



Western Australia

Aboriginal Cultural Heritage Act 2021

Compare between:

[01 Jul 2023, 00-h0-02] and [24 Oct 2023, 00-i0-02]

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.

Division 3 — Local Aboriginal cultural heritage services

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.

Subdivision 3 — Local ACH service functions and related provisions

48. Local ACH service functions

- (1) Local ACH service functions that are, as far as practicable, to be provided in relation to an area by the person designated as the local ACH service for that area are as follows—
 - (a) for the purpose of the management of activities that may harm Aboriginal cultural heritage located in the area under Part 6 — 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;
 - (b) to make, or to facilitate the making of, ACH management plans in respect of the area;
 - (c) to provide advice to proponents carrying out, or intending to carry out, activities in the area about whether Aboriginal cultural heritage is located in the area and the characteristics of Aboriginal cultural heritage located in the area;
 - (d) to provide information to the ACH Council about Aboriginal cultural heritage located in the area to assist the Council to perform its functions under this Act, and to improve the accuracy of the ACH Directory;
 - (e) to make submissions, and provide information, to the Council about proposals for activities to be carried out in the area and the management of those activities so as to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activities;
 - (f) to engage, as appropriate, with other local ACH services, native title parties and knowledge holders about Aboriginal cultural heritage that extends beyond the geographic boundaries of the area;

- (g) to undertake, either directly or indirectly, on-ground identification, maintenance, conservation and preservation of Aboriginal cultural heritage located in the area;
 - (h) to report to the Council about matters related to the provision of local ACH service functions as required by the regulations;
 - (i) to undertake, either directly or indirectly, any activity in relation to protecting, preserving, conserving or managing Aboriginal cultural heritage, agreed under an approved or authorised ACH management plan to be a function of the person designated as the local ACH service for the purposes of this paragraph;
 - (j) other functions, if any, prescribed for the purposes of this paragraph.
- (2) A person designated as a local ACH service must use its best endeavours to provide the functions set out in subsection (1) in a timely manner.

49. Fee for services provided by local ACH service

- (1) Subject to subsection (3), a person designated as a local ACH service may charge a fee for services that it provides in connection with any local ACH service functions that it provides in relation to the area for which it is designated.
- (2) A fee charged must be in accordance with —
- (a) the fee structure that the person designated as a local ACH service had in place at the time it was designated;
or
 - (b) if a variation of the fee structure is later approved by the ACH Council under section 50(2) — the fee structure as varied.
- (3) However, a person designated as a local ACH service cannot charge a fee for services that it provides to the Department or

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the ACH Council in connection with any local ACH service functions.

- (4) If a fee for services charged by a person designated as a local ACH service under subsection (1) is not paid, the person may recover the fee as a debt due in a court of competent jurisdiction.

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 — Funding for local ACH services

51. Funding for local ACH services

- (1) The CEO may, with the prior written approval of the Minister, decide that funding is to be paid to a person designated as the local ACH service for an area for the purpose of enabling the person to provide local ACH service functions for the area.
- (2) If the CEO decides that funding is to be paid under subsection (1) to a person designated as the local ACH service for an area, the CEO must make a written determination setting out —
- (a) the amount of money to be paid as funding to the person (the *funding sum*); and

- (b) the manner in which the funding sum must be paid to the person, including whether the funding sum must be paid —
- (i) in a lump sum or in periodic payments; and
 - (ii) in relation to all or part of a financial year, or another period not exceeding 3 years (the *funding period*);
- and
- (c) the conditions, if any, to which the payment of the funding sum is subject, including, but not limited to the following —
- (i) the purpose for which the funding sum, or a part of it, must be spent;
 - (ii) the provision of information relating to the expenditure of the funding sum, including the production and publication of financial statements;
 - (iii) the continuing satisfactory performance by the person in providing local ACH service functions for the area.
- (3) A determination under subsection (2) must be made in accordance with the criteria, if any, prescribed.
- (4) In addition to any condition imposed under subsection (2)(c), the payment of a funding sum is subject to the condition that if the designation of the person to whom the funding sum was paid is cancelled under section 43 during the funding period then an amount equal to any uncommitted amount of the funding sum at the time when the designation is cancelled must be paid to the ACH Council.
- (5) In subsection (4) —
- uncommitted amount*, in relation to a funding sum paid to a person designated as a local ACH service for an area, means the difference, if any, between —

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- (a) the amount of the funding sum that has been paid to the person at the time when the designation is cancelled; and
 - (b) the amount of the funding sum that, at the time when the designation is cancelled —
 - (i) has already been spent for the purpose of enabling the person to provide local ACH service functions for the area; or
 - (ii) for which liability has already been incurred for the purpose of enabling the person to provide local ACH service functions for the area.
- (6) The CEO must ensure that a person designated as a local ACH service who is paid a funding sum under this section is given written notice of the conditions to which the payment of the funding sum to the person is subject under subsections (2)(c) and (4).
- (7) Funding under this section is payable in accordance with a determination of the CEO under subsection (2).

52. Contravention of funding conditions

- (1) A person designated, or formerly designated, as a local ACH service must not contravene a condition to which the payment of a funding sum to the person is subject under section 51(2)(c) or (4).

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

- (2) In subsection (1) —
funding sum has the meaning given in section 51(2)(a).

Part 3 — Rights and duties in relation to Aboriginal cultural heritage

Division 1 — Preliminary

53. Terms used

In this Part —

custodian —

- (a) in relation to Aboriginal ancestral remains — has the meaning given in section 55(1)(a); or
- (b) in relation to a secret or sacred object — has the meaning given in section 63(1)(a);

organisation means any person other than the following —

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

54. No compensation under this Part

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

Division 2 — Aboriginal ancestral remains

55. Rights of Aboriginal people in relation to Aboriginal ancestral remains

- (1) An Aboriginal person, group or community that has traditional rights, interests and responsibilities in respect of an area in which Aboriginal ancestral remains are located, or are reasonably believed to have originated from, is —
 - (a) a *custodian* of the ancestral remains; and
 - (b) entitled to possession and control of the ancestral remains.

- (2) Subsection (1) applies to Aboriginal ancestral remains regardless of who may have had possession or control of the ancestral remains before the commencement of this section.

56. ACH Council must be notified about Aboriginal ancestral remains

- (1) An organisation or individual that is in possession of Aboriginal ancestral remains must, within the prescribed period, give written notice to the ACH Council —
- (a) stating that they are in possession of the ancestral remains; and
 - (b) describing the ancestral remains; and
 - (c) containing any other information in their possession about the ancestral remains, including information about how they came to be in possession of the ancestral remains.

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

- (2) However, subsection (1) does not apply to —
- (a) an Aboriginal person acting in accordance with the person's traditional rights, interests and responsibilities in respect of the Aboriginal ancestral remains; or
 - (b) an organisation or individual acting at the written request of an Aboriginal person described in paragraph (a); or
 - (c) an organisation that, or individual who, reasonably believes that the ACH Council is already aware that the organisation or individual is in possession of the Aboriginal ancestral remains.

57. Duty of organisations to return Aboriginal ancestral remains

- (1) An organisation that is in possession of Aboriginal ancestral remains and has given notice under section 56(1) must, within the prescribed period —
- (a) identify a custodian of the ancestral remains; and
 - (b) either —
 - (i) return the ancestral remains to a custodian of the ancestral remains; or
 - (ii) at the request of a custodian of the ancestral remains, agree to continue to hold the ancestral remains on behalf of the custodians of the ancestral remains until a custodian of the ancestral remains requests otherwise.
- Penalty for this subsection: a fine of \$20 000.
- (2) An organisation must seek the advice of the ACH Council as to compliance with subsection (1).
- (3) It is a defence to a charge of an offence under subsection (1) to prove that the organisation —
- (a) could not, after taking reasonable steps to do so, identify a custodian of Aboriginal ancestral remains that are in its possession; and
 - (b) has transferred the ancestral remains into the custody of the ACH Council.
- (4) An organisation must give written notice to the ACH Council within the prescribed period after the organisation, in accordance with subsection (1)(b), has either —
- (a) returned Aboriginal ancestral remains to a custodian of the ancestral remains; or
 - (b) been requested by a custodian of Aboriginal ancestral remains to continue to hold the ancestral remains on

behalf of the custodians of the ancestral remains until a custodian of the ancestral remains requests otherwise.

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

58. Duty of individuals to transfer Aboriginal ancestral remains to custody of ACH Council

- (1) An individual who is in possession of Aboriginal ancestral remains and has given notice under section 56(1) must, within the prescribed period, take reasonable steps to transfer the ancestral remains into the custody of the ACH Council.

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

- (2) An individual must seek the advice of the ACH Council as to compliance with subsection (1).

59. Transfer of Aboriginal ancestral remains by coroner

A coroner who has notified the ACH Council under the *Coroners Act 1996* section 19B that a body is, or is likely to be, Aboriginal ancestral remains must, as soon as practicable, transfer any ancestral remains the subject of the notice into the custody of the ACH Council.

60. Aboriginal ancestral remains transferred to custody of ACH Council

The ACH Council may arrange for Aboriginal ancestral remains transferred into its custody under this Act to, as appropriate in relation to particular ancestral remains —

- (a) be returned to a custodian of the ancestral remains; or
- (b) at the request of a custodian of the ancestral remains — be held by the Council in safekeeping on behalf of the custodians of the ancestral remains; or
- (c) if the Council cannot identify a custodian of the ancestral remains — be dealt with in a manner that the Council considers appropriate.

61. Aboriginal ancestral remains must not be disturbed or removed

- (1) A person must not —
- (a) disturb or remove Aboriginal ancestral remains on any land; or
 - (b) sell, exchange or otherwise dispose of Aboriginal ancestral remains; or
 - (c) remove Aboriginal ancestral remains from the State; or
 - (d) cause or permit Aboriginal ancestral remains to be removed from the State; or
 - (e) conceal Aboriginal ancestral remains.

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

- (2) However, subsection (1) does not apply to Aboriginal ancestral remains being dealt with —
- (a) by an Aboriginal person acting in accordance with the person's traditional rights, interests and responsibilities in respect of the ancestral remains; or
 - (b) in accordance with this Part.
- (3) It is a defence to a charge of an offence under subsection (1)(a) to prove that —
- (a) the person charged —
 - (i) was carrying out an activity that was authorised under Part 6 Division 4; or
 - (ii) was performing a function under this Act or another written law; or
 - (iii) was lawfully on the land where the Aboriginal ancestral remains were present and did not reasonably suspect that ancestral remains were present on the land or that the person's actions would disturb or remove Aboriginal ancestral remains present on the land;

and

- (b) the person ceased carrying out the activity, performing the function or taking the action that caused the disturbance or removal of the ancestral remains as soon as practicable after the person became aware of the presence of the ancestral remains.

Division 3 — Secret or sacred objects

62. Term used: prescribed public authority

In this Division —

prescribed public authority means any public authority other than the following —

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

63. Rights of Aboriginal people in relation to secret or sacred objects

- (1) An Aboriginal person, group or community that has traditional rights, interests and responsibilities in respect of a secret or sacred object is —
 - (a) a *custodian* of the object; and
 - (b) a rightful owner of, and entitled to possession and control of, the object —
 - (i) if the object is in the possession of a prescribed public authority immediately before the commencement of this section — on the commencement of this section; or
 - (ii) otherwise — when the object comes into the possession of a prescribed public authority on or after the commencement of this section.

- (2) Subsection (1) applies to a secret or sacred object regardless of who may have owned, or had possession or control of, the object before the commencement of this section or before the object came into the possession of a prescribed public authority.

64. ACH Council must be notified about secret or sacred objects

- (1) A person, other than the WA Museum, that is in possession of a secret or sacred object must, within the prescribed period, give written notice to the ACH Council —
- (a) stating that the person is in possession of the object; and
 - (b) describing the object; and
 - (c) containing any other information in their possession about the object, including information about how they came to be in possession of the object.

Penalty for this subsection: a fine of \$5 000.

- (2) However, subsection (1) does not apply to —
- (a) an Aboriginal person acting in accordance with the person's traditional rights, interests and responsibilities in respect of the secret or sacred object; or
 - (b) a person acting at the written request of an Aboriginal person described in paragraph (a); or
 - (c) a person who reasonably believes that the ACH Council is already aware that they are in possession of the secret or sacred object.

65. Duty of prescribed public authorities to return secret or sacred objects

- (1) A prescribed public authority that is in possession of a secret or sacred object and has given notice under section 64(1) must, within the prescribed period —
- (a) identify a custodian of the object; and
 - (b) either —

- (i) return the object to a custodian of the object; or
- (ii) at the request of a custodian of the object, agree to continue to hold the object on behalf of the custodians of the object until a custodian of the object requests otherwise.

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

- (2) A prescribed public authority must seek the advice of the ACH Council as to compliance with subsection (1).
- (3) It is a defence to a charge of an offence under subsection (1) to prove that the prescribed public authority —
 - (a) could not, after taking reasonable steps to do so, identify a custodian of a secret or sacred object in its possession; and
 - (b) has transferred the object into the custody of the ACH Council.
- (4) A prescribed public authority must give written notice to the ACH Council within the prescribed period after the authority, in accordance with subsection (1)(b), has —
 - (a) returned a secret or sacred object to a custodian of the object; or
 - (b) been requested by a custodian of the object to continue to hold the object on behalf of the custodians of the object until a custodian of the object requests otherwise.

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

66. Secret or sacred objects transferred to custody of ACH Council

The ACH Council may arrange for a secret or sacred object transferred into its custody under this Act to, as appropriate in relation to the particular object —

- (a) be returned to a custodian of the object; or

- (b) at the request of a custodian of the object — be held by the Council in safekeeping on behalf of the custodians of the object; or
- (c) if the Council cannot identify a custodian of the object — be dealt with in a manner that the Council considers appropriate.

67. Secret or sacred objects must not be sold or removed from the State

- (1) A person must not —
 - (a) sell, exchange or otherwise dispose of a secret or sacred object; or
 - (b) remove a secret or sacred object from the State; or
 - (c) cause or permit a secret or sacred object to be removed from the State; or
 - (d) conceal a secret or sacred object.

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

- (2) However, subsection (1) does not apply to a secret or sacred object being dealt with —
 - (a) by an Aboriginal person in accordance with the person's traditional rights, interests and responsibilities in respect of the object; or
 - (b) in accordance with this Part.

Division 4 — Duty to report Aboriginal cultural heritage to ACH Council

68. Reporting Aboriginal cultural heritage

- (1) A person who knows, or becomes aware, of the existence of any of the following must, within the prescribed period, report it to the ACH Council —
 - (a) an Aboriginal place;

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- (b) an Aboriginal object;
- (c) Aboriginal ancestral remains.

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

- (2) However, subsection (1) does not apply to —
 - (a) an Aboriginal person acting in accordance with the person's traditional rights, interests and responsibilities in respect of —
 - (i) the Aboriginal place; or
 - (ii) the Aboriginal object; or
 - (iii) the Aboriginal ancestral remains;
 - or
 - (b) a person acting at the written request of an Aboriginal person described in paragraph (a); or
 - (c) a person who reasonably believes that the ACH Council is already aware of the existence of —
 - (i) the Aboriginal place; or
 - (ii) the Aboriginal object; or
 - (iii) the Aboriginal ancestral remains.
- (3) A report under subsection (1) may be given orally or in writing.
- (4) The ACH Council may arrange for Aboriginal ancestral remains or a secret or sacred object reported to it under subsection (1), that are not under the possession and control of a custodian of the ancestral remains or object, to be transferred into the custody of the Council.

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. Purpose of protected area order

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

- (a) to recognise that Aboriginal cultural heritage of outstanding significance for the purposes of this Act is located in the area; and
- (b) to provide for the area special protection from activities that may harm that Aboriginal cultural heritage.

71. Protected area order guidelines must be considered

In determining under this Part whether Aboriginal cultural heritage is of outstanding significance for the purposes of this

Act, the factors set out in the protected area order guidelines must be considered.

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

72. Application for area to be declared as protected area

- (1) An application for an area to be declared as a protected area may be made by a knowledge holder for the area.
- (2) An application under subsection (1) must —
 - (a) be made to the ACH Council in the approved form; and
 - (b) describe the application area, which can comprise several areas that are not contiguous; and
 - (c) describe —
 - (i) the characteristics of the Aboriginal cultural heritage in the application area; and
 - (ii) the outstanding significance of the Aboriginal cultural heritage to the applicant, or to a group or community of which the applicant is a member;and
 - (d) if the application area includes any area to which an ACH permit relates — be accompanied by evidence of the agreement of the holder of the permit, as referred to in subsection (3); and
 - (e) if the application area includes any area to which an approved or authorised ACH management plan relates — be accompanied by evidence of the agreement of the parties to the plan, as referred to in subsection (4); and
 - (f) be accompanied by the other documents or information, if any, prescribed for the purposes of this paragraph.

- (3) The application area must not include any area to which an ACH permit relates unless the holder of the permit agrees to the amendment of the area to which the permit relates to exclude any area that is included in the application area.
- (4) The application area must not include any area to which an approved or authorised ACH management plan relates unless the parties to the plan agree to the amendment of the area to which the plan relates to exclude any area that is included in the application area.

73. Further information in support of application

- (1) The ACH Council may make a written request to an applicant under section 72(1) to do any of the following —
 - (a) provide the Council with any further information relevant to the application that the Council requires to assess the application;
 - (b) verify any further information by statutory declaration.
- (2) The ACH Council must specify the period within which the request is to be complied with.

74. ACH Council may refuse to consider some applications

The ACH Council may refuse to consider, or consider further, an application under section 72(1) if —

- (a) the application is not made in accordance with this Act;
or
- (b) the applicant has not complied with a request under section 73; or
- (c) the Council is of the opinion that the application is substantially the same as an application that —
 - (i) was made within the previous 2 years; and
 - (ii) was refused.

75. ACH Council must notify certain persons about application

- (1) The ACH Council must give written notice of an application under section 72(1) to the following persons —
 - (a) each local ACH service for the application area or a part of the application area;
 - (b) each native title party for the application area or a part of the application area;
 - (c) each knowledge holder for the application area or a part of the application area.
- (2) In subsection (1)(c) —

each knowledge holder, in relation to an application area or a part of an application area, means each person who is identified as a knowledge holder for the application area or a part of the application area, after reasonable steps have been taken to do so in accordance with the knowledge holder guidelines.
- (3) The notice must give —
 - (a) details of the application area; and
 - (b) details about the Aboriginal cultural heritage to which the application relates to the extent that the details do not disclose culturally sensitive information; and
 - (c) an opportunity to make submissions to the ACH Council within the prescribed period about whether the application area, or a part of the application area, should be declared as a protected area.

