



Western Australia

# **Aboriginal Cultural Heritage Act 2021**

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# Aboriginal Cultural Heritage Act 2021

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Western Australia

## **Aboriginal Cultural Heritage Act 2021**

**An Act —**

- **about Aboriginal cultural heritage; and**
- **to repeal the *Aboriginal Heritage Act 1972* and the *Aboriginal Heritage (Marandoo) Act 1992*; and**
- **to make consequential and other amendments to various Acts; and**
- **for related purposes.**

## **Part 1 — Preliminary**

### **Division 1 — Introduction**

#### **1. Short title**

This is the *Aboriginal Cultural Heritage Act 2021*.

#### **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 15 (other than Division 3) — on the day after assent day;
- (c) Part 14 Division 1 (other than sections 310 and 311) — on the day on which Part 15 Division 3 comes into operation (*transition day*);
- (d) sections 310 and 311 — at the end of the period of 6 months beginning on transition day (*repeal day*);
- (e) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

### **Division 2 — Overview of Act**

#### **3. Overview of Act**

This Division 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 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, conserving, preserving and managing Aboriginal cultural heritage.

**5. Main topics dealt with in Act and where to find them**

- (1) Part 2 provides for the following bodies to assist in the administration of this Act —
  - (a) the Aboriginal Cultural Heritage Council — see Part 2 Division 2;
  - (b) local Aboriginal cultural heritage services — see Part 2 Division 3.
- (2) Rights and duties in relation to Aboriginal cultural heritage are dealt with in Part 3, which 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 3 Division 2;
  - (b) providing that Aboriginal people are the custodians of secret or sacred objects and in some circumstances are the rightful owners of secret or sacred objects and entitled to the possession and control of those objects — see Part 3 Division 3;
  - (c) providing a process for the return to Aboriginal people of Aboriginal ancestral remains and some secret or sacred objects — see Part 3 Divisions 2 and 3;
  - (d) imposing a duty to report Aboriginal cultural heritage to the ACH Council — see Part 3 Division 4.

- (3) The protection of areas in which Aboriginal cultural heritage of outstanding significance is located is provided for in Part 4, which includes the following —
- (a) enabling knowledge holders to apply for those areas to be declared as protected areas — see Part 4 Division 2;
  - (b) providing special protection from activities that may harm that Aboriginal cultural heritage — see Part 4 Divisions 5 and 6;
  - (c) providing that protected area orders cannot be repealed or amended to reduce the size of the protected area without a resolution passed by both Houses of Parliament — see section 85.
- (4) Offences, penalties and compensation for harm to Aboriginal cultural heritage are provided for in Part 5, which includes the following —
- (a) 3 levels of offences for harming Aboriginal cultural heritage —
    - (i) the crime of serious harm to Aboriginal cultural heritage — see sections 92 and 93;
    - (ii) the offence of material harm to Aboriginal cultural heritage — see section 94;
    - (iii) the offence of harm to Aboriginal cultural heritage — see section 95;
  - (b) defences for those offences — see Part 5 Division 3;
  - (c) compensation for harm to Aboriginal cultural heritage caused as a direct or indirect consequence of the commission of an offence under Part 5 Division 2 — see Part 5 Division 4.

Note for this subsection:

For the purposes of paragraph (b), authorisation under Part 6 Division 4 to carry out an activity that harms Aboriginal cultural heritage is a defence to a charge of an offence of harming Aboriginal cultural heritage under Part 5 Division 2. This may include that the activity was carried out in accordance with an ACH permit or an approved or

authorised ACH management plan. Part 6 Divisions 5 and 6 set out the procedure for getting an ACH permit or an approval or authorisation for an ACH management plan.

- (5) The management of activities that may harm Aboriginal cultural heritage is dealt with in Part 6, which includes the following —
- (a) providing that proponents must undertake due diligence assessments under Part 6 Division 2 in relation to proposed activities (unless the activities are exempt activities), to assess —
    - (i) whether areas where it is intended to carry out proposed activities include any area that is part of a protected area; and
    - (ii) based on the level of ground disturbance, whether proposed activities are tier 1 activities, tier 2 activities or tier 3 activities; and
    - (iii) whether Aboriginal cultural heritage is located in areas where the proponent intends to carry out proposed activities; and
    - (iv) whether there is a risk of harm being caused to Aboriginal cultural heritage by proposed activities;
  - (b) the persons to be notified and the persons to be consulted about proposed activities — see Part 6 Division 3;
  - (c) the circumstances in which persons are authorised to carry out activities that may harm Aboriginal cultural heritage — see Part 6 Division 4;
  - (d) other matters relating to the management of activities that may harm Aboriginal cultural heritage, including the following —
    - (i) specifying activities that are exempt from requiring due diligence assessments — see section 103 and the definition of *exempt activity* in section 100;

- (ii) obtaining ACH permits authorising tier 2 activities — see Part 6 Division 5;
- (iii) entering into ACH management plans authorising activities that may harm Aboriginal cultural heritage (including tier 3 activities and activities that may harm Aboriginal cultural heritage determined to be of State significance for the purposes of this Act) — see Part 6 Division 6;
- (iv) determining whether Aboriginal cultural heritage is of State significance for the purposes of this Act — see Part 6 Division 6 Subdivision 5.

