



Western Australia

Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023

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Defined terms

Aboriginal Cultural Heritage Act 2021

Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023

SL 2023/81

Made by the deputy of the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023*.

2. Commencement

These regulations come into operation as follows —

- (a) Part 1 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 July 2023.

3. Terms used

In these regulations —

aggregated turnover has the meaning given in the *Income Tax Assessment Act 1997* (Commonwealth) section 328-115(1);

business has the same meaning as in the *Income Tax Assessment Act 1997* (Commonwealth);

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commercial proponent —

- (a) means a person carrying on a business; but
- (b) does not include any of the following —
 - (i) a government proponent;
 - (ii) a small business;
 - (iii) a non-profit organisation;
 - (iv) a CATSI Act corporation or Corporations Act corporation, except in respect of the undertaking by the corporation of an activity for profit or commercial gain;

government proponent —

- (a) means —
 - (i) a department or organisation as defined in the *Public Sector Management Act 1994* section 3(1); or
 - (ii) an entity listed in the *Public Sector Management Act 1994* Schedule 1 (other than in items 1 to 4 and 6 to 10);

but

- (b) does not include any of the following —
 - (i) the Legislative Council or Legislative Assembly;
 - (ii) a committee of the Legislative Council or Legislative Assembly, or a joint committee or standing committee of the Legislative Council and Legislative Assembly;
 - (iii) a Royal Commission;
 - (iv) a member of, or person who holds an office established under a written law for the purposes of, a body set out in subparagraph (i), (ii) or (iii);

income year, in relation to a commercial proponent, has the same meaning as in the *Income Tax Assessment Act 1997* (Commonwealth);

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non-profit organisation means an organisation that is not carried on for the purposes of profit or gain to its individual members and is, by the terms of the organisation's constitution, prohibited from making any distribution, whether in money, property or otherwise, to its members;

payment period, in relation to a fee payable under these regulations, means the period within which the fee must be paid;

revenue, in relation to a government proponent for a financial year, means the total revenue of the government proponent for that financial year;

Note for this definition:

The revenue of a government proponent may include the following —

- (a) income generated through the government proponent's operating activities, including income from performing services, selling goods or charging fees;
- (b) income received directly from government, including income from appropriations or special purpose accounts.

revenue category —

- (a) in relation to a commercial proponent for an income year — means the category given in regulation 4(1) or determined under regulation 5(2);
- (b) in relation to a government proponent for a financial year — means the category given in regulation 4(2) or determined under regulation 5(4);

small business has the meaning given in the *Small Business Development Corporation Act 1983* section 3(1).

4. Revenue categories of proponents: general rules

- (1) The **revenue category** of a commercial proponent for an income year is the category set out in the Table that is applicable to the aggregated turnover of the commercial proponent for the previous income year, unless regulation 5(2) applies.

Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023**Part 1** Preliminary**r. 4****Table**

| Aggregated turnover for previous income year | Category |
|---|-----------------|
| Less than \$10 million | Category 1 |
| At least \$10 million but less than \$250 million | Category 2 |
| At least \$250 million but less than \$1 billion | Category 3 |
| At least \$1 billion but less than \$5 billion | Category 4 |
| At least \$5 billion | Category 5 |

- (2) The *revenue category* of a government proponent for a financial year is the category set out in the Table that is applicable to the revenue of the government proponent for the previous financial year, unless regulation 5(4) applies.

Table

| Revenue for previous financial year | Category |
|---|-----------------|
| Less than \$10 million | Category 1 |
| At least \$10 million but less than \$250 million | Category 2 |
| At least \$250 million but less than \$1 billion | Category 3 |
| At least \$1 billion but less than \$5 billion | Category 4 |
| At least \$5 billion | Category 5 |

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r. 5

5. Revenue categories of proponents: proponents recently come into existence

- (1) Subregulation (2) applies if —
 - (a) a commercial proponent is liable to pay a fee under Part 3 in respect of an application or objection; and
 - (b) the commercial proponent came into existence in the income year in which the application or objection is made, or the previous income year.
- (2) The *revenue category* of the commercial proponent for the income year in which the application or objection is made is the category determined by the CEO based on the CEO's estimate of what the aggregated turnover of the commercial proponent will be for the income year in which the application or objection is made.
- (3) Subregulation (4) applies if —
 - (a) a government proponent is liable to pay a fee under Part 3 in respect of an application or objection; and
 - (b) the government proponent came into existence in the financial year in which the application or objection is made, or the previous financial year.
- (4) The *revenue category* of the government proponent for the financial year in which the application or objection is made is the category determined by the CEO based on the CEO's estimate of what the revenue of the government proponent will be for the financial year in which the application or objection is made.

Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023**Part 2** Fees for ACH permits**r. 6**

Part 2 — Fees for ACH permits**6. Fees payable in relation to ACH permits**

- (1) A fee of \$100 is payable in respect of the following —
 - (a) an application under section 115(1) of the Act;
 - (b) an application under section 122(1) of the Act;
 - (c) an objection under section 131(1) or (2) of the Act.
- (2) The person liable to pay the fee is the applicant or person who makes the objection.
- (3) The fee must be paid within the period of 14 days after the day on which the application or objection is made.

Part 3 — Fees for ACH management plans**Division 1 — Fees payable in relation to ACH management plans****7. Fees for approval or authorisation of ACH management plan**

- (1) This regulation applies if a commercial proponent or government proponent —
 - (a) applies for the approval of an ACH management plan under section 147(1) of the Act; or
 - (b) applies for the authorisation of an ACH management plan under section 157(1) of the Act (other than as applied by section 170(2) of the Act).
- (2) The fee payable in respect of the application is the sum of the fixed fee and variable fee (if any) set out in the Table that are applicable to the revenue category of the proponent for the income year or financial year in which the application is made.

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 Fees for ACH management plans **Part 3**
 Fees payable in relation to ACH management plans **Division 1**
r. 8

Table

| Revenue category of proponent | Fixed fee (\$) | Variable fee (\$) |
|--------------------------------------|-----------------------|--|
| Category 1 | 250 | Nil |
| Category 2 | 2 500 | 500 for each year for which the plan is proposed to have effect |
| Category 3 | 25 000 | 5 000 for each year for which the plan is proposed to have effect |
| Category 4 | 120 000 | 22 500 for each year for which the plan is proposed to have effect |
| Category 5 | 340 000 | 52 500 for each year for which the plan is proposed to have effect |

- (3) The person liable to pay the fee is the proponent.
- (4) The fee must be paid within the period of 90 days after the day on which the CEO gives notice under regulation 11.

8. Fees for objection to decision of ACH Council

- (1) This regulation applies if —
- (a) the proponent in relation to the activity to which an ACH management plan relates is a commercial proponent or government proponent; and
 - (b) a party to the plan objects under section 155(1) of the Act.

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- (2) The fee payable in respect of the objection is the fee set out in the Table that is applicable to the revenue category of the proponent for the income year or financial year in which the objection is made.

Table

| Revenue category of proponent | Fee (\$) |
|--------------------------------------|-----------------|
| Category 1 | 250 |
| Category 2 | 2 500 |
| Category 3 | 25 000 |
| Category 4 | 120 000 |
| Category 5 | 340 000 |

- (3) The person liable to pay the fee is the proponent.
- (4) The fee must be paid within the period of 90 days after the day on which the CEO gives notice under regulation 11.

9. Fees for extension of term of ACH management plan

- (1) This regulation applies if —
- the proponent in relation to the activity to which an approved or authorised ACH management plan relates is a commercial proponent or government proponent; and
 - a party to the plan applies under section 169(1) of the Act, or section 157(1) of the Act as applied by section 170(2) of the Act, to amend the plan; and
 - the amendment would extend the period for which the plan, or authorisation of the plan, has effect.

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 Fees for ACH management plans **Part 3**
 Fees payable in relation to ACH management plans **Division 1**
r. 9

- (2) The fee payable in respect of the application is the sum of the fixed fee and variable fee (if any) set out in the Table that are applicable to the revenue category of the proponent for the income year or financial year in which the application is made.

Table

| Revenue category of proponent | Fixed fee (\$) | Variable fee (\$) |
|--------------------------------------|-----------------------|---|
| Category 1 | 250 | Nil |
| Category 2 | 2 500 | 500 for each year for which the effect of the plan, or authorisation of the plan, is proposed to be extended |
| Category 3 | 25 000 | 5 000 for each year for which the effect of the plan, or authorisation of the plan, is proposed to be extended |
| Category 4 | 120 000 | 22 500 for each year for which the effect of the plan, or authorisation of the plan, is proposed to be extended |
| Category 5 | 340 000 | 52 500 for each year for which the effect of the plan, or authorisation of the plan, is proposed to be extended |

- (3) The person liable to pay the fee is the proponent.
- (4) The fee must be paid within the period of 90 days after the day on which the CEO gives notice under regulation 11.

Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023**Part 3** Fees for ACH management plans**Division 2** Procedural requirements in relation to ACH management plan fees**r. 10**

Division 2 — Procedural requirements in relation to ACH management plan fees**10. Application or objection must state revenue category of proponent**

- (1) If a person makes an application or objection in respect of which a fee is payable under this Part, the application or objection must —
 - (a) state the revenue category that the person considers to be the revenue category of the proponent for the income year or financial year in which the application or objection is made; and
 - (b) be accompanied by evidence that supports the statement of revenue category.
- (2) Despite subregulation (1)(a), if regulation 5(2) or (4) applies the application or objection must instead state the revenue category that the person considers ought to be the revenue category of the proponent for the income year or financial year in which the application or objection is made.
- (3) The CEO may make a written request to the person or proponent to do any of the following —
 - (a) provide the CEO with any further information that the CEO requires to be satisfied as to the revenue category of the proponent or to determine the revenue category of the proponent;
 - (b) verify information provided with the application or objection, or any further information provided under paragraph (a), by statutory declaration.

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Fees for ACH management plans **Part 3**
Adjustment of fee if authorisation of ACH management plan is **Division 3**
for different period

r. 11**11. CEO must give notice of ACH management plan fees**

If an application or objection in respect of which a fee is payable under this Part is made, the CEO must give to the person liable to pay the fee written notice setting out —

- (a) the amount of the fee; and
- (b) the payment period.

Division 3 — Adjustment of fee if authorisation of ACH management plan is for different period**12. Application of Division**

- (1) This Division applies in relation to an application in respect of which a fee (the *initial fee*) is payable under regulation 7 if —
 - (a) an ACH management plan to which the application relates is authorised under section 165(1)(b)(i) of the Act; and
 - (b) the amount of the fee (the *final fee*) that would have been payable in respect of the application, had it been calculated by reference to the number of years for which the authorisation of the plan is to have effect, differs from the amount of the initial fee.
- (2) This Division applies in relation to an application in respect of which a fee (the *initial fee*) is payable under regulation 9 if —
 - (a) an amendment to an ACH management plan to which the application relates is authorised under section 165(1)(b)(i) of the Act; and
 - (b) the amount of the fee (the *final fee*) that would have been payable in respect of the application, had it been calculated by reference to the number of years for which the effect of the plan or authorisation of the plan is extended, differs from the amount of the initial fee.

Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023**Part 3** Fees for ACH management plans**Division 4** Miscellaneous provisions relating to ACH management plan fees**r. 13**

13. Additional fee must be paid if final fee greater than initial fee

- (1) If the amount of the final fee is greater than the amount of the initial fee, the proponent is liable to pay an additional fee in respect of the application of an amount equal to the difference.
- (2) The fee must be paid within the period of 90 days after the day on which the CEO gives notice under subregulation (3).
- (3) The CEO must give the proponent written notice setting out —
 - (a) the amount of the fee; and
 - (b) the payment period.

14. Difference must be refunded if final fee less than amount paid

If the amount of the final fee is less than the amount paid in respect of the initial fee, the CEO must refund to the proponent an amount equal to the difference.

Division 4 — Miscellaneous provisions relating to ACH management plan fees**15. Treatment of applications to which Act s. 161 or 177 applies**

- (1) The purpose of this provision is to ensure that, if section 161 or 177(1)(a) or (c) of the Act applies in relation to an application, only 1 fee is payable under this Part in respect of the application.
- (2) Subregulation (3) applies if —
 - (a) a fee is paid or payable in respect of an application under section 157(1) of the Act; and
 - (b) the application is, under section 161 of the Act, considered as an application under section 147(1) of the Act.

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Fees for ACH management plans **Part 3**
Miscellaneous provisions relating to ACH management plan fees **Division 4**
r. 16

- (3) The fee is taken to have been paid or to be payable in respect of the application under section 147(1) of the Act.
- (4) Subregulation (5) applies if —
- (a) a fee is paid or payable in respect of an application under section 147(1) of the Act; and
 - (b) the application must, under section 177(1)(a) of the Act, be considered as if it were an application under section 157(1) of the Act.
- (5) The fee is taken to have been paid or to be payable in respect of the application under section 157(1) of the Act.
- (6) Subregulation (7) applies if —
- (a) a fee is paid or payable in respect of an application under section 169(1) of the Act; and
 - (b) the application must, under section 177(1)(c) of the Act, be considered as if it were an application under section 157(1) of the Act as applied by section 170(2) of the Act.
- (7) The fee is taken to have been paid or to be payable in respect of the application under section 157(1) of the Act as applied by section 170(2) of the Act.