76. Preliminary assessment by ACH Council

- (1) At the end of the period for submissions referred to in a notice given under section 75(1) in respect of an application under

section 72(1), the ACH Council must, within the prescribed period —

- (a) consider the application, and any further information provided in response to a request under section 73(1); and
 - (b) consider any submissions made to the Council in response to the notice; and
 - (c) consider the characteristics of the Aboriginal cultural heritage and the significance of it to the knowledge holders for the Aboriginal cultural heritage; and
 - (d) form a preliminary view about whether or not the application area, or a part of the application area, should be declared as a protected area.
- (2) The ACH Council may form a preliminary view that the application area, or a part of the application area, should be declared as a protected area only if the Council is satisfied that Aboriginal cultural heritage of outstanding significance for the purposes of this Act is located in the area.

77. Giving public notice of intention to seek that area be declared as protected area

- (1) If, on an application under section 72(1) for an area to be declared as a protected area, the ACH Council forms a preliminary view that an area should be declared as a protected area, the Council must —
- (a) give public notice as described in subsection (3); and
 - (b) notify the following persons that the public notice has been given —
 - (i) each local ACH service for the area or a part of the area;
 - (ii) each native title party for the area or a part of the area;

- (iii) each knowledge holder for the area or a part of the area;
- (iv) each landholder of land within the area;
- (v) each public authority that the Council considers has an interest in the area or a part of the area;
- (vi) any other person the Council considers has an interest in the area or a part of the area.

(2) In subsection (1)(b)(iii) —

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.

(3) The public notice must include the following —

- (a) details of the area that the ACH Council has formed the preliminary view should be declared as a protected area;
- (b) provision of an opportunity to make submissions to the Council within the prescribed period about the preliminary view of the Council that the area should be declared as a protected area.

78. Review of preliminary assessment of ACH Council that area not be declared as protected area

(1) If, on an application under section 72(1), the ACH Council forms a preliminary view that no part of the application area should be declared as a protected area, the Council must give to the applicant and each person notified under section 75(1) written notice —

- (a) setting out the Council’s preliminary view; and
- (b) setting out the reasons why the Council has formed that view; and

- (c) containing a statement that the person may request the Minister to consider the matter.
- (2) A person who is given notice under subsection (1) may, within the prescribed period, make a written request to the Minister to consider the matter.
- (3) On receipt of a request under subsection (2), the Minister must give a written direction to the ACH Council to provide to the Minister —
 - (a) the application for the area to be declared as a protected area, and any further information provided in response to a request under section 73(1); and
 - (b) any submissions made to the Council in response to a notice given under section 75(1); and
 - (c) information about the basis on which the preliminary view of the Council was formed.
- (4) Having considered the information provided by the ACH Council under subsection (3), the Minister may —
 - (a) confirm the preliminary view formed by the Council that no part of the application area should be declared as a protected area; or
 - (b) if the Minister is satisfied that Aboriginal cultural heritage of outstanding significance for the purposes of this Act is located in the application area, or a part of the application area — give a written direction to the Council to give public notice under section 77(1)(a) and for that purpose the Council is taken to have formed a preliminary view that the application area, or the part of the application area, should be declared as a protected area.
- (5) If the Minister confirms the preliminary view formed by the ACH Council that no part of the application area should be declared as a protected area, the Minister must ensure that written notice of the Minister's decision is given to —

- (a) the applicant; and
- (b) each person notified under section 75(1).

Division 3 — Recommendation of ACH Council

79. Recommendation of ACH Council

- (1) At the end of the period for making submissions referred to in the public notice given under section 77(1)(a) in relation to a preliminary view formed, or taken to be formed under section 78(4)(b), by the ACH Council that an area should be declared as a protected area the Council must, within the prescribed period —
 - (a) consider —
 - (i) the matters set out in section 76(1)(a), (b) and (c) and the preliminary view formed, or taken to be formed, by the Council; and
 - (ii) any submissions made to the Council in response to the public notice;
 - and
 - (b) make a recommendation to the Minister under subsection (2).
- (2) The ACH Council may recommend to the Minister —
 - (a) that the application area, or a part of the application area, be declared as a protected area; or
 - (b) that no part of the application area be declared as a protected area.
- (3) If the ACH Council makes a recommendation that an area be declared as a protected area, the Council may also recommend that an order declaring the area as a protected area should be made subject to conditions relating to any of the following —
 - (a) the management of the area;
 - (b) access to the area;

- (c) the other matters, if any, prescribed for the purposes of this paragraph.
- (4) The ACH Council may make a recommendation under subsection (2)(a) in respect of an area only if satisfied —
 - (a) that Aboriginal cultural heritage of outstanding significance for the purposes of this Act is located in the area; and
 - (b) that the area needs to be provided with special protection from activities that may harm that Aboriginal cultural heritage; and
 - (c) if the area overlaps with an area to which an ACH permit or approved or authorised ACH management plan relates — that there are measures in place to ensure that the permit or plan is amended to exclude from the area to which the permit or plan relates any area that is part of the area to be declared as a protected area; and
 - (d) in relation to the other matters, if any, prescribed for the purposes of this paragraph.
- (5) A recommendation to the Minister under subsection (2) must be accompanied by —
 - (a) the reasons for the recommendation; and
 - (b) the application under section 72(1), and any further information provided in response to a request under section 73(1); and
 - (c) any submissions made to the ACH Council following —
 - (i) notice given under section 75(1); and
 - (ii) public notice given under section 77(1)(a).
- (6) The ACH Council must give public notice of a recommendation made to the Minister under subsection (2).

Division 4 — Decision of Minister

80. Minister may request further information

If the ACH Council makes a recommendation to the Minister under section 79(2), the Minister may make a written request to the Council or any other person to provide the Minister with any further information the Minister requires to assist in making a decision about whether an area should be declared as a protected area.

81. Decision of Minister

- (1) If the ACH Council makes a recommendation to the Minister under section 79(2), the Minister must consider the information provided to the Minister under section 79(5), the recommendation of the Council and any further information provided in response to a request under section 80 and must decide, within the prescribed period —
 - (a) that the application area, or a part of the application area, should be declared as a protected area; or
 - (b) that no part of the application area should be declared as a protected area.
- (2) The decision of the Minister under subsection (1) must be made on the grounds of —
 - (a) whether or not the Minister is satisfied as to the matters set out in section 79(4); and
 - (b) what is in the interests of the State.
- (3) If the Minister makes a decision that an area should be declared as a protected area, the Minister may give any written direction that the Minister considers necessary to ensure that, before a protected area order comes into effect in respect of the area —
 - (a) any relevant ACH permit is amended under section 129(1) to exclude from the area to which the permit relates any area that is part of the area to be

declared as a protected area, as agreed by the permit holder under section 72(3); and

- (b) any relevant approved or authorised ACH management plan is —
 - (i) amended to exclude from the area to which the plan relates any area that is part of the area to be declared as a protected area, as agreed by the parties to the plan under section 72(4); and
 - (ii) approved under section 169(3) as so amended.
- (4) If the Minister makes a decision that an area should be declared as a protected area, the Minister may determine, after considering the recommendation, if any, of the ACH Council under section 79(3), that an order declaring the area as a protected area should be made subject to a condition, or conditions, relating to any of the following —
 - (a) the management of the area;
 - (b) access to the area;
 - (c) the other matters, if any, prescribed for the purposes of this paragraph.
- (5) If the Minister makes a decision that an area should be declared as a protected area, the Minister must recommend to the Governor that the Governor declare the area to be a protected area for the purposes of this Act.
- (6) If the Minister makes a decision that no part of an application area should be declared as a protected area, the Minister must ensure that public notice of that decision is given within 14 days after the decision is made under subsection (1)(b).
- (7) The notice must contain the following —
 - (a) a description of the decision;
 - (b) short particulars of the reasons for the decision.

Division 5 — Declaration of protected area

82. Protected area orders

- (1) The Governor may, by order made on a recommendation of the Minister under section 81(5), declare an area as a protected area for the purposes of this Act.
- (2) An order under subsection (1) can declare that the protected area comprises several areas that are not contiguous.
- (3) An order under subsection (1) 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.

83. Amending and repealing orders

- (1) An application for the amendment or repeal of a protected area order may be made by —
 - (a) a knowledge holder for the protected area; or
 - (b) a person who wants to carry out an activity in the protected area.
- (2) Other than as set out in this section, this Part applies, with all necessary modifications, in respect of —
 - (a) an application for the amendment or repeal of a protected area order; and
 - (b) the making of an order amending or repealing that order.

- (3) An application for the amendment of a protected area order may provide for —
- (a) a change to the name of the protected area; or
 - (b) a change to the description of the boundaries of the protected area; or
 - (c) the removal of a condition to which the order is subject; or
 - (d) the imposition of a new condition to which the order is to be made subject, or a change to a condition to which the order is subject, relating to any of the following —
 - (i) the management of the area;
 - (ii) access to the area;
 - (iii) the other matters, if any, prescribed for the purposes of this subparagraph.
- (4) If the amendment of a protected area order is to provide only for a change to the name of the protected area then —
- (a) sections 75 to 81 do not apply in respect of —
 - (i) the application for the amendment; or
 - (ii) the making of the amending order;and
 - (b) for the purposes of section 82(1), the Minister may make a recommendation to the Governor for the amendment of the protected area order under this subsection; and
 - (c) before making a recommendation under paragraph (b), the Minister must —
 - (i) give to the persons described in section 75(1) written notice of the proposed change to the name of the protected area that provides a reasonable opportunity to make submissions to the Minister about the proposed change to the name of the protected area; and

- (ii) consider any submissions made to the Minister in response to the notice.

84. Order to correct error

- (1) The Minister may, on the Minister's own initiative, recommend to the Governor that the Governor make an order amending a protected area order to correct in the order —
 - (a) a clerical mistake or unintentional error or omission; or
 - (b) a figure that has been miscalculated; or
 - (c) a misdescription of an area, activity, Aboriginal cultural heritage or other thing.
- (2) The Governor may, on a recommendation of the Minister under subsection (1), make an order amending a protected area order.

85. Repeal of protected area order, or amendment to reduce area declared as protected area

A protected area order must not be repealed or amended to reduce the area or, if in relation to a cultural landscape, areas declared as a protected area, unless the recommendation of the Minister under section 81(5), as applied by section 83(2), to repeal or amend the order —

- (a) has been laid before each House of Parliament; and
- (b) has been approved by a resolution passed by both Houses of Parliament.

86. Provisions about protected area orders

- (1) A protected area order must be published in the *Gazette*.
- (2) A protected area order is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (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) A protected area order comes into effect —
 - (a) on the day on which it is published in the *Gazette*; or
 - (b) on a later day specified in the order.

87. Lodgment of notification with Registrar and modification and withdrawal of notification

- (1) In this section —
Registrar means —
 - (a) the Registrar of Titles under the *Transfer of Land Act 1893*, in relation to land that is under the operation of that Act; or
 - (b) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*, in relation to land that is under the operation of that Act.
- (2) As soon as practicable after a protected area order is made under section 82(1), the CEO must lodge with the Registrar a notification (a **section 82(1) notification**) in relation to the order.
- (3) If an order is made under section 82(1), as applied by section 83(2), or under section 84(2) amending or repealing an order in relation to which a section 82(1) notification was lodged, the CEO must lodge with the Registrar a notification for the section 82(1) notification to be modified or withdrawn.
- (4) A notification under subsection (2) or (3) must be —
 - (a) lodged in a form approved by the Registrar; and
 - (b) accompanied by any information the Registrar requires; and
 - (c) accompanied by any relevant fee payable under the *Transfer of Land Act 1893*, the *Registration of Deeds Act 1856* or another written law.

- (5) On the lodgment of a notification under subsection (2) or (3), the Registrar must make any endorsement or notation the Registrar considers necessary on the certificate of title or other appropriate register or record in respect of the land to which the notification applies.

Division 6 — Contravention of conditions on protected area orders

88. Contravention of conditions on protected area order

- (1) A person must not contravene a condition to which a protected area order is subject.
Penalty for this subsection: a fine of \$20 000.
- (2) It is a defence to a charge of an offence under subsection (1) to prove that the person charged did not know, and could not by the exercise of reasonable diligence have known, of the condition to which the charge relates.

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

Division 1 — Preliminary

89. Application of Part

This Part applies to the following Aboriginal cultural heritage only —

- (a) an Aboriginal place;
- (b) an Aboriginal object;
- (c) Aboriginal ancestral remains;
- (d) Aboriginal cultural heritage located in a protected area.

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. Meaning of serious harm and material harm to Aboriginal cultural heritage

- (1) Harm to Aboriginal cultural heritage is *serious* if the harm is —
 - (a) irreversible, of a high impact or on a wide scale; or
 - (b) to Aboriginal cultural heritage located in a protected area.
- (2) Harm to Aboriginal cultural heritage is *material* if the harm is neither trivial nor negligible.

Division 2 — Offences: harm to Aboriginal cultural heritage

92. Serious harm to Aboriginal cultural heritage

A person commits a crime if —

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

Alternative offence: s. 93(1), 94 or 95.

Penalty:

- (a) for an individual —
 - (i) imprisonment for 5 years or a fine of \$1 000 000, or both;
 - (ii) a daily penalty of a fine of \$50 000 for each day or part of a day during which the offence continues;
- (b) for a body corporate —
 - (i) a fine of \$10 000 000;
 - (ii) a daily penalty of a fine of \$500 000 for each day or part of a day during which the offence continues.

Summary conviction penalty:

- (a) for an individual —
 - (i) imprisonment for 2 years or a fine of \$700 000, or both;
 - (ii) a daily penalty of a fine of \$35 000 for each day or part of a day during which the offence continues;
- (b) for a body corporate —
 - (i) a fine of \$7 000 000;
 - (ii) a daily penalty of a fine of \$350 000 for each day or part of a day during which the offence continues.

93. Serious harm to Aboriginal cultural heritage, including by accident

- (1) A person commits an offence if —
- (a) the person harms Aboriginal cultural heritage; and
 - (b) the harm is serious.

Alternative offence: s. 94 or 95.

Penalty for this subsection:

- (a) for an individual —
 - (i) a fine of \$500 000;
 - (ii) a daily penalty of a fine of \$25 000 for each day or part of a day during which the offence continues;
 - (b) for a body corporate —
 - (i) a fine of \$5 000 000;
 - (ii) a daily penalty of a fine of \$250 000 for each day or part of a day during which the offence continues.
- (2) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection (1) that any event occurred by accident.

94. Material harm to Aboriginal cultural heritage

A person commits an offence if —

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

Alternative offence: s. 95.

Penalty:

- (a) for an individual —
 - (i) a fine of \$100 000;

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- (ii) a daily penalty of a fine of \$5 000 for each day or part of a day during which the offence continues;
- (b) for a body corporate —
 - (i) a fine of \$1 000 000;
 - (ii) a daily penalty of a fine of \$50 000 for each day or part of a day during which the offence continues.

95. Harm to Aboriginal cultural heritage

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

Penalty:

- (a) for an individual —
 - (i) a fine of \$25 000;
 - (ii) a daily penalty of a fine of \$1 250 for each day or part of a day during which the offence continues;
- (b) for a body corporate —
 - (i) a fine of \$250 000;
 - (ii) a daily penalty of a fine of \$12 500 for each day or part of a day during which the offence continues.

Division 3 — Defences: harm to Aboriginal cultural heritage

96. Defence of authority under Part 6 Division 4

It is a defence to a charge of an offence under Division 2 to prove that the carrying out of the activity that harmed the Aboriginal cultural heritage was authorised under Part 6 Division 4.

97. Defences that apply in relation to protected areas

It is a defence to a charge of an offence under section 92 or 93(1) in relation to Aboriginal cultural heritage located in a protected area to prove that the act that harmed the Aboriginal cultural heritage was carried out in accordance with —

- (a) the protected area order for the protected area; or
- (b) regulations applicable to the protected area.

98. Other defences

It is a defence to a charge of an offence under Division 2 to prove that the activity that harmed the Aboriginal cultural heritage was carried out —

- (a) by a person —
 - (i) after the person made an assessment, in undertaking a due diligence assessment in relation to the carrying out of the activity, that there was no risk of harm being caused to Aboriginal cultural heritage by the activity; and
 - (ii) who took all reasonable steps possible to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity;
- or
- (b) by a person in accordance with a remediation order; or
 - (c) by a person in accordance with the *Coroners Act 1996* in the course of determining whether human remains are Aboriginal ancestral remains; or
 - (d) by a person in an emergency situation for the purpose of preventing, or minimising, loss of life, prejudice to the safety, or harm to the health, of people; or

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- (e) by a person of a prescribed class, in a prescribed situation or while carrying out a prescribed activity.

Note for this section:

The duty to mitigate set out in paragraph (a)(ii) applies in relation to Aboriginal cultural heritage in an area even if an assessment was made, in undertaking a due diligence assessment, that Aboriginal cultural heritage was not located in the area.

Division 4 — Compensation for harm to Aboriginal cultural heritage

99. Compensation for harm to Aboriginal cultural heritage

- (1) The CEO may, with the prior written approval of the Minister, decide that compensation is to be paid in respect of Aboriginal cultural heritage to which harm has been caused as a direct or indirect consequence of the commission of an offence under Division 2.
- (2) Compensation payable under subsection (1) must be paid to an Aboriginal person, group or community with traditional rights, interests and responsibilities in respect of the Aboriginal cultural heritage to which the harm has been caused.
- (3) If the CEO decides that compensation must be paid under subsection (1), the CEO must make a written determination setting out —
 - (a) the amount of money that must be paid as compensation (the *compensation sum*); and
 - (b) the manner in which the compensation sum must be paid; and
 - (c) the Aboriginal person, group or community to whom the compensation sum must be paid in full, or the Aboriginal persons, groups or communities between whom the compensation sum must be shared and the amount of each share.

