportunity to be heard on the matter.
- 14 (5) If authorisation of an ACH management plan is suspended it is
15 of no effect during the period of the suspension.

16 **150. Authorisation of amended ACH management plan**

- 17 (1) The section applies if —
- 18 (a) a party to an ACH management plan wants to amend an
19 ACH management plan that was approved under
20 section 134(1) or authorised under section 147(1); and
- 21 (b) either —
- 22 (i) the parties do not agree on amendments to the
23 ACH management plan; or
- 24 (ii) the ACH management plan relates to Aboriginal
25 cultural heritage that has been determined to be
26 of State significance for the purposes of this Act.
- 27 (2) If this section applies, a party to an ACH management plan may
28 apply under section 140(1) for an amended plan to be authorised
29 by the Minister.

- 1 (3) This Subdivision applies to the authorisation of an amended
2 ACH management plan as if the amended plan were a new ACH
3 management plan except that —
- 4 (a) the application does not need to contain the matters
5 referred to in section 140(2)(d) or (e); and
- 6 (b) the ACH Council and the Minister do not need to be
7 satisfied as to the matters set out in section 146(1)(b).

8 **Subdivision 4 — Aboriginal cultural heritage of State significance**

9 **151. ACH Council to issue guidelines**

10 The ACH Council is to issue guidelines about the factors to be
11 considered in deciding whether, for the purposes of this Act,
12 Aboriginal cultural heritage is of State significance.

13 **152. ACH Council may determine if Aboriginal cultural heritage
14 is of State significance**

15 (1) In this section —

16 *application* means —

- 17 (a) an application for the approval of an ACH management
18 plan made under section 131(1); or
- 19 (b) an application for the authorisation of an ACH
20 management plan made under section 140(1).

21 (2) If, in considering an application, the ACH Council forms the
22 view that the Aboriginal cultural heritage that is the subject of
23 the ACH management plan to which the application relates may
24 be of State significance the Council is to make a determination,
25 in accordance with this Subdivision about whether the
26 Aboriginal cultural heritage is of State significance for the
27 purposes of this Act.

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1 **153. Notice to be given of Aboriginal cultural heritage that may**
2 **be of State significance**

3 (1) In this section —

4 *notice area* means the area where the Aboriginal cultural
5 heritage referred to in a notice given under this section is
6 located.

7 (2) Before making a determination under section 152 the ACH
8 Council is to give public notice that the Council has formed the
9 view that the Aboriginal cultural heritage may be of State
10 significance for the purposes of this Act.

11 (3) The notice is to give —

- 12 (a) details of the Aboriginal cultural heritage to which the
13 notice relates; and
14 (b) details of the area where the Aboriginal cultural heritage
15 is located; and
16 (c) an opportunity for a person to submit to the ACH
17 Council, within the prescribed period, a statement about
18 the person's views on whether the Aboriginal cultural
19 heritage should be recognised for the purposes of this
20 Act as being of State significance.

21 (4) The ACH Council is to notify the following persons that public
22 notice has been given under subsection (2) —

- 23 (a) each local ACH service for the notice area or part of the
24 notice area;
25 (b) each native title party for the notice area or part of the
26 notice;
27 (c) each person who —
28 (i) is identified in accordance with the guidelines as
29 a knowledge holder for the notice area or part of
30 the notice area; and
31 (ii) is not a native title party for the notice area or
32 any part of the notice area;

- 1 (d) each landholder of land within the notice area;
- 2 (e) each public authority that has the care, control and
- 3 management of land within the notice area;
- 4 (f) any other person the Council considers has an interest in
- 5 the notice area or part of the notice area.

6 **154. Decision of ACH Council**

- 7 (1) The ACH Council is to —
- 8 (a) consider any submissions made to the Council in
- 9 response to the public notice; and
- 10 (b) consider the nature of the Aboriginal cultural heritage
- 11 and the significance of it to the State; and
- 12 (c) make a determination that the Aboriginal cultural
- 13 heritage —
- 14 (i) is of State significance for the purposes of this
- 15 Act; or
- 16 (ii) is not of State significance for the purposes of
- 17 this Act.
- 18 (2) The ACH Council may make a determination that the
- 19 Aboriginal cultural heritage is of State significance for the
- 20 purposes of this Act only if the Council is satisfied that —
- 21 (a) in accordance with guidelines issued for the purpose of
- 22 this Division the Aboriginal cultural heritage is of State
- 23 significance; and
- 24 (b) the significance of the heritage should be recognised for
- 25 the purposes of this Act.

26 **155. Continuation of applications**

- 27 (1) If the ACH Council determines that Aboriginal cultural heritage
- 28 is of State significance for the purposes of this Act —
- 29 (a) an application for the authorisation of an ACH
- 30 management plan that relates to the heritage is to

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- 1 continue to be considered as an application for the
2 authorisation of the plan made under section 140(1); and
- 3 (b) an application for the approval of an ACH management
4 plan that relates to the heritage is to be considered as if it
5 were an application for the authorisation of the plan
6 made under section 140(1).
- 7 (2) If the ACH Council determines that Aboriginal cultural heritage
8 is not of State significance for the purposes of this Act —
- 9 (a) an application for the authorisation of an ACH
10 management plan that relates to the heritage is to
11 continue to be considered as an application for the
12 authorisation of the plan made under section 140(1); and
- 13 (b) an application for the approval of an ACH management
14 plan that relates to the heritage is to continue to be
15 considered as an application for the approval of the plan
16 made under section 131(1).

17 **Division 8 — Miscellaneous**

18 **156. Change in parties to ACH management plan to be notified**

- 19 (1) If a proponent transfers their rights under an approved or
20 authorised ACH management plan to another person (the
21 *transferee*), the transferee must give written notice of the
22 transfer and the day on which the transfer took effect to —
- 23 (a) the Aboriginal parties to the plan; and
24 (b) the ACH Council.
- 25 Penalty for this subsection: a fine of \$10 000.
- 26 (2) If the ACH Council is given written notice under subsection (1)
27 the Council is to —
- 28 (a) amend the ACH Directory to show the updated
29 information; and
30 (b) notify the transferee and the other parties to the ACH
31 management plan that the Directory has been updated.

1 **157. ACH management plan binding on subsequent proponents**

2 Any obligation under an approved or authorised ACH
3 management plan in respect of the carrying out of an activity in
4 an area is binding on the current proponent of the activity,
5 whether or not the proponent was a party to the plan when it
6 was made.

7 **158. Contravention of conditions on ACH permit or ACH**
8 **management plan: offence**

9 (1) A person who holds an ACH permit must comply with any
10 conditions imposed on the ACH permit.

11 Penalty for this subsection: a fine of \$20 000.

12 (2) A person who is a party to an ACH management plan must
13 comply with any conditions imposed on the approval or
14 authorisation of the plan.

15 Penalty for this subsection: a fine of \$100 000.

16 **159. Information about ACH permits and ACH management**
17 **plans to be recorded on ACH Directory**

18 The ACH Council is to ensure that the prescribed information
19 about any of the following is recorded on the ACH Directory, in
20 accordance with Part 9 —

21 (a) an ACH permit;

22 (b) an ACH management plan approved under
23 section 134(1);

24 (c) an ACH management plan authorised under
25 section 147(1).

26 **160. Information about Aboriginal cultural heritage of State**
27 **significance to be recorded on ACH Directory**

28 The ACH Council is to ensure that the prescribed information
29 about Aboriginal cultural heritage that is determined to be of
30 State significance is recorded on the ACH Directory in
31 accordance with Part 9.

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1 **161. Regulations: ACH impact statements**

2 The regulations may make provision for and in relation to the
3 preparation of ACH impact statements.

Consultation Draft

1 **Part 9 — Aboriginal Cultural Heritage Directory**

2 **Division 1 — ACH Directory**

3 **162. ACH Directory**

- 4 (1) The ACH Council is to establish and maintain a directory to be
5 called the Aboriginal Cultural Heritage Directory.
- 6 (2) The ACH Directory is to be a record of Aboriginal cultural
7 heritage of the State.
- 8 (3) The ACH Directory is to be established and maintained in the
9 manner and form determined by the ACH Council as
10 appropriate for achieving the purposes set out in section 163.

11 **163. Purposes of ACH Directory**

12 The purposes of establishing and maintaining the ACH
13 Directory are as follows —

- 14 (a) to assemble, organise and maintain the information and
15 documents about Aboriginal cultural heritage described
16 in section 164;
- 17 (b) for information and documents in the Directory to be
18 accessible, in accordance with Division 2, as a research
19 and planning tool to assist —
- 20 (i) Aboriginal people, groups and communities, and
21 other people in their consideration of Aboriginal
22 cultural heritage; and
- 23 (ii) people proposing to carry out activities that may
24 harm Aboriginal cultural heritage; and
- 25 (iii) in the administration of this Act.

26 **164. Information and documents on ACH Directory**

- 27 (1) The ACH Directory is to contain the following —
- 28 (a) the information prescribed about each protected area;

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- 1 (b) the information prescribed about each determination
2 under Part 8 Division 7 Subdivision 4 that Aboriginal
3 cultural heritage is of State significance for the purposes
4 of this Act;
- 5 (c) the information prescribed about each —
6 (i) ACH permit; and
7 (ii) ACH management plan;
- 8 (d) the information prescribed about each Part 10 order;
- 9 (e) information as to the identity of —
10 (i) in relation to an ACH management plan — each
11 person determined to be an Aboriginal party in
12 accordance with section 98;
13 (ii) in relation to an ACH management plan — the
14 persons to be consulted, and the persons to be
15 notified, under Part 8;
16 (iii) in relation to an ACH permit — the persons to be
17 notified under Part 8;
- 18 (f) the information prescribed about the making of an
19 approved or authorised ACH management plan;
- 20 (g) information as to the identity of knowledge holders
21 for —
22 (i) a particular area; or
23 (ii) particular Aboriginal cultural heritage;
- 24 (h) information about the Aboriginal cultural heritage of the
25 State, including a description of the Aboriginal cultural
26 heritage and, where relevant, the location of the
27 Aboriginal cultural heritage;
- 28 (i) any other information and documents, including
29 historical information and documents, that are relevant
30 to the purposes for which the Directory is established
31 and maintained under section 163 that —
32 (i) are prescribed for the purposes of this section; or

- 1 (ii) the ACH Council considers appropriate to
2 include in the Directory.
- 3 (2) Information and documents may be placed on the ACH
4 Directory, in accordance with the regulations —
5 (a) on the initiative of the ACH Council; or
6 (b) at the request of a local ACH service or another person.

7 **165. Accuracy of ACH Directory**

- 8 (1) The ACH Council must ensure that the ACH Directory is as
9 accurate and up-to-date as practicable, and may, as it considers
10 necessary —
11 (a) modify the Directory; and
12 (b) add to the Directory; and
13 (c) correct the Directory.
- 14 (2) However, information or a document may only be removed
15 from the ACH Directory in accordance with section 166.
- 16 (3) The placing of information or a document on the ACH
17 Directory, or its removal from the Directory, is not conclusive
18 about whether the information is up-to-date, comprehensive or
19 otherwise accurate.

20 **166. Removing information and documents from ACH Directory**

- 21 (1) The ACH Council may remove information or a document from
22 the ACH Directory if the ACH Council is satisfied that the
23 information or document has been placed on the Directory in
24 error or is factually incorrect.
- 25 (2) Before acting under subsection (1) to remove information or a
26 document about Aboriginal cultural heritage from the Directory,
27 the ACH Council must, to the extent it is reasonably practicable
28 to do so, consult —
29 (a) a knowledge holder for the Aboriginal cultural heritage
30 to which the information or document relates; or

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- 1 (b) if it is not possible to identify or consult with a
 2 knowledge holder for the Aboriginal cultural heritage —
- 3 (i) each local ACH service for the area or part of the
 4 area to which the Aboriginal cultural heritage
 5 relates; or
- 6 (ii) if there is no local ACH service for any part of
 7 the area — each native title party for the area or
 8 part of the area to which the Aboriginal cultural
 9 heritage relates.

Division 2 — Access to ACH Directory**167. Access for Aboriginal people**

12 The ACH Council must ensure that the information and
 13 documents on the ACH Directory about Aboriginal cultural
 14 heritage are available to an Aboriginal person, community or
 15 group that, in accordance with Aboriginal tradition, have rights
 16 interests or responsibilities —

- 17 (a) for the Aboriginal cultural heritage to which the
 18 information or documents relate; or
- 19 (b) in respect of Aboriginal places located in, or Aboriginal
 20 objects located in or reasonably believed to have
 21 originated from, the area to which the information or
 22 documents relate.

168. Limited access for general public

- 24 (1) The ACH Council must ensure that the information and
 25 documents on the ACH Directory are not available to the
 26 general public other than —
- 27 (a) in accordance with section 169, 170 or 171; or
 28 (b) in accordance with any regulations made under
 29 section 172, or
 30 (c) to the extent that, in the Council's opinion, it is
 31 appropriate to make the information and documents
 32 available to the general public.

- 1 (2) However, culturally sensitive information about Aboriginal
2 cultural heritage must not be made available to a member of the
3 general public other than in accordance with the explicit consent
4 of a knowledge holder for the Aboriginal cultural heritage.

5 **169. Access to information about protected areas and the**
6 **management of activities**

7 The ACH Council must ensure that the information and
8 documents on the ACH Directory are available to the general
9 public to the extent that the information and documents relate to
10 any of the following —

- 11 (a) whether or not a particular area is, or is within, a
12 protected area;
- 13 (b) whether or not a particular area is the subject of —
14 (i) an ACH permit; or
15 (ii) an approved or authorised ACH management
16 plan;
- 17 (c) whether or not a particular area is the subject of a
18 Part 10 order;
- 19 (d) if a particular area is the subject of an ACH permit —
20 the contact details for the holder of the permit;
- 21 (e) if a particular area is the subject of an approved or
22 authorised ACH management plan — the contact details
23 for the parties to the plan.

24 **170. Access to assess activities that may harm Aboriginal cultural**
25 **heritage**

26 The ACH Council must ensure that information and documents
27 on the ACH Directory are available to a person who proposes to
28 carry out an activity that may harm Aboriginal cultural heritage
29 to the extent that the information and documents relate to the
30 activity.

Aboriginal Cultural Heritage Bill 2020**Part 9** Aboriginal Cultural Heritage Directory**Division 3** Regulations: ACH Directory**s. 171**

1 **171. Access for research**

2 The ACH Council must ensure that information and documents
3 on the ACH Directory are available to a person carrying out
4 research into Aboriginal cultural heritage to the extent that, in
5 the Council's opinion —

- 6 (a) the information on the Directory relates to the research
7 being carried out by the person; and
8 (b) it is appropriate to make the information and documents
9 available for the research.

10 **Division 3 — Regulations: ACH Directory**11 **172. Regulations: ACH Directory**

- 12 (1) The regulations may make provision for and in relation to the
13 ACH Directory.
- 14 (2) Regulations made for the purposes of subsection (1) may
15 provide for the following —
- 16 (a) the form and content of the ACH Directory;
- 17 (b) the placing of information and documents on the
18 Directory;
- 19 (c) the availability of information and documents on the
20 Directory that relate to —
- 21 (i) ACH permits;
- 22 (ii) approved or authorised ACH management plans;
- 23 (d) the payment of such fees, if any, as are prescribed in
24 relation to the making available of information and
25 documents under section 170 or 171;
- 26 (e) making available copies of, and extracts from,
27 information or documents on the Directory in the
28 circumstances prescribed.

- 1 (3) Regulations made for the purposes of subsection (2)(c) may —
- 2 (a) limit, or impose requirements or conditions on, access to
- 3 information and documents referred to in that provision
- 4 by all persons, or by persons of a prescribed class or
- 5 classes; or
- 6 (b) prohibit access to information and documents referred to
- 7 in that provision or to a prescribed class or classes of the
- 8 information and documents by all persons, or by persons
- 9 of a prescribed class or classes.

Consultation Draft

Aboriginal Cultural Heritage Bill 2020**Part 10** Stop activity orders, prohibition orders and remediation orders**Division 1** Preliminary**s. 173**

1 **Part 10 — Stop activity orders, prohibition orders and**
2 **remediation orders**

3 **Division 1 — Preliminary**

4 **173. Terms used**

5 In this Part —

6 **remediate**, in relation to Aboriginal cultural heritage, means to
7 carry out work to —

- 8 (a) control, abate or mitigate harm to the Aboriginal cultural
9 heritage;
- 10 (b) maintain, remediate or restore Aboriginal cultural
11 heritage that has been harmed;

12 **specified**, in relation to an order under this Part, means specified
13 in that order.

14 **174. Aboriginal cultural heritage to which this Part applies**

15 This Part applies to the following Aboriginal cultural heritage
16 only —

- 17 (a) an Aboriginal place;
- 18 (b) an Aboriginal object;
- 19 (c) Aboriginal ancestral remains;
- 20 (d) a cultural landscape, or a part of a cultural landscape,
21 that is —
- 22 (i) a protected area; or
- 23 (ii) within a protected area.

24 **175. Purposes for which power may be exercised under this Part**

25 The powers under this Part may be exercised only for the
26 purposes of this Act.

Division 2 — Stop activity order**176. Stop activity order may be given by Minister**

- (1) The Minister may give a stop activity order to a person described in subsection (2) if the Minister is of the opinion that —
- (a) Aboriginal cultural heritage requires protection because an activity —
 - (i) is being carried out and the activity is harming the Aboriginal cultural heritage; or
 - (ii) is being carried out and the activity involves an imminent risk of harm to the Aboriginal cultural heritage; or
 - (iii) will be carried out imminently and will involve a risk of harm to the Aboriginal cultural heritage;
- and
- (b) the activity —
 - (i) is not authorised under Part 8 Division 4; or
 - (ii) is authorised under an ACH permit, or under an approved or authorised ACH management plan, but new information has emerged —
 - (I) that identifies Aboriginal cultural heritage that was not identified at the time the permit was granted or the plan was approved or authorised; or
 - (II) about the significance of Aboriginal cultural heritage that was identified at the time the permit was granted or the plan was approved or authorised.

Aboriginal Cultural Heritage Bill 2020**Part 10** Stop activity orders, prohibition orders and remediation orders**Division 2** Stop activity order**s. 177**

- 1 (2) A stop activity order is to be given to a person that, in the
2 opinion of the Minister, has control over the activity.

3 Note for this subsection:

4 The person that the order is given to may be the landholder or the
5 occupier of land where the activity is carried out, or the proponent for
6 the activity or another person that, in the opinion of the Minister, has
7 control over the activity.

- 8 (3) A stop activity order expires on the day that is 60 days after the
9 day on which the order is given to a person under this section,
10 unless it is cancelled earlier under section 197(1)(b).

- 11 (4) For the purpose of section 179, the Minister is to give a copy of
12 a stop activity order to the ACH Council immediately after the
13 Minister has given the order.

14 **177. Contents of stop activity order**

15 A stop activity order must —

- 16 (a) state briefly —
17 (i) that the Minister is of the opinion that grounds
18 for giving the order exist; and
19 (ii) the basis for that opinion;
20 and
21 (b) specify directions on measures to be taken to protect the
22 Aboriginal cultural heritage from harm, or the risk of
23 harm, including the following —
24 (i) that the carrying out of a specified activity is to
25 stop immediately;
26 (ii) prohibiting the carrying out of a specified
27 activity;
28 (iii) prohibiting the carrying out of a specified
29 activity in a specified way or for a specified
30 period of time;
31 and

- 1 (c) specify that the person given the order is to ensure that
2 those directions are complied with, and describe briefly
3 the consequences of failing to do so; and
4 (d) describe briefly how, after consultation under
5 section 180, a prohibition order may be made; and
6 (e) specify the day (being 60 days after the day on which
7 the order is given) on which the order will expire, unless
8 cancelled earlier.

9 **178. Compliance with stop activity order**

- 10 (1) The person to whom a stop activity order is given must comply
11 with the directions specified in the order.

12 Penalty for this subsection:

- 13 (a) a fine of \$250 000;
14 (b) a fine of \$12 500 for each day or part of a day during
15 which the offence continues.

- 16 (2) The person to whom a stop activity order is given must, as soon
17 as reasonably practicable after complying with the directions
18 specified in the order, notify the ACH Council in writing that
19 they have complied.

20 Penalty for this subsection: a fine of \$10 000.

21 **179. ACH Council to make recommendation about prohibition
22 order while stop activity order in force**

- 23 (1) The ACH Council is to consider whether the Aboriginal cultural
24 heritage the subject of the stop activity order requires the
25 protection of a prohibition order and is to make a
26 recommendation that the Minister —

- 27 (a) give a prohibition order in relation to the Aboriginal
28 cultural heritage; or
29 (b) not give a prohibition order in relation to the Aboriginal
30 cultural heritage.

