



Western Australia

## **Aboriginal Cultural Heritage Act 2021**

Compare between:

[06 Apr 2023, 00-f0-01] and [30 Jun 2023, 00-g0-00]



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.

### **Division 2 — Aboriginal Cultural Heritage Council**

#### **Subdivision 1 — ACH Council established**

#### **20. ACH Council established**

- (1) A body called the Aboriginal Cultural Heritage Council is established.
- (2) The ACH Council is an agent of the State and has the status, immunities and privileges of the State.

## **21. Composition of ACH Council**

- (1) The ACH Council is comprised of the following members —
  - (a) 2 persons appointed by the Minister to be chairpersons, each of whom is an Aboriginal person —
    - (i) 1 of whom has traditional rights, interests and responsibilities in respect of women’s business; and
    - (ii) 1 of whom has traditional rights, interests and responsibilities in respect of men’s business; and
  - (b) between 4 and 9 other persons appointed by the Minister.
- (2) The Minister must seek nominations, in accordance with the regulations, of persons for appointment as members.
- (3) The Minister must ensure that —
  - (a) the members have, between them, such knowledge, skills and experience as the Minister considers appropriate to enable them to effectively perform the functions of the ACH Council under this Act; and
  - (b) as far as practicable —
    - (i) the majority of the members are Aboriginal people; and
    - (ii) the gender composition of the ACH Council is balanced.

### **Subdivision 2 — Functions and powers**

## **22. Functions of ACH Council**

- (1) The ACH Council has the following functions —
  - (a) promoting public awareness, understanding and appreciation of Aboriginal cultural heritage in the State;

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- (b) promoting the role of Aboriginal people in —
  - (i) the recognition, protection, conservation and preservation of Aboriginal cultural heritage; and
  - (ii) the management of activities that may harm Aboriginal cultural heritage; and
  - (iii) the administration of this Act;
- (c) proactively assisting in the recognition, protection, conservation, preservation and management of Aboriginal cultural heritage, including, if relevant, by developing guidance materials;
- (d) functions under Division 3 Subdivision 2 in relation to the designation of persons as local ACH services for different areas of the State;
- (e) providing advice, and taking appropriate action, under Part 3 in relation to Aboriginal ancestral remains and secret or sacred objects;
- (f) making decisions under Part 6 in relation to ACH permits and ACH management plans;
- (g) making recommendations relating to prohibition orders and remediation orders under Part 7;
- (h) making decisions relating to the endorsement of ACH protection agreements under Part 8;
- (i) establishing and maintaining the ACH Directory under Part 9;
- (j) providing advice to the Minister as described in subsection (2);
- (k) other functions conferred on the ACH Council under this Act;
- (l) other functions, if any, prescribed for the purposes of this paragraph.

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

**23. Powers of ACH Council**

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

**24. Delegation by ACH Council**

- (1) The ACH Council may delegate a power or duty of the Council under another provision of this Act, other than a power or duty under a provision listed in the Table, to any of the following —
- (a) a member;
  - (b) a member of staff provided to the Council under section 25;
  - (c) a committee.

**Table**

s. 36(1)	s. 43(2)
s. 44(1)	s. 50(2)
s. 76	s. 79(1), (2) or (3)
s. 150(1)	s. 161(1)
s. 162(1)	s. 169
s. 176(1)(b)	

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- (2) A delegation must be in writing executed by the ACH Council.
- (3) A person to whom, or a committee to which, a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person or committee exercising or performing a power or duty that has been delegated to the person or committee under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) This section does not limit the ability of the ACH Council to perform a function through —
  - (a) a member of staff provided to the Council under section 25; or
  - (b) an agent of the Council.

**Subdivision 3 — Staff and assistance**

**25. Facilities and services**

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

**26. Assistance**

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

- (2) A person co-opted to assist the ACH Council may attend meetings of the Council and participate in its deliberations but cannot vote at a meeting of the Council.
- (3) A person co-opted to assist the ACH Council is entitled to be paid the remuneration and allowances determined by the Minister on the recommendation of the Public Sector Commissioner unless the person is a public service officer.

**Subdivision 4 — Accountability and financial arrangements**

**27. Minister may give directions**

- (1) The Minister may give a written direction to the ACH Council in respect of the performance of its functions, and the Council must give effect to the direction.
- (2) However, a direction under subsection (1) cannot be given in respect of the performance of a function in relation to any of the following —
  - (a) a particular person or matter;
  - (b) a particular ACH permit or approved or authorised ACH management plan;
  - (c) a particular application for an ACH permit or for the approval or authorisation of an ACH management plan;
  - (d) the evaluation of the characteristics or significance of Aboriginal cultural heritage;
  - (e) the giving of advice, or making of a recommendation, to the Minister under this Act.
- (3) Subsection (2) does not apply to a direction of the Minister referred to in a provision listed in the Table.