- (4) A determination under subsection (3) must be made in accordance with the criteria, if any, prescribed.
- (5) Before making a decision under subsection (1), or a determination under subsection (3), the CEO must —
 - (a) make a written request to the ACH Council to provide the CEO with advice about the decision or the determination; and
 - (b) consider any advice received in response to the request.
- (6) A request made to the ACH Council under subsection (5)(a) must set out details of —
 - (a) the Aboriginal cultural heritage to which harm has been caused; and
 - (b) the commission of the offence, and the direct or indirect consequences of the commission of the offence, that caused the harm; and
 - (c) the Aboriginal person, group or community to whom the compensation sum is proposed to be paid in full, or the Aboriginal persons, groups or communities between whom it is proposed that the compensation sum be shared and the amount of each share.
- (7) Compensation under this section is payable in accordance with a determination of the CEO under subsection (3).

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 m²;
- (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 — Due diligence assessment

102. Due diligence assessment

For the purposes of this Act, a person undertakes a **due diligence assessment** in relation to a proposed activity that is intended to be carried out in an area if the person, in accordance

with the ACH Management Code, makes an assessment about the following —

- (a) whether the area where it is intended that the proposed activity be carried out includes any area that is part of a protected area;
- (b) whether the proposed activity is a —
 - (i) a tier 1 activity; or
 - (ii) a tier 2 activity; or
 - (iii) a tier 3 activity;
- (c) whether Aboriginal cultural heritage is located in the area where it is intended that the proposed activity be carried out;
- (d) whether there is a risk of harm being caused to Aboriginal cultural heritage by the proposed activity;
- (e) in relation to a proposed activity that has been assessed as a tier 2 activity or a tier 3 activity — the identity of the persons to be notified or the persons to be consulted about the proposed activity.

103. Due diligence assessment not required for exempt activity

A due diligence assessment is not required in relation to an exempt activity.

Note for this section:

However, a proponent is required to make an assessment about whether the area where it is intended that the exempt activity be carried out includes any area that is part of a protected area, see section 109.

104. Proponent may seek confirmation about proposed activity

- (1) A proponent who intends to carry out an activity in an area may request the CEO to provide a letter of advice to confirm whether the proposed activity is —
 - (a) an exempt activity; or

- (b) a tier 1 activity; or
 - (c) a tier 2 activity; or
 - (d) a tier 3 activity.
- (2) A request under subsection (1) must —
- (a) be in writing; and
 - (b) contain details of —
 - (i) the proposed activity; and
 - (ii) the area where the proposed activity is intended to be carried out.
- (3) On receipt of a request under subsection (1), the CEO must provide the proponent with the letter of advice if the CEO is satisfied that —
- (a) subsection (4) applies; and
 - (b) the proposed activity described in the letter can be confirmed as —
 - (i) an exempt activity; or
 - (ii) a tier 1 activity; or
 - (iii) a tier 2 activity; or
 - (iv) a tier 3 activity.
- (4) A letter of advice under subsection (3) must only be provided by the CEO if the proposed activity described in the letter is an activity in relation to which there is uncertainty as to whether or not the activity is —
- (a) an exempt activity; or
 - (b) a tier 1 activity; or
 - (c) a tier 2 activity; or
 - (d) a tier 3 activity.
- (5) A letter of advice provided under subsection (3) may be used in evidence in proceedings for an offence under Part 5 Division 2

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in relation to the carrying out of the activity described in the letter.

- (6) It is not a requirement for a proponent to request or obtain a letter of advice under this section before carrying out an activity in an area.

105. Responsibility for undertaking due diligence assessment

It is the responsibility of the proponent for a proposed activity to undertake a due diligence assessment.

106. Related agreement may be used to satisfy some due diligence requirements

Steps taken under a related agreement for an area to identify whether Aboriginal cultural heritage is located in the area, or to assess whether there is a risk of harm being caused to Aboriginal cultural heritage located in the area by an activity, may be used to satisfy the requirements of a due diligence assessment referred to in section 102(c) or (d) in relation to a proposed activity that the proponent intends to carry out in the area.

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. Assistance to identify persons to be notified or persons to be consulted

- (1) A proponent may request the assistance of the CEO to identify 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.
- (2) In response to a request under subsection (1), the CEO must provide the proponent with reasonable assistance to identify the persons.

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

109. Authority to carry out exempt activity

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

- (a) the activity is an exempt activity; and

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- (b) the area where the activity is carried out does not include any area that is part of a protected area.

110. Authority to carry out tier 1 activity that may harm Aboriginal cultural heritage

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

- (a) the activity is a tier 1 activity; and
- (b) the area where the activity is carried out does not include any area that is part of a protected area; and
- (c) a due diligence assessment is undertaken in relation to the carrying out of the activity; and
- (d) the person takes all reasonable steps possible to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity.

Note for this section:

The duty to mitigate set out in paragraph (d) applies in relation to Aboriginal cultural heritage in an area even if an assessment was made, in undertaking a due diligence assessment, that Aboriginal cultural heritage was not located in the area.

111. Authority to carry out tier 2 activity that may harm Aboriginal cultural heritage

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

- (a) the activity is a tier 2 activity; and
- (b) the area where the activity is carried out does not include any area that is part of a protected area; and
- (c) a due diligence assessment is undertaken in relation to the carrying out of the activity; and
- (d) the person carries out the activity in accordance with —
 - (i) an ACH permit; or

- (ii) an approved or authorised ACH management plan.

112. Authority to carry out tier 3 activity that may harm Aboriginal cultural heritage

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

- (a) the activity is a tier 3 activity; and
- (b) the area where the activity is carried out does not include any area that is part of a protected area; and
- (c) a due diligence assessment is undertaken in relation to the carrying out of the activity; and
- (d) the person carries out the activity in accordance with an approved or authorised ACH management plan.

Division 5 — ACH permits

Subdivision 1 — Notice of intention to carry out tier 2 activity

113. Notice of intention to carry out tier 2 activity

A proponent who intends to carry out a tier 2 activity in an area that may harm Aboriginal cultural heritage must give to each of the persons to be notified about the activity —

- (a) written notice providing details of —
 - (i) the proposed activity; and
 - (ii) the area where the proponent intends to carry out the activity;
- and
- (b) an opportunity to submit to the proponent, within the prescribed period, a statement about the person's views about the risk of harm being caused to Aboriginal cultural heritage located in the area by the proposed activity.

114. Notification carried out under related agreement

Notification carried out in an area in accordance with a related agreement may be used to satisfy the notice requirements in section 113 in relation to the area to the extent that the notification complies with the requirements set out in that section.

Subdivision 2 — Grant of ACH permit

115. Application for ACH permit

- (1) At the end of the period for submissions referred to in section 113(b), a proponent who intends to carry out a tier 2 activity in an area may apply for an Aboriginal cultural heritage permit (an *ACH permit*) to carry out the activity.
- (2) An application for an ACH permit must —
 - (a) be made to the ACH Council in the approved form; and
 - (b) contain details of the proposed activity and the area to which the permit is intended to relate; and
 - (c) identify —
 - (i) the Aboriginal cultural heritage located in the area to which the permit is intended to relate, as assessed in undertaking a due diligence assessment in relation to the carrying out of the proposed activity, or of which the proponent is otherwise aware in the area; and
 - (ii) the characteristics of that Aboriginal cultural heritage of which the proponent is aware;and
 - (d) identify —
 - (i) whether there is a risk of harm being caused to Aboriginal cultural heritage by the proposed activity, as assessed in undertaking a due

diligence assessment in relation to the carrying out of the proposed activity; and

- (ii) if a risk of harm has been identified, that risk of harm and the Aboriginal cultural heritage that is at risk of harm;

and

- (e) include details of the notice given under section 113(a), including details of the persons who were notified; and
- (f) set out how the proposed activity will be managed to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity, including a clear explanation of the steps, if any, that will be taken to avoid, or minimise, that risk; and
- (g) include any submissions made to the proponent under section 113(b); and
- (h) be accompanied by the documents or information, if any, prescribed for the purposes of this paragraph.

116. Further information in support of application

- (1) The ACH Council may make a written request to an applicant for an ACH permit to do any of the following —
 - (a) provide the Council with any further information relevant to the application that the Council requires to assess the application;
 - (b) verify any further information by statutory declaration.
- (2) A request under subsection (1) must specify the prescribed period within which the request is to be complied with.

117. ACH Council may refuse to consider some applications

The ACH Council may refuse to consider, or consider further, an application for an ACH permit if —

- (a) the application is not made in accordance with this Act;
or

- (b) the applicant has not complied with a request under section 116.

118. ACH Council to give notice of application

- (1) On receipt of an application under section 115(1), the ACH Council must give written notice of the application, with the application attached, to each of the persons to be notified about the activity to which the application relates.
- (2) The notice must provide that a person given the notice may submit to the ACH Council, within the prescribed period, a statement about the person's views on the proposal set out in the application.

119. Decision of ACH Council on application for ACH permit

- (1) The ACH Council must —
 - (a) assess each application for an ACH permit in accordance with section 120(1); and
 - (b) have regard to —
 - (i) any submissions made to the proponent under section 113(b); and
 - (ii) any further information provided in response to a request under section 116(1); and
 - (iii) any submissions made to the Council under section 118(2);and
 - (c) make a decision —
 - (i) if it is satisfied as to the matters set out in section 120(1) — to grant an ACH permit; or
 - (ii) otherwise, to refuse to grant an ACH permit.
- (2) A decision on an application must be made by the ACH Council within the prescribed period.

- (3) The prescribed period for making a decision on an application does not include any period commencing on the day on which a request is made under section 116(1) in respect of the application and ending on the day on which the first of the following occurs —
 - (a) the request is complied with;
 - (b) the period for complying with the request expires.
- (4) If the ACH Council does not make a decision on an application within the prescribed period, the applicant may make a written request to the Minister to direct the Council to do anything that the Minister considers necessary to expedite the matter.
- (5) A direction given by the Minister in response to a request under subsection (4) must —
 - (a) be in writing; and
 - (b) specify the period within which the direction must be complied with.
- (6) If the ACH Council does not comply with a direction made by the Minister, the Minister may stand in the place of the Council and decide the application in accordance with this Subdivision.
- (7) The ACH Council must give written notice of the Council's decision to —
 - (a) the applicant for the ACH permit; and
 - (b) each of the persons to be notified about the activity to which the application relates.

120. Grant of ACH permit

- (1) The ACH Council must grant an ACH permit if satisfied —
 - (a) that the proposed activity is a tier 2 activity; and
 - (b) that the area where the applicant intends to carry out the activity does not include any area that is part of a protected area; and

- (c) that each of the persons to be notified about the proposed activity under section 113(a) has been so notified; and
 - (d) that the applicant will take all reasonable steps possible to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity; and
 - (e) in relation to the other matters, if any, prescribed for the purposes of this paragraph.
- (2) The ACH Council must refuse to grant an ACH permit if it is not satisfied as to the matters referred to in subsection (1).
- (3) An ACH permit must be in an approved form and include details of the following —
- (a) the person to whom the permit is granted;
 - (b) the activity to which the permit relates;
 - (c) the area to which the permit relates;
 - (d) when the permit comes into effect;
 - (e) the conditions to which the permit is subject;
 - (f) the other matters, if any, prescribed for the purposes of this paragraph.

121. Duration of ACH permit

An ACH permit —

- (a) takes effect —
 - (i) when it is granted; or
 - (ii) on a later day, if any, specified in the permit;and
- (b) is of effect until the expiry of the period of 4 years after the day on which the permit comes into effect unless the permit is —
 - (i) earlier cancelled under section 130(1)(b); or
 - (ii) extended under section 126(1)(c)(i).

Subdivision 3 — Extension of ACH permit

122. Application for extension of ACH permit

- (1) The holder of an ACH permit may apply to the ACH Council for the term of the permit to be extended.
- (2) An application cannot be made under subsection (1) later than 90 days before the ACH permit is due to expire.
- (3) Before making an application under subsection (1), the permit holder must give to each of the persons to be notified about the activity to which the permit relates —
 - (a) written notice including details of the proposed extension; and
 - (b) an opportunity to submit to the permit holder, within the prescribed period, a statement about the person's views on the proposed extension.
- (4) The application must —
 - (a) be made to the ACH Council in the approved form; and
 - (b) include details of the notice given under subsection (3)(a), including details of the persons who were notified; and
 - (c) include any submissions made to the permit holder under subsection (3)(b).

123. Further information in support of application

- (1) The ACH Council may make a written request to an applicant for the extension of an ACH permit to do any of the following —
 - (a) provide the Council with any further information relevant to the application that the Council requires to assess the application;
 - (b) verify any further information by statutory declaration.

- (2) A request under subsection (1) must specify the prescribed period within which the request is to be complied with.

124. ACH Council may refuse to consider some applications

The ACH Council may refuse to consider, or consider further, an application for the extension of an ACH permit if —

- (a) it is not made in accordance with this Act; or
- (b) the applicant has not complied with a request under section 123(1).

125. ACH Council to give notice of application for extension of ACH permit

- (1) On receipt of an application under section 122(1), the ACH Council must give written notice of the application, with the application attached, to each of the persons to be notified about the activity to which the application relates.
- (2) The notice must provide that a person given the notice may submit to the ACH Council, within the prescribed period, a statement about the person's views on the proposal set out in the application.

126. Decision on application for extension of ACH permit

- (1) The ACH Council must —
 - (a) assess each application for an extension of an ACH permit in accordance with section 120(1) as if the application for the extension of the permit were an application for the grant of the permit; and
 - (b) have regard to —
 - (i) any submissions made to the permit holder under section 122(3)(b); and
 - (ii) any further information provided in response to a request under section 123(1); and

- (iii) any submissions made to the Council under section 125(2);
- and
- (c) make a decision —
 - (i) if it is satisfied as to the matters set out in section 120(1) — to extend the ACH permit; or
 - (ii) otherwise, to refuse to extend the ACH permit.
- (2) A decision on the application must be made by the ACH Council within the prescribed period.
- (3) The prescribed period for making a decision on an application does not include any period commencing on the day on which a request is made under section 123(1) in respect of the application and ending on the day on which the first of the following occurs —
 - (a) the request is complied with;
 - (b) the period for complying with the request expires.
- (4) If the ACH Council does not make a decision on an application within the prescribed period the applicant may make a written request to the Minister to direct the Council to do anything that the Minister considers necessary to expedite the matter.
- (5) A direction given by the Minister in response to a request under subsection (4) must —
 - (a) be in writing; and
 - (b) specify the period within which the direction must be complied with.
- (6) If the ACH Council does not comply with a direction given by the Minister within the period specified, the Minister may stand in the place of the Council and decide the application in accordance with this Subdivision.

- (7) The ACH Council must give written notice of the Council's decision to —
 - (a) the applicant for the extension of the ACH permit; and
 - (b) each of the persons to be notified about the activity to which the application relates.
- (8) An ACH permit that is extended under this section is of effect until the expiry of the period of 2 years after the day on which the permit is extended unless the permit is —
 - (a) earlier cancelled under section 130(1)(b); or
 - (b) further extended under this section.

Subdivision 4 — Other matters

127. ACH Council must be notified of transfer of ACH permit

- (1) If the holder of an ACH permit transfers the permit to another person, the permit holder and the person to whom the permit is transferred must, within the prescribed period, give written notice of the transfer to the ACH Council.

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

- (2) On receipt of a notice under subsection (1), the ACH Council must give written notice about the identity of the person to whom the permit is transferred to each of the persons to be notified about the activity to which the permit relates.

128. Conditions

- (1) It is a condition of an ACH permit that —
 - (a) the permit holder must notify the ACH Council if the permit holder becomes aware, while the permit is of effect, of any new information about Aboriginal cultural heritage in the area to which the permit relates; and
 - (b) the permit holder must comply with the reporting requirements, if any, specified in the permit; and

- (c) a Part 7 order given in relation to an activity to which the permit relates must be complied with.
- (2) An ACH permit may be granted or extended subject to any other conditions that the ACH Council considers appropriate to ensure that the activity to which the permit relates is managed so as to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity in the area to which the permit relates.
- (3) If the ACH Council becomes aware of new information about Aboriginal cultural heritage in the area to which a permit relates (due to being notified by the permit holder or otherwise), the Council may, by written notice given to the permit holder, impose or amend a condition on the permit as the Council considers appropriate to ensure that the activity to which the permit relates is managed so as to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity in the area.
- (4) A notice given under subsection (3) takes effect on the day specified in the notice.
- (5) The day specified in a notice given under subsection (3) cannot be before the permit holder has had a reasonable opportunity to —
- (a) make submissions to the ACH Council in relation to the condition or the amended condition; and
 - (b) take any action necessary to comply with the condition or amended condition.
- (6) The ACH Council may, at any time, by written notice given to the holder of an ACH permit, revoke a condition, other than a condition referred to in subsection (1), that is imposed on the permit.

- (7) The ACH Council may exercise a power under subsection (6) —
 - (a) on the Council’s own initiative; or
 - (b) on receipt of an application by the permit holder.
- (8) The ACH Council must, within the prescribed period, give written notice to each of the persons to be notified about the activity to which the permit relates of the Council’s decision to —
 - (a) impose or amend a condition on a permit under subsection (3); or
 - (b) revoke a condition imposed on a permit under subsection (6).

129. Amendment of ACH permit area

- (1) The ACH Council must, at the written direction of the Minister under section 81(3)(a), amend the area to which an ACH permit relates to exclude from that area any area that is part of the area to be declared as a protected area under Part 4 Division 5.
- (2) The ACH Council must, within the prescribed period, give written notice of the amendment of the area to which an ACH permit relates under subsection (1) to —
 - (a) the holder of the ACH permit; and
 - (b) each of the persons to be notified about the activity to which the permit relates.

130. Suspension or cancellation of ACH permit

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

- (2) A notice under subsection (1) may be given only if —
- (a) the ACH Council is no longer satisfied about the matters set out in section 120(1); or
 - (b) the ACH permit holder carries out an activity in the area to which the permit relates that —
 - (i) may harm Aboriginal cultural heritage; and
 - (ii) is not authorised under the permit;
- or
- (c) the permit holder breaches a condition imposed on the permit.
- (3) A notice given under subsection (1) —
- (a) must set out the grounds on which the action is taken; and
 - (b) takes effect on the day specified in the notice.
- (4) Before taking action under subsection (1), the ACH Council must give the permit holder —
- (a) written notice of —
 - (i) the action that the Council proposes to take; and
 - (ii) the grounds on which it proposes to take that action;
- and
- (b) a reasonable opportunity to be heard on the matter.
- (5) If an ACH permit is suspended, it is of no effect during the period of the suspension.
- (6) The ACH Council must give written notice to each of the persons to whom notice was given in relation to the grant of the permit under section 113(a) of the Council’s decision to take action under subsection (1).