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- 1 (2) A recommendation is to be made by the ACH Council within
2 the prescribed period.
- 3 (3) The ACH Council must only make a recommendation under
4 subsection (1)(a) if the Council is of the opinion that the
5 Aboriginal cultural heritage the subject of the stop activity order
6 still requires protection because the grounds for giving the order
7 still exist.
- 8 (4) Before making a recommendation under subsection (1) the
9 ACH Council is to —
- 10 (a) give written notice under section 180 that the Council is
11 considering whether or not to recommend that a
12 prohibition order be given in relation to the Aboriginal
13 cultural heritage; and
- 14 (b) following the period for submissions referred to in a
15 notice given under section 180, consider any
16 submissions made to the Council in response to the
17 notice.
- 18 (5) If the ACH Council makes a recommendation —
- 19 (a) under subsection (1)(a) that the Minister give a
20 prohibition order — the Council may also make
21 recommendations about the following —
- 22 (i) any directions to be included in the order;
23 (ii) the duration of the order;
24 (iii) other matters, if any, that are prescribed;
25 and
- 26 (b) under subsection (1)(b) that the Minister not give a
27 prohibition order — the Council may also recommend
28 that the Minister cancel the stop activity order under
29 section 197(1)(b).

1 **180. Notification of ACH Council before making**
2 **recommendation under section 179(1)**

- 3 (1) The notice referred to in section 179(4) is to be given to the
4 persons referred to in subsection (2) and is to contain —
- 5 (a) information about whether or not the ACH Council
6 should recommend that a prohibition order be given in
7 relation to the Aboriginal cultural heritage the subject of
8 the stop activity order; and
- 9 (b) details about —
- 10 (i) the Aboriginal cultural heritage and the activity
11 the subject of the stop activity order, to the extent
12 that the details do not disclose culturally
13 sensitive information; and
- 14 (ii) the period of time for which it is proposed the
15 prohibition order would be in force;
- 16 and
- 17 (c) an opportunity to make submissions to the ACH Council
18 within the prescribed period about whether or not the
19 Council should recommend that a prohibition order be
20 given in relation to the Aboriginal cultural heritage the
21 subject of the stop activity order.
- 22 (2) The notice is to be given to the following persons —
- 23 (a) the person that was given the stop activity order;
- 24 (b) any other person that, in the opinion of the Minister, has
25 control over the activity the subject of the stop activity
26 order;
- 27 (c) each local ACH service for the area or part of the area
28 where the activity is being carried out or is imminent;
- 29 (d) if there is not a local ACH service for the area or for a
30 part of the area —
- 31 (i) each native title party for the area or the part of
32 the area; and

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- 1 (ii) each person who —
- 2 (I) is identified in accordance with the
- 3 guidelines as a knowledge holder for
- 4 the area or the part of the area; and
- 5 (II) is not a native title party for the area or
- 6 the part of the area;
- 7 (e) if paragraph (d) applies but there is not a native title
- 8 party or a knowledge holder for the area or part of the
- 9 area — each native title representative body for the area
- 10 or the part of the area.

Division 3 — Prohibition orders**181. Prohibition order may be given by Minister**

- 13 (1) The Minister may give a prohibition order in relation to an
- 14 activity that is the subject of a stop activity order to a person
- 15 described in subsection (3) —
- 16 (a) if the ACH Council has made a recommendation to the
- 17 Minister under section 179(1)(a); or
- 18 (b) on the Minister's initiative.
- 19 (2) The decision of the Minister under subsection (1) is to be made
- 20 on the grounds of —
- 21 (a) whether or not the Minister is satisfied that the grounds
- 22 on which the stop activity order was given still exist;
- 23 and
- 24 (b) what is in the interests of the State.
- 25 (3) A prohibition order is to be given to a person that, in the opinion
- 26 of the Minister, has control over the activity.

27 Note for this subsection:

28 The person given the order may be the person who was given the stop

29 activity order, the landholder or occupier of the land where the activity

30 is carried out, the proponent for the activity or another person that, in

31 the opinion of the Minister, has control over the activity.

1 (4) The Minister is to ensure public notice is given of the giving of
2 a prohibition order.

3 (5) A prohibition order expires on the day specified in the order,
4 unless it is cancelled earlier under section 197(1)(b), extended
5 under section 184 or of unlimited duration.

6 **182. Contents of prohibition order**

7 A prohibition order must —

8 (a) state briefly —

9 (i) that the Minister is satisfied grounds exist for the
10 giving of the order; and

11 (ii) the basis for that opinion;

12 and

13 (b) specify directions on measures to be taken to protect the
14 Aboriginal cultural heritage from harm, or the risk of
15 harm, including the following —

16 (i) that the carrying out of a specified activity is to
17 stop immediately;

18 (ii) prohibiting the carrying out of a specified
19 activity;

20 (iii) prohibiting the carrying out of a specified
21 activity in a specified way or for a specified
22 period of time;

23 and

24 (c) specify that the person given the order is to ensure that
25 those directions are complied with, and describe briefly
26 the effect of failing to do so; and

27 (d) unless it is of unlimited duration, specify the day on
28 which the order will expire, unless cancelled earlier or
29 extended.

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183. Compliance with prohibition order

(1) The person to whom a prohibition order is given must comply with the directions specified in the order.

Penalty for this subsection:

- (a) a fine of \$250 000;
- (b) a fine of \$12 500 for each day or part of a day during which the offence continues.

(2) The person to whom a prohibition order is given must, as soon as reasonably practicable after complying with the directions specified in the order, notify the ACH Council in writing that they have complied.

Penalty for this subsection: a fine of \$10 000.

184. Extension of prohibition order

(1) Before a prohibition order expires, the Minister may extend the duration of the order by written notice given to the holder of the order.

(2) The decision of the Minister under subsection (1) is to be made on the grounds of —

- (a) whether or not the Minister is satisfied that the grounds on which the stop activity order pursuant to which the prohibition order was given still exist; and
- (b) what is in the interests of the State.

(3) Before making a decision under subsection (1), the Minister is to —

- (a) give written notice in accordance with section 185 of the proposal to extend the prohibition order; and
- (b) following the period for submissions referred to in a notice given under section 185(1), consider any submissions made to the Minister in response to the notice.

- 1 (4) The Minister is to ensure that public notice is given of the
2 extension of the duration of the prohibition order.

3 **185. Notification of Minister before extending prohibition order**

- 4 (1) The notice referred to in section 184(3) is to be given to the
5 persons referred to in subsection (2) and is to contain —
- 6 (a) details of the proposal to extend the prohibition order;
7 and
- 8 (b) details about —
- 9 (i) the Aboriginal cultural heritage and the activity
10 the subject of the prohibition order, to the extent
11 that the details do not disclose culturally
12 sensitive information; and
- 13 (ii) the period of time for which it is proposed to
14 extend the prohibition order;
- 15 and
- 16 (c) an opportunity to make submissions to the Minister
17 within the prescribed period about whether the
18 prohibition order should be extended as proposed.
- 19 (2) The notice is to be given to the following persons —
- 20 (a) the person that was given the prohibition order;
- 21 (b) any other person that, in the opinion of the Minister, has
22 control over the activity the subject of the prohibition
23 order;
- 24 (c) the persons referred to in section 180(2)(c) to (e).

25 **Division 4 — Remediation orders**

26 **186. ACH Council may recommend remediation order be given**

27 The ACH Council may recommend to the Minister that a
28 remediation order be given if the Council is of the opinion that
29 Aboriginal cultural heritage has been harmed in contravention
30 of this Act.

Aboriginal Cultural Heritage Bill 2020**Part 10** Stop activity orders, prohibition orders and remediation orders**Division 4** Remediation orders**s. 187**

187. Remediation order may be made by Minister

- 1 (1) The Minister may give a remediation order to a person
2 described in subsection (2) —
3
- 4 (a) if the ACH Council has made a recommendation to the
5 Minister under section 186; and
6 (b) the Minister is of the opinion that Aboriginal cultural
7 heritage has been harmed in contravention of this Act.
- 8 (2) A remediation order is to be given to a person that, in the
9 opinion of the Minister —
- 10 (a) has control over the activity that harmed the Aboriginal
11 cultural heritage; or
12 (b) is a landholder or occupier of the land where the activity
13 that harmed the Aboriginal cultural heritage was carried
14 out.
- 15 (3) The Minister is to ensure that public notice is given of the
16 giving of a remediation order.

188. Contents of remediation order

- 17 A remediation order must —
18
- 19 (a) state briefly —
20 (i) that the Minister is of the opinion that grounds
21 for giving the order exist; and
22 (ii) the basis for that opinion;
23 and
24 (b) specify directions on measures to be taken to remediate
25 the Aboriginal cultural heritage; and
26 (c) specify that the person given the order is to ensure that
27 those directions are complied with in the timeframes
28 specified in the order, and describe briefly the effect of
29 failing to do so.

1 **189. Compliance with remediation order**

2 (1) The person to whom a remediation order is given must comply
3 with the directions specified in the order.

4 Penalty for this subsection:

5 (a) a fine of \$250 000;

6 (b) a fine of \$12 500 for each day or part of a day during
7 which the offence continues.

8 (2) The person to whom a remediation order is given must, as soon
9 as reasonably practicable after complying with the directions
10 specified in the order, notify the ACH Council in writing of that
11 compliance.

12 Penalty for this subsection: a fine of \$10 000.

13 **190. Other persons may carry out remediation if order**
14 **contravened**

15 (1) If a person contravenes a remediation order, the Minister may
16 authorise any other person to carry out some or all of the
17 directions specified in the order.

18 (2) The Minister may, in a court of competent jurisdiction, recover
19 the cost of the remediation referred to in subsection (1) as a debt
20 due from the person to whom the remediation order was given.

21 **191. Entry to carry out remediation**

22 (1) A person required or authorised to carry out remediation under a
23 remediation order may enter land if it is necessary to do so for
24 the purpose of carrying out the remediation.

25 (2) However, nothing in this Division authorises a person to enter
26 any part of premises used for residential purposes except with
27 the consent of the occupier of the premises.

Aboriginal Cultural Heritage Bill 2020**Part 10** Stop activity orders, prohibition orders and remediation orders**Division 5** Miscellaneous**s. 192**

Division 5 — Miscellaneous**192. General matters about orders under this Part**

An order under this Part (including the amendment or cancellation of an order) —

- (a) must be in writing; and
- (b) may be given whether or not —
 - (i) any person has been proceeded against or convicted of an offence; or
 - (ii) the person to whom the order is given has been notified about the proposal to make the order.

193. Details of orders under this Part to be recorded on ACH Directory

The Minister is to ensure that the information prescribed about an order under this Part is recorded on the ACH Directory, in accordance with Part 9.

194. Directions in orders under this Part

A direction specified in an order under this Part may do any of the following —

- (a) be expressed to be subject to any conditions specified in the order;
- (b) be expressed to be subject to the discretion of any person specified in the order;
- (c) refer to any prescribed requirements or standards or to a code of practice;
- (d) offer the person to whom it is given a choice of ways in which to act.

195. Recovery by person given remediation order

A person who complied with a remediation order that the person was given, but who is not the person who harmed the

1 Aboriginal cultural heritage the subject of the remediation order,
2 may, in a court of competent jurisdiction, recover the cost of
3 complying with the order as a debt due from the person who
4 harmed the Aboriginal cultural heritage.

5 **196. When order takes effect**

6 An order under this Part takes effect when a person is given the
7 order.

8 **197. Amendment or cancellation of orders under this Part**

9 (1) By written notice given to a person given an order under this
10 Part, the Minister may —

- 11 (a) if the order is a prohibition order or a remediation
12 order — amend the order; or
13 (b) cancel the order.

14 (2) Before making a decision under subsection (1) to amend or
15 cancel a prohibition order, the Minister is to —

- 16 (a) give written notice in accordance with section 198 of the
17 proposal to amend or cancel the prohibition order; and
18 (b) following the period for submissions referred to in a
19 notice given under section 198, consider any
20 submissions made to the Minister in response to the
21 notice.

22 **198. Notification of Minister before amending or cancelling a**
23 **prohibition order**

24 The notice referred to in section 197(2) is to be given to the
25 persons referred to in section 185(2) and is to contain —

- 26 (a) details of the proposal to amend or cancel the
27 prohibition order; and
28 (b) details about the Aboriginal cultural heritage and the
29 activity the subject of the prohibition order, to the extent
30 that the details do not disclose culturally sensitive
31 information; and

Aboriginal Cultural Heritage Bill 2020**Part 10** Stop activity orders, prohibition orders and remediation orders**Division 5** Miscellaneous**s. 199**

- 1 (c) an opportunity to make submissions to the Minister
2 within the prescribed period about whether the
3 prohibition order should be amended or cancelled as
4 proposed.

199. Display of order under this Part

- 6 (1) A person who is given an order under this Part must, as soon as
7 possible, display a copy of the order in a prominent place at or
8 near the area the subject of the order.

9 Penalty for this subsection:

- 10 (a) a fine of \$10 000;
11 (b) a fine of \$500 for each day or part of a day during
12 which the offence continues.

- 13 (2) A person must not intentionally remove, destroy, damage or
14 deface an order displayed under subsection (1) while the order
15 is in force.

16 Penalty for this subsection: a fine of \$10 000.

Part 11 — Securing compliance

Division 1 — Preliminary

200. Terms used

In this Part —

CI Act means the *Criminal Investigation Act 2006*;

dwelling means a place or part of a place that is ordinarily used for human habitation and it does not matter that it is from time to time uninhabited;

entry warrant means an entry warrant issued under Division 4;

inspection purposes means the purposes referred to in section 209;

occupier —

- (a) in relation to a place — includes any person who has or appears to have control or management of the place; and
- (b) in relation to a vehicle — includes any person who is or appears to be in charge of the vehicle;

photograph includes to make a digital image or a video recording;

reasonably suspects has the meaning given in section 201;

seized thing means a thing seized under section 218 or in the exercise of powers under the CI Act;

thing relevant to an offence has the meaning given in section 202.

201. Reasonably suspects: meaning

For the purposes of this Part, a person *reasonably suspects* something at a relevant time if the person personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non-existent) when judged objectively, are reasonable.

Aboriginal Cultural Heritage Bill 2020

Part 11 Securing compliance

Division 2 Inspectors

s. 202

1 **202. Things relevant to an offence: meaning**

- 2 (1) For the purposes of this Part, a thing is a *thing relevant to an*
3 *offence* if it is reasonably suspected that —
- 4 (a) the thing has been, is being, or is intended to be used for
5 the purpose of committing an offence; or
- 6 (b) the thing has been obtained by the commission of an
7 offence; or
- 8 (c) an offence has been, is being, or may be committed in
9 respect of the thing; or
- 10 (d) the thing is or may afford —
- 11 (i) evidence relevant to proving the commission of
12 an offence or who has committed an offence; or
- 13 (ii) evidence that tends to rebut an alibi.
- 14 (2) For the purposes of this Part, a thing relevant to an offence may
15 be material or non-material, animate (other than human) or
16 inanimate.

17 **Division 2 — Inspectors**18 **203. Inspectors**

- 19 (1) The CEO may, in writing, designate any of the following
20 persons as an inspector for the purposes of this Act —
- 21 (a) a public service officer;
- 22 (b) a person employed or engaged under the *Public Sector*
23 *Management Act 1994* section 100 by the employing
24 authority of the Department.
- 25 (2) A person may be designated as an inspector for a fixed or
26 indefinite period.
- 27 (3) The CEO may, in writing, revoke a designation at any time.

1 **204. Aboriginal inspectors**

2 (1) The CEO may, in writing, appoint any Aboriginal person to be
3 an Aboriginal inspector for the whole or any specified area of
4 the State.

5 (2) An Aboriginal inspector has, in respect of the area for which the
6 Aboriginal inspector is appointed, the powers conferred by or
7 under this Act on an inspector that are specified in the
8 appointment, and to that extent is taken to be an inspector.

9 (3) A person may be appointed as an Aboriginal inspector for a
10 fixed or indefinite period.

11 (4) The CEO may, by writing, revoke an appointment at any time.

12 **205. Identity cards**

13 (1) The CEO is to give to each person designated under section 203
14 or appointed under section 204 an identity card.

15 (2) An identity card is to —

16 (a) identify the person as an inspector or an Aboriginal
17 inspector as the case may be; and

18 (b) if the person is an Aboriginal inspector — specify the
19 area of the State for which the person is appointed and
20 the powers conferred on the person; and

21 (c) contain a recent photograph of the person.

22 (3) A person who, without reasonable excuse, fails to return their
23 identity card to the CEO on ceasing to be an inspector or an
24 Aboriginal inspector commits an offence.

25 Penalty for this subsection: a fine of \$5 000.

26 (4) A person given an identity card under subsection (1) is to carry
27 the identity card at all times when exercising powers or
28 performing functions as an inspector unless it is impracticable to
29 do so.

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Part 11 Securing compliance

Division 3 Inspection powers

s. 206

206. Production or display of identity card

- (1) A person given an identity card under section 205(1) may exercise a power they have as an inspector in relation to someone only if —
- (a) the person first produces the identity card for the other person's inspection; or
 - (b) the person has the identity card displayed so it is clearly visible to the other person.
- (2) Subsection (1) only applies if the inspector is in the physical presence of the person in relation to whom the power is to be exercised.
- (3) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the person may exercise the power and then produce the identity card for inspection by the other person at the first reasonable opportunity.

207. Police officers to have powers of inspectors

For the purposes of this Act, a police officer has the powers of an inspector under this Act and is taken to be an inspector.

208. Impersonation

A person must not impersonate an inspector.

Penalty: a fine of \$5 000.

Division 3 — Inspection powers**209. Purposes for which inspection may be carried out**

An inspector may carry out an inspection for any of the following purposes —

- (a) to search for or inspect anything controlled, regulated or managed under this Act;

- 1 (b) to ascertain whether this Act or any instrument entered
2 into, given or issued under this Act has been or is being
3 contravened;
- 4 (c) to inspect any records that are kept under or for the
5 purposes of this Act or that are relevant to determining
6 whether this Act or any instrument entered into, given or
7 issued under it has been or is being contravened;
- 8 (d) any other purpose that is prescribed.

9 **210. Power to enter places**

- 10 (1) For the purposes of an inspection an inspector may do any of
11 the following —
- 12 (a) subject to section 211, at any time enter a place that is
13 not a dwelling;
- 14 (b) at any time enter a dwelling with the informed consent
15 of an occupier of the dwelling;
- 16 (c) enter a place in accordance with an entry warrant.
- 17 (2) For the purposes of subsection (1)(b), an occupier gives
18 informed consent if the occupier consents after being informed
19 by the inspector —
- 20 (a) of the powers that the inspector wants to exercise in
21 carrying out the inspection in respect of the dwelling;
22 and
- 23 (b) of the reasons why the inspector wants to exercise those
24 powers; and
- 25 (c) that the person may refuse to consent to the inspector
26 entering the dwelling.

27 **211. Entering Aboriginal places**

- 28 (1) Before entering a place an inspector is to take all reasonable
29 steps to determine —
- 30 (a) if the place is an Aboriginal place; and

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Part 11 Securing compliance

Division 3 Inspection powers

s. 212

- 1 (b) if the place is an Aboriginal place — whether in
2 accordance with Aboriginal tradition there are
3 restrictions on entry to the place.
- 4 (2) If the inspector determines that the place is an Aboriginal place
5 and that in accordance with Aboriginal tradition there are
6 restrictions on entry to the place, the inspector may only enter
7 the place if —
- 8 (a) the inspector is permitted to enter the place in
9 accordance with Aboriginal tradition; or
- 10 (b) the inspector is accompanied by a person who is
11 permitted to enter the place in accordance with
12 Aboriginal tradition.
- 13 (3) However, an inspector may enter a place without complying
14 with subsection (2) if the inspector considers on reasonable
15 grounds that the entry is necessary to prevent harm to
16 Aboriginal cultural heritage.
- 17 **212. Power to enter includes power to enter some other places**
- 18 (1) This section applies if under section 210 an inspector may enter
19 a place.
- 20 (2) If the place is 1 of 2 or more premises in one building, then, in
21 order to enter the place, the inspector may enter, but not inspect,
22 any part of the building that the occupiers of the place use
23 exclusively but in common with each other.
- 24 **213. Power to stop and enter vehicles and ancillary powers**
- 25 (1) In this section —
- 26 ***mobile home*** means a vehicle that —
- 27 (a) is ordinarily used for human habitation; and
28 (b) is permanently or semi-permanently stationary in a
29 single location.
- 30 (2) For inspection purposes an inspector may at any time stop and
31 enter a vehicle other than a mobile home.

- 1 (3) If under subsection (2) an inspector may stop a vehicle, the
2 inspector may use any means that are reasonably necessary in
3 the circumstances to do so.
- 4 (4) Subsection (3) does not authorise the use of means that are
5 likely to cause death or grievous bodily harm to any person,
6 whether or not the person is in the vehicle.
- 7 (5) An inspector who under subsection (2) stops a vehicle may —
8 (a) detain the vehicle for a reasonable period; and
9 (b) move the vehicle to another place suitable for carrying
10 out an inspection.