Note for this subsection:

For the purposes of paragraph (c), authorisation under Part 6 Division 4 to carry out an activity that harms Aboriginal cultural heritage is a defence to a charge of an offence of harming Aboriginal cultural heritage under Part 5 Division 2.

- (6) Part 7 provides for the Minister to give the following orders in certain circumstances —
  - (a) stop activity orders (that expire after 60 days, unless extended) specifying measures to be taken to protect Aboriginal cultural heritage from harm or an imminent risk of harm — see Part 7 Division 2;
  - (b) prohibition orders (that may be of unlimited duration) specifying measures to be taken to protect Aboriginal cultural heritage from harm or an imminent risk of harm — see Part 7 Division 3;
  - (c) remediation orders specifying measures to be taken to remediate Aboriginal cultural heritage that has been harmed in contravention of this Act — see Part 7 Division 4.

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

- (1) This Act also —
- (a) sets out the objects of this Act and provides that, in pursuit of those objects, the principles set out in sections 9 and 10 must be observed — see Division 3 of this Part; and
  - (b) gives defined meanings to key words and phrases used in this Act — see Division 4 of this Part; and
  - (c) sets out some general matters, including, importantly, how this Act applies in relation to native title rights and interests — see Division 5 of this Part; and
  - (d) provides for the endorsement of ACH protection agreements — see Part 8; and
  - (e) establishes an ACH Directory of information and documents relevant to Aboriginal cultural heritage, (including information about protected areas, ACH permits, ACH management plans and Aboriginal cultural heritage) and provides for access to the information and documents — see Part 9; and
  - (f) provides mechanisms aimed at ensuring compliance with this Act, including the designation and appointment of inspectors and Aboriginal inspectors, and powers of inspection, entry and seizure — see Part 10;
  - (g) provides for miscellaneous matters, including the following —
    - (i) the role of the State Administrative Tribunal in reviewing certain decisions — see Part 12;
    - (ii) the making of regulations and guidelines — see Part 13 Division 3;
    - (iii) that the Act cannot be circumvented or contracted out of — see section 300.

- (2) In relation to the transition from the *Aboriginal Heritage Act 1972* to this Act, this Act —
- (a) on the day after assent day — amends the *Aboriginal Heritage Act 1972* to provide that a consent given under section 18 of that Act in relation to a notice given on or after assent day under section 18(2) of that Act is limited in duration to a maximum period of 5 years and that the Minister must be notified about new information about Aboriginal cultural heritage — see Part 15 Division 2; and
  - (b) on transition day — amends the *Aboriginal Heritage Act 1972* to allow for a period of 6 months for decisions to be made on notices given under section 18(2) of that Act, and on applications for other approvals made under that Act, before that day — see Part 15 Division 3; and
  - (c) on repeal day (at the end of that 6-month period) — repeals the *Aboriginal Heritage Act 1972* and provides arrangements to assist in completing the transition from the *Aboriginal Heritage Act 1972* to this Act, including arrangements relating to consents given under section 18 of the repealed Act — see Part 14.
- (3) This Act makes provision in relation to the transition from the *Aboriginal Heritage (Marandoo) Act 1992* to this Act, and provides for the repeal of that Act — see section 312 and Part 14 Division 2 Subdivision 4.
- (4) This Act also consequentially amends various other Acts — see Part 16.

## **7. Overview is a guide**

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

### **Division 3 — Objects and principles**

#### **8. Objects of Act**

- (1) The objects of this Act are as follows —
  - (a) to recognise —
    - (i) the fundamental importance to Aboriginal people of Aboriginal cultural heritage and the central role of Aboriginal cultural heritage in Aboriginal communities past, present and future; and
    - (ii) that Aboriginal people have custodianship over Aboriginal cultural heritage; and
    - (iii) the value of Aboriginal cultural heritage to Aboriginal people and the wider Western Australian community; and
    - (iv) the living, historical and traditional nature of Aboriginal cultural heritage;
  - (b) to recognise, protect, conserve and preserve Aboriginal cultural heritage;
  - (c) to manage activities that may harm Aboriginal cultural heritage in a manner that provides —
    - (i) clarity, confidence and certainty; and
    - (ii) balanced and beneficial outcomes for Aboriginal people and the wider Western Australian community;
  - (d) to promote an appreciation of Aboriginal cultural heritage.
- (2) In the pursuit of the objects of this Act, the following principles must be observed —
  - (a) the principles set out in section 9 relating to Aboriginal cultural heritage;

- (b) the principles set out in section 10 relating to the management of activities that may harm Aboriginal cultural heritage.