131. Objection to decision of ACH Council

- (1) The applicant for an ACH permit may, within the prescribed period, object in writing to the Minister if the ACH Council refuses to grant the permit under section 119(1)(c)(ii).
- (2) The holder of an ACH permit may, within the prescribed period, object in writing to the Minister if the ACH Council —
 - (a) refuses to extend the permit under section 126(1)(c)(ii);
or
 - (b) grants or extends the permit subject to conditions under section 128(2); or
 - (c) imposes or amends a condition on the permit under section 128(3); or
 - (d) revokes a condition on the permit under section 128(6);
or
 - (e) suspends or cancels the permit under section 130(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 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) A person who objects under this section must, within the prescribed period, give notice of the objection to each of the persons to be notified about the activity to which the application, or permit, relates, as the case requires.

- (5) The Minister may make a written request to a person who objects 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.
- (6) Having considered the information provided by the ACH Council under subsection (3) and any further information provided in response to a request under subsection (5) the Minister must —
- (a) confirm the decision made by the ACH Council; or
 - (b) make another decision.
- (7) The decision of the Minister under subsection (6) must be made on the grounds of —
- (a) whether or not the Minister is satisfied as to the matters set out in section 120(1); and
 - (b) what is in the interests of the State.
- (8) The Minister must ensure that written notice of the decision is given within 14 days after the decision is made under subsection (6) to —
- (a) the person making the objection; and
 - (b) each of the persons to be notified about the activity to which the application or the ACH permit relates.
- (9) The notice must contain the following —
- (a) a description of the decision;
 - (b) short particulars of the reasons for the decision.

132. Notice of decision must be given

- (1) The ACH Council must give to a person who has a right under section 131(1) or (2) to object to the Minister about a decision written notice in accordance with this section.

- (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, within the prescribed period under section 131(1), to the Minister about the decision within the period specified in the notice.

133. Contravention of conditions on ACH permit

A person who holds an ACH permit must not contravene a condition to which the permit is subject.

Penalty: a fine of \$20 000.

Division 6 — ACH management plans

Subdivision 1 — Preliminary

134. When ACH management plan required

- (1) An approved or authorised ACH management plan is required before the commencement of a tier 3 activity that may harm Aboriginal cultural heritage.
- (2) An ACH management plan that has been authorised under section 165(1)(b)(i) is required before the commencement of a tier 3 activity —
 - (a) that may harm Aboriginal cultural heritage determined under section 176(1)(b)(i) to be of State significance for the purposes of this Act; or
 - (b) if the proponent and each interested Aboriginal party for the plan do not agree about the terms of an ACH management plan.

- (3) An approved or authorised ACH management plan may also be in relation to a tier 2 activity.

135. Meaning of interested Aboriginal party for ACH management plan

- (1) Each of the following persons is an *interested Aboriginal party* for an ACH management plan that relates to the carrying out of a proposed activity in an area —
- (a) each person designated as a local ACH service for the area or a part of the area;
 - (b) if there is not a person designated as 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; or
 - (ii) if there is not a native title party for the area or the part of the area — each native title representative body for the area or the part of the area.
- (2) An interested Aboriginal party for an ACH management plan that relates to the carrying out of a proposed activity in an area may agree to be an Aboriginal party to the plan.

136. Assistance to identify each interested Aboriginal party

- (1) A proponent may request the assistance of the CEO to identify each person that is an interested Aboriginal party for an ACH management plan.
- (2) In response to a request under subsection (1), the CEO must provide the proponent with reasonable assistance to identify each person that is an interested Aboriginal party for the plan.

137. ACH management plan

- (1) An Aboriginal cultural heritage management plan (an *ACH management plan*) is a plan for the management of an activity that may harm Aboriginal cultural heritage.
- (2) An ACH management plan must —
 - (a) identify —
 - (i) the proponent for the activity to which the plan relates; and
 - (ii) each Aboriginal party, if any, to the plan; and
 - (iii) the area to which the plan relates (which must not include any area that is part of a protected area); and
 - (iv) the activity to which the plan relates;and
 - (b) identify —
 - (i) the Aboriginal cultural heritage located in the area to which the plan relates, as assessed in undertaking a due diligence assessment in relation to the carrying out of the proposed activity, or of which the proponent is otherwise aware in the area; and
 - (ii) the characteristics of that Aboriginal cultural heritage of which the proponent is aware;and
 - (c) include an ACH impact statement in respect of the proposed activity; and
 - (d) set out the processes to be followed if, while approval or authorisation of the plan is of effect, a party to the plan becomes aware of new information about Aboriginal cultural heritage in the area to which the plan relates; and

- (e) set out how the proposed activity will be managed, where possible, to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity, including a clear explanation of the steps, if any, that will be taken to avoid, or minimise, that risk; and
- (f) set out the extent to which harm to Aboriginal cultural heritage is authorised; and
- (g) set out any conditions that must be complied with before, during and after the proposed activity is carried out; and
- (h) specify the period for which the plan is to have effect; and
- (i) include or set out the other matters, if any, prescribed for the purposes of this paragraph.

Note for this subsection:

There may not be an Aboriginal party to an ACH management plan to identify under paragraph (a)(ii) in relation to the area to which the plan relates, or a part of that area. This may be because an interested Aboriginal party for an ACH management plan has not agreed to be an Aboriginal party to the plan.

- (3) An ACH management plan must not include any details of commercial arrangements between a proponent and an Aboriginal party.

138. Provisions in related agreement

A provision that is included in a related agreement for an area may be incorporated into, and form part of, an ACH management plan to the extent that the provision relates to any matter specified in section 137(2) in relation to the area to which the plan relates.

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. Consultation carried out under related agreement

Consultation carried out in accordance with a related agreement for an area may be used to satisfy the requirements set out in section 139 in relation to the area to which the ACH management plan relates to the extent that the consultation complies with the requirements in that section.

141. Proponent must take steps to identify and understand characteristics of Aboriginal cultural heritage in area

A proponent who intends to carry out an activity under an ACH management plan must take reasonable steps to identify, and obtain an understanding of the characteristics of, the Aboriginal cultural heritage located in the area to which the plan is to relate.

142. Notice about proposed ACH management plan to each interested Aboriginal party

- (1) A proponent who intends to carry out an activity in an area under an ACH management plan must give written notice about the plan to —
 - (a) each interested Aboriginal party; and
 - (b) the ACH Council.

- (2) Notice under subsection (1) must state the proponent's intention to —
 - (a) use its best endeavours to reach agreement with each interested Aboriginal party about the terms of an ACH management plan; and
 - (b) enter into an ACH management plan.
- (3) Notice under subsection (1) cannot be given until after the proponent has satisfied the requirements set out —
 - (a) in section 139, in relation to consultation about the proposed activity; and
 - (b) in section 141, in relation to identifying, and obtaining an understanding of the characteristics of, the Aboriginal cultural heritage located in the area to which the plan is to relate.

143. Reaching agreement about ACH management plan

- (1) The proponent and each interested Aboriginal party must use their best endeavours to reach agreement about the terms of an ACH management plan.
- (2) The period for reaching agreement is —
 - (a) the prescribed period commencing on the day that is 5 days after the day on which the proponent gives written notice under section 142(1); or
 - (b) a longer period —
 - (i) agreed by the proponent and each interested Aboriginal party; or
 - (ii) imposed by the ACH Council, by written notice given to the proponent and each interested Aboriginal party.

144. Application for approval of ACH management plan if agreement reached

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

145. Application for authorisation of ACH management if agreement not reached

An application for the authorisation of an ACH management plan may be made under Subdivision 3 if the proponent and each interested Aboriginal party do not agree on a plan within the period specified under section 143(2).

Subdivision 2 — Approval of ACH management plan

146. Informed consent

- (1) For the purposes of this Subdivision, the consent of an interested Aboriginal party for an ACH management plan cannot be informed consent unless —
 - (a) the proponent has given to the interested Aboriginal party full and proper disclosure of information about the activity that the proponent intends to carry out under the plan; and
 - (b) the consent is given voluntarily and without coercion, intimidation or manipulation.
- (2) In subsection (1)(a) —

information, about an activity, includes a clear explanation about —

 - (a) what the activity will involve, including —
 - (i) the method the proponent intends to use to carry out the activity (the *preferred method*); and

- (ii) if applicable, each other feasible method available to the proponent to carry out the activity (a *feasible alternative method*);
- and
- (b) in relation to the preferred method, and each feasible alternative method available to the proponent —
 - (i) a clear explanation of the risk of reasonably foreseeable harm being caused to Aboriginal cultural heritage by the activity using that method; and
 - (ii) the nature of the harm to Aboriginal cultural heritage that is risked by the carrying out of the activity using that method;
- and
- (c) in relation to the preferred method — a clear explanation of how the activity will be managed to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity using that method, including a clear explanation of the steps, if any, that will be taken to avoid or minimise that risk.

147. Application for approval of ACH management plan

- (1) A proponent may apply to the ACH Council for approval of an ACH management plan that relates to the carrying out of an activity in an area if the proponent and each interested Aboriginal party for the plan has agreed the terms of the plan.
- (2) An application for the approval of an ACH management plan must —
 - (a) be made to the ACH Council in the approved form; and
 - (b) include the plan agreed to by the proponent and each interested Aboriginal party for the plan; and
 - (c) include evidence that each interested Aboriginal party for the plan has given informed consent to the plan; and

- (d) include a summary of the information, about the activity that the proponent intends to carry out under the plan, that was disclosed to each interested Aboriginal party for the plan in accordance with section 146(1)(a); and
- (e) include details of the consultation about the carrying out of the activity that has been conducted with each of the persons to be consulted; and
- (f) include any responses to the proposal to carry out the activity that were provided to the proponent by a person who was consulted; and
- (g) be accompanied by the other documents and information, if any, prescribed for the purposes of this paragraph.

Note for this section:

If the ACH Council makes a determination under section 176(1)(b)(i) that Aboriginal cultural heritage is of State significance for the purposes of this Act, section 177(1)(a) provides that an application for the approval of the ACH management plan must be considered as if it were an application under section 157(1) for the authorisation of the plan.

148. Further information in support of application

- (1) The ACH Council may make a written request to an applicant for approval of an ACH management plan or an interested Aboriginal party for the plan to do any of the following —
 - (a) provide the Council with any further information relevant to the application that the Council requires to assess the application;
 - (b) verify any further information by statutory declaration.
- (2) A request under subsection (1) must specify the prescribed period within which the request must be complied with.

149. ACH Council may refuse to consider some applications

The ACH Council may refuse to consider, or consider further, an application for the approval of an ACH management plan if —

- (a) the application is not made in accordance with this Act; or
- (b) the applicant does not comply with a request under section 148.

150. Decision of ACH Council

- (1) The ACH Council must —
 - (a) assess each application under section 147(1), including any further information provided in response to a request under section 148(1); and
 - (b) make a decision to —
 - (i) approve the ACH management plan to which the application relates; or
 - (ii) refuse to approve the ACH management plan to which the application relates.
 - (2) A decision on an application must be made by the ACH Council within the prescribed period.
 - (3) The prescribed period for making a decision on an application does not include —
 - (a) any period commencing on the day on which a request is made under section 148(1) in respect of the application and ending on the day on which the first of the following occurs —
 - (i) the request is complied with;
 - (ii) the prescribed period for complying with the request expires;
- or

- (b) any period —
 - (i) commencing on the day on which public notice is given under section 175(2) in respect of the Aboriginal cultural heritage that may be harmed by the activity to which the plan relates; and
 - (ii) ending on the day on which the ACH Council makes a determination under section 176(1)(b)(ii) that the Aboriginal cultural heritage is not of State significance for the purposes of this Act.

Note for this subsection:

For paragraph (b), if the ACH Council makes a determination under section 176(1)(b)(i) that the Aboriginal cultural heritage is of State significance for the purposes of this Act, section 177(1)(a) provides that an application for the approval of the ACH management plan must be considered as if it were an application under section 157(1) for the authorisation of the plan.

- (4) If the ACH Council does not make a decision within the prescribed period, the applicant may make a written request to the Minister to direct the Council to do anything that the Minister considers necessary to expedite the matter.
- (5) A direction given by the Minister in response to a request under subsection (4) must —
 - (a) be in writing; and
 - (b) specify the period within which the direction must be complied with.
- (6) If the ACH Council does not comply with a direction made by the Minister, the Minister may stand in the place of the Council and make a decision on the application in accordance with this Subdivision.
- (7) The ACH Council must ensure that written notice of a decision on an application is given within 14 days after the decision is made under subsection (1)(b) to the parties to the ACH management plan.

- (8) The notice must contain the following —
- (a) a description of the decision;
 - (b) short particulars of the reasons for the decision.

151. Approval of ACH management plan

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

- (a) that the activity to which the plan relates is an activity that may harm Aboriginal cultural heritage located in the area to which the plan relates; and
- (b) that the area to which the plan relates does not include any area that is part of a protected area; and
- (c) that the Aboriginal cultural heritage is not of State significance and does not need to be dealt with under Subdivision 5; and
- (d) that there has been consultation with each person to be consulted about the activity; and
- (e) that each interested Aboriginal party for the plan has given informed consent to the plan; and
- (f) in relation to the other matters, if any, prescribed for the purposes of this paragraph.

152. Duration of ACH management plan approval

The approval of an ACH management plan under section 150(1)(b)(i) —

- (a) takes effect on the day of the approval or on a later day, if any, specified in the notice given under section 150(7) of the decision to approve the plan; and
- (b) is of effect, other than during any period when the approval is suspended under section 154(1)(a), until whichever of the following occurs first —
 - (i) the approval of the plan is cancelled under section 154(1)(b);

- (ii) the plan expires in accordance with its terms;
- (iii) the activities to which the plan relates are completed.

153. Conditions

It is a condition of an approval of an ACH management plan that —

- (a) a party to the plan must notify the ACH Council if the party becomes aware, while the approval of the plan is of effect, of any new information about Aboriginal cultural heritage in the area to which the plan relates; and
- (b) the proponent must comply with the reporting requirements, if any, specified in the plan; and
- (c) a Part 7 order given in relation to an activity to which the plan relates must be complied with.

154. Suspension or cancellation of ACH management plan approval

- (1) The Minister may, by written notice given to the parties to an ACH management plan approved under section 150(1)(b)(i), take either of the following actions —
 - (a) suspend the approval for a specified period;
 - (b) cancel the approval.
 - (2) A notice under subsection (1) may be given only if —
 - (a) the Minister is not satisfied that the matters set out in section 151 still apply; or
 - (b) the proponent carries out an activity in the area to which the ACH management plan relates that —
 - (i) may harm Aboriginal cultural heritage; and
 - (ii) is not in accordance with the plan;
- or

- (c) the proponent contravenes a condition to which the approval is subject.
- (3) A notice given under subsection (1) —
 - (a) must set out the grounds on which the action is taken; and
 - (b) takes effect on the day specified in it.
- (4) Before taking action under subsection (1), the Minister must give the parties to the ACH management plan —
 - (a) written notice of —
 - (i) the action that the Minister proposes to take; and
 - (ii) the grounds on which the Minister proposes to take that action;
 - and
 - (b) a reasonable opportunity to be heard on the matter.
- (5) If approval of an ACH management plan is suspended, it is of no effect during the period of the suspension.

155. Objection to decision of ACH Council

- (1) A party to an ACH management plan may, within the prescribed period, object in writing to the Minister if the ACH Council —
 - (a) refuses to approve the plan under section 150(1)(b)(ii); or
 - (b) refuses to approve an amended ACH management plan under section 169(1).
- (2) On receipt of an objection under subsection (1), the Minister must give a written direction to the ACH Council to provide to the Minister —
 - (a) the information 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.
- (3) The Minister may make a written request to any of the parties to the ACH management plan 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.
- (4) Having considered the information provided by the ACH Council under subsection (2) and any further information provided in response to a request under subsection (3), the Minister must —
 - (a) confirm the decision made by the Council; or
 - (b) make another decision.
- (5) The decision of the Minister under subsection (4) must be made on the grounds of —
 - (a) whether or not the Minister is satisfied as to the matters set out in section 151; and
 - (b) what is in the interests of the State.
- (6) The Minister must ensure that written notice of the decision is given within 14 days after the decision is made under subsection (4) to the parties to the ACH management plan.
- (7) The notice must contain the following —
 - (a) a description of the decision;
 - (b) short particulars of the reasons for the decision.

156. 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 155(1) 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, within the prescribed period under section 155(1), to the Minister about the decision.

Subdivision 3 — Authorisation of ACH management plan by Minister

157. Application for authorisation of ACH management plan

- (1) A proponent may apply to the ACH Council for the authorisation of an ACH management plan by the Minister if —
 - (a) the proponent intends to carry out an activity that may harm Aboriginal cultural heritage; and
 - (b) the period specified under section 143(2) for reaching agreement on a plan for the management of the proposed activity has ended; and
 - (c) the proponent has not been able to reach agreement with each interested Aboriginal party about the terms of a plan.
- (2) An application for the authorisation of an ACH management plan by the Minister must —
 - (a) be made to the ACH Council in the approved form; and
 - (b) include the plan proposed by the proponent; and
 - (c) identify each interested Aboriginal party for the plan; and
 - (d) include details of the consultation about the carrying out of the activity that has been conducted with each of the persons to be consulted; and

- (e) include any responses to the proposal to carry out the activity that were provided to the proponent by a person who was consulted; and
 - (f) include details of the negotiation that has been carried out under section 143(1) between the proponent and each interested Aboriginal party, including —
 - (i) a summary of the issues that are in dispute between the proponent and each interested Aboriginal party; and
 - (ii) evidence that the proponent used their best endeavours to reach agreement about the terms of a plan;
- and
- (g) be accompanied by the other documents or information, if any, prescribed for the purposes of this paragraph.

158. Further information in support of application

- (1) The ACH Council may make a written request to the applicant for authorisation of an ACH management plan or an interested Aboriginal party for the plan, to do any of the following —
 - (a) provide the Council with any further information relevant to the application that the Council requires to assess the application;
 - (b) verify any further information by statutory declaration.
- (2) A request under subsection (1) must specify the prescribed period within which the request must be complied with.