11 **214. Application of CI Act s. 31**

12 The CI Act section 31 (the *applied provision*) applies, with all
13 necessary changes, to and in relation to the entry of a place
14 under section 210(1)(a) or (c) or 212 or a vehicle under
15 section 213 as if references in the applied provision to —

- 16 (a) a place included references to a vehicle; and
17 (b) an occupier included references to a person in charge of
18 a vehicle; and
19 (c) an officer were references to an inspector; and
20 (d) a search warrant were references to an entry warrant;
21 and
22 (e) a search were references to an inspection.

23 **215. Other powers related to inspection**

24 For inspection purposes an inspector may do any of the
25 following —

- 26 (a) take onto or into, and use on or in, a place or vehicle any
27 equipment or facilities that are reasonably necessary in
28 order to carry out the inspection;
29 (b) make reasonable use of any equipment, facilities or
30 services on or in a place or vehicle in order to carry out

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- 1 an inspection and for that purpose operate the equipment
2 or facilities;
- 3 (c) remain on or in a place or vehicle for so long as is
4 reasonably necessary to carry out the inspection; and
- 5 (d) inspect and open any package, compartment, cupboard
6 or container of any kind, and inspect its contents;
- 7 (e) inspect any cage, enclosure or similar structure on or in
8 a place or vehicle;
- 9 (f) photograph or otherwise make a record of a place or
10 vehicle and any thing in or on the place or vehicle;
- 11 (g) take samples or specimens of or from water or soil;
- 12 (h) apply an identifier to any object;
- 13 (i) survey and mark out land for any purposes relevant to
14 carrying out the inspection;
- 15 (j) label any thing.

216. Obtaining records

- 17 (1) In this section —
18 **relevant record** means a record that contains information that is
19 relevant to compliance with this Act or with an instrument
20 entered into, issued or given under it.
- 21 (2) For inspection purposes an inspector may do one or more of the
22 following —
- 23 (a) direct a person who has the custody or control of a
24 record to give the inspector the record or a copy of it;
- 25 (b) direct a person who has the custody or control of a
26 record, computer or thing to make or print out a copy of
27 the record or to operate the computer or thing;
- 28 (c) operate a computer or other thing on which a record is
29 or may be stored;
- 30 (d) direct a person who is or appears to be in control of a
31 record that the inspector reasonably suspects is a
32 relevant record to give the inspector a translation, code,

- 1 password or other information necessary to gain access
2 to or interpret and understand the record;
- 3 (e) take extracts from or make copies of, or download or
4 print out, or photograph a record that the inspector
5 reasonably suspects is a relevant record;
- 6 (f) take reasonable measures to secure or protect a record,
7 or computer or other thing on which a record is or may
8 be stored, against damage or unauthorised removal or
9 interference.
- 10 (3) If an inspector is given a record, the inspector must, if
11 practicable, allow a person who is otherwise entitled to
12 possession of it to have reasonable access to it.

13 **217. Directions**

- 14 (1) In this section —
15 *specified* means specified by the inspector.
- 16 (2) An inspector may do any of the following for inspection
17 purposes —
- 18 (a) direct an occupier of a place or vehicle, or a person who
19 is or appears to be in possession or control of a thing, to
20 give to the inspector, orally or in writing —
- 21 (i) any information in the person's possession or
22 control as to the name and address of the owner
23 of the place, vehicle or thing; and
- 24 (ii) any other information in the person's possession
25 or control that is relevant to an inspection;
- 26 (b) direct an occupier of a place or vehicle to answer
27 questions;
- 28 (c) direct an occupier of a place or vehicle to open or unlock
29 anything in or on the place or vehicle to which the
30 inspector requires access;
- 31 (d) direct an occupier of a place to give the inspector a plan,
32 or access to a plan, of the place;

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- 1 (e) direct an occupier of a place or vehicle, or a person who
 2 is or appears to be in possession or control of a thing, to
 3 give the inspector any assistance that the inspector
 4 reasonably needs to carry out the inspector's functions
 5 in relation to the place, vehicle or thing;
- 6 (f) direct an occupier of a vehicle to move the vehicle to a
 7 specified place for inspection;
- 8 (g) direct a person who is or appears to be in control of a
 9 consignment of goods to move the consignment to a
 10 specified place for inspection;
- 11 (h) direct a person who is in control of an object to do
 12 anything necessary to identify the object;
- 13 (i) direct a person who is or appears to be in control of any
 14 goods, vehicle, package or container to label the goods,
 15 vehicle, package or container;
- 16 (j) direct a person who is or appears to be in control of an
 17 object to keep possession of that object until further
 18 directed by the inspector;
- 19 (k) direct a person who is or appears to be in control of an
 20 object to leave that object at a specified place until
 21 directed by the inspector.

22 218. Seizure of thing relevant to an offence

- 23 (1) This section does not authorise the seizure of Aboriginal
 24 ancestral remains.
- 25 (2) If an inspector when exercising a power under this Division
 26 finds a thing relevant to an offence, the inspector may, subject
 27 to subsection (3) seize the thing.
- 28 (3) The inspector may seize the thing only if the inspector
 29 reasonably suspects any of the following —
- 30 (a) that the thing has been unlawfully obtained;
- 31 (b) that possession of the thing at that time and place by the
 32 person in possession of it is unlawful;

- 1 (c) that it is necessary to seize the thing for any of the
2 following purposes —
- 3 (i) to prevent it from being concealed, damaged,
4 destroyed, interfered with or lost;
- 5 (ii) to preserve its evidentiary value;
- 6 (iii) to prevent it from being used in the commission
7 of another offence.
- 8 (4) The CI Act sections 147 to 151 apply, with all necessary
9 changes, to and in relation to —
- 10 (a) the seizure of a thing under this section; and
11 (b) a thing that may be seized under this section; and
12 (c) a thing seized under this section.
- 13 (5) The form prescribed for the CI Act section 147(1), as applied by
14 subsection (4), may be adapted as necessary for the purposes of
15 this section.

16 **219. Security of seized things**

- 17 (1) If under section 218 or in the exercise of powers under the CI
18 Act, an inspector seizes a thing, the inspector is to take
19 reasonable steps to ensure that the thing is kept in a secure
20 manner.
- 21 (2) A person must not tamper or interfere with a thing seized under
22 section 218 or in the exercise of powers under the CI Act
23 without the approval of an inspector.
- 24 Penalty for this subsection: a fine of \$10 000.

25 **220. Dealing with seized things**

- 26 (1) In this section —
27 *deal with* includes to preserve, to treat, to sell, to give away, to
28 use and to destroy.

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- 1 (2) This section does not apply if the thing seized is an Aboriginal
2 object except to the extent that it allows the thing seized to be
3 preserved.
- 4 (3) If under section 218 or in the exercise of powers under the
5 CI Act, an inspector seizes a thing, and in the opinion of the
6 inspector, the thing is likely to deteriorate if no action is taken to
7 deal with it, the inspector may deal with the thing in accordance
8 with the directions of the CEO.
- 9 (4) If a thing is sold under subsection (3) the proceeds of the sale,
10 after the deduction of expenses incidental to the sale —
- 11 (a) if subsection (5) applies — are to be paid to the person
12 entitled to possession of the thing before it was seized;
13 or
- 14 (b) otherwise — are to be credited to the Consolidated
15 Account.
- 16 (5) This subsection applies if —
- 17 (a) under section 218 or in the exercise of powers under the
18 CI Act a thing is seized in connection with an offence;
19 and
- 20 (b) the thing is sold under subsection (3); and
- 21 (c) the decision is subsequently made not to commence a
22 prosecution in respect of the offence, or if, after the
23 prosecution has been completed, no person is convicted
24 of the offence.

221. Dealing with Aboriginal ancestral remains

- 26 If an inspector when exercising a power under this Division
27 finds human remains that the inspector reasonably considers
28 may be Aboriginal ancestral remains the inspector is to —
- 29 (a) take reasonable steps to ensure that the human remains
30 are kept in a secure manner; and
- 31 (b) transfer them to the ACH Council to be dealt with under
32 Part 5 Division 2.

1 **222. Forensic examination**

2 (1) In this section —

3 *do a forensic examination*, on a sample, specimen or other
4 thing, means to do any or all of the following —

5 (a) to examine or operate it;

6 (b) to photograph, measure or otherwise make a record of it;

7 (c) to take an impression of it;

8 (d) to take samples of or from it;

9 (e) to do tests on it, or on any sample taken under
10 paragraph (d), for forensic purposes.

11 (2) If an inspector takes a sample or specimen under section 215(g)
12 the inspector may do a forensic examination on it or arrange for
13 a forensic examination to be done on it.

14 (3) If an inspector, when exercising a power under this Division,
15 finds a thing that may be seized under section 218, then whether
16 or not the inspector seizes the thing, the inspector may do a
17 forensic examination on it or arrange for a forensic examination
18 to be done on it.

19 (4) If it is reasonably necessary to do so in order to do a forensic
20 examination, the sample, specimen or thing may, unless the
21 thing seized is an Aboriginal object, be dismantled, damaged or
22 destroyed.

23 (5) The power in subsection (3) is not to be exercised in relation to
24 a thing that may contain information that is privileged, as
25 defined in the CI Act section 151(1), until under that section (as
26 applied by section 218(4) of this Act) —

27 (a) a decision is made that the information is not privileged;
28 or

29 (b) orders have been made to enable the power to be
30 exercised.

1

Division 4 — Entry warrants

2

223. Applying for entry warrant

3

- (1) An inspector may apply to a magistrate for an entry warrant authorising the entry of a place or vehicle for inspection purposes.

4

5

6

- (2) An inspector may apply for an entry warrant for a place or vehicle even if, under Division 3, an inspector may enter the place or vehicle without an entry warrant.

7

8

9

- (3) The application is to be made in accordance with section 224 and must include the prescribed information, if any.

10

11

224. Making an application

12

- (1) In this section —

13

application means an application under section 223;

14

remote communication means any way of communicating at a distance including by telephone, fax, email and radio.

15

16

- (2) A reference in this section to making an application includes a reference to giving information in support of an application.

17

18

- (3) An application is to be made in person before a magistrate unless —

19

20

(a) the warrant is needed urgently; and

21

(b) the applicant reasonably suspects that a magistrate is not available within a reasonable distance of the applicant.

22

23

- (4) If subsection (3)(a) and (b) apply —

24

(a) the application may be made to the magistrate by remote communication; and

25

26

(b) the magistrate may grant the application only if satisfied about the matters in subsection (3)(a) and (b).

27

28

- (5) An application is to be in writing unless —

29

(a) the application is made by remote communication; and

- 1 (b) it is not practicable to send the magistrate written
2 material.
- 3 (6) If subsection (5)(a) and (b) apply —
- 4 (a) the application may be made orally; and
- 5 (b) the magistrate is to make a written record of the
6 application and any information given in support of it.
- 7 (7) An application must be made on oath unless —
- 8 (a) the application is made by remote communication; and
- 9 (b) it is not practicable for the magistrate to administer an
10 oath to the applicant.
- 11 (8) If subsection (7)(a) and (b) apply —
- 12 (a) the application may be made in an unsworn form; and
- 13 (b) if the magistrate issues an entry warrant, the applicant
14 must as soon as is practicable send the magistrate an
15 affidavit verifying the application and any information
16 given in support of it.
- 17 **225. Further provisions relating to an application for entry**
18 **warrant**
- 19 (1) If, on an application made by remote communication under
20 section 224 a magistrate issues an entry warrant, the magistrate
21 is to, if practicable, send a copy of the original warrant to the
22 applicant by remote communication, but otherwise —
- 23 (a) the magistrate is to send the applicant by remote
24 communication any information that must be set out in
25 the warrant; and
- 26 (b) the applicant must complete a form of warrant with the
27 information received and give the magistrate a copy of
28 the form as soon as practicable after doing so; and
- 29 (c) the magistrate is to attach the copy of the form to the
30 original warrant and any affidavit received from the
31 applicant and make them available for collection by the
32 applicant.

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1 (2) The copy of the original warrant sent, or the form of the warrant
2 completed, as the case may be, under subsection (1) has the
3 same force as the original warrant.

4 (3) If an applicant contravenes section 224(8)(b) or
5 subsection (1)(b), any evidence obtained under the entry warrant
6 is not admissible in proceedings in a court.

7 226. Issuing entry warrant

8 (1) A magistrate may issue an entry warrant only if satisfied that it
9 is necessary for an inspector to enter a place or vehicle for
10 inspection purposes.

11 (2) An entry warrant is to contain the following information —

12 (a) a reasonably particular description of the place or
13 vehicle to which it relates;

14 (b) a reasonably particular description of the inspection
15 purpose for which entry to the place or vehicle is
16 required;

17 (c) the period, not exceeding 30 days, during which it may
18 be executed;

19 (d) the name of the magistrate who issued it;

20 (e) the date and time when it was issued.

21 (3) If a magistrate refuses to issue an entry warrant, the magistrate
22 must record on the application the fact of, the date and time of,
23 and the reasons for, the refusal.

24 227. Effect of entry warrant

25 (1) An entry warrant has effect according to its content and this
26 section.

27 (2) An entry warrant comes into force when it is issued by the
28 magistrate.

- 1 (3) An entry warrant authorises the inspector executing the
2 warrant —
3 (a) to enter the place or vehicle described in the warrant;
4 and
5 (b) to exercise the powers conferred by Division 3.

6 **228. Execution of entry warrant**

- 7 (1) An entry warrant may be executed by the inspector to whom it
8 is issued or by any other inspector.
9 (2) An inspector executing a warrant must, at the reasonable request
10 of a person apparently in charge of the place or vehicle, produce
11 the warrant.

12 **Division 5 — Other provisions**

13 **229. Time and place for compliance with direction**

14 An inspector may specify the date and time when, and place
15 where, a direction given under this Act must be complied with.

16 **230. Direction may be given orally or in writing**

- 17 (1) A direction under this Act may be given by an inspector orally
18 or in writing.
19 (2) A direction that is given orally is to be confirmed in writing
20 within 5 business days after it is given, unless within that period
21 it is complied with or cancelled.
22 (3) Failure to comply with subsection (2) does not invalidate the
23 direction.

24 **231. Exercise of power may be recorded**

25 An inspector may record the exercise of a power under this Act,
26 including by making an audio-visual recording.

Aboriginal Cultural Heritage Bill 2020

Part 11 Securing compliance

Division 5 Other provisions

s. 232

1 **232. Assistance to exercise powers**

2 (1) An inspector exercising a power under this Act may authorise as
3 many other persons to assist in exercising the power as are
4 reasonably necessary in the circumstances.

5 (2) A person who under subsection (1) is authorised by an inspector
6 to assist in exercising a power is to obey any lawful and
7 reasonable direction given to the person by the inspector when
8 assisting in exercising the power.

9 (3) For the purposes of section 276, a person who assists in
10 exercising a power under this Act having been authorised by an
11 inspector to do so is taken to be performing a function under
12 this Act.

13 (4) The protection from liability given to a person because of the
14 operation of subsection (3) does not extend to anything done or
15 omitted to be done by the person in contravention of a lawful
16 and reasonable direction referred to in subsection (2).

17 **233. Use of force**

18 (1) When exercising a power under this Act an inspector, and any
19 person assisting an inspector, may use any force against any
20 person or thing that is reasonably necessary in the
21 circumstances —

22 (a) to exercise the power; and

23 (b) to overcome any resistance to exercising the power that
24 is offered, or that the inspector reasonably suspects will
25 be offered, by any person.

26 (2) However, if the use of force is likely to cause significant
27 damage to property, an inspector or person assisting an
28 inspector is not entitled to use force unless the CEO has, in the
29 particular case, given the inspector prior written authorisation to
30 do so.

31 (3) Any use of force under this section against a person is subject to
32 *The Criminal Code* Chapter XXVI.

1 **234. Evidence obtained improperly**

- 2 (1) This section applies if, in the purported exercise of a power
3 conferred by this Act or by an entry warrant issued or
4 purportedly issued under this Act —
- 5 (a) a thing relevant to an offence is seized or obtained; and
6 (b) a requirement of this Act in relation to exercising the
7 power or issuing the entry warrant, including a power
8 that arises before or after the exercise of the power or
9 the issue of the entry warrant, is contravened.
- 10 (2) Any evidence derived from a thing seized or obtained or from
11 the exercise of the power is not admissible in any criminal
12 proceeding against a person in court unless —
- 13 (a) the person does not object to the admission of the
14 evidence; or
15 (b) the court decides otherwise under subsection (3).
- 16 (3) The court may nevertheless decide to admit the evidence if it is
17 satisfied that the desirability of admitting the evidence
18 outweighs the undesirability of admitting the evidence.
- 19 (4) In making a decision under subsection (3) the court is to take
20 into account each of the following —
- 21 (a) any objection to the evidence being admitted by the
22 person against whom the evidence may be given;
23 (b) the seriousness of the offence in respect of which the
24 evidence is relevant;
25 (c) the seriousness of any contravention of this Act in
26 obtaining the evidence;
27 (d) whether any contravention of this Act in obtaining the
28 evidence —
29 (i) was intentional or reckless; or
30 (ii) arose from an honest and reasonable mistake of
31 fact;
32 (e) the probative value of the evidence;

Aboriginal Cultural Heritage Bill 2020

Part 11 Securing compliance

Division 5 Other provisions

s. 235

1 (f) any other matter the court thinks fit.

2 (5) The probative value of the evidence does not by itself justify its
3 admission.

235. Compliance with directions: offence

5 (1) A person must not contravene a direction given to the person by
6 an inspector under this Act.

7 Penalty for this subsection: a fine of \$10 000.

8 (2) It is a defence to a charge of an offence under subsection (1) to
9 prove that the person charged had a reasonable excuse.

236. Obstruction of inspector: offence

11 A person must not obstruct an inspector or a person assisting an
12 inspector in the exercise or attempted exercise of a power under
13 this Act.

14 Penalty: a fine of \$20 000.

237. Self-incrimination not an excuse

16 (1) An individual is not excused from complying with a direction
17 under this Act to provide information or answer questions, or to
18 produce any record or thing, on the ground that the information,
19 answer, record or thing might incriminate the individual or
20 make the individual liable to a penalty.

21 (2) However, any information or answer provided, or document or
22 thing produced, by an individual in compliance with a direction
23 under this Act is not admissible as evidence in any proceedings
24 against the individual other than proceedings for perjury or an
25 offence against section 275.

238. Orders for forfeiture or disposal of seized things

27 (1) In this section —

28 *seized thing* means a thing seized —

29 (a) under section 218; or

1 (b) under the CI Act in the exercise of powers in respect of
2 an offence under this Act.

3 (2) This section does not apply if the seized thing is an Aboriginal
4 object except to the extent that it allows the seized thing to be
5 forfeited to the State to be dealt with in accordance with Part 5.

6 (3) A court that convicts a person of an offence under this Act may
7 make an order for the forfeiture to the State, or the destruction
8 or disposal, of a seized thing if the court is satisfied that that
9 thing was the subject of, used in, or otherwise involved in, the
10 commission of the offence.

11 **239. Application of *Criminal and Found Property Disposal***
12 ***Act 2006***

13 The *Criminal and Found Property Disposal Act 2006* applies to
14 and in respect of —

15 (a) any thing seized under section 218 unless the thing is
16 dealt with under section 220; and

17 (b) any thing forfeited under section 238.

Aboriginal Cultural Heritage Bill 2020**Part 12** Legal proceedings**Division 1** General provisions relating to offences**s. 240**

1 **Part 12 — Legal proceedings**2 **Division 1 — General provisions relating to offences**3 **240. Who may commence proceedings for simple offence**4 (1) A prosecution of a simple offence under this Act, or in respect
5 of any other matter arising under this Act, may only be
6 commenced by the CEO or by a person authorised by the CEO
7 to do so.8 (2) Subsection (1) does not limit the ability of a person to
9 commence or conduct the prosecution of an offence if the
10 person has authority at law to do so.11 **241. Time limit for prosecution of simple offence**12 (1) A prosecution of a simple offence under this Act must be
13 commenced within 6 years after the date on which the offence
14 was allegedly committed.15 (2) However, if a prosecution notice alleging an offence specifies
16 the date on which evidence of the alleged offence first came to
17 the attention of a person who commences the prosecution —18 (a) the prosecution may be commenced within 2 years after
19 that date; and20 (b) the prosecution notice need not contain particulars of the
21 date on which the offence is alleged to have been
22 committed.23 (3) The date on which evidence of the alleged offence first came to
24 the attention of the person who commenced the prosecution is,
25 in the absence of evidence to the contrary, the date specified in
26 the prosecution notice.

1 **Division 2 — Additional powers available to the Courts**

2 **242. Court may order costs and expenses**

3 Without affecting any other power of a court to award costs, a
4 court that hears proceedings for an offence under this Act has
5 power to make the orders that it thinks fit in respect of the costs
6 and expenses of and incidental to the examination, seizure,
7 detention, storage, analysis, destruction or other disposition of
8 anything the subject of those proceedings.