**9. Principles relating to Aboriginal cultural heritage**

The principles relating to Aboriginal cultural heritage are as follows —

- (a) Aboriginal people should be recognised as having a living relationship with, and as being the primary custodians of, Aboriginal cultural heritage;
- (b) Aboriginal people should, as far as practicable, be involved in —
  - (i) the recognition, protection, conservation and preservation of Aboriginal cultural heritage; and
  - (ii) the management of activities that may harm Aboriginal cultural heritage;
- (c) as far as practicable —
  - (i) Aboriginal ancestral remains should be in the possession, and under the custodianship and control, of Aboriginal people;
  - (ii) secret or sacred objects should be in the possession, and under the custodianship, ownership, and control, of Aboriginal people;
  - (iii) Aboriginal ancestral remains and secret or sacred objects that are not in the possession, and under the custodianship and control, of Aboriginal people should be returned to Aboriginal people.



**10. Principles relating to management of activities that may harm Aboriginal cultural heritage**

The principles relating to the management of activities that may harm Aboriginal cultural heritage are as follows —

- (a) it should be recognised that —
  - (i) places, objects and landscapes have a range of different values for different individuals, groups or communities, and those values may change for an individual, group or community over time; and
  - (ii) those values includes social, spiritual, historical, scientific, economic and aesthetic values;
- (b) the range of different values for places, objects and landscapes held by different individuals, groups or communities, at particular times and over time, should be recognised and respected;
- (c) places and objects exist within landscapes and should be considered in that context;
- (d) as far as practicable, in order to utilise land for the optimum benefit of the people of Western Australia, the values held by Aboriginal people in relation to Aboriginal cultural heritage should be prioritised when managing activities that may harm Aboriginal cultural heritage.

**Division 4 — Interpretation**

**Subdivision 1 — Terms used**

**11. Terms used**

In this Act —

*Aboriginal ancestral remains* has the meaning given in paragraph (b)(iv) of the definition of *Aboriginal cultural heritage* in section 12;

**Aboriginal cultural heritage** has the meaning given in section 12;

**Aboriginal inspector** means a person appointed under section 225(1);

**Aboriginal object** has the meaning given in paragraph (b)(ii) of the definition of **Aboriginal cultural heritage** in section 12;

**Aboriginal person** means a person who —

- (a) is wholly or partly descended from the original inhabitants of Australia; and
- (b) identifies as an Aboriginal person; and
- (c) is accepted as an Aboriginal person by an Aboriginal community in which the person lives, or with which the person identifies;

**Aboriginal place** has the meaning given in paragraph (b)(i) of the definition of **Aboriginal cultural heritage** in section 12;

**Aboriginal tradition** —

- (a) means the living, historical and traditional observances, practices, customs, beliefs, values, knowledge and skills of the Aboriginal people of the State generally, or of a particular group or community of Aboriginal people of the State; and
- (b) includes any such observances, practices, customs, beliefs, values, knowledge and skills relating to particular persons, areas, objects or relationships;

**ACH Council** means the Aboriginal Cultural Heritage Council established under section 20(1);

**ACH Directory** means the Aboriginal Cultural Heritage Directory established and maintained under section 211(1);

**ACH impact statement** has the meaning given in section 100;

**ACH management plan** has the meaning given in section 100;

**ACH permit** has the meaning given in section 100;

**ACH protection agreement** has the meaning given in section 206(1);

**approved form** means a form approved under section 307;

**approved or authorised ACH management plan** means an ACH management plan —

- (a) approved under section 150(1)(b)(i); or
- (b) authorised under section 165(1)(b)(i);

**area** means an area of land;

**assent day** has the meaning given in section 2(a);

**CATSI Act corporation** has the meaning given in section 19;

**CEO** means the chief executive officer of the Department;

**consult** has the meaning given in section 100;

**consultation guidelines** has the meaning given in section 294(b);

**Corporations Act corporation** has the meaning given in section 19;

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

**cultural landscape** has the meaning given in paragraph (b)(iii) of the definition of **Aboriginal cultural heritage** in section 12;

**culturally sensitive information** means information that, in accordance with Aboriginal tradition, is information that is not to be shared with people who are not the knowledge holders for the Aboriginal cultural heritage to which the information relates;

**Department** means the department of the Public Service principally assisting in the administration of this Act;

**due diligence assessment** has the meaning given in section 102;

**electronic means** includes —

- (a) an electronic database or document management system; and

- (b) any other means by which a document can be accessed electronically;

**guidelines** means guidelines made under Part 13 Division 3 Subdivision 2;

**harm**, in relation to Aboriginal cultural heritage, has the meaning given in section 90;

**ILUA** means an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements established and maintained under the Native Title Act Part 8A;

**inspector** means a person designated as an inspector under section 224(1);

**instrument** means any of the following —

- (a) an ACH permit;
- (b) an approved or authorised ACH management plan;
- (c) a protected area order;
- (d) a Part 7 order;

**in the interests of the State** includes —

- (a) for the social or economic benefit of the State, including for the social or economic benefit of Aboriginal people; and
- (b) the interests of future generations;

**knowledge holder** —

- (a) in relation to an area, means an Aboriginal person who —
  - (i) in accordance with Aboriginal tradition, holds particular knowledge about the Aboriginal cultural heritage of the area; and
  - (ii) has traditional rights, interests and responsibilities in respect of Aboriginal places located in, or Aboriginal objects or Aboriginal

ancestral remains located in or reasonably believed to have originated from, the area;

and

- (b) in relation to Aboriginal cultural heritage, means an Aboriginal person who —
- (i) in accordance with Aboriginal tradition, holds particular knowledge about the Aboriginal cultural heritage; and
  - (ii) has traditional rights, interests and responsibilities in respect of the Aboriginal cultural heritage;