**Table**

s. 46(3)	s. 78(3) or (4)(b)
s. 81(3)	s. 119(5)

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s. 126(5)	s. 131(3)
s. 150(5)	s. 155(2)
s. 162(6)	

- (4) The Minister must cause a direction given under subsection (1) to be laid before each House of Parliament, or dealt with under section 308, within 14 days after the direction is given.
- (5) Subsection (4) does not apply to a direction of the Minister —
- (a) referred to in a provision listed in the Table to subsection (3); or
  - (b) given under section 295 or 299(1) or (3)(b)(i).
- (6) The text of a direction given under subsection (1) during a financial year must be included in the annual report submitted by the ACH Council for that financial year under section 29.

**28. Minister to have access to information**

- (1) In this section —
- document* includes any tape, disk or other device or medium on which information is recorded or stored;
- information* means information specified, or of a description specified, by the Minister that relates to the functions of the ACH Council.
- (2) The Minister is entitled —
- (a) to have access to information in the possession of the ACH Council; and
  - (b) if the information is in or on a document — to have access to, and make and retain copies of, that document.
- (3) For the purposes of subsection (2), the Minister may —
- (a) request the ACH Council to give information or a document to the Minister; and



- (b) request the Council to give the Minister access to information or a document; and
  - (c) for the purposes of paragraph (b), make use of staff and facilities provided to the Council under section 25 to obtain information or a document and give it to the Minister.
- (4) The ACH Council must comply with a request under subsection (3) and make staff and facilities provided to the Council available to the Minister for the purposes of subsection (3)(c).

### **Subdivision 5 — Other matters**

#### **29. Annual report of ACH Council**

- (1) As soon as practicable after each 1 July, and not later than 28 September, the ACH Council must 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 report required under this section must be prepared and dealt with in conjunction with the annual report for the relevant financial year prepared under the *Financial Management Act 2006* section 61 by the accountable authority of the Department.

#### **30. 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

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- (b) appoint members of the 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 the procedures must be consistent with any directions of the ACH Council and the terms of any delegation under which the committee is acting.
- (7) A committee must —
  - (a) keep minutes of its meetings to a standard approved by the ACH Council; and
  - (b) provide the Council with a copy of the minutes of each meeting.

**31. Procedures**

Subject to the regulations, the ACH Council may determine its own procedures.

**32. Remuneration of members of ACH Council or committee**

A member of the ACH Council, or of a committee, is entitled to be paid the remuneration and allowances determined by the Minister on the recommendation of the Public Sector Commissioner unless the member is a public service officer.

**33. Impersonating member of ACH Council**

A person must not falsely represent, by words or conduct, that the person is a member of the ACH Council.

Penalty: a fine of \$5 000.

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**Subdivision 1 — Purpose and nature of local ACH services**

**34. Purpose of local ACH service**

A person designated as a local ACH service for an area of the State —

- (a) must, as far as practicable, provide local ACH service functions for that area; and
- (b) may charge a fee for services that it provides in connection with the provision of local ACH service functions in accordance with Subdivision 3.

**35. Nature of local ACH service**

- (1) A person designated as a local ACH service is not an organisation for the purposes of the *Public Sector Management Act 1994*.
- (2) The *Public Sector Management Act 1994* does not apply to, or in relation to, the designation of a person as a local ACH service and a local ACH service is not subject to that Act.
- (3) A person designated as a local ACH service is not an agent of the State and does not have the status, immunities and privileges of the State.

**Subdivision 2 — Designation as local ACH service**

**36. ACH Council must designate local ACH service**

- (1) The ACH Council must, as far as practicable, designate persons as local ACH services for different areas of the State.
- (2) A person may be designated by the ACH Council as a local ACH service for more than 1 area.
- (3) The ACH Council can designate only 1 local ACH service for an area.

**37. Designation of local ACH service**

- (1) The ACH Council may designate a person as the local Aboriginal cultural heritage service for an area if —
  - (a) the person —
    - (i) has applied under section 38 to be designated as the local ACH service for the area; and
    - (ii) meets the requirements set out in section 39;and
  - (b) the Council determines that the person has priority for designation for the area as set out in section 40(1).
- (2) If the ACH Council decides not to designate a person who has applied under section 38 to be designated as the local ACH service for an area, the Council must advise the Minister in writing of the decision and the reasons for the decision.

**38. Application to be designated as local ACH service**

A person described in section 40(1) may apply, in the approved form, to the ACH Council to be designated as the local ACH service for an area.