159. ACH Council may refuse to consider some applications

The ACH Council may refuse to consider, or consider further, an application if —

- (a) the application is not made in accordance with this Act;
- or

- (b) the applicant has not complied with a request under section 158.

160. Assistance to reach agreement on ACH management plan

- (1) If an application for the authorisation of an ACH management plan to carry out an activity is made under section 157(1), the ACH Council may —
 - (a) assist the applicant and each interested Aboriginal party (the *proposed parties*) to reach agreement about the terms of an ACH management plan in respect of the activity; and
 - (b) for that purpose, act as a mediator.
- (2) The ACH Council must give written notice to the proposed parties of an offer under subsection (1) to assist them to reach agreement about the terms of an ACH management plan.
- (3) The period during which the offer by the ACH Council to assist the proposed parties to reach agreement about the terms of an ACH management plan can be utilised by the proposed parties ends on the day specified by the Council in written notice given to the proposed parties.
- (4) In assisting the proposed parties to reach agreement the ACH Council may —
 - (a) request the applicant to submit an amended ACH management plan; or
 - (b) request an interested Aboriginal party to submit an ACH management plan; or
 - (c) propose an ACH management plan for the consideration of the proposed parties.
- (5) If the ACH Council is acting as a mediator under subsection (1)(b), it must not use or disclose information to

which it has had access only because it provided assistance under subsection (1) other than —

- (a) for the purposes of —
 - (i) providing that assistance; or
 - (ii) establishing whether an interested Aboriginal party has given informed consent to an ACH management plan;

or

- (b) with the prior written consent of the person who provided the Council with the information.

(6) For the purposes of this section, the ACH Council may appoint another person (a *mediator*) to perform the functions of the Council under this section in relation to assisting the proposed parties to reach agreement and acting as a mediator.

(7) Section 305 applies to a mediator in respect of the mediator's performance or purported performance of a function described in subsection (6).

161. ACH Council may approve ACH management plan if agreement reached

(1) If, during consideration of an application for the authorisation of an ACH management plan under section 157(1), the applicant and each interested Aboriginal party advise the ACH Council that they have reached agreement on the terms of the plan, the Council may consider the application as an application made under section 147(1) for approval of the agreed plan.

(2) This section does not apply if the ACH Council has made a determination under section 176(1)(b)(i) that Aboriginal cultural heritage located in the area to which the ACH management plan relates is of State significance for the purposes of this Act.

162. Recommendation of ACH Council

- (1) The ACH Council must —
 - (a) assess each application for the authorisation of an ACH management plan in accordance with section 163(1); and
 - (b) make a recommendation that the Minister —
 - (i) authorise the ACH management plan included with the recommendation; or
 - (ii) refuse to authorise an ACH management plan for the activity to which the application relates.
- (2) A recommendation to the Minister under subsection (1)(b) must be made by the ACH Council within the prescribed period.
- (3) The ACH Council must give written notice of the Council's recommendation to the Minister under subsection (1)(b) to the applicant and to each interested Aboriginal party for the ACH management plan.
- (4) The prescribed period for making a recommendation on an application does not include —
 - (a) any period commencing on the day on which a request is made in respect of the application under section 158(1) and ending on the day on which the first of the following occurs —
 - (i) the request is complied with;
 - (ii) the prescribed period for complying with the request expires;
 - or
 - (b) any period —
 - (i) commencing on the day on which the ACH Council gives notice to the parties under section 160(2); and

- (ii) ending on the day specified in the notice given to the parties by the ACH Council under section 160(3);
- or
- (c) any period —
 - (i) commencing on the day on which public notice is given under section 175(2) in respect of the Aboriginal cultural heritage that may be harmed by the activity to which the plan relates; and
 - (ii) ending on the day on which the ACH Council makes a determination under section 176(1)(b) about whether the Aboriginal cultural heritage is of State significance for the purposes of this Act.
- (5) If the ACH Council does not make a recommendation to the Minister within the prescribed period, the applicant may make a written request to the Minister to direct the Council to do anything that the Minister considers necessary to expedite the matter.
- (6) A direction given by the Minister in response to a request under subsection (5) must —
 - (a) be in writing; and
 - (b) specify the period within which the direction must be complied with.
- (7) If the ACH Council does not comply with a direction made by the Minister, the Minister may make a decision on the application under section 165(1)(b), and may request further information under section 164, without having received a recommendation from the Council.

163. Recommendation of ACH management plan

- (1) The ACH Council may recommend to the Minister under section 162(1)(b)(i) that an ACH management plan be

authorised in respect of an activity only if the Council is satisfied —

- (a) that the activity is an activity that may harm Aboriginal cultural heritage located in the area to which the plan relates; and
 - (b) that the area to which the plan relates does not include any area that is part of a protected area; and
 - (c) that there has been consultation with each person to be consulted about the activity; and
 - (d) that the plan provides for the activity to be managed to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity; and
 - (e) in relation to the other matters, if any, prescribed for the purposes of this paragraph.
- (2) The ACH Council may recommend under section 162(1)(b)(i) that the Minister authorise an ACH management plan that is any of the following —
- (a) the ACH management plan included with the application under section 157(1);
 - (b) if section 177(1)(a) applies — the ACH management plan included with the application under section 147(1);
 - (c) an ACH management plan submitted or proposed under section 160(4);
 - (d) another ACH management plan prepared by the Council.

164. Minister may request further information

If the ACH Council makes a recommendation to the Minister under section 162(1)(b) in respect of an application for the authorisation of an ACH management plan, the Minister may make a written request to the Council or any other person to provide the Minister with any further information the Minister requires to assist in making a decision under section 165(1)(b).

165. Decision of Minister

- (1) If the ACH Council makes a recommendation to the Minister under section 162(1)(b) in respect of an application for the authorisation of an ACH management plan, the Minister must —
 - (a) in accordance with subsection (3), consider the application, the recommendation made by the Council and any further information provided in response to a request under section 164; and
 - (b) make a decision to —
 - (i) authorise the plan included with the recommendation or authorise another plan; or
 - (ii) refuse to authorise a plan for the activity to which the application relates.
- (2) An ACH management plan that is authorised under subsection (1)(b)(i) —
 - (a) may be in respect of all, or a part, of the area to which the application relates; and
 - (b) may be in respect of all, or some, of the activities to which the application relates; and
 - (c) must specify the period for which the authorisation is to have effect.
- (3) The decision of the Minister under subsection (1)(b) must be made on the grounds of —
 - (a) whether or not the Minister is satisfied as to the matters set out in section 163(1); and
 - (b) what is in the interests of the State.
- (4) The Minister must ensure that written notice of the decision is given within 14 days after the decision is made under subsection (1)(b) to —

- (a) the applicant for authorisation of an ACH management plan; and
 - (b) each of the persons to be consulted about the activity to which the application relates.
- (5) The notice must contain the following —
- (a) a description of the decision;
 - (b) short particulars of the reasons for the decision.

166. Duration of ACH management plan authorisation

The authorisation of an ACH management plan by the Minister under section 165(1)(b)(i) —

- (a) takes effect on —
 - (i) the day that the plan is authorised; or
 - (ii) a later day, if any, specified in the authorisation;and
- (b) is of effect until whichever of the following occurs first —
 - (i) the authorisation of the plan is cancelled under section 168(1)(b);
 - (ii) the period for which the authorisation of the plan is to have effect expires;
 - (iii) the activities to which the plan relates are completed.

167. Conditions

- (1) It is a condition of an authorisation of an ACH management plan that —
- (a) a party to the plan must notify the ACH Council if the party becomes aware, while the authorisation of the plan is of effect, of any new information about Aboriginal cultural heritage in the area to which the plan relates; and

- (b) the proponent must comply with the reporting requirements, if any, specified in the plan; and
 - (c) a Part 7 order given in relation to an activity to which the plan relates must be complied with.
- (2) The authorisation of an ACH management plan may be made subject to any other conditions that the Minister considers appropriate to ensure that the activity to which the plan relates is managed to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity in the area to which the plan relates.
- (3) If the Minister becomes aware of new information about Aboriginal cultural heritage in the area to which an ACH management plan authorised under section 165(1)(b)(i) relates (due to being notified by a party to the plan or otherwise), the Minister may, by written notice given to the parties to the plan, impose or amend a condition on the authorisation of the plan that the Minister considers appropriate to ensure that the activity to which the plan relates is managed to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity in the area to which the plan relates.
- (4) A notice given under subsection (3) takes effect on the day specified in the notice.
- (5) The day specified in a notice given under subsection (3) cannot be before the parties to the ACH management plan have a reasonable opportunity to —
 - (a) make submissions to the Minister in relation to the condition or amended condition; and
 - (b) take any action necessary to comply with the condition or amended condition.
- (6) The Minister may, at any time, by written notice given to the parties to an ACH management plan, revoke a condition, other than a condition referred to in subsection (1), that is imposed on the authorisation of the plan.

- (7) The Minister may exercise a power under subsection (6) —
- (a) on the Minister’s own initiative; or
 - (b) on receipt of an application by a party to the ACH management plan.

168. Suspension or cancellation of authorisation of ACH management plan

- (1) The Minister may, by written notice given to the parties to an ACH management plan authorised under section 165(1)(b)(i), take either of the following actions —
- (a) suspend the authorisation of the plan for a specified period;
 - (b) cancel the authorisation of the plan.
- (2) A notice under subsection (1) may be given only if —
- (a) the Minister is no longer satisfied as to the matters set out in section 163(1); or
 - (b) the proponent carries out an activity in the area to which the ACH management plan relates that —
 - (i) may harm Aboriginal cultural heritage; and
 - (ii) is not in accordance with the plan;
- or
- (c) the proponent contravenes a condition to which the authorisation is subject.
- (3) A notice given under subsection (1) —
- (a) must set out the grounds on which the action is taken; and
 - (b) takes effect on the day specified in the notice.

- (4) Before taking action under subsection (1), the Minister must give the parties to the ACH management plan —
 - (a) written notice of the action that the Minister proposes to take and the grounds on which the Minister proposes to take that action; and
 - (b) a reasonable opportunity to be heard on the matter.
- (5) If the authorisation of an ACH management plan is suspended, it is of no effect during the period of the suspension.

Subdivision 4 — Other provisions about ACH management plans

169. Approval of amended ACH management plan

- (1) Unless section 170 applies, the ACH Council may, on the application of a party to an approved or authorised ACH management plan, approve, or refuse to approve, an amendment to the plan agreed to by the parties to the plan.
- (2) Subdivision 2 applies in relation to the approval of an amendment to an approved or authorised ACH management plan as if the amendment were a new ACH management plan except that —
 - (a) the application for the approval of the amendment to the plan does not need to contain the matters referred to in section 147(2)(e) or (f); and
 - (b) the ACH Council does not need to be satisfied as to the matter set out in section 151(d) in relation to the amendment to the plan.
- (3) The ACH Council must, at the written direction of the Minister under section 81(3)(b), approve an amendment to an approved or authorised ACH management plan to exclude from the area to which the plan relates any area that is part of the area to be declared as a protected area under Part 4 Division 5.

Note for this section:

If the ACH Council makes a determination under section 176(1)(b)(i) that Aboriginal cultural heritage is of State significance for the purposes of this Act, section 177(1)(c) provides that an application for the approval of an amendment to an approved or authorised ACH management plan must be considered as if it were an application under section 170 for the authorisation of the amendment to the plan.

170. Authorisation of amended ACH management plan

- (1) This section applies if —
 - (a) a party to an approved or authorised ACH management plan wants to amend the plan; and
 - (b) either —
 - (i) the parties do not agree on amendments to the plan; or
 - (ii) there is not an Aboriginal party to the plan; or
 - (iii) Aboriginal cultural heritage located in the area to which the plan relates has been determined under section 176(1)(b)(i) to be of State significance for the purposes of this Act.
- (2) If this section applies, a party to the approved or authorised ACH management plan may apply under section 157(1) for an amendment to the plan to be authorised by the Minister as if the amendment were a new ACH management plan.
- (3) If there is an Aboriginal party to an approved or authorised ACH management plan to which an amendment is sought, sections 142 and 143 and Subdivision 3 apply in relation to the authorisation of the amendment to the plan as if the amendment were a new ACH management plan except that —
 - (a) the application for the authorisation of the amendment does not need to contain the matters referred to in section 157(2)(d) or (e); and
 - (b) the ACH Council and the Minister do not need to be satisfied as to the matter set out in section 163(1)(c).

- (4) If there is not an Aboriginal party to an approved or authorised ACH management plan to which an amendment is sought, Subdivision 3 applies in relation to the authorisation of the amendment to the plan as if the amendment were a new ACH management plan except that —
- (a) the application for the authorisation of the amendment does not need to contain the matters referred to in section 157(2)(d), (e) or (f); and
 - (b) the ACH Council and the Minister do not need to be satisfied as to the matter set out in section 163(1)(c).

171. Change to identity of parties to ACH management plan

- (1) If a person identified under section 137(2)(a)(ii) as an Aboriginal party to an approved or authorised ACH management plan is no longer an interested Aboriginal party for the plan —
- (a) the person is no longer an Aboriginal party to the plan; and
 - (b) the person must, within the prescribed period, give written notice that they are no longer an interested Aboriginal party for the plan to the ACH Council; and
 - (c) the ACH Council may —
 - (i) nominate an interested Aboriginal party for the plan to be an Aboriginal party to the plan; or
 - (ii) take measures to ensure that any obligations undertaken by the Aboriginal party under the plan are discharged.

Example for this subsection:

Situations in which an Aboriginal party to a plan is no longer an interested Aboriginal party may include —

- (a) the designation of a local ACH service being cancelled or suspended under section 43; or
- (b) a CATSI Act corporation or a Corporations Act corporation being deregistered under the relevant Commonwealth Act.

- (2) A nomination under subsection (1)(c)(i) is made by written notice given by the ACH Council to the person, or persons, nominated.
- (3) A person nominated under subsection (1)(c)(i) becomes an Aboriginal party to the approved or authorised ACH management plan on accepting the nomination.
- (4) If the person identified under section 137(2)(a)(i) as the proponent (the *former proponent*) in an approved or authorised ACH management plan is not the current proponent for the activity to which the plan relates, the former proponent and the current proponent must, within the prescribed period, give written notice of the change in the identity of the proponent to —
 - (a) each Aboriginal party to the plan; and
 - (b) the ACH Council.

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

- (5) The current proponent becomes the person to be identified under section 137(2)(a)(i) as the proponent in an approved or authorised ACH management plan on the receipt by the ACH Council of notice under subsection (4).

172. Approved or authorised ACH management plan continues to have effect despite change to identity of party

An approved or authorised ACH management plan continues to have effect in accordance with its terms in relation to the activity to which the plan relates despite —

- (a) a person identified under section 137(2)(a)(ii) as an Aboriginal party to the plan no longer being an Aboriginal party to the plan under section 171(1)(a); or
- (b) any amendment made to the plan to change the identity of a party to the plan that is in accordance with —
 - (i) a nomination accepted under section 171(3); or

- (ii) a notice received under section 171(5).

173. Contravention of conditions on approved or authorised ACH management plan

A party to an approved or authorised ACH management plan must not contravene a condition to which the approval or authorisation of the plan is subject.

Penalty: a fine of \$100 000.

Subdivision 5 — Aboriginal cultural heritage of State significance

174. State significance guidelines must be considered

In determining under this Subdivision whether Aboriginal cultural heritage is of State significance for the purposes of this Act, the factors set out in the State significance guidelines must be considered.

175. Notice must be given if ACH Council forms view that Aboriginal cultural heritage may be of State significance

- (1) In this section —

application means —

- (a) an application under section 147(1) for the approval of an ACH management plan; or
 - (b) an application under section 157(1) for the authorisation of an ACH management plan; or
 - (c) an application under section 169 for the approval of an amendment to an approved or authorised ACH management plan; or
 - (d) an application under section 170 for the authorisation of an amendment to an approved or authorised ACH management plan.
- (2) If, in considering an application, the ACH Council forms the view that Aboriginal cultural heritage located in the area to

which the application or the approved or authorised ACH management plan, as is relevant, relates may be of State significance for the purposes of this Act, the Council must give public notice that the Council is considering making a determination that the Aboriginal cultural heritage is of State significance for the purposes of this Act.

- (3) The notice must include the following —
- (a) details of the Aboriginal cultural heritage to which the notice relates;
 - (b) details of the area in which the Aboriginal cultural heritage is located (the *notice area*);
 - (c) provision of an opportunity for a person to submit to the ACH Council, within the prescribed period, a statement about the person's views on whether the Aboriginal cultural heritage should be recognised as being of State significance for the purposes of this Act.
- (4) The ACH Council must notify the following persons that public notice has been given under subsection (2) —
- (a) each local ACH service for the notice area or a part of the notice area;
 - (b) each native title party for the notice area or a part of the notice area;
 - (c) each knowledge holder for the notice area or a part of the notice area;
 - (d) each landholder of land within the notice area;
 - (e) each public authority that the Council considers has an interest in the notice area or a part of the notice area;
 - (f) any other person the Council considers has an interest in the notice area or a part of the notice area.
- (5) In subsection (4)(c) —
- each knowledge holder*, in relation to a notice area or a part of a notice area, means each person who is identified as a knowledge

holder for the notice area or a part of the notice area, after reasonable steps have been taken to do so in accordance with the knowledge holder guidelines.

176. Determination about Aboriginal cultural heritage of State significance

- (1) The ACH Council must, within the prescribed period beginning at the end of the period for submissions included in a public notice given under section 175(3)(c) —
 - (a) consider any submissions in relation to the Aboriginal cultural heritage made to the Council in response to the notice; and
 - (b) make a determination that the Aboriginal cultural heritage —
 - (i) is of State significance for the purposes of this Act; or
 - (ii) is not of State significance for the purposes of this Act.
- (2) The ACH Council may make a determination under subsection (1)(b)(i) only if the Council is satisfied, after taking into consideration the factors set out in the State significance guidelines, that the Aboriginal cultural heritage is of State significance for the purposes of this Act.
- (3) If the ACH Council does not make a determination under subsection (1)(b) within the prescribed period, the person that made the application referred to in section 175(2) in relation to the area where the Aboriginal cultural heritage is located may make a written request to the Minister to direct the Council to do anything that the Minister considers necessary to expedite the matter.
- (4) A direction given by the Minister in response to a request under subsection (3) must —
 - (a) be in writing; and

- (b) specify the period within which the direction must be complied with.
- (5) If the ACH Council does not comply with a direction given by the Minister, the Minister may stand in the place of the Council and make a determination under subsection (1)(b) in accordance with this Subdivision.