9 **243. Court may order forfeiture**

10 A court that convicts a person of an offence under this Act may,
11 in addition to any penalty imposed or order made in respect of
12 the conviction, order the forfeiture to the State of anything that
13 was used in the commission of the offence.

14 **Division 3 — Criminal liability of employers, body corporate**
15 **officers and others**

16 **244. Term used: officer**

17 In this Division —
18 *officer*, in relation to a body corporate, has the meaning given in
19 the *Corporations Act 2001* (Commonwealth) section 9.

20 **245. Liability of employer for offences by employee**

21 (1) If an employee contravenes any provision of this Act in the
22 course of their employment, the employer is taken to have
23 contravened the same provision whether or not the employee
24 contravened the provision —

25 (a) without the employer's authority; or

26 (b) contrary to the employer's orders or instructions.

27 (2) In proceedings against an employer for such a contravention, it
28 is a defence to prove that the employer took all reasonable steps
29 to prevent the commission of the offence by the employee.

Aboriginal Cultural Heritage Bill 2020**Part 12** Legal proceedings**Division 3** Criminal liability of employers, body corporate officers and others**s. 246**

- 1 (3) In determining whether things done or omitted to be done by the
 2 employer constituted reasonable steps, a court must have regard
 3 to —
- 4 (a) what the employer knew, or ought to have known, about
 5 the contravention; and
- 6 (b) whether the employer could, by the exercise of due
 7 diligence, have prevented the contravention; and
- 8 (c) any other relevant matter.
- 9 (4) An employer may be proceeded against and convicted under a
 10 provision of this Act in accordance with this section whether or
 11 not the employee has been proceeded against or convicted under
 12 that provision.

246. Liability of officers for offence by body corporate

- 13 (1) This section applies to an offence under a provision of this Act
 14 listed in the Table.
 15

Table

s. 50	s. 51(1)
s. 55(1)	s. 58
s. 59(1)	s. 61(1)
s. 62(1)	s. 83
s. 84(1)	s. 85
s. 86	s. 158(1) and (2)
s. 178(1) and (2)	s. 183(1) and (2)
s. 189(1) and (2)	s. 199(1) and (2)
s. 275(1)	s. 277(2)

- 1 (2) If a body corporate is guilty of an offence to which this section
2 applies, an officer of the body corporate is also guilty of the
3 offence if the officer failed to take all reasonable steps to
4 prevent the commission of the offence by the body corporate.
- 5 (3) In determining whether things done or omitted to be done by the
6 officer constitute reasonable steps, a court must have regard
7 to —
- 8 (a) what the officer knew, or ought to have known, about
9 the commission of the offence by the body corporate;
10 and
- 11 (b) whether the officer was in a position to influence the
12 conduct of the body corporate in relation to the
13 commission of the offence; and
- 14 (c) any other relevant matter.

15 **247. Further provisions relating to liability of officers of body**
16 **corporate**

- 17 (1) Section 246 does not affect the liability of a body corporate for
18 any offence.
- 19 (2) An officer of a body corporate may be charged with, and
20 convicted of, an offence in accordance with section 246 whether
21 or not the body corporate is charged with, or convicted of, the
22 principal offence committed by the body corporate.
- 23 (3) If an officer of a body corporate who is charged with an offence
24 in accordance with section 246 claims that the body corporate
25 would have a defence if it were charged with the offence —
- 26 (a) the onus of proving the defence is on the officer; and
27 (b) the standard of proof required is the standard that would
28 apply to the body corporate in relation to the defence.
- 29 (4) Subsection (3) does not limit any other defence available to the
30 officer.

Aboriginal Cultural Heritage Bill 2020**Part 12** Legal proceedings**Division 3** Criminal liability of employers, body corporate officers and others**s. 248**

248. Liability of employees and agents

It is not a defence to a charge of an offence under this Act that the accused person was, at the time of the commission of the offence, an employee or agent of another person.

249. Liability of partners

(1) In this section —

offence means an offence under this Act committed or alleged to have been committed in the course of the activities of a partnership.

(2) If an ACH permit is granted to a partner in respect of the activities of a partnership, each partner in the partnership has the same rights and duties as the holder of the permit, whether or not the partner is named in the permit.

(3) If an ACH management plan is approved or authorised in respect of the activities of a partnership, each partner in the partnership has the same rights and duties as a party to the plan, whether or not the partner is named in the plan.

(4) If a person (*partner A*) who is a partner in a partnership is charged with an offence, every other person who was a partner in the partnership at the time of the alleged offence may also be charged with the offence.

(5) If a person (*partner B*) is charged as permitted by subsection (4) and partner A is convicted of the offence, partner B is to be taken to have also committed the offence, subject to subsection (8).

(6) If a person (*partner C*) who is a partner in a partnership is alleged to have committed an offence then, although partner C is not charged with the offence, every other person who was a partner in the partnership at the time the offence was committed may be charged with the offence.

(7) If a person (*partner D*) is charged as permitted by subsection (6) and it is proved that partner C committed the offence, partner D

1 is to be taken to have also committed the offence, subject to
2 subsection (8).

3 (8) If under this section a person is charged with an offence it is a
4 defence to prove that —

5 (a) the offence was committed without the person's consent
6 or connivance; and

7 (b) the person took all the measures to prevent the
8 commission of the offence that the person could
9 reasonably be expected to have taken having regard to
10 the person's functions and to all the circumstances.

11 **Division 4 — Evidentiary provisions**

12 **250. Term used: specified**

13 In this Division —

14 *specified*, in relation to a certificate, prosecution notice or
15 indictment, means specified in the certificate, prosecution notice
16 or indictment, as the case requires.

17 **251. Application of Division**

18 (1) This Division applies for the purpose of proceedings for an
19 offence under this Act.

20 (2) A provision of this Division that provides for a matter to be
21 taken to be proved applies only in the absence of proof to the
22 contrary.

23 (3) This Division is in addition to and does not affect the operation
24 of the *Evidence Act 1906*.

25 **252. Certain matters taken to be proved if alleged in prosecution 26 notice or indictment**

27 An allegation in a prosecution notice or indictment of any
28 matter listed in the Table is taken to be proved.

Aboriginal Cultural Heritage Bill 2020

Part 12 Legal proceedings

Division 4 Evidentiary provisions

s. 253

1

Table

Item	Matter
1.	That the person who commenced the proceeding is authorised to do so
2.	If the name of the accused is the name given by the alleged offender at the time of, or immediately following, the occurrence giving rise to the offence, the accused is the alleged offender
3.	That a specified act occurred on land of a specified description
4.	That on a specified day or during a specified period a specified person was the landholder of specified land
5.	That, on proof of a specified act being done by a specified person, the act was done by the person for a specified purpose or with a specified intent or knowledge
6.	That a document purporting to have been signed or executed, as is relevant, by the Minister, the CEO, an inspector or the ACH Council was signed, or executed, as is relevant, by a person who at the specified time was the Minister, the CEO, an inspector or a person authorised to sign or execute the document on behalf of the ACH Council, as the case requires

2 **253. Certain matters taken to be proved if stated in certificate**

3 (1) In this section —

4 ***authorised person*** means a person designated under
5 subsection (2) to be an authorised person.

- 1 (2) The Minister may by notice published in the *Gazette* designate a
 2 person to be an authorised person for the purposes of this
 3 section.
- 4 (3) Production of a certificate purporting to be signed by the CEO
 5 and stating any of the matters listed in the Table is, without
 6 proof of the CEO's signature, evidence of the facts stated in the
 7 certificate.

8 **Table**

Item	Matter
1.	That on a specified day or during a specified period a person was or was not — (a) the holder of an ACH permit; or (b) a party to an approved or authorised ACH management plan; or (c) a person to whom a Part 10 order had been given
2.	That on a specified day or during a specified period an instrument was or was not in effect
3.	That on a specified day or during a specified period a specified instrument was subject to a specified condition
4.	That on a specified day or during a specified period a Part 10 order contained a specified direction
5.	That on a specified day or during a specified period a specified person was or was not authorised to carry out a specified activity under an instrument

Aboriginal Cultural Heritage Bill 2020

Part 12 Legal proceedings

Division 4 Evidentiary provisions

s. 253

Item	Matter
6.	That on a specified day or during a specified period a specified person was appointed as a local ACH service for a specified area
7.	That on a specified day or during a specified period a person was a native title party for a specified area
8.	That on a specified day or during a specified period a body was a native title representative body for a specified area
9.	That on a specified day or during a specified period a person was an inspector or a person assisting an inspector
10.	That on a specified day or during a specified period a specified area was or was not a protected area or part of a protected area
11.	That on a specified day or during a specified period specified Aboriginal cultural heritage was or was not of State significance
12.	That on a specified day or during a specified period a person held a specified office

- 1 (4) Production of a certificate purporting to be signed by an
2 authorised person and stating any of the matters listed in the
3 Table is, without proof of the authorised person's signature,
4 evidence of the facts stated in the certificate.

1

Table

Item	Matter
1.	That on a specified day or during a specified period a specified place was an Aboriginal place
2.	That on a specified day or during a specified period a specified thing was an Aboriginal object
3.	That on a specified day or during a specified period a specified thing was a secret or sacred Aboriginal object
4.	That on a specified day or during a specified period specified human remains were Aboriginal ancestral remains
5.	That on a specified day or during a specified period a specified person was or was not a custodian of Aboriginal ancestral remains
6.	That on a specified day or during a specified period a specified person was or was not a custodian of a specified secret or sacred object
7.	That on a specified day or during a specified period a person was or was not a knowledge holder for a specified area

2

(5) Subsections (3) and (4) only apply if —

3

(a) at least 28 days before the hearing, at which the certificate is proposed to be produced, notice in writing has been given to the accused of the prosecutor's intention to produce the certificate; and

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(b) the accused has not within 14 days after receipt of the notice delivered to the prosecutor a notice requiring that

Aboriginal Cultural Heritage Bill 2020**Part 12** Legal proceedings**Division 4** Evidentiary provisions**s. 254**

1 the evidence of the CEO or the authorised person be
2 given in person.

3 (6) The court before which proceedings are held may, in addition to
4 making any other order as to costs, make such order as it thinks
5 fit as to the expenses and remuneration to be paid for the
6 services of the CEO or the authorised person.

7 **254. Evidence in relation to documents**

8 (1) A document certified by the CEO to be a true copy of an
9 instrument as at a specified date —

10 (a) is taken to be proved to be a copy of the original
11 document as at that date; and

12 (b) is admissible in the same way, and has the same
13 evidentiary value, as the original.

14 (2) A document certified by the CEO to be a true copy of the ACH
15 Directory, or any part of the Directory, as at a specified date is
16 proof of the contents of the Directory, or that part of the
17 Directory, as at that date.

18 (3) A document certified by the CEO to be a true copy of specified
19 guidelines as at a specified date or during a specified period is
20 proof of the contents of the guidelines as at that date or during
21 that period.

22 (4) A document purporting to have been signed by a delegate of the
23 Minister, the ACH Council or the CEO is taken to have been
24 signed by a person who at the time was such a delegate and was
25 authorised to sign it.

26 (5) A copy of a document or record obtained by an inspector or
27 Aboriginal inspector exercising a power under Part 11
28 Division 3 is admissible in evidence if it is certified by the
29 inspector or Aboriginal inspector as having been obtained in the
30 exercise of that power.

1 **255. Onus of proving certain matters**

2 In any proceedings for an offence, the onus of proving a matter
3 listed in the Table lies with the person asserting the matter.

4

Table

Item	Matter
1.	That a person has undertaken consultation in accordance with the consultation guidelines
2.	That conduct was engaged in with lawful excuse or reasonable excuse

1 **Part 13 — Review by State Administrative Tribunal**

2 **Division 1 — Preliminary**

3 **256. When this Part applies**

4 This Part applies where jurisdiction is conferred on the State
5 Administrative Tribunal in relation to the review of a decision
6 under Division 2.

7 **257. Terms used**

8 In this Part —

9 *affected person*, in relation to a reviewable decision, has the
10 meaning given in section 258(1)(b);

11 *reviewable decision* has the meaning given in section 258(1)(a).

12 **Division 2 — Reviews by State Administrative Tribunal**

13 **258. Review of certain decisions**

14 (1) The Table to this section sets out —

15 (a) decisions made under this Act that are reviewable in
16 accordance with this Part (*reviewable decisions*); and

17 (b) who is eligible to apply for a review of a reviewable
18 decision (the *affected person*).

19 (2) An affected person may apply to the State Administrative
20 Tribunal for a review of a reviewable decision.

21 (3) The application must be made within 28 days after the day on
22 which notice of the decision is given.

23 (4) Despite the *State Administrative Tribunal Act 2004* section 61,
24 the Tribunal may —

25 (a) order that the hearing of a review or any part of the
26 hearing be held in private; and

27 (b) specify the persons who may be present at the hearing.

Aboriginal Cultural Heritage Bill 2020

Review by State Administrative Tribunal

Part 13

Reviews by State Administrative Tribunal

Division 2**s. 258**

- 1 (5) The Tribunal's power to make an order under subsection (4) is
2 exercisable by —
- 3 (a) a legally qualified member; or
- 4 (b) the presiding member if the Tribunal as constituted for a
5 hearing does not consist of or include a legally qualified
6 member.
- 7 (6) The Tribunal may make an order under subsection (4) if the
8 Tribunal considers it is necessary to do so.

Table

Item	Reviewable decisions	Person affected
1.	A decision of the Minister under section 147(1) to authorise or refuse to authorise an ACH management plan	<p>The applicant for the ACH management plan to be approved under section 131(1) if the plan is found to relate to Aboriginal heritage of State significance</p> <p>The applicant for the ACH management plan to be authorised under section 140(1)</p> <p>A person who is, or would be, an Aboriginal party in relation to the ACH management plan</p>

Aboriginal Cultural Heritage Bill 2020**Part 13** Review by State Administrative Tribunal**Division 2** Reviews by State Administrative Tribunal**s. 258**

Item	Reviewable decisions	Person affected
2.	A decision by the Minister under section 147(1) (as read with section 150) to authorise or refuse to authorise an amended ACH management plan	A party to the ACH management plan
3.	A decision of the Minister under section 149(1) to cancel or suspend an ACH management plan	A party to the ACH management plan
4.	A decision of the Minister under section 176(1) to give a stop activity order	The person to whom the stop activity order was given
5.	A decision of the Minister under section 181(1) to give a prohibition order	The person to whom the prohibition order was given
6.	A decision of the Minister under section 184(1) to extend the duration of a prohibition order	The person to whom the prohibition order was given
7.	A decision of the Minister under section 187(1) to give a remediation order	The person to whom the remediation order was given

Aboriginal Cultural Heritage Bill 2020

Review by State Administrative Tribunal

Part 13

Reviews by State Administrative Tribunal

Division 2**s. 259**

Item	Reviewable decisions	Person affected
8.	A decision by the Minister under section 197(1)(a) to amend a prohibition order or a remediation order	The person to whom the order was given
9.	A decision by the Minister under section 197(1)(b) to cancel a Part 10 order	The person to whom the order was given

1 **259. Notice of reviewable decisions to be given**

- 2 (1) The decision maker is to give written notice of a reviewable
3 decision within 14 days after the decision is made to each
4 person who is an affected person in relation to the decision.
- 5 (2) The notice is to contain the following —
- 6 (a) a description of the decision;
- 7 (b) short particulars of the reasons for the decision;
- 8 (c) a statement that an affected person may have a right to a
9 review of the decision under section 258.

Aboriginal Cultural Heritage Bill 2020**Part 14** Miscellaneous**Division 1** Notice of decisions, instruments, and other information**s. 260**

1

Part 14 — Miscellaneous

2

**Division 1 — Notice of decisions, instruments, and other
information**

3

4

260. Public notice

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Where under this Act public notice of a decision, instrument or other information is to be given, notice of the decision, instrument or other information is to be —

6

7

8

(a) published on a website maintained by the ACH Council;
and

9

10

(b) if so prescribed — a copy of the decision, instrument, or other information is to be published in accordance with the regulations.

11

12

13

261. How notice may be given

14

(1) Notice of a decision, instrument or other information under this Act may be given to a person by —

15

16

(a) giving it to the person personally; or

17

(b) leaving it at the person's place of residence or business;
or

18

19

(c) sending it by prepaid post (including document exchange) addressed to the person —

20

21

(i) in accordance with the *Interpretation Act 1984* section 75(1); or

22

23

(ii) at an address appearing on recent correspondence addressed by or on behalf of the person to the ACH Council, the CEO or the Minister or otherwise notified to the Council, CEO or the Minister or published by the person; or

24

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(iii) at an address shown in the rate record kept by a local government under the *Local Government Act 1995* as the address for the service of rate notices under that Act on that person;

29

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31

- 1 or
- 2 (d) faxing it or communicating it by electronic
- 3 communication, as defined in the *Electronic*
- 4 *Transactions Act 2011* section 5(1), to a number or
- 5 address provided by the person or appearing on recent
- 6 correspondence addressed by or on behalf of the person
- 7 to the ACH Council, the CEO or the Minister or
- 8 otherwise notified to the Council, the CEO or the
- 9 Minister or published by the person; or
- 10 (e) if so prescribed — publishing a copy of the notice in
- 11 accordance with the regulations; or
- 12 (f) communicating it in some other way agreed with the
- 13 person.
- 14 (2) The use of a particular method for giving notice to a person
- 15 does not prevent the giving of other notice or other documents
- 16 to the same person in a different way.
- 17 (3) Failure to properly give notice to one person does not affect
- 18 whether or not it was properly given to another person.

19 **262. Giving notice or documents to landholder or occupier of**

20 **land**

- 21 (1) Notice of a decision, instrument or other information under this
- 22 Act given to a person because the person is a landholder or an
- 23 occupier of land may be addressed to the person by the
- 24 description of “the landholder” or “the occupier” of the relevant
- 25 land, describing it, without further name or description.
- 26 (2) If there are 2 or more landholders or occupiers, notice or a
- 27 document is sufficiently given to all of them if it is given to one
- 28 of them, and is addressed to that one with the addition of the
- 29 words “and others” or “and another”, as the case requires.
- 30 (3) If notice is to be given to a person because the person is a
- 31 landholder, the notice or document may be given to the person
- 32 by addressing it to the landholder and giving it under
- 33 section 261 to the occupier, if any, of the land.

Aboriginal Cultural Heritage Bill 2020**Part 14** Miscellaneous**Division 1** Notice of decisions, instruments, and other information**s. 263**

- 1 (4) If notice is to be given to a person because the person is a
 2 landholder or occupier of land, the notice may be given to the
 3 person by addressing it to the person and affixing it to a
 4 conspicuous part of the land.
- 5 (5) Subsections (3) and (4) only apply if it is not reasonably
 6 practicable to give the notice or document in any of the ways
 7 provided for in section 261 and this Act does not otherwise state
 8 how the notice or document is to be given.

263. Giving certain notices

- 10 (1) If for any reason it is not reasonably practicable to give a notice
 11 under a section listed in the Table to this section to a person in
 12 accordance with section 261, the notice may be given by
 13 publishing a copy of the notice in the prescribed way.
- 14 (2) A notice given under subsection (1) —
 15 (a) may be directed to any number of —
 16 (i) landholders or occupiers of land; or
 17 (ii) knowledge holders of an area;
 18 and
 19 (b) is to be taken to be given to —
 20 (i) the landholders and occupiers of any land
 21 specified in the notice;
 22 (ii) the knowledge holders of an area specified in the
 23 notice.

Table

s. 68(1)(c)	s. 70(1)(b)(iii) or (iv)
s. 153(4)(c) and (d)	

264. Time when notice given

- 26 (1) Except where notice of a decision, instrument or other
 27 information under this Act is sent by post to an address outside

1 the State, given personally, or the contrary is proved, the notice
2 or document is taken to be given on the business day following
3 the day on which the notice or document was sent by post, faxed
4 or communicated to, or left for, the person to whom it was
5 addressed.

6 (2) Notice sent by post to an address within Australia but outside
7 the State is taken to be given on the 5th business day after the
8 day on which the notice or document was sent to the person to
9 whom it is addressed.

10 (3) Notice sent by post to an address outside Australia is taken to be
11 given on the 10th business day after the day on which the
12 document was sent to the person to whom it is addressed.

13 **265. Defects in notice**

14 Notice of a decision, instrument or other information under this
15 Act is not invalid only because of —

- 16 (a) a formal defect or irregularity in the notice unless the
17 defect or irregularity causes or is likely to cause serious
18 injustice; or
19 (b) a failure to use the correct name of the person to whom
20 the notice is given if the order sufficiently identifies the
21 person and is given to the person in accordance with this
22 Division and, where relevant, section 259.