**39. Requirements for designation as local ACH service**

The requirements for a person to be designated as the local ACH service for an area are that, in the opinion of the ACH Council, the person —

- (a) has comprehensive knowledge of the local Aboriginal community in the area; and
- (b) has the endorsement of any registered native title body corporate, or registered native title claimant, for the area or a part of the area; and
- (c) has sufficient support of the local Aboriginal community in the area to enable it to provide local ACH service functions for the area; and
- (d) for the purpose of the management of activities that may harm Aboriginal cultural heritage located in the area under Part 6 — has the necessary knowledge and skills to engage and negotiate, as is appropriate, with —
  - (i) proponents carrying out, or intending to carry out, activities in the area; and
  - (ii) native title parties and knowledge holders for the area, or a part of the area;and
- (e) has sufficient knowledge, skills and resources to provide local ACH service functions for the area; and
- (f) has in place a fee structure for the fees to be charged for services provided in connection with the provision of local ACH service functions for the area that —
  - (i) is reasonable; and
  - (ii) complies with the local ACH service (fees) guidelines;and
- (g) satisfies the other requirements, if any, prescribed for the purposes of this paragraph.

**40. Order of priority of designation**

- (1) The order of priority for designation as a local ACH service for an area is as follows —
- (a) if the area is the subject of a settlement ILUA — a regional corporation in relation to the area or a part of the area;
  - (b) a registered native title body corporate for the area or a part of the area;
  - (c) a person who was a registered native title body corporate for the area or a part of the area but —
    - (i) under an ILUA, has surrendered their native title rights and interests in respect of the area or the part of the area; or
    - (ii) the person’s native title rights and interests in respect of the area or the part of the area have been compulsorily acquired or otherwise been extinguished;
  - (d) a CATSI Act corporation or a Corporations Act corporation that —
    - (i) represents the local Aboriginal community in the area; or
    - (ii) has members that are knowledge holders for the area;
  - (e) a native title representative body for the area.
- (2) In subsection (1)(a) —
- regional corporation** means —
- (a) in relation to an area the subject of a settlement ILUA referred to in paragraph (a) of the definition of **settlement ILUA** — a Regional Corporation, as defined in the *Land Administration (South West Native Title Settlement) Act 2016* section 3, appointed in respect of that area; or

- (b) in relation to the area the subject of the settlement ILUA referred to in paragraph (b) of the definition of *settlement ILUA* — the Regional Entity, as defined in that ILUA; or
- (c) in relation to an area the subject of a settlement ILUA referred to in paragraph (c) of the definition of *settlement ILUA* — a prescribed corporation that has functions in respect of the area under, or for the purposes of, the settlement ILUA;

*settlement ILUA* means —

- (a) a settlement ILUA within the meaning of the *Land Administration (South West Native Title Settlement) Act 2016* section 3; or
  - (b) the ILUA named the Yamatji Nation Indigenous Land Use Agreement registered on 30 July 2020; or
  - (c) another prescribed ILUA under which native title rights and interests have been surrendered.
- (3) For the purposes of subsection (1)(d)(i), a CATSI Act corporation or a Corporations Act corporation represents the local Aboriginal community in an area in the circumstances prescribed.

**41. ACH Council must give public notice of designation**

- (1) The ACH Council must give public notice of the designation of a person as the local ACH service for an area.
- (2) The notice must include the following —
  - (a) a description of the area for which the person is designated as the local ACH service sufficient to identify it;
  - (b) the name of the person designated;

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- (c) details of how the person may be contacted;
- (d) the other information, if any, prescribed for the purposes of this paragraph.

**42. Duration of designation as local ACH service for area**

- (1) The designation of a person as the local ACH service for an area —
  - (a) takes effect on the day on which the ACH Council gives public notice under section 41(1) or on a later day, if any, specified in the notice; and
  - (b) is of effect, other than during any period when the designation is suspended under section 43(2)(a), until whichever of the following occurs first —
    - (i) if the person is a CATSI Act corporation — the person is deregistered under the CATSI Act;
    - (ii) if the person is a Corporations Act corporation — the person is deregistered under the *Corporations Act 2001* (Commonwealth);
    - (iii) the designation is cancelled under section 43(1) or (2)(b).
- (2) The designation of a person as the local ACH service for an area is not affected by the amendment of the area under section 44 and the person is taken to be designated as the local ACH service for the area as amended.

**43. Suspension or cancellation of designation as local ACH service for area or part of area**

- (1) The ACH Council may, on the written request of a person who is designated as the local ACH service for an area, cancel the designation in relation to the area or a part of the area.



- (2) The Minister or the ACH Council may, by written notice given to a person who is designated as the local ACH service for an area, take either of the following actions —
- (a) suspend the designation in relation to the area or a part of the area for a specified period;
  - (b) cancel the designation in relation to the area or a part of the area.
- (3) A notice under subsection (2) may be given only if the Minister or the ACH Council —
- (a) is satisfied that the person —
    - (i) no longer meets the requirements to be designated as the local ACH service for the area as set out in section 39; or
    - (ii) is no longer highest in the order of priority as set out in section 40(1) of those persons that have applied to be designated as the local ACH service for the area;
  - or
  - (b) determines that the person designated as the local ACH service for the area is not, as far as practicable, providing local ACH service functions for the area or a part of the area, as required under section 34(a).
- (4) A notice given under subsection (2) —
- (a) must set out the grounds on which the action is taken; and
  - (b) takes effect on the day on which the notice is given under that subsection or on a later day, if any, specified in the notice.