**knowledge holder guidelines** has the meaning given in section 294(c);

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

**landholder** —

- (a) in relation to Crown land, means —
- (i) if the land is in a managed reserve as defined in the *Land Administration Act 1997* section 3(1) — the management body of that reserve under that Act; or
  - (ii) if the land is vested in a person under a written law other than the *Land Administration Act 1997* — that person; or
  - (iii) if the land is a road as defined in the *Land Administration Act 1997* section 3(1) — whichever of the following has the control and management of the road under a written law, the local government in whose district the road is situated, the Commissioner of Main Roads or the Minister to whom the administration of the *Public Works Act 1902* is committed; or

- (iv) if the land is held under a lease lawfully granted by the Crown, and does not have a landholder under subparagraph (i), (ii) or (iii) — each of the lessee and the Minister as defined in the *Land Administration Act 1997* section 3(1); or
- (v) if the land does not otherwise have a landholder under this paragraph — the Minister as defined in the *Land Administration Act 1997* section 3(1);

and

- (b) in relation to land that is not Crown land, means —
  - (i) a person who is registered under the *Transfer of Land Act 1893* as proprietor of an estate in fee simple in the land; or
  - (ii) a person who is the holder of the freehold in the land as evidenced by a memorial that is registered under the *Registration of Deeds Act 1856*; or
  - (iii) an executor or administrator of, or a person appointed under a written law to act on behalf of, a person referred to in subparagraph (i) or (ii); or
  - (iv) an agent or attorney of a person referred to in subparagraph (i) or (ii); or
  - (v) a mortgagee in possession of the land;

and

- (c) in relation to any land, means a person who —
  - (i) holds rights conferred under the *Dampier to Bunbury Pipeline Act 1997* section 34 in respect of the land or is approved under section 34(3) of that Act as the nominee of a person who holds such rights; or

- (ii) holds a distribution licence under the *Energy Coordination Act 1994* Part 2A as a result of which the person has rights or powers in respect of the land; or
- (iii) holds, or has made an application for, a mining tenement under the *Mining Act 1978* in respect of the land; or
- (iv) in accordance with the *Mining Act 1978*, holds, occupies, uses, or enjoys in respect of the land a mining tenement within the meaning of the *Mining Act 1904*; or
- (v) holds, or has made an application for, a permit, drilling reservation, lease or licence under the *Petroleum and Geothermal Energy Resources Act 1967* in respect of the land; or
- (vi) holds a licence under the *Petroleum Pipelines Act 1969* section 10 in respect of the land or has authority under section 7 of that Act to enter upon the land; or
- (vii) holds a licence under the *Water Services Act 2012* as a result of which the person has rights or powers in respect of the land;

**local ACH service**, for an area, means the person designated under section 37(1) as the local Aboriginal cultural heritage service to provide local Aboriginal cultural heritage service functions for the area under Part 2 Division 3;

**local ACH service (fees) guidelines** has the meaning given in section 294(d);

**local ACH service functions** has the meaning given in section 19;

**located** has the meaning given in section 13;

**material**, in relation to harm to Aboriginal cultural heritage, has the meaning given in section 91(2);

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

***native title party***, in relation to an area, means —

- (a) a registered native title body corporate for the area; or
- (b) a registered native title claimant for the area; or
- (c) a person who was a registered native title body corporate for the area or a registered native title claimant for the area but —
  - (i) under an ILUA, has surrendered their native title rights and interests in respect of the area; or
  - (ii) whose native title rights and interests in respect of the area have been compulsorily acquired or otherwise been extinguished;

or

- (d) if the area is the subject of a settlement ILUA — a regional corporation in relation to that area;

***native title representative body*** means —

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

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

***new information about Aboriginal cultural heritage*** has the meaning given in section 178;

***occupier*** —

- (a) in relation to land, means a person who is, or is entitled to be, in occupation or control of the land, whether or not the person is a landholder of the land; and



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

***outstanding significance*** has the meaning given in section 69;

***Part 7 order*** means —

- (a) a stop activity order; or
- (b) a prohibition order; or
- (c) a remediation order;

***parties*** has the meaning given in section 100;

***persons to be consulted*** has the meaning given in section 100;

***persons to be notified*** has the meaning given in section 100;

***prescribed*** means prescribed by the regulations;

***prohibition order*** means an order given under Part 7 Division 3;

***proponent*** has the meaning given in section 100;

***proposed activity*** has the meaning given in section 100;

***protected area*** means an area declared as a protected area by an order under section 82(1);

***protected area order*** means an order made under Part 4 Division 5;

***protected area order guidelines*** has the meaning given in section 294(e);

***public authority*** means —

- (a) a Minister of the State; or
- (b) a department or an organisation as those terms are defined in the *Public Sector Management Act 1994* section 3(1); or
- (c) an entity listed in the *Public Sector Management Act 1994* Schedule 1;