23 **Division 2 — Regulations and guidelines**

24 **Subdivision 1 — Regulations**

25 **266. General power for regulations**

- 26 (1) The Governor may make regulations prescribing matters —
27 (a) required or permitted by this Act to be prescribed; or
28 (b) necessary or convenient to be prescribed for giving
29 effect to the purposes of this Act.

Aboriginal Cultural Heritage Bill 2020**Part 14** Miscellaneous**Division 2** Regulations and guidelines**s. 267**

- 1 (2) Without limiting subsection (1), regulations may be made in
2 relation to the following —
- 3 (a) the manner in which applications under this Act are to
4 be made;
- 5 (b) the verification of information or documentation,
6 including a requirement for a statutory declaration to be
7 made about a matter.
- 8 (3) The regulations may provide for offences against the regulations
9 and prescribe penalties for those offences not exceeding a fine
10 of \$10 000.

Subdivision 2 — Guidelines**267. Guidelines**

13 The ACH Council may, with the approval or on direction of the
14 Minister, prepare guidelines about the following —

- 15 (a) the carrying out of consultation for the purposes of this
16 Act;
- 17 (b) the identification of persons who are knowledge holders
18 for an area;
- 19 (c) the carrying out of a due diligence assessment for a
20 proposed activity;
- 21 (d) the factors to be considered in determining if Aboriginal
22 cultural heritage is of State significance.

268. Consultation on proposed guidelines

- 24 (1) The ACH Council is to give public notice of proposed
25 guidelines that the Council has prepared.
- 26 (2) The notice is to give —
- 27 (a) a brief description of the contents of the proposed
28 guidelines; and
- 29 (b) details of where and how a copy of the proposed
30 guidelines can be obtained or viewed; and

- 1 (c) an opportunity to make submissions to the ACH Council
2 within 28 days after the notice is given about any
3 provision in the proposed guidelines.
- 4 (3) The ACH Council is to inform the following persons that public
5 notice about proposed guidelines has been given under
6 subsection (1) —
- 7 (a) each local ACH service;
8 (b) each native title party for an area within the State;
9 (c) each native title representative body in the State;
10 (d) any public authority that the Council considers may
11 have an interest in the proposed guidelines;
12 (e) any peak industry body that the Council considers may
13 have an interest in the proposed guidelines;
14 (f) any other person the Council considers has an interest in
15 the guidelines.
- 16 (4) The ACH Council is to consider any submissions with respect
17 to the proposed guidelines and may modify the proposed
18 guidelines as it sees fit.

19 **269. Approval of Minister**

- 20 (1) The Minister may approve guidelines prepared by the ACH
21 Council with or without such modifications as the Minister
22 thinks fit.
- 23 (2) Guidelines have no force or effect until they are published in the
24 *Gazette*.

25 **270. Publishing approved guidelines**

- 26 The ACH Council is to cause a copy of any guidelines approved
27 by the Minister to be published in the *Gazette*.

Aboriginal Cultural Heritage Bill 2020

Part 14 Miscellaneous

Division 3 Miscellaneous provisions

s. 271

1 **271. Amending or repealing guidelines**

- 2 (1) Guidelines may be amended by amendments prepared by the
3 ACH Council with the approval of the Minister, or on a
4 direction of the Minister.
- 5 (2) Guidelines may be repealed by —
6 (a) subsequent guidelines; or
7 (b) an instrument of repeal —
8 (i) made by the ACH Council with the approval of
9 the Minister, or on a direction of the Minister;
10 and
11 (ii) approved by the Minister and published in the
12 *Gazette*.
- 13 (3) Sections 267, 268, 269 and 270 apply, with such modifications
14 as are necessary, to and in relation to an amendment as if the
15 amendment were guidelines.

16 **Division 3 — Miscellaneous provisions**17 **272. No contracting out**

- 18 (1) A term of a contract or other agreement that purports to do any
19 of the following is of no effect —
20 (a) exclude, limit or modify the operation of this Act;
21 (b) exclude, limit or modify any duty owed under this Act;
22 or
23 (c) transfer to another person any duty owed under this Act.
- 24 (2) A purported waiver of a right, remedy or benefit conferred on a
25 person under this Act is of no effect.

26 **273. Delegation by Minister**

- 27 (1) The Minister may delegate any power or duty of the Minister
28 under another section of this Act, other than any power or duty

- 1 under a section listed in the Table to this section, to any of the
 2 following —
- 3 (a) the ACH Council;
- 4 (b) the CEO;
- 5 (c) a person employed or engaged in the Department.
- 6 (2) A delegation must be in writing signed by the Minister.
- 7 (3) A person or body to whom or which a power or duty is
 8 delegated under this section cannot delegate that power or duty.
- 9 (4) A person or body exercising or performing a power or duty that
 10 has been delegated to the person or body under this section is
 11 taken to do so in accordance with the terms of the delegation
 12 unless the contrary is shown.
- 13 (5) This section does not limit the ability of the Minister to perform
 14 a function through an officer or agent.

15 **Table**

s. 24(1)	s. 29
s. 37(2)	s. 71(4) and (5)
s. 121(5)	s. 147(1)
s. 149(1)	s. 150
s. 176(1)	s. 181(1)
s. 184(1)	s. 187
s. 197(1)	

16 **274. Delegation by CEO**

- 17 (1) The CEO may delegate any power or duty of the CEO under
 18 another provision of this Act to a person employed or engaged
 19 in the Department.

Aboriginal Cultural Heritage Bill 2020

Part 14 Miscellaneous

Division 3 Miscellaneous provisions

s. 275

- 1 (2) A delegation must be in writing signed by the CEO.
- 2 (3) Notice of the delegation is to be published in the *Gazette*.
- 3 (4) A person to whom or which a power or duty is delegated under
4 this section cannot delegate that power or duty.
- 5 (5) A person exercising or performing a power or duty that has been
6 delegated to the person under this section is taken to do so in
7 accordance with the terms of the delegation unless the contrary
8 is shown.
- 9 (6) This section does not limit the ability of the CEO to perform a
10 function through an officer or agent.

275. Giving false or misleading information: offence

- 12 (1) A person must not do anything set out in subsection (2) —
- 13 (a) in, or in connection with, an application made or a
14 notice or other document given under this Act; or
- 15 (b) in compliance, or purported compliance, with a
16 requirement or request under this Act; or
- 17 (c) for any other purpose under this Act.
- 18 Penalty for this subsection: a fine of \$20 000.
- 19 (2) The things to which subsection (1) applies are as follows —
- 20 (a) making a statement knowing it to be false or misleading
21 in a material particular;
- 22 (b) omitting from a statement made anything without which
23 the statement is, to the person's knowledge, misleading
24 in a material particular;
- 25 (c) giving information that —
- 26 (i) the person knows is false or misleading in a
27 material particular; or
- 28 (ii) omits anything without which the information is,
29 to the person's knowledge, misleading in a
30 material particular.

1 **276. Protection from liability for wrongdoing**

- 2 (1) An action in tort does not lie against a person for anything that
3 the person has done, in good faith, in the performance or
4 purported performance of a function under this Act.
- 5 (2) The ACH Council and the State are also relieved of any liability
6 that either of them might otherwise have had for another person
7 having done anything as described in subsection (1).
- 8 (3) The protection given by this section applies even though the
9 thing done as described in subsection (1) may have been
10 capable of being done whether or not this Act had been enacted.
- 11 (4) In this section, a reference to the doing of anything includes a
12 reference to an omission to do anything.

13 **277. Confidentiality**

- 14 (1) A person who is or has been engaged in the performance of
15 functions under this Act must not, directly or indirectly, record,
16 disclose or make use of any information obtained in the course
17 of duty except —
- 18 (a) for the purpose of, or in connection with, performing a
19 function under this Act; or
- 20 (b) as required or allowed under this Act or another written
21 law; or
- 22 (c) for the purposes of any legal proceedings arising under
23 this Act; or
- 24 (d) with the written consent of the person to whom the
25 information relates; or
- 26 (e) in other circumstances prescribed for this subsection.
- 27 Penalty for this subsection: a fine of \$20 000.

Aboriginal Cultural Heritage Bill 2020**Part 14** Miscellaneous**Division 3** Miscellaneous provisions**s. 278**

1 (2) Information relating to trade processes, financial information, or
2 culturally sensitive information that has been disclosed under
3 subsection (1) for a particular purpose must not be used for any
4 other purpose by —

- 5 (a) the person to whom the information was disclosed; or
6 (b) any other person who gains access to the information
7 (whether properly or improperly and whether directly or
8 indirectly) as a result of that disclosure.

9 Penalty for this subsection: a fine of \$20 000.

10 (3) Subsection (1) does not extend to the recording, disclosure or
11 use of —

- 12 (a) statistical or other information that could not reasonably
13 be expected to lead to the identification of any person to
14 whom it relates; or
15 (b) information that is already in the public domain.

16 **278. CEO may approve forms**

17 The CEO may approve forms for use under this Act.

18 **279. Laying documents before House of Parliament not sitting**

19 (1) This section applies if —

- 20 (a) a provision of this Act requires the Minister to cause a
21 document to be laid before each House of Parliament, or
22 dealt with under this section, within a period; and
23 (b) at the beginning of the period, a House of Parliament is
24 not sitting; and
25 (c) in the Minister's opinion, the House will not sit before
26 the end of the period.

27 (2) The Minister must send the document to the Clerk of the House
28 before the end of the period.

29 (3) When the document is sent to the Clerk of the House it is taken
30 to have been laid before the House.

- 1 (4) The laying of the document that is taken to have occurred under
2 subsection (3) must be recorded in the Minutes, or Votes and
3 Proceedings, of the House on the first sitting day of the House
4 after the Clerk receives the document.

5 **280. Review of Act**

- 6 (1) The Minister must review the operation and effectiveness of this
7 Act, and prepare a report based on the review as soon as
8 practicable —
9 (a) after the 5th anniversary of the day on which this section
10 comes into operation; and
11 (b) after that, at intervals of not more than 5 years.
- 12 (2) The Minister must cause each report to be laid before each
13 House of Parliament, or dealt with under section 279, as soon as
14 practicable after it is prepared, but not later than 12 months after
15 the requirement to carry out the review arose.

Aboriginal Cultural Heritage Bill 2020**Part 15** Repeals and transitional matters**Division 1** Repeals**s. 281**1 **Part 15 — Repeals and transitional matters**2 **Division 1 — Repeals**3 **281. *Aboriginal Heritage Act 1972* repealed**4 The *Aboriginal Heritage Act 1972* is repealed.5 **282. *Aboriginal Heritage Regulations 1974* repealed**6 The *Aboriginal Heritage Regulations 1974* are repealed.7 **Division 2 — Transitional provisions arising from the**
8 **enactment of the *Aboriginal Cultural Heritage Act 2020***9 **Subdivision 1 — Terms used**10 **283. Terms used**

11 In this Division —

12 ***ACMC*** means the Aboriginal Cultural Material Committee —

13 (a) established under the AH Act section 28(1); and

14 (b) as in existence immediately before repeal day;

15 ***AH Act*** means the *Aboriginal Heritage Act 1972*;16 ***AH Act approval*** means —17 (a) an authorisation given under the AH Act section 16(2)
18 before repeal day; or19 (b) an approval given under the *Aboriginal Heritage*
20 *Regulations 1974* regulation 7 before repeal day; or21 (c) a consent given under the *Aboriginal Heritage*
22 *Regulations 1974* regulation 10 before repeal day;23 ***AH Act section 18 consent*** means a consent given under the
24 AH Act section 18 before repeal day;25 ***assent day*** means the day on which Part 1 comes into operation;

1 *commencement day* means the day on which Part 7 Division 2
2 comes into operation;

3 *no longer in force* —

4 (a) in relation to an AH Act section 18 consent — means
5 the section 18 consent is no longer in force in
6 accordance with section 285; or

7 (b) in relation to an AH Act approval — means the approval
8 is no longer in force in accordance with section 286;

9 *repeal day* means the day on which section 281 comes into
10 operation.

11 **Subdivision 2 — AH Act section 18 consents and AH Act approvals**

12 **284. AH Act section 18 consent and AHA Act approval continues**
13 **in force**

14 (1) Except as otherwise provided under this Part, on and after repeal
15 day —

16 (a) an AH Act section 18 consent continues to have effect in
17 accordance with its terms; and

18 (b) an AH Act approval continues to have effect in
19 accordance with its terms.

20 (2) Subsection (1)(a) does not apply to an AH Act section 18
21 consent that is no longer in force.

22 (3) Subsection (1)(b) does not apply to an AH Act approval that is
23 no longer in force.

24 **285. When AH Act section 18 consents are no longer in force**

25 (1) For the purposes of this Act, an AH Act section 18 consent is no
26 longer in force if —

27 (a) the consent has expired in accordance with its terms; or

28 (b) the use by the owner of the land the subject of the
29 consent for the purpose specified in the consent has been
30 completed; or

Aboriginal Cultural Heritage Bill 2020**Part 15** Repeals and transitional matters**Division 2** Transitional provisions arising from the enactment of the
Aboriginal Cultural Heritage Act 2020**s. 286**

- 1 (c) the owner of the land the subject of the consent no
2 longer exists or cannot be identified; or
- 3 (d) the owner of the land the subject of the consent has
4 voluntarily surrendered the consent to the Minister.

5 (2) If a term was defined in the AH Act immediately before
6 commencement day, it has the same meaning in subsection (1).

7 (3) The Minister may make a decision that an AH Act section 18
8 consent is no longer in force.

9 (4) Public notice is to be given of a decision of the Minister that an
10 AH Act section 18 consent is no longer in force.

286. When AH Act approvals are no longer in force

12 (1) For the purposes of this Act, an AH Act approval is no longer in
13 force if —

- 14 (a) the approval has expired in accordance with its terms; or
- 15 (b) the purpose for which the approval was given has been
16 completed or the activities to which the approval relates
17 have been completed; or
- 18 (c) the holder of the approval no longer exists or cannot be
19 identified; or
- 20 (d) the holder of the approval has voluntarily surrendered
21 the approval to the Minister.

22 (2) The Minister may make a decision that an AH Act approval is
23 no longer in force.

24 (3) Public notice is to be given of a decision of the Minister that an
25 AH Act approval is no longer in force.

- 1 **287. AH Act section 18 consents taken to be ACH management**
2 **plans for certain purposes only**
- 3 (1) On and after commencement day, an AH Act section 18 consent
4 is taken to be an ACH management plan that has been approved
5 under section 134(1) —
- 6 (a) in relation to protected area orders under Part 6 — for
7 the purposes of —
- 8 (i) sections 65(2)(e), 72(4)(c) and 74(3)(b); and
9 (ii) section 138;
10 and
- 11 (b) in relation to providing a defence to a charge of an
12 offence under Part 7 Division 2 — for the purposes of
13 section 87; and
- 14 (c) in relation to the ACH Directory under Part 9 — for the
15 purposes of sections 164(1)(c)(ii) and 169(b)(ii); and
- 16 (d) in relation to Part 10 orders — for the purposes of
17 section 176(1)(b)(i) and (ii); and
- 18 (e) in relation to securing compliance with this Act under
19 Part 11 — for the purposes of Part 11; and
- 20 (f) in relation to legal proceedings under Part 12 — for the
21 purposes of Part 12; and
- 22 (g) in relation to miscellaneous provisions under Part 14 —
23 for the purposes of Part 14.
- 24 (2) For the purposes of subsection (1)(a)(ii) —
- 25 (a) the owner of the AH Act section 18 consent is taken to
26 be the proponent for the activity to which the ACH
27 management plan relates; and
- 28 (b) the Aboriginal parties described in section 98 in relation
29 to an ACH management plan are taken to be the
30 Aboriginal parties to the ACH management plan.
- 31 (3) Subsection (1) does not apply to an AH Act section 18 consent
32 that is no longer in force.

Aboriginal Cultural Heritage Bill 2020**Part 15** Repeals and transitional matters**Division 2** Transitional provisions arising from the enactment of the
Aboriginal Cultural Heritage Act 2020**s. 288**

288. AH Act approvals taken to be ACH permits for certain purposes only

- (1) On and after commencement day, an AH Act approval is taken to be an ACH permit —
- (a) in relation to a protected area order under Part 6 — for the purposes of —
 - (i) sections 65(2)(d), 72(4)(c) and 74(3)(a); and
 - (ii) section 119(1)(a);
 and
 - (b) in relation to providing a defence to a charge of an offence under Part 7 Division 2 — for the purposes of section 87; and
 - (c) in relation to the ACH Directory under Part 9 — for the purposes of sections 164(1)(c)(i) and 169(b)(i); and
 - (d) in relation to Part 10 orders — for the purposes of section 176(1)(b)(i) and (ii); and
 - (e) in relation to securing compliance with this Act under Part 11 — for the purposes of Part 11; and
 - (f) in relation to legal proceedings under Part 12 — for the purposes of Part 12; and
 - (g) in relation to miscellaneous provisions under Part 14 — for the purposes of Part 14.
- (2) Subsection (1) does not apply to an AH Act approval that is no longer in force.

Subdivision 3 — Other matters**289. Protected areas under AH Act**

- (1) An order under the AH Act section 19(4), declaring an Aboriginal site to be a protected area, that is in force immediately before commencement day —
- (a) remains in force on and after that day as if it were a protected area order made under this Act; and

1 (b) may be amended or repealed under section 76.

2 (2) Despite subsection (1), on commencement day the exclusive
3 right, provided under the AH Act section 22(1), to the
4 occupation and use of every place that is declared to be a
5 protected area ceases to be vested in the Minister.

6 **290. Information and documents on former register transferred**
7 **to ACH Directory**

8 On commencement day, all of the information and documents
9 that were, immediately before that day, recorded in the register
10 maintained under the AH Act section 38 are to be transferred to
11 and included on the ACH Directory.

12 **291. ACMC abolished**

13 On repeal day —

- 14 (a) the ACMC is abolished; and
15 (b) a person who, immediately before that day, was a
16 member of the ACMC ceases to be a member; and
17 (c) the records of the ACMC are taken to be the records of
18 the ACH Council.

19 **292. Unfinished business**

20 (1) On and after repeal day, the Minister under the AH Act is to
21 continue in existence for the purposes of dealing with and
22 finalising any proceedings commenced by or against the ACMC
23 or the Minister before that day.

24 (2) Despite the repeal of the AH Act, while the Minister under the
25 AH Act continues in existence under subsection (1), the
26 Minister has the powers to do any act that the Minister considers
27 necessary or expedient to do for the purpose for which the
28 Minister is continued in existence.

Aboriginal Cultural Heritage Bill 2020

Part 15 Repeals and transitional matters

Division 3 Transitional regulations

s. 293

1 **293. Completion of things commenced**

2 Subject to section 292, anything commenced to be done by the
3 ACMC before repeal day may be continued by the ACH
4 Council, to the extent to which the doing of that thing is within
5 the functions of the Council.

6 **294. References to *Aboriginal Heritage Act 1972***

7 If a written law or document refers to the *Aboriginal Heritage*
8 *Act 1972* the reference is taken, where the context permits, to be
9 a reference to —

- 10 (a) after commencement day — the *Aboriginal Heritage*
11 *Act 1972* and the *Aboriginal Cultural Heritage*
12 *Act 2020*; or
13 (b) after repeal day — the *Aboriginal Cultural Heritage*
14 *Act 2020*.

15 **Division 3 — Transitional regulations**16 **295. Terms used**

17 In this Division —
18 *transitional matter* —

- 19 (a) means a matter of a transitional nature arising in
20 connection with the enactment of this Act, or the
21 amendment of another Act by this Act; and
22 (b) includes a saving or application matter;

23 *transitional regulations* means regulations made under
24 section 296.

25 **296. Transitional regulations**

- 26 (1) Regulations under this Act may prescribe anything required,
27 necessary or convenient to be prescribed in relation to a
28 transitional matter.

- 1 (2) Transitional regulations may provide that specified provisions
2 of this Act or another written law —
- 3 (a) do not apply to, or in relation to, a specified matter or
4 thing; or
- 5 (b) apply with specified modifications to, or in relation to,
6 any matter or thing.
- 7 (3) If transitional regulations provide that a state of affairs is to be
8 taken to have existed, or not to have existed, on and after a day
9 that is earlier than the day on which the transitional regulations
10 are published in the *Gazette* but not earlier than the day on
11 which this Act receives the Royal Assent, the regulations have
12 effect according to their terms.
- 13 (4) If transitional regulations contain a provision referred to in
14 subsection (3), the provision does not operate so as to —
- 15 (a) affect in a manner prejudicial to a person (other than the
16 State or an authority of the State) the rights of that
17 person existing before the regulations were published in
18 the *Gazette*; or
- 19 (b) impose liabilities on a person (other than the State or an
20 authority of the State) in respect of anything done or
21 omitted to be done before the regulations were published
22 in the *Gazette*.

23 **Division 4 — Miscellaneous**

24 **297. Interpretation Act 1984 not affected**

25 Except to the extent this Part or regulations made under
26 section 296 expressly provide differently, the *Interpretation*
27 *Act 1984* applies in relation to repeals effected by Division 1.