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- (5) Before taking action under subsection (2), the Minister or the ACH Council must give the person designated as the local ACH service for the area —
- (a) written notice of —
    - (i) the action that the Minister or the Council proposes to take; and
    - (ii) the grounds on which the Minister or the Council proposes to take that action;
  - and
  - (b) a reasonable opportunity to be heard on the matter.
- (6) If the designation of a person as the local ACH service for an area or a part of an area is suspended, the designation is of no effect during the period of the suspension.
- (7) If the Minister or the ACH Council suspends or cancels the designation of a person as the local ACH service for an area or a part of an area under this section the Council must give public notice of the suspension or cancellation.

**44. Change to area for local ACH service**

- (1) The ACH Council may amend the area for which a person is designated as the local ACH service.
- (2) An amendment of the area may be —
- (a) made at the request of the person designated as the local ACH service; or
  - (b) initiated by the ACH Council.
- (3) If the proposed amendment is not at the request of the person designated as the local ACH service, the ACH Council must give that person —
- (a) written notice of —
    - (i) its intention to amend the area for which the person is designated; and

- (ii) the reasons for the proposed amendment;
  - and
  - (b) a reasonable opportunity to be heard on the matter.
- (4) The ACH Council may amend the area for which a person is designated as the local ACH service only if the Council is satisfied that —
  - (a) the person —
    - (i) is in the order of priority for designation for the amended area as set out in section 40(1); and
    - (ii) meets the requirements to be designated as the local ACH service for the amended area as set out in section 39;
  - and
  - (b) there is no other person designated as a local ACH service for any part of the amended area.
- (5) If the ACH Council amends the area for which a person is designated as the local ACH service, the Council must give public notice of the amended area.

**45. Change to local ACH service**

- (1) The ACH Council may, on its own initiative or at the request of a person designated as a local ACH service for an area, amend any of the following referred to in the public notice of the designation given under section 41(1) —
  - (a) the name of the person;
  - (b) any other detail or information described in section 41(2)(c) or (d).
- (2) If the ACH Council amends details or information under subsection (1), the Council must give public notice of the amended details or information.

**46. Objection to decision of ACH Council**

- (1) A person who applies under section 38 to be designated as the local ACH service for an area may, within the prescribed period, object in writing to the Minister if the ACH Council refuses to designate the person as the local ACH service for the area.
- (2) A person designated as a local ACH service for an area may, within the prescribed period, object in writing to the Minister if the ACH Council —
  - (a) refuses to cancel the designation in relation to the area or a part of an area under section 43(1); or
  - (b) suspends or cancels the designation in relation to the area or a part of the area under section 43(2); or
  - (c) refuses to amend the area for which the person is designated in response to a request under section 44(2)(a); or
  - (d) amends the area for which the person is designated on the initiative of the Council under section 44(2)(b); or
  - (e) refuses to approve a variation of the fee structure for services provided by the person in response to a request under section 50(1).
- (3) On receipt of an objection under this section, the Minister must give a written direction to the ACH Council to provide to the Minister —
  - (a) the information, if any, that was provided to the Council at the time when the decision to which the objection relates was made; and
  - (b) the reasons of the Council for the decision, and any other information that, in the opinion of the Council, is relevant to the decision.

- (4) The Minister may make a written request to a person who has objected under this section to do any of the following —
- (a) provide the Minister with any further information relevant to the objection that the Minister requires to assess the objection;
  - (b) verify any further information by statutory declaration.
- (5) Having considered the information provided by the ACH Council under subsection (3) and any further information provided in response to a request under subsection (4) the Minister may —
- (a) confirm the decision made by the Council; or
  - (b) make another decision and substitute it for the decision made by the Council.
- (6) The Minister must ensure that written notice of a decision of the Minister under this section is given to the person who made the objection.

**47. Notice of decision must be given**

- (1) The ACH Council must give to a person written notice of a decision of the Council if the person has a right under section 46(1) or (2) to object to the Minister about the decision.
- (2) The notice must be given within 14 days after the decision is made.
- (3) The notice must contain the following —
- (a) a description of the decision;
  - (b) short particulars of the reasons for the decision;
  - (c) a statement that the person has a right to object to the Minister about the decision.

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**Subdivision 3 — Local ACH service functions and related provisions**

*[48, 49. Have not come into operation.]*

**50. Variation of fee structure for services provided by local ACH service**

- (1) A person designated as a local ACH service may request the ACH Council to approve a variation of the fee structure for services that it provides in connection with the provision of any local ACH service functions.
- (2) In response to a request under subsection (1), the ACH Council may approve the variation of the fee structure if the Council is satisfied that the fee structure as so varied —
  - (a) is reasonable; and
  - (b) complies with the local ACH service (fees) guidelines.