***public notice*** means a notice published under section 282;

**regional corporation** has the meaning given in section 40(2);

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

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

**related agreement** has the meaning given in section 100;

**remediation order** means an order given under Part 7 Division 4;

**repeal day** has the meaning given in section 2(d);

**secret or sacred object** means an Aboriginal object that is secret or sacred to an Aboriginal person, group or community in accordance with Aboriginal tradition;

**serious**, in relation to harm to Aboriginal cultural heritage, has the meaning given in section 91(1);

**settlement ILUA** has the meaning given in section 40(2);

**specified**, in relation to an instrument or another document, means specified in the instrument or document, as is relevant;

**State significance** has the meaning given in section 100;

**State significance guidelines** has the meaning given in section 294(f);

**stop activity order** means an order given under Part 7 Division 2;

**tier 1 activity** has the meaning given in section 100;

**tier 2 activity** has the meaning given in section 100;

**tier 3 activity** has the meaning given in section 100;

**traditional rights, interests and responsibilities**, in relation to an Aboriginal person, group or community, means the rights, interests and responsibilities that the person, group or community has in accordance with Aboriginal tradition;

**transition day** has the meaning given in section 2(c);

*vehicle* means any thing capable of transporting people or things by air, road, rail or water, and it does not matter how the thing is moved or propelled;

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

### Subdivision 2 — Other key terms

## 12. Meaning of Aboriginal cultural heritage and related terms

In this Act —

*Aboriginal cultural heritage* —

- (a) means the tangible and intangible elements that are important to the Aboriginal people of the State, and are recognised through social, spiritual, historical, scientific or aesthetic values, as part of Aboriginal tradition; and
- (b) includes the following —
  - (i) an area (an *Aboriginal place*) in which tangible elements of Aboriginal cultural heritage are present;
  - (ii) an object (an *Aboriginal object*) that is a tangible element of Aboriginal cultural heritage;
  - (iii) a group of areas (a *cultural landscape*) interconnected through tangible or intangible elements of Aboriginal cultural heritage;
  - (iv) the bodily remains of a deceased Aboriginal person (*Aboriginal ancestral remains*), other than remains that are buried in a cemetery where non-Aboriginal persons are also buried or remains that have been dealt with or are to be dealt with under a law of the State relating to the burial of the bodies of deceased persons.

**13. Meaning of located in relation to Aboriginal cultural heritage**

Aboriginal cultural heritage is *located* in an area if —

- (a) the area is, or is part of, an Aboriginal place or a cultural landscape; or
- (b) there are Aboriginal ancestral remains or an Aboriginal object in the area.

**Division 5 — Other provisions of general application**

**14. Act binds Crown**

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.

**15. 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.

**16. Native title rights and interests**

- (1) In this section —

*affect* has the meaning given in the Native Title Act section 227.

- (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 that those rights and interests are recognised and protected by the Native Title Act.

**17. *Coroners Act 1996* not affected**

Subject to section 59, nothing in this Act affects the operation of the *Coroners Act 1996*.

**18. *Freedom of Information Act 1992* does not apply to culturally sensitive information**

The *Freedom of Information Act 1992* (**FOI Act**) does not apply to information, documents or other records under this Act (whether or not on the ACH Directory) to the extent that the FOI Act would otherwise enable or require the disclosure of culturally sensitive information.

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

### **Division 1 — Interpretation**

#### **19. Terms used**

In this Part —

**CATSI Act** means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Commonwealth);

**CATSI Act corporation** means a corporation registered under the CATSI Act;

**committee** means a committee of the ACH Council established under section 30(1);

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

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

**local ACH service functions**, in relation to a local ACH service, means the functions set out in section 48;

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

*[Divisions 2 and 3 have not come into operation.]*

*[Parts 3-5 have not come into operation.]*

## **Part 6 — Managing activities that may harm Aboriginal cultural heritage**

### **Division 1 — Preliminary**

#### **100. Terms used**

In this Part —

**Aboriginal party**, in relation to an approved or authorised ACH management plan, means each interested Aboriginal party that has agreed to be a party to the plan;

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

**ACH Management Code** has the meaning given in section 294(a);

**ACH management plan** has the meaning given in section 137;

**ACH permit** means an Aboriginal cultural heritage permit granted under section 119(1)(c)(i);

**consult** means to consult in accordance with section 101 and the consultation guidelines;

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

- (a) construction, renovation or demolition of a building occupied, or intended for occupation, as a place of residence, or a building ancillary to such a building, on a lot as defined in the *Planning and Development Act 2005* section 4(1) that is less than 1 100 m<sup>2</sup>;
- (b) development of a prescribed type carried out in accordance with the *Planning and Development Act 2005*;
- (c) travel on an existing road or track;
- (d) the taking of photographs for a recreational purpose;

- (e) recreational activities carried out on or in public waters or in a public place;
- (f) burning carried out —
  - (i) for fire prevention or control purposes or other fire management works on Crown land; and
  - (ii) by a public authority;
- (g) clearing of a kind set out in the *Environmental Protection Act 1986* Schedule 6 item 10, 10A, 11 or 12;
- (h) other activities, if any, prescribed for the purposes of this paragraph;