Aboriginal Cultural Heritage Bill 2020**Part 16** Amendments to other Acts**Division 1** Aboriginal Heritage Act 1972 amended**s. 298**

Part 16 — Amendments to other Acts**Division 1 — *Aboriginal Heritage Act 1972* amended****Subdivision 1 — Act amended****298. *Aboriginal Heritage Act 1972* amended**

This Division amends the *Aboriginal Heritage Act 1972*.

Subdivision 2 — *Aboriginal Heritage Act 1972* amended on day after assent day**299. Section 18 amended**

After section 18(5) insert:

(6) In subsection (6A) —

transitional period means the period —

- (a) beginning on the day on which the *Aboriginal Cultural Heritage Act 2020* Part 16 Division 1 Subdivision 2 comes into operation; and
- (b) ending on the day on which the *Aboriginal Cultural Heritage Act 2020* Part 16 Division 1 Subdivision 3 comes into operation.

(6A) If the owner of any land gives notice to the Committee under subsection (2) during the transitional period and the Minister gives consent under subsection (3)(a) in relation to the notice, it is a condition of the consent that the consent —

- (a) takes effect on the day after the day on which the owner is informed of the Minister's decision under subsection (3); and

- 1 (b) remains in force only for the period of 5 years,
- 2 or any lesser period specified in the consent,
- 3 after that day.
- 4

5 **Subdivision 3 — *Aboriginal Heritage Act 1972* amended on day that**
 6 **Part 7 Division 2 comes into operation (commencement day)**

7

8 **Division 2 — Other Acts amended**

9

Consultation Draft



Overview

ABORIGINAL CULTURAL HERITAGE BILL 2020

The Aboriginal Cultural Heritage Bill 2020 (the Bill) presents a transformative and contemporary vision for the management of Aboriginal cultural heritage in Western Australia. It will achieve this by including an Aboriginal voice in the management of Aboriginal cultural heritage, and by providing for better decisions and improved protection.

The primary objectives of the Bill are to:

- recognise:
 - the fundamental importance of Aboriginal cultural heritage to Aboriginal people;
 - that Aboriginal people have custodianship over their heritage;
 - the value of Aboriginal cultural heritage to Aboriginal people and the wider community;
- recognise, protect and preserve Aboriginal cultural heritage;
- provide a clear framework for the management of activities that may harm Aboriginal cultural heritage to provide balanced and beneficial outcomes for Aboriginal people and the wider Western Australian community; and
- promote the appreciation of Western Australia's Aboriginal cultural heritage.

Key features of the Bill include:

1. Updated Aboriginal cultural heritage definition

- The Bill establishes a comprehensive overarching definition of Aboriginal cultural heritage that captures its diverse expressions and perspectives, including tangible and intangible elements.
- The definition of Aboriginal cultural heritage reflects a living culture that is central to the wellbeing of Aboriginal people and replaces the outdated concepts of heritage management practices in its focus on sites and artefacts under the current Act.
- The Bill provides for the recognition of cultural landscapes and for cultural landscapes of outstanding significance to be declared protected areas. The inclusion of cultural landscapes recognises the living landscapes Aboriginal groups value because of their enduring relationship with that place and its continuing importance to their cultural identity.

2. Recognising Aboriginal custodianship and control of cultural heritage

- The Bill recognises that Aboriginal people are the custodians of their heritage and provides that Aboriginal people are the rightful custodians of ancestral remains and secret and sacred objects.
- The Bill requires Aboriginal ancestral remains held by persons and organisations to be returned to the rightful Aboriginal custodians. The Bill also encourages the return of secret and sacred objects to the rightful Aboriginal custodians.



Overview

ABORIGINAL CULTURAL HERITAGE BILL 2020

3. A new directory of Aboriginal cultural heritage

- The Bill imposes a duty for any person to report Aboriginal cultural heritage, which will be recorded in the newly established Aboriginal Cultural Heritage Directory.
- The Aboriginal Cultural Heritage Directory will be a record of Aboriginal cultural heritage of the State, and be a depository of all information and documents relevant to Aboriginal cultural heritage, including Aboriginal cultural heritage permits and Aboriginal cultural heritage management plans.
- Minimum recording standards will be developed by the Aboriginal Cultural Heritage Council for entries on the Directory.

4. Enabling an Aboriginal voice through the Aboriginal Cultural Heritage Council and Local Aboriginal Heritage Services

- The Bill establishes the Aboriginal Cultural Heritage Council to provide oversight of the Aboriginal cultural heritage system. There is a requirement for the Chair to be an Aboriginal person, and members selected based on their skills and experience, with a preference for the appointment of Aboriginal people.
- The Council will promote public awareness, understanding and appreciation of Aboriginal cultural heritage in Western Australia, have a role in approving Aboriginal Cultural Heritage Management Plans, and inform standards and guidelines on matters relating to Aboriginal cultural heritage.
- The Bill provides for the Council's appointment of local Aboriginal Cultural Heritage Service (local ACH service) for each area of the State.

- The functions of a local ACH service include:
 - facilitating notification and consultation with Native Title parties and other knowledge holders in the area;
 - making and facilitating Aboriginal cultural heritage management plans in the area;
 - supporting the implementation of the plans;
 - providing evidence to the Council about Aboriginal cultural heritage within the area and the importance of that heritage;
 - and other functions.

Local ACH services may charge fees for services.

5. Protecting areas of outstanding significance

- The Bill provides for the protection of an area of outstanding significant Aboriginal cultural heritage from activities that are likely to harm its Aboriginal cultural heritage. Current Protected Areas from the 1972 Act will retain their status.
- Knowledge holders may make an application for an area of outstanding significance to be declared a Protected Area.
- A Protected Area order will not trigger *Native Title Act 1993* provisions, thus providing opportunity for more places of outstanding significance to be declared Protected Areas, and enabling active management of Protected Areas by Aboriginal people.

Overview

ABORIGINAL CULTURAL HERITAGE BILL 2020

6. Managing activities that may cause harm to Aboriginal cultural heritage through a tiered system and agreement between parties

- The Bill gives Aboriginal people a role in decisions about their heritage, with a focus on agreed Aboriginal cultural heritage management plans between Aboriginal parties and proponents to avoid or minimise impacts on heritage.
- Proponents are required to consult the relevant Aboriginal parties in the area when proposing to undertake any work that may harm Aboriginal cultural heritage.
- The Bill establishes a tiered land use approvals system encouraging proponents to undertake due diligence to determine if an activity will impact Aboriginal cultural heritage:
 - Exempt activities include recreational activities, emergency situations and minor residential developments.
 - Minimal impact activities: No approval is required. Letter of advice can be sought from Department.
 - Low impact activities: Aboriginal cultural heritage permit required. Proponents are required to notify Aboriginal parties before submitting an application.
 - Medium to high impact activities: Proponents will be required to seek agreement with relevant Aboriginal parties and develop an Aboriginal cultural heritage management plan for approval to proceed with their activity.
- Aboriginal Cultural Heritage Management Plans are authorised by the Council or the Minister if they meet certain requirements. These plans will need to ensure that contingency arrangements are included to cover instances where new Aboriginal cultural heritage is discovered or new information about the significance of Aboriginal cultural heritage is provided.
- Applications for approval of Aboriginal Cultural Heritage Management Plans that may cause harm to Aboriginal cultural heritage of State significance will require Ministerial authorisation.
- The Bill establishes a Government authorisation process where no agreement can be reached on Aboriginal cultural heritage management plans. The Council will mediate and facilitate agreement on a plan between both parties, but may ultimately develop its own plan for the Minister's authorisation.
- Provisions in Native Title agreements or previous heritage agreements between proponents and Aboriginal parties, may be used to satisfy Aboriginal cultural heritage management plans that meet the standards and requirements in the Bill.

7. Stronger compliance and enforcement

- The Bill establishes the offences of serious harm and harm to Aboriginal cultural heritage. The proposed penalties for these offences are significantly higher than any other Commonwealth, State or Territory Aboriginal cultural heritage legislation e.g. \$10 million for serious harm to Aboriginal cultural heritage for a body corporate and \$1 million or imprisonment of 5 years for individual.
- The Minister can issue stop activity orders and prohibition orders to protect Aboriginal cultural heritage from harm.
- Remediation orders can be issued to allow for remediation work to be undertaken to restore impacted Aboriginal cultural heritage to its original condition.
- The Bill provides mechanisms aimed at ensuring compliance with this Bill, including the appointment of inspectors and powers of inspection. The statute of limitation period for prosecutions has been extended from 12 months to 6 years.



Overview

ABORIGINAL CULTURAL HERITAGE BILL 2020

8. Rights of review and improved transparency

- Both Aboriginal parties and proponents will be afforded the same rights of review for key decisions made under the Bill.
- The Bill will require recommendations or decisions made under the Bill to be published and for notification to be given to relevant parties.

9. Increased certainty with statutory guidelines

- The Bill provides for the preparation of Council guidelines. These guidelines will provide more clarity and certainty for all parties and include guidelines about the carrying out of a due diligence assessment for a proposed activity and guidelines for the carrying out of consultation.

10. Transitional provisions

- The Aboriginal Cultural Material Committee will continue operating under the Bill for a transitional period, while the Council is being established and regulations to support various aspects of the Bill are being prepared.
- The current Act will continue to operate for at least one year after the Bill is enacted to allow for the transition from the current Act to the new Bill.

Approvals Pathway

ABORIGINAL CULTURAL HERITAGE BILL 2020



A proponent is required to complete a due diligence assessment to determine if there is Aboriginal cultural heritage in the activity area, to determine if the activity is exempt, or a minimal, low or medium to high impact activity, and to identify Aboriginal parties they need to notify or consult about activity. Proponents should contact the Department if they are unsure what level of activity their proposal comes under.

Exempt activity



No approval required

Exempt activities include

- Recreational activities (personal photography, using existing tracks or roads)
- Minor developments on lots less than 1100sqm
- Subdivisions of not more than five lots
- Clearing of native vegetation (subject to environmental permits)
- Emergency measures (prescribed burning under the Fire and Emergency Services Act)

Minimal impact activity



No approval required

Proponent may request confirmation from the Department that no approval is required for minimal impact activities.

Low impact activity



Permit required

1. Proponent notifies Aboriginal parties in the area of proposal and seeks comments.
2. Following notification, proponent submits permit application to the Aboriginal Cultural Heritage Council.
3. The Council assesses application. The Council may seek additional information in support of application.
4. The Council issues permit or refuses application.

Medium or High impact activity



Aboriginal Cultural Heritage Management Plan required

1. Proponent consults Aboriginal people in the area about proposal in accordance with consultation guidelines.
2. Proponent works with the Aboriginal party that will be party to the ACH Management Plan to develop the Plan.
3. Plan submitted to the Aboriginal Cultural Heritage Council for approval.
4. Plan considered by the Council. Council may seek additional information in support of the application.
5. The Council or Minister approves or refuses plan.

Where the proponent and relevant Aboriginal party cannot agree on a management plan, the Aboriginal Cultural Heritage Council will mediate, or develop a plan for consideration by the Minister, which the proponent must comply with in order to proceed with the proposed activity.

Approvals Pathway

ABORIGINAL CULTURAL HERITAGE BILL 2020

Medium to High Impact

Step 1

Due diligence assessment

A proponent is required to complete a due diligence assessment to determine if there is Aboriginal cultural heritage in the activity area. Proponents should contact the Department of Planning, Lands and Heritage if they are unsure what level of activity impact their proposal is likely to have. **An Aboriginal Cultural Heritage Management Plan is required for activities determined to be medium or high impact.**



Step 2

Consult, negotiate and agree

A proponent must consult all native title parties and knowledge holders in the area about the proposal. The proponent will then work with the Aboriginal group that will be party to any agreement to develop an Aboriginal Cultural Heritage Management Plan.



Step 3

Apply and assess

Once a management plan is agreed, an application is made to the Aboriginal Cultural Heritage Council for consideration. The Council is comprised of an Aboriginal Chair and members selected for their skills and experience.



Step 4

State significance

If the Council forms the opinion that the Aboriginal Cultural Heritage is of State significance, it must refer the plan to the Minister for Aboriginal Affairs for authorisation.



Step 5

Notification

The Council may request additional information, approve or refuse the Aboriginal Cultural Heritage Management Plan. If refused, the Council decision will be reviewable by the Minister for Aboriginal Affairs.



Where the proponent and relevant Aboriginal party cannot agree on a management plan, the Aboriginal Cultural Heritage Council will mediate, or develop a plan for consideration by the Minister, which the proponent must comply with in order to proceed with the proposed activity.

Want to know more

Read the overview of the Aboriginal Cultural Heritage Bill 2020 at www.dplh.wa.gov.au/aha-review

6 March 2020

Our Ref: 4.77

Kym Suckling
Senior Heritage Officer Regions
Heritage Operations \

Via email kym.suckling@dplh.wa.gov.au

Dear Kym

Re AHA Review Fact Sheet - Improved Protection

I refer to your recent email dated 5 February 2020 and following discussions with Council provide the following preliminary comments, which in part are due to some recent experience with respect to the on-ground implementation under the current heritage act.

For instance, spurious spur of the moment type objections which cause much angst among our works crews with very costly consequences of temporary shutdowns. A few brief examples such as

- “could the Shire cease drawing water from the riverbed at the Ballinyoo Bridge but rather use the nearby turkeys nest” are quite reasonable, but others such as “you will have to pay us extra to survey these clearings on the edge of the road so you can turn your trucks around” are clearly not.
- an area gets inspected by the nominated group, but then other indigenous groups feel they have missed out and want to do another survey of the same area. There needs to be a clear indication of what group is responsible for what area so we can have fair and reasonable dealings with them and then move forward.

As a direct result this in part led Council to avoid the issue and cart water some extra distance of around 50km rather than use water within the river that was located close to the job because in this instance we had concerns with respect to delays as it was an urgent repair job and some disquiet rightly or wrongly with respect to dealing with the local indigenous community. I might point out that in another part of the Shire we had no such concerns having confidence with representatives of that particular indigenous community and proceeded on amicably and in an expeditious manner.

It is noted that “Aboriginal voices will be a key element of the new legislation.” We would hope this is the case but I would also add that all stakeholders voices need to be a part of the new legislation because if the new requirements are too heavily skewed towards aboriginal demands then the regions won't feel much ownership of the process which will lead to inevitable conflict down the track.

On the surface an extended period of enforcement is of concern because if our Council satisfies the heritage requirements on a certain date does this mean that we have to stay open to comeback for a five-year period? And what if in ignorance something, particularly something that wasn't obvious was disturbed. Is there retrospective action?



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An updated definition of what constitutes Aboriginal heritage, cultural landscapes and place-based intangible heritage is also potentially open to creating more confusion as there currently seems to be a lack of definitive understanding so what seems a broader definition becomes more problematical. It would seem that this definition is critical for changes to be successful.

Similarly encouraging agreements between Aboriginal people and land use proponents would seem on the surface to rely of a degree of trust and rapport being established with the Council having some confidence that the group is truly representative. We are also not sure how this relates to native title claims which on the surface would seem a more transparent process for agreements.

Unlike an entity who owns or leases land for occupation, our Council in the main has only predominately only one interest which relates to roads and roadmaking. Issues like vehicular turn arounds, road widenings are usually minor aspects that as a public benefit institution should ideally be exempt. However, moderate land clearances relating to gravel pits or extracting water from surface water sources may need some review but from the viewpoint that there is no exportation of resources; merely providing a public benefit. Perhaps for road authorities there should be some exceptions; perhaps within operating guidelines.

A few other points are requested to be considered including the following:

- establishing a state library for any heritage work carried out. This is to be stored and accessible to all parties to prevent doubling up of surveys
- some level of exemption or a reduced fee paid for by state or local government for any surveys done for "Public Works".
- all surveys conducted through PBC and each survey first and final.
- clarification on what is cultural/heritage site if not identified straight away, obviously not a significant site.
- penalties for false claims of sites.

We look forward to participating in the review

Should you have any queries then please contact me to discuss.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Bill Boehm', with a stylized, cursive script.

Bill Boehm

Chief Executive Officer



30 May 2019

Attn: Assistant Director General, Heritage Services
Department of Planning, Lands and Heritage
Locked Bag 2506
PERTH WA 6001

Our Ref: 05-032-01-001

By email: ahareview@dplh.wa.gov.au

Dear Sir/ Madam,

RE: Interim Submission –AHA Review Consultation Phase Two

Thank you for the opportunity to provide comment on the Discussion Paper, Consultation Paper and Overview of proposals for new legislation released in March 2019 relating to the review of Western Australia's Aboriginal heritage legislation.

The Western Australian Local Government Association (WALGA) is an independent, membership based organisation representing and supporting the work and interests of 138 Local Governments in Western Australia. WALGA provides an essential voice for over 1,200 Local Government Elected Members, approximately 14,500 employees and over 2.5 million constituents of Local Government in Western Australia.

WALGA and its members supports the conservation and protection of Aboriginal cultural heritage in Western Australia and the modernization of our Aboriginal cultural heritage legislation to reflect international and national best practice. We acknowledge the importance to Aboriginal people of their cultural heritage and the central role that cultural heritage and access to country plays in their health and wellbeing. As land managers and land use planning decision-makers, Local Government plays an important role in many activities that have the potential to protect and impact Aboriginal cultural heritage. Local Government also acknowledges the place of Aboriginal people as community members, residents and ratepayers.

Our Submission is in the document attached to this letter. Our Submission is based on input provided by a Local Government Reference Group convened by WALGA comprising representatives from a number of Local Governments, as well as a Survey conducted by WALGA and feedback obtained during an Information Session conducted for our members by WALGA and the Department of Planning, Lands and Heritage on 9 May 2019.

Thank you again for the opportunity to provide comment. For additional information please contact Susie Moir, Policy Officer - Community on 92132058 or smoir@walga.asn.au.