*[Subdivision 4 has not come into operation.]*

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

## Part 4 — Protected areas

### Division 1 — Preliminary

#### 69. Terms used

In this Part —

*application area* means the area to which an application under section 72(1) relates;

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

- (a) that the Aboriginal cultural heritage is of outstanding significance to —
  - (i) a knowledge holder for the Aboriginal cultural heritage; or
  - (ii) a group or community, the members of which are knowledge holders for the Aboriginal cultural heritage;
- and
- (b) that the significance is recognised through social, spiritual, historical, scientific or aesthetic values as part of Aboriginal tradition.

[70, 71. *Have not come into operation.*]

[Divisions 2-4 *have not come into operation.*]

### Division 5 — Declaration of protected area

[82-85. *Have not come into operation.*]

#### 86. Provisions about protected area orders

[(1) *has not come into operation*]

- (2) A protected area order is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

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(3) The *Interpretation Act 1984* sections 43 (other than subsections (4) and (6)), 44 and 56 and Part VIII apply to a protected area order as if it were subsidiary legislation.

(4) The CEO must ensure that public notice is given of a protected area order.

*[(5) has not come into operation]*

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

*[Division 6 has not come into operation.]*



## **Part 5 — Offences about harming Aboriginal cultural heritage and compensation for harm to Aboriginal cultural heritage**

### **Division 1 — Preliminary**

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

#### **90. Meaning of harm to Aboriginal cultural heritage**

- (1) To *harm* Aboriginal cultural heritage includes to destroy or damage the Aboriginal cultural heritage.
- (2) However, an act carried out in relation to Aboriginal cultural heritage by an Aboriginal person acting in accordance with the person's traditional rights, interests and responsibilities in respect of the Aboriginal cultural heritage cannot harm the Aboriginal cultural heritage.

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

[Divisions 2-4 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;

***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. Consultation about proposed activities**

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

- (a) the proponent making a genuine attempt to contact and consult, in a timely manner, each person to be consulted;
- (b) the proponent providing sufficient information about the proposed activity to each person to be consulted to enable them to understand the proponent's reasoning and intention;
- (c) each person to be consulted having an opportunity to clearly state their position on the proposed activity and explain that position;
- (d) the proponent and each person to be consulted disclosing relevant and necessary information about their position as reasonably requested;
- (e) the proponent taking reasonable steps to follow up with a person to be consulted if there is no response to the initial contact or a reasonable request for further information.

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

**Division 3 — Persons to be notified or persons to be consulted about activities or proposed activities**

**107. Persons to be notified or persons to be consulted about activities or proposed activities**

- (1) The persons to be notified or the persons to be consulted about an activity that a proponent is carrying out, or a proposed

activity that the proponent intends to carry out, in an area are the following —

- (a) each local ACH service for the area or a part of the area;
  - (b) if there is not a local ACH service for the area or a part of the area —
    - (i) each native title party for the area or the part of the area; and
    - (ii) each knowledge holder for the area or the part of the area;
  - (c) if there is not a local ACH service, a native title party or a knowledge holder for the area or a part of the area — each native title representative body for the area or the part of the area.
- (2) In subsection (1)(b)(ii) —

*each knowledge holder*, in relation to an area or a part of an area, means each person who is identified as a knowledge holder for the area or a part of the area, after reasonable steps have been taken to do so in accordance with the knowledge holder guidelines.

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

[Divisions 4 and 5 have not come into operation.]

## **Division 6 — ACH management plans**

### **Subdivision 1 — Preliminary**

[134-138. *Have not come into operation.*]

#### **139. Obligation to consult on ACH management plan**

- (1) A proponent who intends to carry out an activity under an ACH management plan must consult with each of the persons to be consulted about the proposed activity.

- (2) Consultation must be carried out within a reasonable time and in accordance with the consultation guidelines.

*[140-145. Have not come into operation.]*

*[Subdivisions 2-5 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. Giving notice generally**

(1) If notice of a document is required or permitted to be given under this Act to a person, the notice may be given by —

- (a) giving it to the person personally; or
- (b) leaving it at the person's usual, or last known, place of residence or business; or
- (c) sending it by prepaid post (including document exchange) addressed to the person —
  - (i) to the address provided by the person for the giving or service of notice; or
  - (ii) if no address is provided as referred to in subparagraph (i) — to the last known address of the person; or
  - (iii) to 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;

or



- (d) emailing it to an email address or faxing it to a fax number —
    - (i) provided by the person for the giving or service of notice; or
    - (ii) if no email address or fax number is provided as referred to in subparagraph (i) — to the email address or fax number appearing on recent correspondence addressed by or on behalf of the person to the person or entity giving the notice, or otherwise notified to the person or entity giving the notice, or published by the person to whom the notice is to be given;
- or
- (e) communicating it in some other agreed way with the person; or
  - (f) any other manner prescribed, including by electronic means or by publishing a copy of the notice, in accordance with the regulations.
- (2) The use of a particular method for giving notice to a particular person does not prevent the use of a different method for giving notice to the same person.
  - (3) Notice required to be given to a partnership is taken to have been given to all members of the partnership if it is given to any member of the partnership in accordance with subsection (1).
  - (4) Failure to properly give notice to 1 person does not affect whether or not notice was properly given to another person.
  - (5) This section is in addition to the *Interpretation Act 1984* sections 75 and 76.