***informed consent*** has a meaning affected by section 146;

***interested Aboriginal party*** has the meaning given in section 135(1);

***parties***, to an approved or authorised ACH management plan, means —

- (a) each Aboriginal party to the plan; and
- (b) the proponent identified in the plan under section 137(2)(a)(i);

***persons to be consulted***, in relation to an activity or a proposed activity, means the persons to be consulted in accordance with section 107(1);

***persons to be notified***, in relation to an activity or a proposed activity, means the persons to be notified in accordance with section 107(1);

***proponent*** means a person who —

- (a) intends to carry out an activity that may harm Aboriginal cultural heritage; or
- (b) carries out an activity authorised under Division 4;

***proposed activity*** means an activity that a proponent intends to carry out;



***related agreement***, for an area, means an agreement that —

- (a) contains provisions about —
  - (i) the management of Aboriginal cultural heritage in the area; and
  - (ii) the carrying out of an activity in the area in relation to which authorisation under Part 6 Division 4 is required;and
- (b) is between a proponent for an activity being, or a proposed activity intended to be, carried out in the area and —
  - (i) if there is an approved or authorised ACH management plan for the area — a person who is an Aboriginal party to the plan; or
  - (ii) if there is, or were to be, an ACH management plan for the area — a person who is, or would be, an interested Aboriginal party for the plan; or
  - (iii) otherwise — 1 or more of the persons to be notified or the persons to be consulted about those activities, or proposed activities;

Example for this definition:

An ILUA or an agreement mentioned in the Native Title Act section 31(1)(b) may be a related agreement.

***State significance***, in relation to Aboriginal cultural heritage, means that the Aboriginal cultural heritage is of exceptional importance to the cultural identity of the State;

***tier 1 activity*** means an activity involving no, or a minimal level of, ground disturbance that is prescribed for the purpose of this definition;

***tier 2 activity*** means an activity involving a low level of ground disturbance that is prescribed for the purpose of this definition;

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*tier 3 activity* means an activity involving a moderate to high level of ground disturbance that is prescribed for the purpose of this definition.

[101. *Has not come into operation.*]

[Divisions 2-6 have not come into operation.]

[Parts 7-12 have not come into operation.]

## Part 13 — Miscellaneous

*[Division 1 has not come into operation.]*

### Division 2 — Giving notice

#### 282. Public notice

If public notice of a matter or document is required to be given under this Act, notice of the matter or document must —

- (a) be published on a website maintained by, or on behalf of, the ACH Council; and
- (b) if the regulations so provide — be published in accordance with the regulations.

*[283-286. Have not come into operation.]*

### Division 3 — Regulations and guidelines

#### Subdivision 1 — Regulations

#### 287. Regulations

- (1) The Governor may make regulations prescribing matters —
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may provide for, prohibit, control, impose requirements in relation to, or otherwise regulate all or any of the matters described in this Subdivision.
- (3) The regulations may provide that a contravention of a regulation is an offence and provide for a penalty for an offence not exceeding a fine of \$10 000.

**288.    Regulations about ACH Council and local ACH services**

- (1) In this section —  
*financial matters* includes funding provided under section 51.
- (2) Regulations may be made about the ACH Council, including the following —
- (a) nomination, appointment, term of office, resignation and removal from office of members of the Council or of a committee of the Council;
  - (b) alternate members of the Council, to deputise for members temporarily unable or unavailable to act;
  - (c) committees of the Council;
  - (d) management of conflicts of interest of members of the Council or of a committee of the Council;
  - (e) meetings and proceedings of the Council, including the following —
    - (i) chairing meetings;
    - (ii) holding remote meetings;
    - (iii) making resolutions without meetings.
- (3) Regulations may be made about local ACH services, including about reports to be provided by a local ACH service about the following —
- (a) matters related to the provision of local ACH service functions;
  - (b) financial matters, including the keeping, inspection and auditing of financial records, in compliance with any requirements prescribed.

**289. Regulations about protected areas**

Regulations may be made about protected areas, including the following —

- (a) activities, or classes of activities, that may be carried out in a protected area;
- (b) the regulation, control or prohibition of the carrying out of an activity, or a class of activities, in a protected area;
- (c) the erection or placement of notices or signs to identify an area as a protected area and to provide information about the following —
  - (i) regulations referred to in paragraph (a) or (b);
  - (ii) the conditions, if any, to which the protected area order declaring the area as a protected area is subject;
  - (iii) any offence under this Act, or the regulations, that relates to a protected area;
- (d) the destruction, removal or other interference with a notice or sign erected or placed under paragraph (c).

**290. Regulations about ACH Directory**

Regulations may be made about the ACH Directory, including the following —

- (a) the form and content of the Directory;
- (b) the placing of information and documents on the Directory;
- (c) the availability of information and documents on the Directory under section 216;
- (d) the provision of copies of, and extracts from, information and documents on the Directory that have been made available under this Act.

**291.    Regulations about determining whether information is culturally sensitive information**

Regulations may be made about procedures for determining whether information is culturally sensitive information for the purposes of this Act, including for the review of a decision about whether or not information is culturally sensitive information.