177. Continuation of applications

- (1) If the ACH Council makes a determination under section 176(1)(b)(i) that Aboriginal cultural heritage is of State significance for the purposes of this Act —
 - (a) an application for the approval of an ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must be considered as if it were an application under section 157(1) for the authorisation of the plan; and
 - (b) an application for the authorisation of an ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 157(1) for the authorisation of the plan; and
 - (c) an application for the approval of an amendment to an approved or authorised ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must be considered as if it were an application under section 170 for the authorisation of the amendment to the plan; and
 - (d) an application for the authorisation of an amendment to an approved or authorised ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 170 for the authorisation of the amendment to the plan.

- (2) If the ACH Council makes a determination under section 176(1)(b)(ii) that Aboriginal cultural heritage is not of State significance for the purposes of this Act —
- (a) an application for the approval of an ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 147(1) for the approval of the plan; and
 - (b) an application for the authorisation of an ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 157(1) for the authorisation of the plan; and
 - (c) an application for the approval of an amendment to an approved or authorised ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 169 for the approval of the amendment; and
 - (d) an application for the authorisation of an amendment to an approved or authorised ACH management plan that relates to an area in which the Aboriginal cultural heritage is located must continue to be considered as an application under section 170 for the authorisation of the amendment to the plan.

Part 7 — Stop activity orders, prohibition orders and remediation orders

Division 1 — Preliminary

178. Terms used

In this Part —

new information about Aboriginal cultural heritage —

- (a) in relation to an area to which an ACH permit relates, means information not identified in the application for the grant of the permit under section 115(2)(c) about —
 - (i) Aboriginal cultural heritage located in the area; or
 - (ii) the characteristics of Aboriginal cultural heritage located in the area;

and

- (b) in relation to an area to which an approved or authorised ACH management plan relates, means information not identified in the plan under section 137(2)(b) (including in the ACH impact statement included in the plan under section 137(2)(c)) about —
 - (i) Aboriginal cultural heritage located in the area; or
 - (ii) the characteristics of Aboriginal cultural heritage located in the area;

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

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

179. Application of Part

This Part applies to the following Aboriginal cultural heritage only —

- (a) an Aboriginal place;
- (b) an Aboriginal object;
- (c) Aboriginal ancestral remains;
- (d) Aboriginal cultural heritage located in a protected area.

Division 2 — Stop activity orders

180. Stop activity order may be given by Minister in certain circumstances

- (1) The Minister may, in the circumstances set out in subsection (3), give a stop activity order to a person if the Minister is of the opinion that Aboriginal cultural heritage is being harmed or there is an imminent risk of harm being caused to Aboriginal cultural heritage.
- (2) For the purposes of subsection (1), Aboriginal cultural heritage is being harmed or there is an imminent risk of harm being caused to Aboriginal cultural heritage if an activity —
 - (a) is being carried out and the activity is harming the Aboriginal cultural heritage; or
 - (b) is being carried out and the activity involves an imminent risk of harm being caused to the Aboriginal cultural heritage; or
 - (c) will be carried out imminently and the activity will involve a risk of harm being caused to the Aboriginal cultural heritage.

- (3) A stop activity order can only be given under subsection (1) —
- (a) if the harm or imminent risk of harm is caused by —
 - (i) the carrying out of a tier 2 activity or a tier 3 activity that is not authorised under Part 6 Division 4; or
 - (ii) the carrying out of any activity in a protected area;
 - or
 - (b) if —
 - (i) the harm or imminent risk of harm is caused by the carrying out of an activity in accordance with an ACH permit or an approved or authorised ACH management plan; and
 - (ii) there is new information about Aboriginal cultural heritage in the area where the activity is being carried out.
- (4) A stop activity order must be given to a person who, in the opinion of the Minister, has control over the activity.
- Note for this subsection:
- The person given the order may be —
- (a) the landholder or occupier of the land where the activity is being, or will be, carried out; or
 - (b) the proponent for the activity; or
 - (c) another person who, in the opinion of the Minister, has control over the activity.
- (5) A stop activity order expires on the day that is 60 days after the day on which the order is given to a person under this section, unless it is cancelled earlier under section 203(1)(b) or extended under section 182(1).
- (6) Immediately after a stop activity order is given under subsection (1), the Minister must give a copy of the order to the ACH Council to enable the Council to consider under section 186(1) whether Aboriginal cultural heritage the subject

of the order requires continued protection under a prohibition order.

- (7) The Minister must ensure that public notice is given of the giving of a stop activity order as soon as practicable after the order is given.

181. Contents of stop activity order

A stop activity order must —

- (a) state briefly —
- (i) that the Minister is satisfied that grounds for giving the order exist; and
 - (ii) the basis for that opinion;
- and
- (b) briefly describe the Aboriginal cultural heritage the subject of the order; and
- (c) specify directions on measures that must be taken to protect Aboriginal cultural heritage the subject of the order from harm, or the imminent risk of harm, including the following —
- (i) that the carrying out of a specified activity must stop immediately;
 - (ii) that the carrying out of a specified activity is prohibited;
 - (iii) that the carrying out of a specified activity in a specified way or for a specified period is prohibited;
- and
- (d) specify that the person given the order must ensure that those directions are complied with, and describe briefly the consequences of failing to do so; and

- (e) describe briefly how, after the process set out in sections 186 to 188 has been followed, a prohibition order may be given; and
- (f) specify the day (being 60 days after the day on which the order is given) on which the order will expire, unless cancelled earlier under section 203(1)(b) or extended under section 182(1).

182. Extension of duration of stop activity order

- (1) Before a stop activity order expires, the Minister may extend the duration of the order by written notice given to the person who was given the order.
- (2) The decision of the Minister to extend the duration of a stop activity order must be made on the grounds that the Minister is satisfied that the ACH Council requires further time to consider under section 186(1) whether Aboriginal cultural heritage the subject of the order requires continued protection under a prohibition order.
- (3) The Minister must ensure that public notice is given of the extension of the duration of the stop activity order as soon as practicable after notice is given extending the duration of the order.
- (4) The Minister may extend the duration of a stop activity order under subsection (1) —
 - (a) on only one occasion; and
 - (b) for —
 - (i) a period of 60 days beginning immediately after the order would otherwise expire in accordance with its terms; or
 - (ii) any shorter period specified in writing by the Minister.

183. Compliance with stop activity order

- (1) A person who is given a stop activity order must comply with the directions specified in the order.

Penalty for this subsection:

- (a) a fine of \$250 000;
- (b) a daily penalty of a fine of \$12 500 for each day or part of a day during which the offence continues.
- (2) A person who is given a stop activity order must, as soon as reasonably practicable after complying with the directions specified in the order, notify the ACH Council in writing of that compliance.

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

Division 3 — Prohibition orders

184. Recommendations by ACH Council about prohibition orders under section 185(1) or 186(1)(b)

The ACH Council —

- (a) under section 185(1), may make a recommendation that the Minister give a prohibition order to a person; and
- (b) under section 186(1)(b), must, while a stop activity order is of effect, make a recommendation to the Minister about whether or not a prohibition order should be given.

185. ACH Council may make recommendation about prohibition orders in certain circumstances

- (1) The ACH Council may, in the circumstances set out in subsection (3), make a recommendation that the Minister give a

prohibition order to a person if the Council is of the opinion that —

- (a) Aboriginal cultural heritage is being harmed or there is an imminent risk of harm being caused to Aboriginal cultural heritage; and
 - (b) special measures need to be taken to prohibit an activity in order to protect the Aboriginal cultural heritage from the harm, or the imminent risk of harm.
- (2) For the purposes of subsection (1)(a), Aboriginal cultural heritage is being harmed or there is an imminent risk of harm being caused to Aboriginal cultural heritage if an activity —
- (a) is being carried out and the activity is harming the Aboriginal cultural heritage; or
 - (b) is being carried out and the activity involves an imminent risk of harm being caused to the Aboriginal cultural heritage; or
 - (c) will be carried out imminently and the activity will involve a risk of harm being caused to the Aboriginal cultural heritage.
- (3) A recommendation can only be made under subsection (1) —
- (a) if the harm or imminent risk of harm is caused by —
 - (i) the carrying out of a tier 2 activity or a tier 3 activity that is not authorised under Part 6 Division 4; or
 - (ii) the carrying out of any activity in a protected area;
 - or
 - (b) if —
 - (i) the harm or imminent risk of harm is caused by the carrying out of an activity in accordance with an ACH permit or an approved or authorised ACH management plan; and

- (ii) there is new information about Aboriginal cultural heritage in the area where the activity is being carried out.
- (4) If the ACH Council makes a recommendation under subsection (1), the Council may also make recommendations about the following —
 - (a) the person to whom the order is to be given;
 - (b) any directions to be included in the order;
 - (c) the duration of the order;
 - (d) the other matters, if any, prescribed for the purposes of this paragraph.

186. ACH Council must make recommendation about prohibition order while stop activity order of effect

- (1) The ACH Council must, while a stop activity order is of effect —
 - (a) consider whether Aboriginal cultural heritage the subject of the order requires continued protection under a prohibition order; and
 - (b) make a recommendation that the Minister —
 - (i) give a prohibition order in relation to an activity the subject of a direction specified in the stop activity order; or
 - (ii) not give a prohibition order in relation to an activity the subject of a direction specified in the stop activity order.
- (2) If the ACH Council makes a recommendation under subsection (1)(b)(i), the Council may also make recommendations about the following —
 - (a) the person to whom the order is to be given;
 - (b) any directions to be included in the order;
 - (c) the duration of the order;

- (d) the other matters, if any, prescribed for the purposes of this paragraph.
- (3) Section 185(1), (2) and (3) apply in relation to the making of a recommendation by the ACH Council under subsection (1)(b).
- (4) A recommendation must be made by the ACH Council within the prescribed period.

187. ACH Council must give notice before making recommendation about prohibition order

- (1) Before making a recommendation under section 185(1) or 186(1)(b), the ACH Council must —
 - (a) give written notice in accordance with subsection (2) that the Council is considering whether or not to recommend that a prohibition order be given in relation to —
 - (i) the activity specified in the notice; and
 - (ii) the Aboriginal cultural heritage specified in the notice;
 - and
 - (b) following the period for submissions referred to in subsection (2)(c), consider any submissions made to the Council in response to the notice.
- (2) The notice under subsection (1)(a) must be given to the persons referred to in subsection (3) and provide —
 - (a) information relevant to the decision of the ACH Council whether or not to recommend that a prohibition order be given; and
 - (b) details about —
 - (i) the Aboriginal cultural heritage being harmed or at imminent risk of harm, to the extent that the details do not disclose culturally sensitive information; and

- (ii) the activity to which the proposed prohibition order is to relate; and
 - (iii) the proposed duration of the prohibition order; and
 - (c) an opportunity to make submissions to the Council within the prescribed period about whether or not the Council should recommend that a prohibition order be given.
- (3) The notice under subsection (1)(a) must be given to the following persons —
 - (a) any person who, in the opinion of the ACH Council, has control over the activity specified in the notice;
 - (b) each local ACH service for the area or a part of the area where the activity is being carried out or is likely to be carried out;
 - (c) if there is not a local ACH service for the area or a part of the area where the activity is being carried out or is likely to be carried out —
 - (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;
 - (d) 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.
- (4) In subsection (3)(c)(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.

188. Prohibition order may be given by Minister

- (1) If the ACH Council makes a recommendation to the Minister under section 185(1) or 186(1)(b), the Minister —
 - (a) must consider the recommendation of the Council; and
 - (b) may decide —
 - (i) to give a prohibition order to a person described in subsection (3); or
 - (ii) not to give a prohibition order.
- (2) The decision of the Minister under subsection (1) must be made on the grounds of —
 - (a) whether or not the Minister is satisfied as to the matters set out in section 185(1) and (3); and
 - (b) what is in the interests of the State.
- (3) A prohibition order must be given to a person who, in the opinion of the Minister, has control over the activity.

Note for this subsection:

The person given the order may be —

- (a) the landholder or occupier of the land where the activity is being, or will be, carried out; or
 - (b) the proponent for the activity; or
 - (c) another person who, in the opinion of the Minister, has control over the activity.
- (4) The Minister must ensure that public notice is given of the giving of a prohibition order as soon as practicable after the order is given.
 - (5) The Minister must ensure that notice is given of a decision under subsection (1)(b)(ii) not to give a prohibition order to the persons who were given notice under section 187(3) in relation to consideration by the ACH Council whether or not to recommend that a prohibition order be given.

189. Contents of prohibition order

A prohibition order must —

- (a) state briefly —
 - (i) that the Minister is satisfied that grounds exist for the giving of the order; and
 - (ii) the basis for that opinion;and
- (b) briefly describe Aboriginal cultural heritage the subject of the order; and
- (c) specify directions on measures that must be taken to protect Aboriginal cultural heritage the subject of the order from harm, or the risk of harm, including any of the following —
 - (i) that the carrying out of a specified activity must stop immediately;
 - (ii) that the carrying out of a specified activity is prohibited;
 - (iii) that the carrying out of a specified activity in a specified way or for a specified period is prohibited;and
- (d) specify that the person given the order must ensure that those directions are complied with, and describe briefly the consequences of failing to do so; and
- (e) specify —
 - (i) that the order is of unlimited duration, unless cancelled; or
 - (ii) the day on which the order will expire, unless cancelled earlier under section 203(1)(a) or extended under section 191(1).

190. Compliance with prohibition order

- (1) A person who is given a prohibition order must comply with the directions specified in the order.

Penalty for this subsection:

- (a) a fine of \$250 000;
- (b) a daily penalty of a fine of \$12 500 for each day or part of a day during which the offence continues.
- (2) A person who is given a prohibition order must, as soon as reasonably practicable after complying with the directions specified in the order, notify the ACH Council in writing of that compliance.

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

191. Extension of duration of prohibition order

- (1) Before a prohibition order expires, the Minister may extend the duration of the order by written notice given to the person who was given the order.
- (2) The decision of the Minister under subsection (1) must be made on the grounds that —
- (a) the Minister is satisfied that the grounds on which the prohibition order was given still exist; and
- (b) it is in the interests of the State.
- (3) Before making a decision under subsection (1), the Minister must —
- (a) give written notice, in accordance with section 192(1), of the proposal to extend the duration of the prohibition order; and
- (b) at the end of the period for submissions referred to in section 192(1)(d), consider any submissions made to the Minister in response to the notice.

- (4) The Minister must ensure that public notice is given of the extension of the duration of the prohibition order as soon as practicable after the duration of the order is extended.

192. Notice by Minister before extension of duration of prohibition order

- (1) The notice under section 191(3)(a) must be given to the persons referred to in subsection (2) and provide —
- (a) details of the proposal to extend the duration of the prohibition order, including the proposed extension period; and
 - (b) details about the contents of the prohibition order, excluding any details that disclose culturally sensitive information; and
 - (c) details about the directions specified in the prohibition order; and
 - (d) an opportunity to make submissions to the Minister within the prescribed period about whether the duration of the prohibition order should be extended as proposed.
- (2) The notice must be given to the following persons —
- (a) the person who was given the prohibition order;
 - (b) any other person who, in the opinion of the Minister, has control over an activity the subject of a direction specified in the prohibition order;
 - (c) the persons referred to in section 187(3)(b) to (d).

Division 4 — Remediation orders

193. ACH Council may recommend remediation order

The ACH Council may recommend that the Minister give a remediation order to a person described in section 194(2) if the Council is of the opinion that Aboriginal cultural heritage has been harmed in contravention of this Act.

194. Remediation order may be given by Minister

- (1) The Minister may give a remediation order to a person described in subsection (2) if —
 - (a) the ACH Council has made a recommendation to the Minister under section 193; and
 - (b) the Minister is satisfied that Aboriginal cultural heritage has been harmed in contravention of this Act.
- (2) A remediation order must be given to a person who, in the opinion of the Minister —
 - (a) had control over the activity that harmed the Aboriginal cultural heritage; or
 - (b) is a landholder or occupier of the land where the activity that harmed the Aboriginal cultural heritage was carried out.
- (3) The Minister must ensure that public notice is given of the giving of a remediation order as soon as practicable after the order is given.

195. Contents of remediation order

A remediation order must —

- (a) state briefly —
 - (i) that the Minister is satisfied that grounds for giving the order exist; and
 - (ii) the basis for that opinion;and
- (b) briefly describe Aboriginal cultural heritage the subject of the order; and
- (c) specify directions on measures that must be taken to remediate the harm to the Aboriginal cultural heritage and any period within which a measure must be carried out; and

- (d) specify that the person given the order must ensure that those directions are complied with and describe briefly the consequences of failing to do so.

196. Compliance with remediation order

- (1) A person who is given a remediation order must comply with the directions specified in the order.

Penalty for this subsection:

- (a) a fine of \$250 000;
 - (b) a daily penalty of a fine of \$12 500 for each day or part of a day during which the offence continues.
- (2) A person who is given a remediation order must, as soon as reasonably practicable after complying with the directions specified in the order, notify the ACH Council in writing of that compliance.

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

197. Other persons may carry out remediation if order contravened

- (1) If a person who is given a remediation order contravenes the order, the Minister may authorise any other person to carry out some or all of the directions specified in the order.
- (2) The Minister may, in a court of competent jurisdiction, recover the cost of the remediation referred to in subsection (1) as a debt due from the person to whom the remediation order was given.

198. Entry to carry out remediation

- (1) A person required or authorised to carry out remediation under a remediation order may enter land if it is necessary to do so for the purpose of carrying out the remediation.
- (2) However, nothing in this Division authorises a person to enter any part of premises used for residential purposes except with the consent of the occupier of the premises.

199. Recovery by person given remediation order

A person who complied with a remediation order that the person was given, but who is not the person who had control over the activity that harmed the Aboriginal cultural heritage the subject of the remediation order, may, in a court of competent jurisdiction, recover the cost of complying with the order as a debt due from the person who had control over the activity that harmed the Aboriginal cultural heritage.