[284, 285. Have not come into operation.]

**286. Defects in notice**

Notice of a document is not ineffective, nor is it to be regarded as having been not properly given, only because of an error, misdescription or irregularity in the document or the way it is addressed that is not likely to mislead or does not in fact mislead.

**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 — Guidelines**

#### **294. Guidelines**

Guidelines may be made under this Subdivision about the following —

- (a) the undertaking of a due diligence assessment for a proposed activity (the *ACH Management Code*);
- (b) the carrying out of consultation for the purposes of this Act (the *consultation guidelines*);
- (c) the identification of persons who are knowledge holders for an area (the *knowledge holder guidelines*);
- (d) the fee structure for the fees to be charged for services provided in connection with the provision of local ACH service functions (the *local ACH service (fees) guidelines*);
- (e) the factors to be considered in determining whether Aboriginal cultural heritage is of outstanding significance for the purposes of this Act (the *protected area order guidelines*);
- (f) the factors to be considered in determining under section 176(1)(b) whether Aboriginal cultural heritage is of State significance for the purposes of this Act (the *State significance guidelines*).

**295.    Preparation of guidelines**

The ACH Council may, with the approval or on the direction of the Minister, prepare proposed guidelines.

**296.    Consultation on proposed guidelines**

- (1) The ACH Council must give public notice of proposed guidelines that the Council has prepared.
- (2) The notice must include the following —
  - (a) a brief description of the contents of the proposed guidelines;
  - (b) details of where and how a copy of the proposed guidelines can be obtained or viewed;
  - (c) provision of an opportunity to make submissions to the ACH Council within 60 days after the notice is given about any provision in the proposed guidelines.
- (3) The ACH Council must inform the following persons that public notice about proposed guidelines has been given under subsection (1) —
  - (a) each local ACH service for an area in the State;
  - (b) each native title party for an area in the State;
  - (c) each native title representative body in the State;
  - (d) any public authority that the Council considers may have an interest in the proposed guidelines;
  - (e) any peak industry body that the Council considers may have an interest in the proposed guidelines;
  - (f) any other person the Council considers has an interest in the guidelines.
- (4) The ACH Council —
  - (a) must consider any submissions made in response to the notice given under subsection (1); and
  - (b) may modify the proposed guidelines as it thinks fit.



**297. Approval of Minister**

The Minister may approve proposed guidelines prepared by the ACH Council with or without any modifications that the Minister thinks fit.

**298. Provisions about guidelines**

- (1) The ACH Council must cause a copy of any guidelines approved by the Minister under section 297 to be published in the *Gazette*.
- (2) Guidelines come into effect —
  - (a) on the day on which they are published in the *Gazette*;  
or
  - (b) on a later day specified in the guidelines.
- (3) Guidelines are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (4) The *Interpretation Act 1984* sections 43 (other than subsections (4) and (6)), 44 and 56 and Part VIII apply to guidelines as if they were subsidiary legislation.

**299. Amending or repealing guidelines**

- (1) The ACH Council may, with the approval or on the direction of the Minister, amend guidelines.
- (2) Sections 296, 297 and 298 apply, with such modifications as are necessary, to and in relation to an amendment as if the amendment were guidelines.
- (3) Guidelines may be repealed by —
  - (a) subsequent guidelines; or
  - (b) an instrument of repeal —
    - (i) made by the ACH Council with the approval or on the direction of the Minister; and

- (ii) approved by the Minister and published in the *Gazette*.

#### **Division 4 — General provisions**

*[300-306. Have not come into operation.]*

**307. CEO may approve forms**

The CEO may approve forms for use under this Act.

**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.]*

## **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).

**Subdivision 2 — Protected areas**

**314. Terms used**

In this Subdivision —

*Aboriginal site* has the meaning given in the AH Act section 4;

*AH Act protected area order* means an order —

- (a) made under the AH Act section 19(4) declaring an Aboriginal site to be a protected area; and
- (b) that is of effect immediately before transition day;

*former protected area order* means the following —

- (a) an AH Act protected area order;
- (b) an historical protected area order;

*historical protected area order* has the meaning given in section 315(1).