16. Years rounded to nearest whole year

When determining a number of years for the purposes of regulation 7(2), 9(2) or 12(1)(b) or (2)(b), the number of years must be rounded to the nearest whole year, with exactly 6 months more than a whole year rounded up.

Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023**Part 4** Miscellaneous**Division 1** Procedural matters**r. 17**

Part 4 — Miscellaneous**Division 1 — Procedural matters****17. Fee waiver, reduction or refund**

The CEO may, on a case-by-case basis, refund, reduce or waive, in whole or in part, a fee paid or payable under these regulations if the CEO considers it appropriate to do so.

18. Extension of time within which to pay fees

- (1) The CEO may, on application by the person liable to pay a fee under these regulations, extend the payment period.
- (2) An application under subregulation (1) must —
 - (a) be in writing; and
 - (b) be made before the end of the payment period.
- (3) If the CEO grants an extension after the end of the payment period, these regulations have effect as if the CEO had granted the extension before the end of the period.

19. CEO must give notice of waiver, reduction or extension of time

If the CEO reduces or waives a fee, or extends a payment period, the CEO must give to the person liable to pay the fee written notice setting out, as applicable —

- (a) the new amount of the fee; or
- (b) the new payment period.

20. Applications and objections not required to be dealt with until fee received

An application or objection in respect of which a fee is payable under these regulations is not required to be dealt with until the fee is received.

Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023

Miscellaneous

Part 4

Interest on and recovery of outstanding amounts

Division 2**r. 21****21. When fees taken to have been received**

A fee is taken to have been received on the day on which it is credited to the ACH Account established under section 279(1) of the Act.

Division 2 — Interest on and recovery of outstanding amounts**22. Overdue fees and outstanding amounts**

- (1) A fee payable under these regulations in respect of an application or objection becomes *overdue* if —
 - (a) the fee is not paid within the payment period; and
 - (b) a relevant action is taken in relation to the application or objection.
- (2) A *relevant action* is taken in relation to an application or objection if —
 - (a) in relation to an application under section 115(1), 122(1), 147(1) or 169(1) of the Act — the ACH Council, or the Minister standing in place of the ACH Council, makes a decision on the application; or
 - (b) in relation to an objection under section 131(1) or (2) or 155(1) of the Act — the Minister confirms the ACH Council's decision or makes another decision; or
 - (c) in relation to an application under section 157(1) of the Act (including as applied by section 170(2) of the Act) — the Minister makes a decision on the application.
- (3) An amount of an overdue fee that is unpaid is an *outstanding amount*.

23. Interest on outstanding amounts

- (1) A person liable to pay an overdue fee is liable to pay interest on any outstanding amount of the overdue fee at the rate set out in subregulation (2).

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- (2) The rate is a rate 3% higher than the cash rate target, as determined and published by the Reserve Bank of Australia, in effect on the day after the day on which the payment period for the overdue fee ends.
- (3) Interest accrues from the day after the day on which the payment period for the overdue fee ends.
- (4) Interest does not accrue on interest that becomes payable under subregulation (1).

24. Recovery of outstanding amounts

- (1) The CEO may recover as a debt in a court of competent jurisdiction any outstanding amount of an overdue fee, or interest payable under regulation 23(1), from the person liable to pay the outstanding amount or interest.
- (2) The CEO may, in a certificate, do 1 or more of the following —
 - (a) specify an outstanding amount as being all or part of an overdue fee;
 - (b) specify an amount as being interest payable under regulation 23(1);
 - (c) specify a person as being liable to pay the specified amount;
 - (d) state that the specified amount is unpaid.
- (3) In proceedings under subregulation (1), a certificate is, without proof of the appointment of the CEO or of the authenticity of the signature, sufficient evidence of the matters specified or stated.

N. HAGLEY, Clerk of the Executive Council.

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Defined terms

Defined terms

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

The list is not part of the law.]

| Defined term | Provision(s) |
|------------------------------|----------------------------------|
| aggregated turnover | 3 |
| business | 3 |
| commercial proponent | 3 |
| final fee | 12(1) and (2) |
| government proponent | 3 |
| income year | 3 |
| initial fee | 12(1) and (2) |
| non-profit organisation..... | 3 |
| outstanding amount..... | 22(3) |
| overdue | 22(1) |
| payment period | 3 |
| relevant action..... | 22(2) |
| revenue..... | 3 |
| revenue category | 3, 4(1) and (2) and 5(2) and (4) |
| small business | 3 |