Division 5 — Other provisions about orders under this Part

200. General matters about orders under this Part

An order under this Part, and the amendment, extension or cancellation of an order under this Part —

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

201. Directions in orders under this Part

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

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

202. Duration of orders under this Part

An order under this Part —

- (a) takes effect when a person is given the order; and
- (b) is of effect until whichever of the following occurs first —
 - (i) the order is cancelled under section 203(1);
 - (ii) the order expires in accordance with its terms or the terms of a notice given under section 182(1) or 191(1).

203. Amendment or cancellation of certain orders under this Part

- (1) The Minister may, by written notice given to a person given an order under this Part —
 - (a) if the order is a prohibition order — amend or cancel the order; or
 - (b) if the order is a stop activity order or a remediation order — cancel the order.
- (2) Before making a decision under subsection (1)(a) to amend or cancel a prohibition order, the Minister must —
 - (a) give written notice in accordance with section 204 of the proposal to amend or cancel the prohibition order; and
 - (b) at the end of the period for submissions referred to in section 204(c), consider any submissions made to the Minister in response to the notice.
- (3) The Minister must give written notice of a decision under subsection (1) to amend or cancel a prohibition order to the persons referred to in section 187(3)(b) to (d) as soon as practicable after the decision is made.

204. Notification by Minister before amending or cancelling prohibition order

The notice under section 203(2)(a) must be given to the persons referred to in section 192(2) and provide —

- (a) details of the proposal to amend or cancel the prohibition order; and
- (b) details about the contents of the prohibition order, excluding any details that disclose culturally sensitive information; and
- (c) an opportunity to make submissions to the Minister within the prescribed period about whether the prohibition order should be amended or cancelled as proposed.

205. Display of order under this Part

- (1) A person who is given an order under this Part must, as soon as practicable, display a copy of the order in a prominent place at or near the area where any activity the subject of a direction specified in the order is, or was, being carried out.

Penalty for this subsection:

- (a) a fine of \$10 000;
 - (b) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.
- (2) A person must not intentionally remove, destroy, damage or deface an order displayed under subsection (1) while the order is of effect.

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

Part 8 — Aboriginal cultural heritage protection agreements

206. ACH protection agreement

- (1) An Aboriginal cultural heritage protection agreement (an *ACH protection agreement*) is an agreement that —
 - (a) deals with 1 or more of the matters described in subsection (3); and
 - (b) does not deal with any activity for which an ACH permit or an ACH management plan is required under this Act; and
 - (c) is not a related agreement.
- (2) The parties to an ACH protection agreement must include at least 1 Aboriginal person, group or community.
- (3) Without limiting the matters that may be dealt with by an ACH protection agreement, an agreement may deal with any of the following —
 - (a) the recognition, protection, conservation, preservation or management of Aboriginal cultural heritage in relation to an area, or areas;
 - (b) the protection, maintenance or use of an Aboriginal place;
 - (c) the protection, maintenance or use of a cultural landscape, or a part of a cultural landscape;
 - (d) the protection, maintenance or use of Aboriginal objects;
 - (e) rights of access to, or to use, Aboriginal places or Aboriginal objects by Aboriginal people;
 - (f) the restoration and preservation of Aboriginal places, cultural landscapes and Aboriginal objects;
 - (g) any other matter prescribed for the purposes of this paragraph.

207. Endorsement of ACH protection agreement

- (1) A party to an ACH protection agreement may submit the agreement to the ACH Council for endorsement.
- (2) An ACH protection agreement submitted to the ACH Council for endorsement must —
 - (a) be made in the approved form; and
 - (b) be accompanied by the other documents and information, if any, prescribed for the purposes of this paragraph.

208. Further information in support of submission

- (1) The ACH Council may make a written request to a person who has submitted an ACH protection agreement for endorsement to do any of the following —
 - (a) provide the Council with any further information relevant to the submission that the Council requires to assess the submission;
 - (b) verify any further information by statutory declaration.
- (2) A request under subsection (1) must specify the prescribed period within which the request must be complied with.

209. ACH Council may refuse to consider some submissions

The ACH Council may refuse to consider, or consider further, a submission for the endorsement of an ACH protection agreement if —

- (a) the submission is not made in accordance with this Act; or
- (b) the person who submitted the agreement for endorsement has not complied with a request under section 208.

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210. Decision of ACH Council

- (1) The ACH Council must assess each submission for the endorsement of an ACH protection agreement under section 207(1) and make a decision to —
 - (a) endorse the agreement; or
 - (b) refuse to endorse the agreement.
- (2) A decision on a submission must be made by the ACH Council within the prescribed period.
- (3) The prescribed period for making a decision on a submission does not include any period commencing on the day on which a request is made under section 208(1) in respect of the submission and ending on the day on which the first of the following occurs —
 - (a) the request is complied with;
 - (b) the prescribed period for complying with the request expires.

Part 9 — Aboriginal Cultural Heritage Directory

Division 1 — ACH Directory

211. ACH Directory

- (1) The ACH Council must establish and maintain a directory called the Aboriginal Cultural Heritage Directory.
- (2) The ACH Directory must be established and maintained in the manner and form determined by the ACH Council as appropriate for achieving the purposes set out in section 212.

212. Purposes of ACH Directory

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

- (a) to assemble, organise and maintain the information and documents about Aboriginal cultural heritage described in section 213;
- (b) for information and documents in the Directory to be accessible, in accordance with Division 2, as a research and planning tool to assist —
 - (i) Aboriginal people, groups and communities, and other people, in their consideration of Aboriginal cultural heritage; and
 - (ii) persons proposing to carry out activities that may harm Aboriginal cultural heritage; and
 - (iii) in the administration of this Act.

213. Information and documents on ACH Directory

- (1) The ACH Directory must contain the prescribed information about the following —
 - (a) a protected area;
 - (b) a local ACH service for an area;

- (c) a native title party for an area;
 - (d) the knowledge holders for the following —
 - (i) a particular area;
 - (ii) particular Aboriginal cultural heritage;
 - (e) an ACH protection agreement endorsed under Part 8;
 - (f) an ACH permit;
 - (g) an ACH management plan approved under section 150(1)(b)(i);
 - (h) an ACH management plan authorised under section 165(1)(b)(i);
 - (i) a determination under section 176(1)(b)(i) that Aboriginal cultural heritage is of State significance for the purposes of this Act;
 - (j) a Part 7 order.
- (2) The ACH Directory must also contain —
- (a) information about Aboriginal cultural heritage of the State, including, where relevant —
 - (i) a description of the characteristics of the Aboriginal cultural heritage; and
 - (ii) a description of the location of the Aboriginal cultural heritage; and
 - (iii) in relation to an Aboriginal object, a description of where it is reasonably believed to have originated from; and
 - (iv) particularly in relation to intangible Aboriginal cultural heritage — recordings (including photographs, films, audio, video, digital and other recordings);
- and

- (b) any other information and documents, including historical information and documents, relevant to Aboriginal cultural heritage that —
 - (i) are prescribed for the purposes of this paragraph; or
 - (ii) the ACH Council considers appropriate to include in the Directory.
- (3) In subsection (2)(a)(iv) —
intangible Aboriginal cultural heritage means the intangible elements of Aboriginal cultural heritage, including knowledge, or oral expression, of Aboriginal tradition.
- (4) Information and documents may be placed on the ACH Directory, in accordance with the regulations —
 - (a) on the initiative of the ACH Council; or
 - (b) at the request of a local ACH service or another person.

214. Accuracy of ACH Directory

- (1) The ACH Council must ensure that the ACH Directory is as accurate and up-to-date as practicable, and may, as it considers necessary, do any of the following —
 - (a) modify the Directory;
 - (b) add to the Directory;
 - (c) correct the Directory.
- (2) However, information or a document can only be removed from the ACH Directory in accordance with section 215.
- (3) The placing of information or a document on the ACH Directory, or its removal from the Directory, is not conclusive as to whether the information is up-to-date, comprehensive or otherwise accurate.

215. Removing information and documents from ACH Directory

- (1) The ACH Council may remove information or a document from the ACH Directory if the Council is satisfied that the information or document has been placed on the Directory in error or is factually incorrect.
- (2) Before removing information or a document about Aboriginal cultural heritage from the ACH Directory, other than under subsection (1), the ACH Council must, to the extent that it is reasonably practicable to do so, consult —
 - (a) a knowledge holder for the Aboriginal cultural heritage to which the information or document relates; or
 - (b) if it is not possible to identify or consult with a knowledge holder for the Aboriginal cultural heritage —
 - (i) each local ACH service for the area or a part of the area to which the Aboriginal cultural heritage relates; or
 - (ii) if there is not a local ACH service for the area or a part of the area to which the Aboriginal cultural heritage relates — each native title party for the area or the part of the area; or
 - (iii) if there is not a local ACH service or native title party for the area or a part of the area to which the Aboriginal cultural heritage relates — each native title representative body for the area or the part of the area.

Division 2 — Access to ACH Directory

216. Access to ACH Directory

- (1) The ACH Council must ensure that the information and documents on the ACH Directory are made available only —
 - (a) as set out in this Division; or

- (b) in the circumstances, to the persons, and to the extent, that the Council considers appropriate; or
 - (c) if the regulations so provide, in accordance with the regulations.
- (2) However, information that is, or documents that contain, culturally sensitive information about Aboriginal cultural heritage must not be made available to a person unless a knowledge holder for the Aboriginal cultural heritage has explicitly consented to the disclosure of the information to the person.

217. Access for Aboriginal people

The ACH Council must ensure that the information and documents on the ACH Directory are available to an Aboriginal person, group or community that has traditional rights, interests and responsibilities in respect of —

- (a) the Aboriginal cultural heritage to which the information or documents relate; or
- (b) Aboriginal places located in, or Aboriginal objects located in or reasonably believed to have originated from, the area to which the information or documents relate.

218. Access to information about protected areas and management of activities

The ACH Council must ensure that the information and documents on the ACH Directory are available to the general public to the extent necessary to enable the following to be ascertained —

- (a) whether or not a particular area includes any area that is part of a protected area;
- (b) the conditions, if any, to which a protected area order, declaring a particular area as a protected area, is subject;

- (c) the Aboriginal cultural heritage that has been determined by the ACH Council under section 176(1)(b)(i) to be of State significance for the purposes of this Act;
- (d) whether or not a particular area is the subject of —
 - (i) an ACH permit; or
 - (ii) an approved or authorised ACH management plan;
- (e) a local ACH service for an area;
- (f) a native title party for an area;
- (g) if a particular area is the subject of an ACH permit — the contact details of the holder of the permit;
- (h) if a particular area is the subject of an approved or authorised ACH management plan — the contact details of the parties to the plan;
- (i) whether or not a particular area is the subject of a Part 7 order.

219. Access for proponents of activities

- (1) The ACH Council must ensure that the information and documents on the ACH Directory are available to a proponent who intends to carry out an activity that may harm Aboriginal cultural heritage —
 - (a) to the extent that the information and documents relate to the proposed activity or the Aboriginal cultural heritage at risk of harm; and
 - (b) to the extent that the Council considers that a proponent requires the information and documents to enable them to comply with the requirements of this Act.
- (2) However, information or documents prescribed as excluded from the operation of this section cannot be made available to a proponent under this section.

220. Access for research

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

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

Part 10 — Securing compliance

Division 1 — Preliminary

221. Terms used

In this Part —

CI Act means the *Criminal Investigation Act 2006*;

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

entry warrant means an entry warrant issued under Division 4;

inspection purposes means the purposes referred to in section 230;

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

reasonably suspects has the meaning given in section 222;

seized thing means a thing seized —

- (a) under section 239; or
- (b) under the *CI Act* in the exercise of powers in respect of an offence under this Act;

thing relevant to an offence has the meaning given in section 223.

222. Reasonably suspects

For the purposes of this Part, a person *reasonably suspects* something at a given time if —

- (a) the person personally has grounds at the time for suspecting the thing; and
- (b) those grounds (even if they are subsequently found to be false or non-existent) when judged objectively, are reasonable.

223. Thing relevant to an offence

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

Division 2 — Inspectors

224. Inspectors

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

225. Aboriginal inspectors

- (1) The CEO may, in writing, appoint an Aboriginal person to be an Aboriginal inspector for an area of the State.
- (2) Before appointing an Aboriginal inspector for a specified area for which a local ACH service is designated, the CEO must —
 - (a) give to the local ACH service for the area, or a part of the area, for which the Aboriginal inspector is to be appointed —
 - (i) written notice of the proposed appointment; and
 - (ii) a reasonable opportunity to make submissions to the CEO about the proposed appointment;
 - and
 - (b) take into account any submission received in making a decision about the proposed appointment.
- (3) An Aboriginal inspector has, in respect of the area for which the Aboriginal inspector is appointed, the powers conferred by or under this Act on an inspector that are specified in the appointment, and to that extent is taken to be an inspector.
- (4) A person may be appointed as an Aboriginal inspector for a fixed or indefinite period.
- (5) The CEO may, in writing, revoke an appointment at any time.

226. Identity cards

- (1) The CEO must cause an identity card to be given to each person designated under section 224(1) or appointed under section 225(1).
- (2) An identity card must —
 - (a) identify the person as an inspector or an Aboriginal inspector, as is relevant; and

- (b) if the person is an Aboriginal inspector — specify the area of the State for which the person is appointed and the powers conferred on the person; and
 - (c) include a recent photograph of the person.
- (3) A person who, without reasonable excuse, fails to return their identity card to the CEO on ceasing to be an inspector or an Aboriginal inspector commits an offence.
- Penalty for this subsection: a fine of \$5 000.
- (4) A person given an identity card under subsection (1) must carry the identity card at all times when exercising powers or performing functions as an inspector unless it is impracticable to do so.

227. Production or display of identity card

- (1) An inspector or an Aboriginal inspector may exercise a power conferred on them as an inspector in relation to another person only if the inspector or Aboriginal inspector —
- (a) first produces the identity card given to the person under section 226(1) (the *identity card*) for the other person’s inspection; or
 - (b) has the identity card displayed so that it is clearly visible to the other person.
- (2) Subsection (1) only applies if the inspector or Aboriginal inspector is in the physical presence of the person in relation to whom the power is to be exercised.
- (3) However, if it is not practicable to comply with subsection (1) before exercising the power, the inspector or Aboriginal inspector may exercise the power and then produce the identity card for inspection by the other person at the first reasonable opportunity.

228. Police officers have powers of inspectors

For the purposes of this Act, a police officer has the powers of an inspector under this Act and is taken to be an inspector.

229. Impersonating an inspector or an Aboriginal inspector

A person must not falsely represent by words or conduct that the person is an inspector or an Aboriginal inspector.

Penalty: imprisonment for 12 months or a fine of \$12 000, or both.

Division 3 — Inspection and related powers

230. Purposes for which inspection may be carried out

An inspector may carry out an inspection for any of the following purposes —

- (a) to ascertain whether this Act or any instrument has been or is being contravened;
- (b) to inspect any records that are kept under or for the purposes of this Act or that are relevant to determining whether this Act or any instrument has been or is being contravened;
- (c) any other purpose prescribed for the purposes of this paragraph.

231. Power to enter places

- (1) For inspection purposes an inspector may do any of the following —
 - (a) subject to section 232, at any time enter a place that is not a dwelling;
 - (b) at any time enter a dwelling with the informed consent of an occupier of the dwelling;
 - (c) enter a place in accordance with an entry warrant.

- (2) For the purposes of subsection (1)(b), an occupier gives informed consent if the occupier consents after being informed by the inspector —
- (a) of the powers that the inspector wants to exercise in carrying out the inspection in respect of the dwelling; and
 - (b) of the reasons why the inspector wants to exercise those powers; and
 - (c) that the occupier may refuse to consent to the inspector entering the dwelling.

232. Entering Aboriginal places

- (1) Before entering a place under section 231(1)(a), an inspector must take all reasonable steps to determine —
- (a) whether the place is an Aboriginal place; and
 - (b) if the place is an Aboriginal place — whether in accordance with Aboriginal tradition there are restrictions on entry to the place.
- (2) If the inspector determines that the place is an Aboriginal place and that in accordance with Aboriginal tradition there are restrictions on entry to the place, the inspector can only enter the place if —
- (a) the inspector is permitted to enter the place in accordance with Aboriginal tradition; or
 - (b) the inspector is accompanied by a person who is permitted to enter the place in accordance with Aboriginal tradition.
- (3) However, an inspector may enter a place without complying with subsection (2) if the inspector considers on reasonable grounds that the entry is necessary to prevent harm to Aboriginal cultural heritage.

233. Power to enter includes power to enter some other places

- (1) This section applies if under section 231(1) an inspector may enter a place.
- (2) If the place is 1 of 2 or more premises in a single building, then, in order to enter the place, the inspector may enter, but not inspect, any part of the building that the occupiers of the place use exclusively but in common with each other.

234. Power to stop and enter vehicles, and ancillary powers

- (1) In this section —
mobile home means a vehicle that is —
 - (a) ordinarily used for human habitation; and
 - (b) permanently or semi-permanently stationary in a single location.
- (2) For inspection purposes an inspector may at any time stop and enter a vehicle other than a mobile home.
- (3) If under subsection (2) an inspector may stop a vehicle, the inspector may use any means that are reasonably necessary in the circumstances to do so.
- (4) Subsection (3) does not authorise the use of means that are likely to cause death or grievous bodily harm to any person, whether or not the person is in the vehicle.
- (5) An inspector who under subsection (2) stops a vehicle may —
 - (a) detain the vehicle for a reasonable period; and
 - (b) move the vehicle to another place suitable for carrying out an inspection.

235. Application of CI Act s. 31

The CI Act section 31 (the *applied provision*) applies, with all necessary modifications, to and in relation to the entry of a

place under section 231(1)(a) or (c) or 233, or a vehicle under section 234(2), as if references in the applied provision to —

- (a) a place included references to a vehicle; and
- (b) an occupier included references to a person in charge of a vehicle; and
- (c) an officer were references to an inspector; and
- (d) a search warrant were references to an entry warrant; and
- (e) a search were references to an inspection.