**315. Historical protected area orders**

- (1) The Governor may, by order published in the *Gazette* before transition day, declare an area as a protected area (an *historical protected area order*).
- (2) An historical protected area order is to be made on the recommendation of the Minister under subsection (3).
- (3) The Minister may, on the Minister's own initiative, recommend to the Governor that the Governor declare an area as a protected area under subsection (1) if the area relates to an Aboriginal site declared to be a protected area under an order made, or purportedly made, under the AH Act section 19(4) before assent day.
- (4) An historical protected area order can declare that the protected area comprises several areas that are not contiguous.
- (5) An historical protected area order must —
  - (a) provide a name for the protected area; and

- (b) describe the boundaries of the protected area in a manner sufficient to identify it; and
  - (c) state that Aboriginal cultural heritage of outstanding significance for the purposes of this Act is located in the protected area; and
  - (d) state the conditions, if any, to which the declaration of the area, or areas, as a protected area is subject.
- (6) Section 86(2) to (4) applies in respect of an historical protected area order as if it were a protected area order.
- (7) An historical protected area order comes into effect immediately before transition day.

**[316]. Continuation of former protected area orders**

*[ (1), (2) have not come into operation ]*

- (3) Immediately before transition day, the exclusive right provided under the AH Act section 22(1) to the occupation and use of every place that is declared to be a protected area under an AH Act protected area order ceases to be vested in the Minister on behalf of the Crown.

*[317. ~~Have~~Has not come into operation.]*

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

**Subdivision 4 — Marandoo Act area**

**327. Terms used**

In this Subdivision —

*Marandoo Act area* means the land described in the *Aboriginal Heritage (Marandoo) Act 1992* Schedule 1 Part 1, Schedule 2 Part 1 and Schedule 3 Part 1 immediately before transition day;

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**Part 14** Repeals and transitional matters

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Aboriginal Cultural Heritage Act 2021

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**owner**, in relation to the specified land, means a person who, immediately before transition day, is using the specified land for the specified purpose;

**reduced area** means the area of land approved by the Minister by order under section 329(1);

**specified land** means —

- (a) the reduced area; or
- (b) the Marandoo Act area if, immediately before transition day, there is no reduced area;

**specified purpose** means undertaking any activity for and incidental to the exploration, mining, processing and transporting of iron ore, including, but not limited to, the construction, operation and maintenance of railways, power lines, roads and other associated infrastructure.

**328. Historical AH Act section 18 consent taken to be held**

- (1) The owner of specified land is taken, immediately before transition day, to hold an historical AH Act section 18 consent to use the specified land for the specified purpose (the **historical AH Act section 18 consent**).
- (2) For the purposes of the application of Subdivision 3 to the historical AH Act section 18 consent —
  - (a) the historical AH Act section 18 consent is taken to have been given to the owner under the AH Act section 18; and
  - (b) the specified land is taken —
    - (i) to be the land the subject of the historical AH Act section 18 consent; and
    - (ii) to be specified in the consent;and

- (c) the specified purpose is taken —
  - (i) to be the purpose for which the land the subject of the historical AH Act section 18 consent may be used; and
  - (ii) to be specified in the consent.

**329. Minister may approve reduced area**

- (1) The Minister may, by order published in the *Gazette* before transition day, approve an area of land that is part of the Marandoo Act area as the reduced area.
- (2) Before an order is made under subsection (1), the Minister must consult as to the area that is to comprise the reduced area with —
  - (a) the person who is using the Marandoo Act area for the specified purpose at the time of the consultation; and
  - (b) the persons to be consulted under Part 6 were a proponent intending to carry out a tier 3 activity in the specified area.
- (3) The reduced area can comprise several areas of the Marandoo Act area that are not contiguous.
- (4) An order made under subsection (1) takes effect immediately before transition day.
- (5) The Minister may, by order published in the *Gazette*, amend or repeal an order made under subsection (1), but only —
  - (a) before transition day; and
  - (b) after the persons to be consulted under subsection (2) have been consulted about the effect of the proposed amendment or repeal.

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

**Subdivision 5 — Other matters**

[331-335. *Have not come into operation.*]

**336. Transitional regulations**

(1) In this regulation —

**publication day**, for transitional regulations, means the day on which those regulations are published in the *Gazette*;

**specified** means specified or described in transitional regulations;

**transitional matter** —

(a) means a matter of a transitional nature that arises as a result of —

(i) the enactment of this Act; or

(ii) the repeal of a written law under Part 14 Division 1; or

(iii) the amendment of a written law under Part 15 or 16;

and

(b) includes a saving or application matter;

**transitional regulations** means regulations made under subsection (2).

(2) If there is no sufficient provision in this Act for dealing with a transitional matter, the Governor may make regulations prescribing matters —

(a) required to be prescribed for the purpose of dealing with the transitional matter; or

(b) necessary or convenient to be prescribed for the purpose of dealing with the transitional matter.