Yours Sincerely,

Joanne Burges
Executive Manager, People and Place

WALGA Submission on Stage 2 of Review of Aboriginal Heritage Act: 30 May 2019

Proposal Number	Proposal	Support/ Not Support	WALGA Response
<p>Proposal 1: Repeal the Aboriginal Heritage Act 1972 and deliver new Aboriginal heritage legislation</p>	<p>The proposal is to repeal the <i>Aboriginal Heritage Act 1972</i> and replace it with modern legislation, regulations and policies. The desired outcome is that the legislation to protect Aboriginal cultural heritage reflects developments in best practice in heritage management and the rights of Aboriginal people under national and international law.</p>	<p>Support</p>	<p>Local Government plays a role in Aboriginal cultural heritage as:</p> <ul style="list-style-type: none"> • A landowner, when considering the potential impact of proposed development on Aboriginal heritage; and • As a planning body, when contacted by landowners and developers for advice about the location of Aboriginal and non-Aboriginal heritage. <p>Local Government supports the conservation and protection of Aboriginal cultural heritage. WALGA supports the development of new Aboriginal heritage legislation that recognizes the rights of Aboriginal people under national and international law to protect their cultural heritage and reflects current best practice heritage management, and improves the clarity, compliance, effectiveness and certainty of the Aboriginal heritage legislation regime.</p>
<p>Proposal 2: Update definitions and scope of new Aboriginal heritage legislation</p>	<p>The proposal is to extend the scope of what is covered by new legislation to include ancestral remains, places that are cultural landscapes and place-based intangible heritage. It is not proposed to extend the definitions in the new legislation to include intellectual property rights. The desired outcome is that the legislation to protect Aboriginal cultural heritage is sensitive to the culture it is designed to protect and therefore, more effective and trusted by Aboriginal people.</p>	<p>Support</p>	<p>WALGA’s understanding is that the new legislation will:</p> <ul style="list-style-type: none"> • Adopt a new definition of ‘place’ that aligns with the <i>Australia ICOMOS Burra Charter</i> definition of place that includes tangible and intangible dimensions; • Continue to protect all Aboriginal cultural heritage places and objects, including cultural landscapes, whether they are registered or not (as under the current AHA); • Continue to protect Aboriginal objects consistent with the current AHA; and • Include culturally appropriate procedures to deal with ancestral remains. <p>WALGA supports these proposals which are intended to ensure that Aboriginal heritage legislation in Western Australia aligns with international best practice, adequately protects cultural landscapes and intangible heritage, and makes provision for the appropriate care of ancestral remains. Some Local Governments have undertaken cultural</p>

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Proposal Number	Proposal	Support/ Not Support	WALGA Response
			<p>mapping exercises with local Aboriginal people in order to document and protect places of Aboriginal cultural heritage significance. However, the undertaking of extensive cultural mapping exercises by Local Government is not practicable in all areas of our vast State; for example, extensive cultural mapping in the Kimberley region would be difficult given the extensive land areas and historical occupation patterns of the land by Aboriginal peoples. Many Local Governments do not have the resources or capacity that are necessary in order to undertake extensive cultural mapping exercises. This may be an area that the newly formed Local Aboriginal Heritage Services and Aboriginal Heritage Council could assist the Local Government sector with in the future.</p>
<p>Proposal 3(A): Local Aboriginal Heritage Services</p>	<p>The proposal is to provide for the appointment of Local Aboriginal Heritage Services to ensure the right people speak for particular areas of country and related cultural heritage are identified, and to make agreements regarding Aboriginal heritage management and land use proposals in their geographic area of responsibility.</p> <p>The desired outcomes are:</p> <ul style="list-style-type: none"> the active involvement of traditional owners and knowledge holders in decision making and management of heritage matters in particular areas of country that they have connection to and 	<p>Support</p>	<p>WALGA understands that the proposal to establish Local Aboriginal Heritage Services (LAHS) is designed to provide a mechanism for Aboriginal people to have a direct role in decision-making about cultural heritage, and for the right people to ‘speak for Country’.</p> <p>WALGA understands that LAHS:</p> <ul style="list-style-type: none"> will provide a first point of contact for proponents seeking advice on heritage matters in a particular area; will undertake or coordinate surveys and management of Aboriginal heritage; may make agreements relating to heritage management and land use proposals with land users; may give advice to the Aboriginal Heritage Council on the acceptability of land use proposals in their area of responsibility; will be appointed and performance monitored by the Aboriginal Heritage Council; will often be an existing Prescribed Body Corporate; and will be subject to timeframes and standards when providing advice and services. <p>Additionally WALGA understands that LAHS will be required to:</p> <ul style="list-style-type: none"> be 100% Aboriginal owned;

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Proposal Number	Proposal	Support/ Not Support	WALGA Response
	<p>cultural responsibility for; and</p> <ul style="list-style-type: none"> consultation and agreement making processes with Aboriginal people are culturally appropriate, transparent and provide more certainty for land users. 		<ul style="list-style-type: none"> have genuine connection with the area it proposes to represent; have demonstrable support from a broad constituency of the Aboriginal people within, and ‘cultural authority’ over, the area it proposes to represent; be incorporated under the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> or Corporations Law; have rules that are consistent with the requirements imposed on Prescribed Bodies Corporate; and demonstrable capacity to undertake the functions required of it and to maintain appropriate standards of corporate good governance. <p>WALGA understands in relation to any area of land, there will only be one LAHS. In areas where there is no LAHS, the DPLH will perform the functions of a LAHS.</p> <p>WALGA supports the establishment of local Aboriginal decision making bodies which are better able to represent local Aboriginal communities which hold local knowledge and responsibility for Aboriginal heritage. The existence of a body which is the first point of contact for development proponents will simplify processes and provide reassurance to parties that they have contacted the right people about Aboriginal heritage matters. LAHS are intended to perform a key role in the proposed new system and as such, their governance, feasibility and resourcing must be carefully considered. The new legislation must provide a clear, robust mechanism for ensuring that LAHS have a genuine connection to the land, demonstrable support from local Aboriginal people and cultural authority. Adequately resourced mechanisms will also be required for resolving disputes in relation to these matters. The financial and resourcing requirements, and the feasibility (given the vast and often isolated geographical expanse of Western Australia) of the new LAHS system will need to be thoroughly investigated before this model is committed to. It is anticipated that the Government will need to provide financial and</p>

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Proposal Number	Proposal	Support/ Not Support	WALGA Response
			<p>capacity building support to LAHS, especially at the beginning of the new system, but in any event on an ongoing basis. The setting of reasonable and appropriate timeframes for LAHS to provide services will be essential to the efficient functioning of the system.</p> <p>Local Government would welcome the provision of a Standard Aboriginal Heritage Agreement for formalizing the relationship between Local Government and LAHS with recommended fees, charges and timeframes to ensure consistency across LAHS, transparency and certainty for parties. A clear dispute resolution process involving an appropriate third party must be established for when LAHS and proponents have disagreements that they are not able to resolve themselves.</p>
<p>Proposal 3(B): Aboriginal Heritage Council</p>	<p>The proposal is to (a) establish an Aboriginal Heritage Council as the central body providing advice and strategic oversight of the Aboriginal heritage system, and (b) abolish the Aboriginal Cultural Materials Committee.</p> <p>The desired outcomes are:</p> <ul style="list-style-type: none"> • The system for the protection, conservation and management of Aboriginal heritage benefits from the strategic oversight and advice of people who are highly skilled and experienced in Aboriginal heritage management. • Aboriginal heritage is respected and valued by 	<p>Support</p>	<p>WALGA understands that in order to provide centralized oversight of the new system, an Aboriginal Heritage Council (AHC) will be established. With a role somewhat similar to the State Heritage Council, the AHC will:</p> <ul style="list-style-type: none"> • Comprise an Aboriginal chair and eight further members appointed by the Minister on the basis of skills and experience relevant to Aboriginal heritage; • Have a strategic focus; • Set standards for services provided by LAHS and Heritage professionals; • Oversee the Aboriginal Heritage Register; • Make decisions on some land use proposals that could affect Aboriginal heritage (neutral or positive impact on heritage, low impact on heritage, accepted by relevant Aboriginal people, or don't relate to a project of State Significance); • Ensure consultation and any related agreement-making processes have been conducted in good faith; • Provide advice to the Minister; • <i>Provide a central point of advice to other decision-making authorities whose decisions could impact Aboriginal heritage;</i>

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Proposal Number	Proposal	Support/ Not Support	WALGA Response
	<p>the non-Aboriginal community.</p> <ul style="list-style-type: none"> • Aboriginal people have a greater say in the operational and strategic decisions that affect their heritage. • Equitable agreements between land users and Aboriginal people at a local level are encouraged and best practice recognized. • System reliance on the Minister as the sole decision maker on all land use proposals is reduced. 		<ul style="list-style-type: none"> • Promote Aboriginal heritage and assist in ensuring that Aboriginal heritage in Western Australia is respected, maintained and managed in accordance with best practice; • Assist with resolving disputed between LAHS, their members and/or proponents where external intervention appears warranted and the parties agree or do not have other formal dispute resolution procedures in place; • Promote and assist in the proper management and maintenance of Western Australia’s Aboriginal heritage, and provide financial and other assistance to promote the conservation of Aboriginal heritage, promote education and training, arrange or conduct research and investigations and develop and implement policies to give effect to its functions. <p>WALGA supports the establishment of the AHC which as a statutory body will have responsibility for oversight of LAHS and the Aboriginal heritage system generally, and will be able to provide education and training and undertake research and investigations in relation to Aboriginal cultural heritage. The role of the AHC in promoting Aboriginal heritage is an important one. WALGA also welcomes the role of the AHC (along with DPLH) in providing a central point of advice to other decision making bodes, including Local Government, whose decisions could impact Aboriginal heritage.</p>
<p>Proposal 3(c): The Minister’s Role</p>	<p>The proposal is that the Minister retains overall accountability and decision-making powers for the Aboriginal heritage system in Western Australia, but may delegate certain decisions and functions to the Aboriginal Heritage Council.</p> <p>The desired outcomes are:</p>	<p>Support</p>	<p>WALGA understands that the functions of the Minister will be:</p> <ul style="list-style-type: none"> • The Minister may delegate decision-making to the AHC where such proposals have a neutral or positive impact or low impact on heritage, are accepted by relevant Aboriginal people, or don’t relate to a project of State Significance; • To receive advice from the AHC on land use proposals that may have significant impact on Aboriginal heritage values or involve projects deemed to be of State Significance;

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Proposal Number	Proposal	Support/ Not Support	WALGA Response
	<ul style="list-style-type: none"> • The Minister, who is accountable for an effective Aboriginal heritage management system, can focus on the effective and efficient running of the system. • The system is not clogged with matters on which the parties agree and where heritage is not impacted. • Ministerial intervention is available but reserved for contentious matters and those where the project is of State Significance or is likely to have a significant impact on Aboriginal heritage. • All stakeholders are confident in an Aboriginal heritage system that is fair, effective, efficient and respects Aboriginal people, their culture and their heritage. 		<ul style="list-style-type: none"> • To make decisions on land use proposals that may have significant impact on Aboriginal heritage values or involve projects deemed to be of State Significance; • To have due regard to the social and cultural effects of the land use proposal and the views of the Aboriginal people and the public interest as part of the decision-making process; • To publish reasons for decisions; • To support the AHC’s activities promoting Aboriginal heritage; and • To issue a stop work order in cases where Aboriginal cultural heritage is threatened by unauthorized land use activities. <p>WALGA supports this proposal which seeks to ensure transparency of decision –making by the Minister, as well as reducing the number of decisions the Minister is required to consider by limiting Ministerial decision-making to land use proposals that may have a significant impact on Aboriginal cultural heritage or are of State Significance. Stop work orders should have immediate effect.</p>
Proposal 3(D): The role of the Department of Planning,	The proposal is that the DPLH remains responsible for the day to day operation of the Act.	Support	<p>WALGA understands that the day to day operations of the new legislation will continue to be the function of DPLH. DPLH will:</p> <ul style="list-style-type: none"> • Provide secretariat and other support to the AHC; • Provide operational advice to the Minister;

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Proposal Number	Proposal	Support/ Not Support	WALGA Response
Lands and Heritage	<p>The desired outcomes are that DPLH supports the Minister and the Aboriginal Heritage Council in:</p> <ul style="list-style-type: none"> • The strategic oversight of the Aboriginal heritage system; • Undertaking strategic and operational policy development and capacity building in the system; • Ensuring timely and efficient performance of the functions of LAHS where no such service exists; and • Maintaining the register as a reliable source of data on Aboriginal heritage and actively enforcing the provisions of the Act. 		<ul style="list-style-type: none"> • Provide advice to land use proponents on processes and minimum standards that must be met when land use proposals have the potential to cause negative impacts on Aboriginal heritage places; • Receive reports of Aboriginal heritage places and objects for inclusion on the Aboriginal Heritage Register; • Maintain the Aboriginal Heritage Register; • Provide, or facilitate the provision of, financial and technical assistance or other Aboriginal heritage management and conservation initiatives; • Manage the Directory of heritage professionals; • Provide capacity building to LAHS; • Develop and deliver education, training and promotion programs; • Perform the role of LAHS where no suitable body exists or has been nominated to take on these functions; • Facilitate research and investigations relating to Aboriginal heritage; • Investigate alleged breaches of the Aboriginal heritage legislation; and • Assist in the prosecution of breaches where sufficient evidence has been collected. <p>WALGA supports the DPLH undertaking the supporting and advisory functions necessary to enable the Minister and AHC to undertake their roles, as well as providing advice and guidance to proponents and other decision-makers, including Local Government. Additionally, WALGA supports the use of government services to undertake the functions of LAHS when necessary, given the key role of LAHS under the proposed new system. It is essential that the DPLH is adequately resourced to undertake these important functions and ensure the continued operation of the Aboriginal heritage system in places where LAHS do not exist.</p>
Proposal 3(E):	The proposal is to aid people needing to engage a Heritage	Support	WALGA understands that a Directory of Heritage Professionals will be established. The main elements of the Directory are:

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Proposal Number	Proposal	Support/ Not Support	WALGA Response
<p>Heritage Professionals – aiding selection of those with appropriate qualifications and experience and improving standards</p>	<p>Professional with appropriate qualifications and experience, and promote higher standards by publishing on the Department’s website a public Directory of Heritage Professionals and the standards required for heritage investigations, community consultation and reporting of heritage information.</p> <p>The desired outcomes are:</p> <ul style="list-style-type: none"> • Improved outcomes for Aboriginal heritage. • Elimination by market selection of substandard consultants. • No regulatory burden. 		<ul style="list-style-type: none"> • To be entered on the Directory, Heritage Professionals will be required to evidence their relevant experience and qualifications, which will also be published on the Directory; • Aboriginal people and proponents will be encouraged to select form the Directory; • In response to a land use proposal, the DPLH will advise what studies and standards are required; • Materials that do not meet the standards set by the AHC will not be accepted and the clock will be stopped on approvals until the appropriate standard has been met by the Heritage Professional; • The DPLH will work with the peak bodies for heritage professionals to develop guidelines and standards of service for endorsement by the AHC; • Inclusion in the Directory does not constitute an endorsement or warranty in respect of any services delivered by a Heritage Professional; • DPLH will not engage in disputes between Heritage Professionals and their clients; • Fees will not be regulated and will remain open to market fluctuations, consistent with other professional service providers. <p>WALGA supports initiatives directed at improving the standard, reliability and quality of research and consultation conducted by Heritage Professionals to support the assessment of land use proposals. The development of guidelines and standards detailing the requirements for particular types of heritage investigation, community consultation, reporting heritage places and the provision of spatial data, and endorsed by the AHC, will support improvements to the quality and standard of work undertaken by Heritage Professionals in Aboriginal heritage.</p>
<p>Proposal 4: Retain the current form</p>	<p>The proposal is to:</p> <p>(a) Rename the ‘Register of Aboriginal Places and</p>	<p>Support</p>	<p>The current Register of Aboriginal Places and Objects is inaccurate with a significant backlog of sites lodged on the ‘interim register’ awaiting assessment by the Aboriginal Cultural Materials Committee (ACMC).</p>

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Proposal Number	Proposal	Support/ Not Support	WALGA Response
<p>and function of the register of Aboriginal places and objects but rename it the Aboriginal Heritage Register.</p>	<p>Objects' to the 'Aboriginal Heritage Register' to reflect the proposed shift of emphasis from 'sites' to the revised scope of the legislation.</p> <p>(b) The Aboriginal Heritage Council will set and regulate reporting standards and improve the accuracy and utility of the register as a mechanism for Aboriginal people to record their heritage and as a land use planning tool.</p> <p>The desired outcomes are:</p> <ul style="list-style-type: none"> • Improved accuracy of records and information on Aboriginal heritage. • The State's database of Aboriginal heritage is a trusted source of information that is captured and managed in a culturally appropriate way. • Increased utility of the register as a record of heritage and planning tool. 		<p>Aboriginal people do not trust the Register, often preferring to not have places of Aboriginal heritage significance registered, which causes uncertainty for land users and inadvertent destruction of heritage.</p> <p>WALGA understands the proposal to be:</p> <ul style="list-style-type: none"> • The Register will be renamed the Aboriginal Heritage Register; • Aboriginal heritage will continue to be protected whether it is registered or not, so the role of the Register will primarily be as an information repository; • Heritage professionals will be required to provide reports that meet standards set by the AHC; • Reports from non-heritage professionals may be entered onto the register, providing minimum information standards are met to identify and locate the heritage place or object and their associated stories; • The register will show the level of confidence in accuracy of information; • DPLH will support the AHC in the maintenance of the register; • LAHS will be encouraged to update and improve information for their areas of responsibility; • There will be standardized language and methods of spatial reporting; • Use of predictive modelling to highlight areas of likely Aboriginal heritage sensitivity will aid risk assessments. <p>WALGA supports the shift to this new model whereby places will be listed on the Aboriginal Heritage Register if they are identified as being culturally important to Aboriginal people (or having scientific value) and sufficient evidence is provided as to the location and why the place is important, rather than the ACMC assessing whether a place should be registered against the criteria stipulated in the current Act. Improvements to the registration process that improve the utility of the database as a planning tool and aid risk-based decision making benefit Aboriginal</p>

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			<p>people, land use proponents and planning decision makers such as Local Government, as the available information will be reliable. Further, the Aboriginal Heritage Register will be able to function as a useful repository of heritage information for Aboriginal people, akin to the State Register of Heritage Places role as a useful repository of non-Aboriginal heritage information. Providing different levels of access to information on the Register for different stakeholders (for example, restricting access to sensitive information) may ease some Aboriginal people’s concerns around providing information for inclusion on the Register while improving the reliability of the information recorded on it. If the DPLH was to advise land holders when a site was registered on their land, this may assist in the preservation of Aboriginal cultural heritage, as land holders would know that there were cultural heritage values on that land and could undertake risk minimization strategies.</p>
<p>Proposal 5: Introduce a referral mechanism to facilitate tiered assessments of proposed land uses.</p>	<p>The proposal is to:</p> <p>(a) Introduce a referral mechanism to facilitate tiered assessments of proposed land uses, with early advice (non-binding) provided by the DPLH or AHC on standards of consultation and/or research necessary to support the approvals process for a development.</p> <p>(b) Non-compliance with standards of consultation or documentation will result in the application</p>	<p>Support</p>	<p>WALGA understands that a referral process analogous to that provided in the <i>Environmental Protection Act 1986</i> is proposed to facilitate early notice of proposed land use activities. This referral process is also intended to support risk-based tiered assessment of land use proponents and LAHS. The new land use proposals system is intended to:</p> <ul style="list-style-type: none"> • Provide for a formal referral mechanism for land use proposals to both government and a LAHS for advice on the Aboriginal heritage implications of the proposal and appropriate level of assessment; • Provide for a tiered assessment of land use proposals dependent upon the known or predicted Aboriginal heritage values of the land and the nature of the proposed land use; • Consent to undertake an activity or range of activities will run with the land provided that ‘new’ land users propose the same activity or range of activities; • Provide a ‘call in’ power to DPLH/ AHC for proposals that ought to have been referred but were not;

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Proposal Number	Proposal	Support/ Not Support	WALGA Response
	<p>not being accepted and the clock will stop on any agreed timeline until correct documents are submitted.</p> <p>(c) A 'call in power' will ensure that proposals that should have been referred, but have not been, can be assessed.</p> <p>Desired outcomes:</p> <ul style="list-style-type: none"> • Land use proposals are designed to co-exist with Aboriginal heritage places wherever possible. • Approvals for low impact activities can be streamlined. • Reduced risk and cost for land use proponents through early referral and advice. 		<ul style="list-style-type: none"> • Provide that a land user may voluntarily adopt the highest tier of assessment; • Set and enforce the standards for research, consultation and reporting to be undertaken for each level of assessment; • Provide that reasons for decisions on the acceptability of land use proposals are given by decision makers; • Provide that all parties to a decision regarding the acceptability of land use proposals that impact Aboriginal heritage values have the right to appeal. <p>The tiered assessment system will reflect the following factors:</p> <ul style="list-style-type: none"> • Any known Aboriginal heritage; • Any predicted Aboriginal heritage; • The extent to which prior land uses have already impacted upon known or predicted Aboriginal heritage. <p>Proponents will be required to take steps to identify whether their land use proposals will negatively impact on Aboriginal heritage. The risk assessment could be based on information contained in the Aboriginal Heritage Register, additional information the proponent has collected through previous studies they have undertaken or through processes embodied in an Aboriginal Heritage agreement, which may set out a range of agreed activities. If the risk assessment indicates that Aboriginal heritage is, or may be, present that is likely to be affected, at that stage the proponent may (1) modify their proposed land use to avoid those impacts, or (2) undertake further investigations with the LAHS to determine the nature and extent of any Aboriginal heritage places. If there is insufficient information available or the proponent is not confident in making a risk assessment, the proponent may seek early advice or formally refer the land use proposal to the DPLH for assessment. The DPLH will assess any formal referral and determine what, if any, studies must be completed prior to the land use proposal being assessed and approved should Aboriginal heritage impacts prove unavoidable.</p>

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Proposal Number	Proposal	Support/ Not Support	WALGA Response
			<p>WALGA’s policy position is that all legislation and policy which deals with land use planning and development must:</p> <ul style="list-style-type: none"> • Ensure role clarity and consistency across legislation controlling development, to avoid confusion of responsibilities; • Be easily interpreted by, understood by and accessible to all sections of the community; and • Be amended only with WALGA involvement and/or consultation/ involvement with local government. <p>WALGA supports the impact avoidance and minimisation focus of the new proposed legislation. In drafting the new legislation consideration needs to be given to the interrelationships between the <i>Planning and Development Act 2005</i>, the <i>Local Government Act 1995</i>, the <i>Land Administration Act 1997</i>, the <i>Mining Act 1978</i> and the Aboriginal heritage legislation so that decision-making staff in Local Government considering the provisions of these pieces of legislation are able to identify <i>when</i> proponents need to consider Aboriginal heritage, and the <i>process</i> for considering Aboriginal heritage when considering land use proposals and applications for development approval. The circumstances in which certain activities do not require Aboriginal heritage approvals needs to be defined more clearly, particularly in relation to applications for development approval under the <i>Planning and Development Act 2005</i> and Works and Services activities undertaken pursuant to Schedule 3.2 of the <i>Local Government Act 1995</i>. DPLH’s <i>Aboriginal Heritage Due Diligence Guidelines</i> and the Aboriginal Heritage Inquiry System and Aboriginal Heritage Risk Matrix contained within it are useful tools for Local Government when assessing whether development proposals may affect Aboriginal heritage. The <i>Aboriginal Heritage Due Diligence Guidelines</i> will require updating so they reflect the new Aboriginal heritage legislation, and consideration should be given to the preparation of additional materials (for example, additional guidelines, policies or checklists) to</p>