**292.    Regulations about fees and charges**

- (1) In this section —  
*fee* includes charge.
- (2) Regulations may be made about fees to be paid in connection with the following —
  - (a) services provided under this Act;
  - (b) the recovery of costs and expenses incurred in the administration of this Act.
- (3) Without limiting subsection (2), regulations to which this section applies may be made about the following —
  - (a) prescribing or providing for the determination of fees;
  - (b) the time at which, or the periods for or during which, fees are to be paid;
  - (c) the structure of fees;
  - (d) the basis on which a fee is to be calculated;
  - (e) the person or body who or which is liable to pay a fee;
  - (f) providing that —
    - (i) an application made under this Act is not required to be dealt with until any fee to be submitted in respect of the application has been received; and

- (ii) an objection made under this Act is not required to be dealt with until any fee to be submitted in respect of the objection has been received;
  - (g) when a fee submitted in respect of an application or objection made under this Act is taken to have been received for the purposes of this Act;
  - (h) interest on unpaid fees;
  - (i) penalties for, and other consequences of, failure to pay fees, late payment of fees or underpayment of fees;
  - (j) recovery of fees.
- (4) Regulations to which this section applies may prescribe or provide for the determination of a fee that is more than the amount, or an estimate of the amount, needed to allow recovery of expenditure —
- (a) incurred in connection with the matter in relation to which the fee is charged; or
  - (b) that is relevant to —
    - (i) the scheme or system under which the action to which the fee relates is taken; or
    - (ii) the performance of any function to which the fee relates.
- (5) Nothing in this section limits the operation of the *Interpretation Act 1984* sections 43, 45 and 45A.
- (6) To the extent that regulations to which this section applies prescribe or provide for the determination of a fee that includes an amount that is a tax, the regulations may impose the tax.

*[Section 292 amended: No. 28 of 2021 s. 4.]*

**293. Other regulations**

Regulations may be made about the following —

- (a) the manner in which applications under this Act are to be made;
- (b) the verification of information or documentation, including a requirement for a statutory declaration to be made about a matter;
- (c) the procedure to be followed by inspectors and Aboriginal inspectors in exercising their powers and performing their functions under Part 10;
- (d) the preparation of ACH impact statements;
- (e) any publishing requirements for the giving of public notice of a matter or document;
- (f) in relation to the giving of notice of documents required or permitted to be given under this Act —
  - (i) the time at which the notice is taken to have been given; and
  - (ii) if notice is given by electronic means — the means of satisfying a requirement under this Act in relation to a document in writing (for example, a requirement that the original of a document be given or that a document be signed).

*[Subdivision 2 has not come into operation.]*

**Division 4 — General provisions**

*[300-307. Have not come into operation.]*

**308. Laying documents before House of Parliament not sitting**

- (1) This section applies if —
  - (a) a provision of this Act requires the Minister to cause a document to be laid before each House of Parliament, or



dealt with under this section, within a specified period;  
and

- (b) at the beginning of the period, a House of Parliament is not sitting; and
  - (c) in the Minister's opinion, the House will not sit before the end of the period.
- (2) The Minister must send the document to the Clerk of the House before the end of the period.
- (3) When the document is sent to the Clerk of the House it is taken to have been laid before the House.
- (4) The laying of the document that is taken to have occurred under subsection (3) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk receives the document.

**[309.** *Has not come into operation.]*

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**Part 14** Repeals and transitional matters

**Division 2** Transitional provisions arising from the enactment of the  
Aboriginal Cultural Heritage Act 2021

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**Part 14 — Repeals and transitional matters**

*[Division 1 has not come into operation.]*

**Division 2 — Transitional provisions arising from the  
enactment of the *Aboriginal Cultural Heritage Act 2021***

**Subdivision 1 — Interpretation**

**313. Terms used**

In this Division —

**ACMC** means the Committee as defined in the AH Act  
section 4;

**AH Act** means the *Aboriginal Heritage Act 1972*;

**AH Act section 18 consent** means a consent given under the  
AH Act section 18;

**historical AH Act section 18 consent** means an AH Act  
section 18 consent that is not a transitional AH Act section 18  
consent;

**transitional AH Act section 18 consent** means an AH Act  
section 18 consent the notice for which was given to the ACMC  
under the AH Act section 18(2) during the transitional period;

**transitional period** means the period —

- (a) beginning on the day on which Part 15 Division 2 comes  
into operation; and
- (b) ending immediately before transition day;

**transitional regulations** has the meaning given in  
section 336(1).

*[Subdivisions 2-5 have not come into operation.]*

## **Part 15 — *Aboriginal Heritage Act 1972* amended**

### **Division 1 — Act amended**

#### **338. *Aboriginal Heritage Act 1972* amended**

This Part amends the *Aboriginal Heritage Act 1972*.

### **Division 2 — Amendments commencing on day after assent day**

#### **339. Section 4 amended**

- (1) In section 4 insert in alphabetical order:

*transition day* has the meaning given in the *Aboriginal Cultural Heritage Act 2021* section 11.