- (3) Transitional regulations may provide that specified provisions of this Act or another written law —
  - (a) do not apply to, or in relation to, a specified matter or thing; or
  - (b) apply with specified modifications to, or in relation to, a specified matter or thing.
- (4) If transitional regulations provide that a specified state of affairs is taken to have existed, or not to have existed, on and after a day that is earlier than publication day but not earlier than assent day, the regulations have effect according to their terms.
- (5) If transitional regulations contain a provision referred to in subsection (4), the provision does not operate so as to —
  - (a) affect in a manner prejudicial to a person (other than the State or an authority of the State) the rights of that person existing before publication day for the regulations; or
  - (b) impose liabilities on a person (other than the State or an authority of the State) in respect of an act done or an omission made before publication day for the regulations.

*[337. Has 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

(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 and 2, Div. 3 Subdiv. 1 and 2 and Subdiv. 3 (s. 50 only), Pt. 4 Div. 1 (s. 69 only) and Div. 5 (s. 86(2)-(4) only), Pt. 5 Div. 1 (s. 90 only), Pt. 6 Div. 1, Div. 3 (s. 107 only) and Div. 6 Subdiv. 1 (s. 139 only), Pt. 13 Div. 2 (s. 282, 283 and 286 only), Div. 3 and Div. 4 (s. 307 and 308 only), Pt. 14 Div. 2 Subdiv. 1, Subdiv. 2 (s. 314, <a href="#">315</a> and <del>315</del> <a href="#">316(3)</a> only), Subdiv. 4 (s. 327-329 only) and Subdiv. 5 (s. 336 only) 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); Pt. 2 Div. 2: 12 Sep 2022 (see s. 2(e) and SL 2022/157 cl. 2); Pt. 2 Div. 3 Subdiv. 1 and 2 and Subdiv. 3 (s. 50 only), Pt. 4 Div. 1 (s. 69 only) and Div. 5 (s. 86(2)-(4) only), Pt. 5 Div. 1 (s. 90 only), s. 101, Pt. 6 Div. 3 (s. 107 only) and Div. 6 Subdiv. 1 (s. 139 only), s. 283 and 286, Pt. 13 Div. 3 Subdiv. 2, s. 307 and Pt. 14 Div. 2 Subdiv. 2 (s. 314 and 315 only), Subdiv. 4 (s. 327-329 only) and Subdiv. 5 (s. 336 only): 6 Apr 2023 (see s. 2(e) and SL 2023/24 cl. <del>2</del> ); <a href="#">s. 316(3): 30 Jun 2023</a> (see s. 2(e) and SL 2023/40 cl. 2(a))
<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:

Short title	Number and year	Assent	Commencement
			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> s. 48 and 49, Pt. 2 Div. 3 Subdiv. 4, Pt. 3, s. 70 and 71, Pt. 4 Div. 2-4, s. 82-85, 86(1) and (5) and 87, Pt. 4 Div. 6, s. 89 and 91, Pt. 5 Div. 2-4, Pt. 6 Div. 2, s. 108, Pt. 6 Div. 4 and 5, s. 134-138 and 140-145, Pt. 6 Div. 6 Subdiv. 2-5, Pt. 7-12, Pt. 13 Div. 1, s. 284 and 285, 300-306 and 309, Pt. 14 Div. 1, s. 316(1) and (2) and 317, Pt. 14 Div. 2 Subdiv. 3, s. 330-335 and 337, Pt. 15 Div. 3 and Pt. 16	27 of 2021	22 Dec 2021	<del>s. 316(3); 30 Jun 2023 (see s. 2(e) and SL 2023/40 cl. 2(a));</del> <del>s.</del> 48 and 49, Pt. 2 Div. 3 Subdiv. 4, Pt. 3, s. 70 and 71, Pt. 4 Div. 2-4, s. 82-85, 86(1) and (5) and 87, Pt. 4 Div. 6, s. 89 and 91, Pt. 5 Div. 2-4, Pt. 6 Div. 2, s. 108, Pt. 6 Div. 4 and 5, s. 134-138 and 140-145, Pt. 6 Div. 6 Subdiv. 2-5, Pt. 7-12, Pt. 13 Div. 1, s. 284 and 285, 300-306, 309, Pt. 14 Div. 1 (other than s. 310 and 311), s. 316(1) and (2) and 317, Pt. 14 Div. 2 Subdiv. 3, s. 330-335 and 337, Pt. 15 Div. 3 and Pt. 16: 1 Jul 2023 (see s. 2(c) and (e) and SL 2023/40 cl. 2(b)); s. 310 and 311: 1 Jan 2024 (see s. 2(d))
<i>Directors' Liability Reform Act 2023</i> Pt. 3 Div. 1	9 of 2023	4 Apr 2023	1 Jul 2023 (see s. 2(b)(ii) and SL 2023/40 cl. 2(b))