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Proposal Number	Proposal	Support/ Not Support	WALGA Response
			<p>support Local Government decision-makers ensure that Aboriginal cultural heritage is considered and protected.</p> <p>As part of this Consultation a number of flow charts have been provided (<i>'Process for assessing land use impact on Aboriginal heritage flow chart'</i>, <i>'Land use decisions in the proposed new Aboriginal heritage system flow chart'</i>) however these flow charts do not address the relationship between the new Aboriginal heritage system and the processes and timeframes provided by the <i>Planning and Development Act 2005</i>. A flow chart illustrating this would be useful.</p> <p>WALGA could assist in the preparation of additional materials designed to assist Local Government through engaging with our members to gather further design input and seeking feedback on any proposals.</p>
<p>Proposal 6: Encourage and recognize agreement making</p>	<p>The proposal is to:</p> <p>(a) Encourage and recognize agreement making between LAHS or other relevant Aboriginal bodies and land use proponents.</p> <p>(b) The AHC will consider and, if appropriate, ratify agreements where land users wish to rely on an agreement to expedite approvals under the new Act.</p> <p>Desired outcomes:</p> <ul style="list-style-type: none"> Aboriginal people have more opportunity to determine better outcomes for their heritage through 	<p>Support</p>	<p>WALGA understands that when assessing the acceptability of land use proposals and issuing any required permits, it is proposed that both the AHC and the Minister will have regard to heritage outcomes agreed between land users and LAHS or other relevant Aboriginal bodies. Where land use proponents wish to rely on an existing agreement to expedite approvals under the new legislation, they will be required to submit the agreement for formal ratification by the AHC. In order to be ratified, an existing agreement must not authorize the destruction of Aboriginal heritage without the need for formal approvals under the legislation or seek to circumvent any other parts of its operation ie parties will not be able to contract out of the new Aboriginal heritage legislation. Proponents will also be able to make agreements with LAHS under the new legislation that are consistent with the new legislation. When presenting an agreed heritage outcome to the AHC for authorization or recommendation to the Minister, proponents will need to provide sufficient information regarding the outcome and how it will be implemented, the agreement it was agreed under, the processes followed and disclose any disputes regarding it. The AHC will be empowered to set the standard of information required and the form it must be supplied in. Once an agreement is ratified and the</p>

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Proposal Number	Proposal	Support/ Not Support	WALGA Response
	<p>agreements that focus on avoiding or minimizing impacts on heritage.</p> <ul style="list-style-type: none"> • Better heritage outcomes are achieved through agreements that are based on respectful and positive relationships. • New and existing agreements concerning heritage outcomes between relevant Aboriginal people and land users can be used to expedite land use assessments and permitting decisions if they meet certain requirements. 		<p>relevant information tendered, the AHC and Minister will be required to have regard to agreed heritage management outcomes when making decisions on land use proposals.</p> <p>WALGA supports the use of strategies in the new Aboriginal heritage legislation to encourage and recognize agreement making between Aboriginal people and land use proponents in order to provide improved social, economic and best practice heritage outcomes for Aboriginal people and increased certainty for proponents regarding development risks and approvals processes. Better Aboriginal heritage outcomes are able to be achieved when the parties have positive relationships and work together through collaboration and agreement based approaches rather than adversarial approaches. Many Local Governments have agreements and relationships with local Aboriginal people and work collaboratively to develop community infrastructure that is sensitive to Aboriginal cultural heritage values. Many Local Governments are seeking to use Reconciliation Action Planning to develop positive relationships with local Aboriginal people and implement strategies for protecting and recognizing Aboriginal cultural heritage. Some Local Governments also have entered into cultural heritage management plans, as well as engaging with Aboriginal Advisory Committees that provide advice and guidance on cultural heritage issues.</p> <p>Local Government would welcome the provision of a Standard Aboriginal Heritage Agreement for formalizing the relationship between Local Government and LAHS with recommended fees, charges and timeframes to ensure consistency across LAHS, transparency and certainty for parties.</p>
<p>Proposal 7 Transparency and Appeals</p>	<p>The proposal is that:</p> <ul style="list-style-type: none"> (a) Reasons for decision are to be published. (b) Land users and Aboriginal people whose legal rights and interests are 	<p>Support</p>	<p>WALGA understands that reasons for decisions will be published by the relevant decision-maker at key decision making stages (referral/ standards setting and land use proposal assessment) enabling affected parties to seek review of decisions. Aboriginal people and land users whose legal rights are affected by the decision will have the same rights of review and appeal if they are aggrieved by a decision. Review mechanisms will be subject to</p>

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	<p>adversely affected by a decision will have the same rights of review and appeal.</p> <p>(c) Retain the State Administrative Tribunal as the primary review body.</p> <p>The desired outcomes are:</p> <ul style="list-style-type: none"> • All stakeholders in Aboriginal heritage have confidence in the administrative decisions that affect Aboriginal heritage. • Rights of review and appeal are equitable. 		<p>statutory timeframes. Participants in the consultation process on a land use proposal will be notified of the recommendations to be considered by the AHC and may lodge a written objection to the recommendation within 21 days of receiving notice of the recommendation. AHC will be required to consider objections before making a recommendation to the Minister on a land use proposal. The SAT will be retained as the primary review body for any person whose legal rights and interests are negatively affected by a decision by the Minister.</p> <p>WALGA supports increased transparency of decision making and equitable appeal rights in the new Aboriginal heritage legislation in order to reflect modern standards of procedural fairness. Aboriginal people and land users whose interests are affected by decision-making should have the same rights of review and appeal if they are aggrieved by a decision on proposed land use and other administrative decisions made during the decision-making process. The stages at which reasons for decisions will be published needs to be clarified to ensure certainty of processes. The process for applications for review of decisions made by the AHC also requires clarification ie is an application for review of a decision of the AHC made to the Minister or the SAT? The impact of delays caused by applications for review and appeals of decisions on statutory timeframes stipulated by the <i>Planning and Development Act 2005</i> requires explication. The preparation of a flow chart illustrating the appeals system under the proposed new legislation and impacts on statutory timeframes would be useful.</p>
<p>Proposal 8: A modernized enforcement regime</p>	<p>The proposal is to:</p> <p>(a) Create a modern enforcement regime by ensuring offences and penalties are brought into line with the <i>Heritage Act</i></p>	<p>Support</p>	<p>WALGA understands that the proposal is to:</p> <ul style="list-style-type: none"> • Maintain the current range of offences; • Limit the current ‘ignorance’ defence to circumstances in which the land use proponent has done everything ‘reasonably practicable’ to make themselves informed; • Increase the limitation period within which a prosecution must commence to three* years from the time of the offence;

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	<p>2018 and other modern statutes.</p> <p>(b) The statutory limitation period is extended to 3 years.</p> <p>(c) Conducting compliance inspections and proceedings will be the responsibility of DPLH.</p> <p>The desired outcome is that the duty of care to avoid unauthorized damage to Aboriginal heritage is taken seriously.</p>		<ul style="list-style-type: none"> • Reinforce that a place need not be on the Aboriginal Heritage Register for the offences to apply; and • Increase penalties to match those provided for in the <i>Heritage Act 2018</i> including fines, restoration orders and compensation for damage or loss of heritage. <p>WALGA supports the increase of penalties under the new Aboriginal heritage legislation so that they align with penalties in the <i>Heritage Act 2018</i> so that the imposition of penalties is equitable across Aboriginal and non-Aboriginal heritage.</p> <p>*The Discussion Paper indicates that the limitation period within which a prosecution can be commenced is five years (page 28) while the Consultation Paper indicates that it is three years (page 26). The <i>Heritage Act 2018</i> provides a limitation period of three years.</p>
<p>Proposal 9: Protected Areas</p>	<p>The proposal is that:</p> <p>(a) The existing Protected Areas and the ability to declare new ones will carry forward into new legislation.</p> <p>(b) A new regulation will be created to authorize specific management activities by the relevant Aboriginal people.</p> <p>The desired outcome is that the mechanism for recognizing Aboriginal heritage places of outstanding importance is more flexible and allows for active management.</p>	<p>Support</p>	<p>WALGA understands that ‘Protected Areas’ under the current legislation will carry forward into the new Aboriginal heritage legislation, along with the process for declaring new ones. Provision will be made in the new legislation so that if an application is made to declare a new Protected Area, Regulations exist that authorize specific management activities by Aboriginal people. The declaration of Protected Areas has significant native title implications as it they are a ‘future act’ under the <i>Native Title Act 1993</i>.</p> <p>WALGA supports the continued use of Protected Areas in the new Aboriginal heritage legislation supported by amended Regulations authorizing specific management activities by relevant Aboriginal group(s) which is intended to facilitate the active management of heritage by Aboriginal people.</p>



*Aboriginal Heritage
Act 1972*

**2018 Review Submission
– Stage 1**

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1.0 Introduction

The *Aboriginal Heritage Act 1972* (AHA) was enacted to ensure that Aboriginal heritage, to which the Act applied, could be appropriately protected and preserved.

Provisions within the AHA impact Local Government in a number of ways including:

- As a landowner, Local Governments are required to consult with Aboriginal communities and conduct heritage surveys when proposing development, in compliance with the Act, and
- As a planning body, Local Governments are contacted by developers and owners for advice regarding the position of heritage sites.

The intent of the submission is to provide an open dialogue with the Department of Planning, Lands and Heritage, Aboriginal Affairs (the Department), on Aboriginal heritage reform in Western Australia (WA) taking into consideration the legal and cultural principles, from a local government perspective.

The Association acknowledges the timely review of the AHA and looks forward to working with the Department on the subsequent phases of the review in order to achieve a deeper sense of local, state and national reconciliation.

2.0 Background

In June 2012, the Association prepared a submission on behalf of members on the 'Seven proposals to regulate and amend the AHA, for improved clarity, compliance, effectiveness and certainty'. A summary is provided below.

1: Prescribe the manner and form of the Register	In-principle support
<ul style="list-style-type: none"> • DIA should be resourced to manage online register • Develop a GIS system, incorporated into LG systems, to ensure certainty around locality of registered Aboriginal heritage sites 	
2: Additional criteria pertaining to the Aboriginal sites of State importance	Partial support
<ul style="list-style-type: none"> • Broadening the criteria to ensure greater inclusion and protection of Aboriginal heritage sites • Clarification around the category to 'benefit current and future generations of WA 	
3: Stronger compliance measures including civic penalties and remediation orders and adjustments to the onus of proof provisions	Partial support
<ul style="list-style-type: none"> • Increased penalties to match comparable legislation 	
4: Site impact avoidance certificates	Partial support – more information required
<ul style="list-style-type: none"> • Department to approve certain proposals to increase process efficiencies • Supports the establishment of an independent body to ensure due diligence is carried out 	

5: Enable the Department to levy fees and recovery costs for surveys and other services	In-principle support
<ul style="list-style-type: none"> Levy fees and recover costs through an independent body 	
6: Remove risk that section 18 consents may be technically invalid because of the definition of 'the owner of any land'	Partial support – more information required
<ul style="list-style-type: none"> Supported amendments to the definition 'the owner of any land' for the purpose of increasing clarity Any changes to S18 will include an amendment to allow Aboriginal people with an interest in the land to appeal Minister's/Department decisions. 	
7: Investigate options to amend the Aboriginal Heritage Act 1972 and the Environmental Protection Act 1986 to streamline decisions about Aboriginal heritage	Did not support
<ul style="list-style-type: none"> The statement 'properly addressed in another process of Government' other than the <i>Environmental Protection Act 1986</i> is misleading The purpose of each legislation is different The EP Act contains provision for right of appeal. S18 of the AH Act confines appeal rights to land owners only The environmental impact assessment (EIA) process undertaken by EP Act is open and transparent and the review document is made publically available. This process ensures Aboriginal sites are appropriately identified and ultimately protected. 	

A further submission was made in 2014, with many of the issues raised by Local Governments addressed in the Aboriginal Heritage Amendment Bill 2014 (the Bill). At this time the endorsed position of the Association supported the following changes:

- The introduction of increased penalties
- Greater transparency through the introduction of the Register of Declarations and Permits (DP Register)
- Increased support for the operation of Register of Aboriginal Sites and Objects (the Register)
- Better coordination of the approvals process

This submission is based on input from a Local Government reference group convened by WALGA on the announcement of this Review. This submission addresses the questions posed within the consultation paper picking up on key themes articulated in section 3.0 Discussion below.

3.0 Discussion

Aboriginal people are still to be enshrined in the *Commonwealth of Australia Constitution Act 1900* (the Constitution) as the traditional custodians of their heritage. The Constitution is the supreme law under which the Commonwealth Government operates, including its relationship to the State of Western Australia. It is properly described as the 'birth certificate of the nation'.

Western Australia has the opportunity through the review of the AHA to lead the way in constitutional recognition. From this all state based legislation and localised policy and procedures can align.

Recommendations

- | |
|---|
| 1. Recognition in AHA of Aboriginal people as the traditional custodians of their heritage. |
| 2. The Department considers developing a working party or Yarn Group to guide the remainder of the AHA review to ensure recommendations are appropriately discussed and weaved into the review process. |

Stronger compliance and enforcement

It needs to be acknowledged that Traditional Owners may not be supportive of all sites being publically registered and in some instances unachievable. Efforts spent to address this will be beneficial to a more successful implementation of the AHA.

Register of Sites and Objects

There is concern regarding the conflict between using the Register to justify approval permits with the rights of Aboriginal peoples access in privacy to their cultural sites. Supporting the rights of Aboriginal people to control, maintain and protect their cultural heritage is fundamental. The incongruences in the AHA need to address this. Furthermore, the AHA suggests that all Aboriginal culture is a fragment of the past.

Recommendations

- | |
|--|
| 3. Acknowledgement in section 5 by inclusive definition, the living and dynamic nature of Aboriginal culture as not limited to place and object to ensure Aboriginal cultural heritage values are considered earlier in application processes. |
|--|

Expedited Approvals by the Chief Executive Officer (CEO)

In the Associations 2012 submission, there was support allowing DAA to expedite certain approvals, support is contingent on the expectation that adequate consultation is carried out with relevant stakeholders before approval is given. Increased resources will be required for culturally appropriate consultation to occur.

The Bill included a new Section 18 process, a newly created position of CEO, who could issue a permit where they were satisfied that the activity would not destroy or damage an Aboriginal site, of that there is no significant risk, without reference to the ACMC. The power and position of the CEO with no rights of review to Aboriginal people the Government Gazette as the only mechanisms for awareness of like situations is in need of review.

Culturally appropriate consultation

The purpose of the AHA is to provide ‘the preservation on behalf of the community of places and objects customarily used by or traditional to the original inhabitants of Australia of their descendants’ (long title). Amendments to the title to acknowledge the Aboriginal community, not the non-Aboriginal community, would reflect a significant change to the intent of the legislation. This purpose would then need to be carried out through the entire AHA. The appointment of an Aboriginal member at all stages of the process of reviewing and implementing the AHA is required if culturally appropriate consultation is to occur. Specifically the APMC, which guides the AHA.

Consultation must involve Aboriginal and non-Aboriginal people meaningfully, be culturally appropriate, involve adequate timeframes and be conducted by appropriate processes. Engaging in face to face discussions to reach consensus as part of a two tiered consultation process will be a significant innovation for the AHA.

Recommendations

4. Amend section 28(3) stating the APMC have a member specialised in anthropology relating to “the Aboriginal inhabitants of Australia” be amended to include the ‘appointment of Aboriginal members’
5. Localised decision made possible through the development of local Committees with members who have the authority to speak for Country.
6. Include stronger entitlements for Aboriginal community representatives being decision makers and having accountability in applications.

Section 18 Assessments

There are currently approximately 15,800 lodged heritage places requiring assessment. The Aboriginal Cultural Material Committee (APMC) is unable to manage this workload.

There is an improvement opportunity within this process. Amendments to the AHA could be amended to provide for an alternative situation where consent is obtained from the relevant Aboriginal parties, via a ‘Consent or Works’. This would significantly reduce the number of Section 18 applications. Ultimately APMC would only need to assess applications where consent cannot be obtained.

The AHA should also consider the inclusion of a provision for circumstances where the proponent has made reasonable endeavour to undertake Aboriginal heritage survey but the relevant parties have been unable to come to a consensus. This could be addressed through the AHA by the inclusion of the requirement for the proponent to serve notice of ‘request for survey’ and the obligation for the Aboriginal group to undertake the requested survey within a specified timeframe.

Local Governments are of the opinion that the Section 18 process should be more transparent, providing clarity to parties, with timeframes for each approval and recommendation being trackable via the Register.

Recommendations

7. Streamline Section 18 with greater potential for inclusion of 'Consent for Works' projects
8. Acknowledge reasonable endeavours to undertake Aboriginal heritage surveys
9. Include a 'Request for Survey' notice process included as an option under Section 18
10. Develop a transparent online function to the Register to monitor the progress of Section 18 applications

Environmental conservation

There is the possibility through the AHA to recognise all resources, particularly water, which will further accomplish social, cultural and economic benefits of cultural heritage. Native vegetation and biodiversity are intricately linked.

Creating maps and plans to help development proponents to plan for and avoid impacts, conserve strategic landscapes and areas' containing high Aboriginal cultural value is an important motion forward. It is recognised and supported that the Department be appropriately resourced to develop and provide available and accessible maps via the Register that are accurately maintained.

It is recognised that there will be some additional challenges, outside of being appropriately resourced such as the relationship between the Register and the maps, acknowledging the oral histories, recorded sites, and the intricacies surrounding waterways. However the Association acknowledges that data needs to be managed with accuracy in order to support Local Governments in planning and modelling.

11. Consider the potential to pilot a conservation mapping process in a specific region to support Aboriginal views and knowledge on Country to share knowledge and improve conservation potential.
12. The Department be appropriately resourced to develop, in partnership with the local communities of the trail site, to provide an available and accessible cultural conservation mapping system via the Register that is accurately maintained.
13. Include definitions in the AHA to better consider and refer to waterways.

Land Use Planning

It is not in scope of a submission at this time to discuss Native Title Settlement, particularly the South West Native Title settlement together with progress being made towards a Local Government specific Noongar Standard Heritage Agreement.

However, in the broadest sense, recognition of native title following the High Court of Australia's Mabo judgement of 1992, has clarified and helped to set parameters about land use planning and management under a native title regime.

14. The Department continues to prioritise discussions and preparations of the South West Native Title Settlement and Local Government specific Noongar Standard Heritage Agreement with relevant stakeholders.

Broad discussions

Further to the questions and themes posed within the consultation paper are broader concerns and discussions within Local Governments pertaining to:

- State based Native Title Agreements
- Local Government specific Noongar Standard Heritage Agreement template
- Engagement with Reconciliation Australia
- Procurement policies of Local Government with respect to Aboriginal businesses in line with recently adopted State procurement policy
- Aboriginal Constitutional Recognition

4.0 Recommendations

1. Recognition in AHA of Aboriginal people as the traditional custodians of their heritage.
2. The Department considers developing a working party or Yarn Group to guide the remainder of the AHA review to ensure recommendations are appropriately discussed and weaved into the review process.
3. Amend section 28(3) stating the ACMC have a member specialised in anthropology relating to “the Aboriginal inhabitants of Australia” be amended to include the ‘appointment of Aboriginal members’.
4. Localised decision made possible through the development of local Committees with members who have the authority to speak for Country.
5. Include stronger signals on Aboriginal community representatives being decision makers and having accountability in applications.
6. Acknowledgement in section 5 by inclusive definition, the living and dynamic nature of Aboriginal culture as not limited to place and object to ensure Aboriginal cultural heritage values are considered earlier in application processes.
7. Streamline Section 18 with greater potential for inclusion of ‘Consent for Works’ projects.
8. Acknowledge reasonable endeavours to undertake Aboriginal heritage surveys.
9. Include a ‘Request for Survey’ notice process included as an option under Section 18.
10. Develop a transparent online function to the Register to monitor the progress of Section 18 applications.
11. Consider the potential to pilot a conservation mapping process in a specific region to support Aboriginal views and knowledge on Country to share knowledge and improve conservation potential.
12. The Department be appropriately resourced to develop, in partnership with the local communities of the trail site, to provide an available and accessible cultural conservation mapping system via the Register that is accurately maintained.
13. Include definitions in the AHA to better consider and refer to waterways.
14. The Department continues to prioritise discussions and preparations of the South West Native Title Settlement and Local Government specific Noongar Standard Heritage Agreement with relevant stakeholders.

5.0 Conclusion

Aboriginal knowledge, underpinned by an ancestral responsibility, holds an intrinsic obligation for Aboriginal peoples care for Country. A review of the AHA is an opportunity to amend legislation and lead the way in cultural heritage planning and protection.

The role and responsibility of Local Government to address outcomes for community capacity building and wider health and wellbeing can also be achieved through this process.

The Association recognises the Departments proposal to reform current legislation as a mechanism in achieving this. The Association also supports continuing the conversation with the Department and other key stakeholders into the future to contribute towards local, state and national reconciliation.

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