- (2) In section 4 in the definition of *traditional custodian* delete “section 9.” and insert:

section 9;

#### **340. Section 18 amended**

After section 18(5) insert:

- (6) 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 —
- (a) the consent —
- (i) takes effect on the day after the day on which the owner is informed of the Minister’s decision under subsection (3); and

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**Part 15** Aboriginal Heritage Act 1972 amended

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(ii) is of effect only for the period of 5 years, or any shorter period that is specified in the consent, beginning on the day on which the consent takes effect;

and

(b) the owner must notify the Minister if the owner becomes aware of any new information about Aboriginal cultural heritage in relation to the land the subject of the consent.

(6A) In subsection (6) —

*Aboriginal cultural heritage* has the meaning given in the *Aboriginal Cultural Heritage Act 2021* section 12;

*located* has the meaning given in the *Aboriginal Cultural Heritage Act 2021* section 13;

*transitional period* has the meaning given in the *Aboriginal Cultural Heritage Act 2021* section 313;

*new information about Aboriginal cultural heritage*, in relation to an area of land the subject of consent given under subsection (3)(a), means information not identified to the Minister or the Committee (whether in the notice given to the Committee under subsection (2) or otherwise) before the consent was given, about —

- (a) Aboriginal cultural heritage located in the area; or
- (b) the characteristics of Aboriginal cultural heritage located in the area.

*[Division 3 has not come into operation.]*

*[Part 16 has not come into operation.]*

## Notes

This is a compilation of the *Aboriginal Cultural Heritage Act 2021* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Aboriginal Cultural Heritage Act 2021</i> Pt. 1, Pt. 2 Div. 1, Pt. 6 Div. 1 (s. 100 only), Pt. 13 Div. 2 (s. 282 only), Div. 3 Subdiv. 1 and Div. 4 (s. 308 only), Pt. 14 Div. 2 Subdiv. 1 and Pt. 15 Div. 1 and 2	27 of 2021	22 Dec 2021	Pt. 1: 22 Dec 2021 (see s. 2(a)); Pt. 15 Div. 1 and 2: 23 Dec 2021 (see s. 2(b)); Pt. 2 Div. 1, Pt. 6 Div. 1 (s. 100 only), Pt. 13 Div. 2 (s. 282 only), Div. 3 Subdiv. 1 and Div. 4 (s. 308 only) and Pt. 14 Div. 2 Subdiv. 1: 18 Jun 2022 (see s. 2(e) and SL 2022/76 cl. 2)
<i>Aboriginal Cultural Heritage Amendment Act 2021</i>	28 of 2021	22 Dec 2021	s. 1 and 2: 22 Dec 2021 (see s. 2(a)); Act other than s. 1 and 2: 18 Jun 2022 (see s. 2(b) and SL 2022/76 cl. 2)

### Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Aboriginal Cultural Heritage Act 2021</i> Pt. 2 Div. 2 and 3, Pt. 3-5, s. 101, Pt. 6 Div. 2-6, Pt. 7-12, Pt. 13 Div. 1, s. 283-286, Pt. 13 Div. 3 Subdiv. 2, s. 300-307 and 309, Pt. 14 Div. 1 and Div. 2 Subdiv. 2-5, Pt. 15 Div. 3 and Pt. 16	27 of 2021	22 Dec 2021	Pt. 2 Div. 2 and 3, Pt. 3-5, s. 101, Pt. 6 Div. 2-6, Pt. 7-12, Pt. 13 Div. 1, s. 283-286, Pt. 13 Div. 3 Subdiv. 2, s. 300-307 and 309, Pt. 14 Div. 2 Subdiv. 2-5, Pt. 15 Div. 3 and Pt. 16: to be proclaimed (see s. 2 (e)); Pt. 14 Div. 1 (other than s. 310 and 311): on the day on which

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**Notes** Uncommenced provisions table

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Short title	Number and year	Assent	Commencement
			Pt. 15 Div. 3 comes into operation (see s. 2(c)); s. 310 and 311: 6 months after Pt. 15 Div. 3 comes into operation (see s. 2(d))

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
Aboriginal ancestral remains .....	11, 12
Aboriginal cultural heritage .....	11, 12
Aboriginal inspector.....	11
Aboriginal object .....	11, 12
Aboriginal party .....	100
Aboriginal person .....	11
Aboriginal place.....	11, 12
Aboriginal tradition.....	11
ACH Council .....	11
ACH Directory.....	11
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consultation guidelines.....	11
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Crown land.....	11
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culturally sensitive information .....	11
Department.....	11
due diligence assessment .....	11
electronic means .....	11
exempt activity.....	100
fee .....	292(1)
financial matters.....	288(1)
FOI Act .....	18

Defined terms

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guidelines .....	11
harm .....	11
historical AH Act section 18 consent .....	313
ILUA .....	11
informed consent .....	100
inspector .....	11
instrument .....	11
interested Aboriginal party .....	100
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persons to be notified .....	11, 100
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settlement ILUA .....	11
specified .....	11
State significance .....	11, 100
State significance guidelines .....	11
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tier 2 activity .....	11, 100
tier 3 activity .....	11, 100
traditional rights, interests and responsibilities .....	11
transitional AH Act section 18 consent.....	313
transitional period .....	313
transitional regulations.....	313
transition day.....	2, 11
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