236. Other powers related to inspection

For inspection purposes an inspector may do any of the following —

- (a) take onto or into, and use on or in, a place or vehicle any equipment or facilities that are reasonably necessary in order to carry out the inspection;
- (b) make reasonable use of any equipment, facilities or services on or in a place or vehicle in order to carry out an inspection and for that purpose operate the equipment or facilities;
- (c) remain on or in a place or vehicle for as long as is reasonably necessary to carry out the inspection;
- (d) inspect and open any package, compartment, cupboard or container of any kind, and inspect its contents;
- (e) inspect any enclosure or similar structure on or in a place or vehicle;
- (f) photograph or otherwise make a record of a place or vehicle and any thing in or on the place or vehicle;
- (g) take samples or specimens of, or from, water or soil;
- (h) apply an identifier to any object;
- (i) survey and mark out land for any purposes relevant to carrying out the inspection;

- (j) label any thing.

237. Obtaining records

- (1) In this section —
relevant record means an instrument, publication or other record that contains information that is relevant to compliance with this Act.
- (2) For inspection purposes an inspector may do any of the following —
 - (a) direct a person who has the custody or control of a relevant record to give the inspector the record or a copy of the record;
 - (b) direct a person who has the custody or control of a record, or of a computer or other thing on which a relevant record is or may be stored to make or print a copy of the record or to operate the computer or thing;
 - (c) operate a computer or other thing on which a relevant record is or may be stored;
 - (d) direct a person who is or appears to be in control of a record that the inspector reasonably suspects is a relevant record to give the inspector a translation, code, password or other information necessary to gain access to or interpret and understand the record;
 - (e) take extracts from, make copies of, download, print or photograph a record that the inspector reasonably suspects is a relevant record;
 - (f) take reasonable measures to secure or protect a relevant record, or computer or other thing on which a relevant record is or may be stored, against damage or unauthorised removal or interference.
- (3) If an inspector is given a relevant record, the inspector must, if practicable, allow a person who is otherwise entitled to possession of the record to have reasonable access to it.

238. Directions

For inspection purposes an inspector may do any of the following —

- (a) direct an occupier of a place or vehicle, or a person who is or appears to be in possession or control of a thing, to give to the inspector, orally or in writing —
 - (i) any information in the person's possession or control as to the name and address of the owner of the place, vehicle or thing; and
 - (ii) any other information in the person's possession or control that is relevant to an inspection;
- (b) direct an occupier of a place or vehicle to answer questions;
- (c) direct an occupier of a place or vehicle to open or unlock any thing in or on the place or vehicle to which the inspector requires access;
- (d) direct an occupier of a place to give the inspector a plan, or access to a plan, of the place;
- (e) direct an occupier of a place or vehicle, or a person who is or appears to be in possession or control of a thing, to give the inspector any assistance that the inspector reasonably requires to perform the inspector's functions in relation to the place, vehicle or thing;
- (f) direct an occupier of a vehicle to move the vehicle to a place specified by the inspector for inspection of the vehicle;
- (g) direct a person who is or appears to be in control of a consignment of goods to move the consignment to a place specified by the inspector for inspection of the consignment;
- (h) direct a person who is or appears to be in control of an object to do anything reasonably necessary to identify the object;

- (i) direct a person who is or appears to be in control of any goods, vehicle, package or container to label the goods, vehicle, package or container;
- (j) direct a person who is or appears to be in control of an object to keep possession of that object until further directed by the inspector;
- (k) direct a person who is or appears to be in control of an object to leave that object at a place specified by the inspector until further directed by the inspector.

239. Seizure of thing relevant to an offence

- (1) This section does not authorise the seizure of Aboriginal ancestral remains.
- (2) If an inspector, when exercising a power under this Division, finds a thing relevant to an offence under this Act, the inspector may, subject to subsection (3), seize the thing.
- (3) The inspector may seize a thing under subsection (2) only if the inspector reasonably suspects any of the following —
 - (a) that the thing has been unlawfully obtained;
 - (b) that possession of the thing at that time and place by the person in possession of it is unlawful;
 - (c) that it is necessary to seize the thing for any of the following purposes —
 - (i) to prevent it from being concealed, damaged, destroyed, interfered with or lost;
 - (ii) to preserve its evidentiary value;
 - (iii) to prevent it from being used in the commission of another offence under this Act.
- (4) The CI Act sections 147, 148, 149 and 151 (the *applied provisions*) apply, with all necessary modifications, to and in relation to —
 - (a) the seizure of a thing under subsection (2); and

- (b) a thing that may be seized under subsection (2); and
 - (c) a thing seized under subsection (2).
- (5) The applied provisions apply as if references in those provisions to an officer were references to an inspector.
- (6) If an inspector seizes a thing under subsection (2), the inspector must —
- (a) issue a receipt for the thing in the form approved by the CEO; and
 - (b) either —
 - (i) if the occupier of the place or vehicle is present — give the receipt to the occupier; or
 - (ii) in any other case — leave the receipt at the place or in or on the vehicle in an envelope addressed to the occupier of the place or vehicle, or otherwise give notice of the receipt.
- (7) However, if it is not practicable to comply with subsection (6)(b)(i), the person may seize the thing and at the first reasonable opportunity leave, or otherwise give notice of, the receipt in accordance with subsection (6)(b)(ii).
- (8) The form prescribed for the CI Act section 147(1), as applied by subsection (4), may be modified as necessary for the purposes of this section.

240. Security of seized things

- (1) If, under section 239(2) or in the exercise of powers under the CI Act, an inspector seizes a thing, the inspector must take reasonable steps to ensure that the thing is kept in a secure manner.
- (2) A person must not move, tamper or otherwise interfere with a seized thing without the approval of an inspector.
- Penalty for this subsection: a fine of \$10 000.

241. Dealing with seized things

- (1) In this section —
deal with includes to preserve, treat, sell, give away, use and destroy.
- (2) If, under section 239(2) or in the exercise of powers under the CI Act, an inspector seizes a thing, and in the opinion of the inspector, the thing is likely to deteriorate if no action is taken to deal with it, the inspector may deal with the thing in accordance with the directions of the CEO.
- (3) Subsection (2) does not apply if the seized thing is an Aboriginal object except to the extent that it allows the object to be transferred to the ACH Council to be dealt with under section 66, whether or not the object is a secret or sacred object.
- (4) If a seized thing is sold under subsection (2), the proceeds of the sale, after the deduction of expenses incidental to the sale —
 - (a) if subsection (5) applies — are to be paid to the person entitled to possession of the thing before it was seized; or
 - (b) otherwise — are to be credited to the Aboriginal Cultural Heritage Account established under section 279(1).
- (5) This subsection applies if —
 - (a) under section 239(2) or in the exercise of powers under the CI Act, a thing is seized in connection with an offence under this Act; and
 - (b) the thing is sold under subsection (2); and
 - (c) the decision is subsequently made not to commence a prosecution in respect of the offence or, after the prosecution has been completed, no person is convicted of the offence.

242. Dealing with Aboriginal ancestral remains

If an inspector, when exercising a power under this Division, finds human remains that the inspector reasonably considers may be Aboriginal ancestral remains, the inspector must —

- (a) take reasonable steps to ensure that the human remains are kept in a secure manner; and
- (b) as soon as practicable, transfer the human remains into the custody of the ACH Council to be dealt with under section 60.

243. Forensic examination

- (1) In this section —

forensic examination, of a sample, specimen or other thing, means any or all of the following —

- (a) to examine or operate it;
 - (b) to photograph, measure or otherwise make a record of it;
 - (c) to take an impression of it;
 - (d) to take samples of or from it;
 - (e) to do tests on it, or on any sample taken under paragraph (d), for forensic purposes.
- (2) If an inspector takes a sample or specimen under section 236(g) the inspector may do a forensic examination, or arrange for a forensic examination to be done, of the sample or specimen.
- (3) If an inspector, when exercising a power under this Division, finds a thing that may be seized under section 239(2), then whether or not the inspector seizes the thing, the inspector may do a forensic examination, or arrange for a forensic examination to be done, of the thing.
- (4) If it is reasonably necessary to do so in order to do a forensic examination, the sample, specimen or thing may, unless the thing is an Aboriginal object, be dismantled, damaged or destroyed.

- (5) The power in subsection (3) cannot be exercised in relation to a thing that may contain information that is privileged, as defined in the CI Act section 151(1), until under that section (as applied by section 239(4) of this Act) —
- (a) a decision has been made that the information is not privileged; or
 - (b) an order has been made to enable the power to be exercised.

Division 4 — Entry warrants

244. Applying for entry warrant

- (1) An inspector may apply to a magistrate for an entry warrant authorising the entry of a place or vehicle for inspection purposes.
- (2) An inspector may apply for an entry warrant for a place or vehicle even if, under Division 3, an inspector may enter the place or vehicle without an entry warrant.
- (3) An application under subsection (1) must be made in accordance with section 245 and include the information, if any, prescribed for the purposes of this subsection.

245. Making application for entry warrant

- (1) In this section —
application means an application under section 244(1);
remote communication means any way of communicating at a distance, including by telephone, fax, radio, videoconferencing, email and other electronic means.
- (2) A reference in this section to making an application includes a reference to giving information in support of an application.

- (3) An application must be made in person before a magistrate unless —
- (a) the entry warrant is needed urgently and the applicant reasonably suspects that a magistrate is not available within a reasonable distance of the applicant; or
 - (b) the application, were it an application under the CI Act section 13, could be lodged electronically under the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* Part 2.
- (4) If subsection (3)(a) or (b) apply —
- (a) the application may be made to a magistrate by remote communication; and
 - (b) the magistrate may grant the application only if satisfied about the matters described in subsection (3)(a) or (b).
- (5) An application must be in writing unless —
- (a) the application is made by remote communication; and
 - (b) it is not practicable to send the magistrate written material.
- (6) If subsection (5)(a) and (b) apply —
- (a) the application may be made orally; and
 - (b) the magistrate must make a written record of —
 - (i) the application; and
 - (ii) any information given in support of the application.
- (7) An application must be made on oath unless —
- (a) the application is made by remote communication; and
 - (b) it is not practicable for the magistrate to administer an oath to the applicant.
- (8) If subsection (7)(a) and (b) apply —
- (a) the application may be made in an unsworn form; and

- (b) if the magistrate issues an entry warrant, the applicant must, as soon as practicable, send the magistrate an affidavit verifying —
 - (i) the application; and
 - (ii) any information given in support of the application.

246. Further provisions relating to application for entry warrant

- (1) If, on an application for an entry warrant under section 244(1) made by remote communication under section 245 a magistrate issues an entry warrant, the magistrate must, if practicable, send a copy of the original warrant to the applicant by remote communication, but otherwise —
 - (a) the magistrate must send to the applicant by remote communication any information that must be set out in the warrant; and
 - (b) the applicant must —
 - (i) complete a form of warrant with the information received; and
 - (ii) give the magistrate a copy of the form as soon as practicable after completing the form;and
 - (c) the magistrate must —
 - (i) attach the copy of the form to the original warrant and any affidavit received from the applicant; and
 - (ii) make them available for collection by the applicant.
- (2) The copy of the original warrant sent, or the form of the warrant completed, as the case may be, under subsection (1) has the same force as the original warrant.

- (3) If an applicant contravenes subsection (1)(b) or section 245(8)(b), any evidence obtained under the entry warrant is not admissible in proceedings in a court or the State Administrative Tribunal.

247. Issuing entry warrant

- (1) A magistrate may issue an entry warrant only if satisfied that, for inspection purposes, it is necessary for an inspector to enter a place or vehicle.
- (2) An entry warrant must contain the following information —
- (a) a reasonably particular description of the place or vehicle to which it relates;
 - (b) a reasonably particular description of the inspection purposes for which entry to the place or vehicle is required;
 - (c) the period, not exceeding 30 days, during which it may be executed;
 - (d) the name of the magistrate who issued it;
 - (e) the date and time when it was issued.
- (3) If a magistrate refuses to issue an entry warrant, the magistrate must record on the application the fact of, the date and time of, and the reasons for, the refusal.

248. Effect of entry warrant

- (1) An entry warrant has effect according to its content and this section.
- (2) An entry warrant comes into force when it is issued by the magistrate.
- (3) An entry warrant authorises the inspector executing the warrant —
- (a) to enter the place or vehicle described in the warrant; and

(b) to exercise the powers conferred by Division 3.

249. Execution of entry warrant

- (1) An entry warrant may be executed by the inspector to whom it is issued or by any other inspector.
- (2) An inspector executing an entry warrant must, at the reasonable request of a person apparently in charge of the place or vehicle to which the warrant relates, produce the warrant.

Division 5 — Other provisions

250. Direction may be given orally or in writing

- (1) A direction under this Part may be given by an inspector orally or in writing.
- (2) A direction that is given orally must be confirmed in writing within 5 business days after it is given, unless within that period it is complied with or cancelled.
- (3) Failure to comply with subsection (2) does not invalidate the direction.

251. Time and place for compliance with direction

An inspector may specify the date and time when, and place where, a direction given under this Part must be complied with.

252. Contravention of directions

A person must not, without reasonable excuse, contravene a direction given to the person by an inspector under this Part .

Penalty: a fine of \$10 000.

253. Exercise of power may be recorded

An inspector may record the exercise of a power under this Act, including by making an audiovisual recording.

254. Assistance to exercise powers

- (1) An inspector exercising a power under this Act may authorise as many other persons to assist in exercising the power as are reasonably necessary in the circumstances.
- (2) A person who, under subsection (1), is authorised by an inspector to assist in exercising a power must obey any lawful and reasonable direction given to the person by the inspector when assisting in exercising the power.
- (3) For the purposes of section 305, a person who assists in exercising a power under this Act, having been authorised under subsection (1) by an inspector to do so, is taken to be performing a function under this Act.
- (4) The protection from liability given to a person under subsection (3) does not extend to anything done or omitted to be done by the person in contravention of a lawful and reasonable direction referred to in subsection (2).

255. Application of CI Act s. 154 and 155

The CI Act sections 154 and 155 apply, with all necessary modifications, to and in relation to a thing seized under section 239(2) as if references in those provisions to —

- (a) an authorisation under that Act were references to an entry warrant; and
- (b) a power conferred by, or a requirement of, that Act were references to a power conferred by, or a requirement of, this Act.

256. Obstruction of inspector

A person must not obstruct an inspector, or a person assisting an inspector, in the exercise or attempted exercise of a power under this Act.

Penalty: a fine of \$20 000.

257. Self-incrimination not an excuse

- (1) An individual is not excused from complying with a direction under this Part to provide information or answer a question, or to produce a record or thing, on the ground that the information, answer, record or thing might incriminate the individual or make the individual liable to a penalty.
- (2) However, any information or answer provided, or document or thing produced, by an individual in compliance with a direction under this Part is not admissible as evidence in any proceedings against the individual other than proceedings for perjury or an offence under section 304(1).

258. Orders for forfeiture or disposal of seized things

- (1) Subject to subsection (2), a court that convicts a person of an offence under this Act may make an order for the forfeiture to the State, or the destruction or disposal, of a seized thing if the court is satisfied that the thing was the subject of, used in, or otherwise involved in, the commission of the offence.
- (2) Subsection (1) does not apply to a seized thing that is an Aboriginal object except to the extent that it allows the object to be forfeited to the State and transferred to the ACH Council to be dealt with under section 66, whether or not the object is a secret or sacred object.

259. Application of *Criminal and Found Property Disposal Act 2006*

- (1) The *Criminal and Found Property Disposal Act 2006* applies to and in respect of —
 - (a) any seized thing unless the thing is dealt with under section 241; and
 - (b) any thing forfeited under section 258, other than an Aboriginal object.

- (2) The Department, when assisting the Minister in the administration of this Act, is a prescribed agency for the purposes of the *Criminal and Found Property Disposal Act 2006*.

Part 11 — Legal proceedings

Division 1 — General provisions relating to offences

260. Who may commence proceedings

- (1) A prosecution of an offence under this Act, or proceedings in respect of any other matter arising under this Act, may be commenced by the CEO or by a person authorised by the CEO to do so.
- (2) Subsection (1) does not limit the ability of a person to commence or conduct the prosecution of an offence under this Act if the person has authority at law to do so.

261. Time limit for prosecution of simple offence

- (1) A prosecution of a simple offence under this Act must be commenced within 6 years after the date on which the offence was allegedly committed.
- (2) However, if a prosecution notice alleging a simple offence under this Act specifies the date on which evidence of the alleged offence first came to the attention of a person authorised to commence the prosecution (the *date specified*) —
 - (a) the prosecution may be commenced within 2 years after the date specified; and
 - (b) the prosecution notice need not contain particulars of the date on which the offence was allegedly committed.
- (3) The date on which evidence of the alleged offence first came to the attention of a person authorised to commence a prosecution is, in the absence of evidence to the contrary, the date specified.

Division 2 — Court may order costs and expenses

262. Court may order costs and expenses

- (1) A court that hears proceedings for an offence under this Act has power to make the orders that it thinks fit in respect of the costs and expenses of, and incidental to, the examination, seizure, detention, storage, analysis, destruction or other disposition of anything the subject of those proceedings.
- (2) Subsection (1) does not affect —
 - (a) any other power of a court to award costs; or
 - (b) the *Criminal Procedure Act 2004* section 123.

Division 3 — Criminal liability of body corporate officers, employees and others

263. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

| | | |
|-------------------|-------------------|-------------------|
| s. 52(1) | s. 56(1) | s. 57(1) and (4) |
| s. 61(1) | s. 64(1) | s. 67(1) |
| s. 68(1) | s. 88(1) | s. 92 |
| s. 93(1) | s. 94 | s. 95 |
| s. 127(1) | s. 133 | s. 171(4) |
| s. 173 | s. 183(1) and (2) | s. 190(1) and (2) |
| s. 196(1) and (2) | s. 205(1) and (2) | s. 240(2) |

Aboriginal Cultural Heritage Act 2021

Part 11 Legal proceedings

Division 3 Criminal liability of body corporate officers, employees and others

s. 266

| | | |
|-----------|--------|-----------|
| s. 252 | s. 256 | s. 304(1) |
| s. 306(2) | | |

[Section 263 inserted: No. 9 of 2023 s. 8.]

[264, 265. Deleted: No. 9 of 2023 s. 8.]

266. Liability of partners

- (1) If an ACH permit is granted to a partner in relation to the activities of a partnership, each partner in the partnership has the same rights and duties as the holder of the permit, whether or not the partner is named in the permit.
- (2) If an ACH management plan is approved under section 150(1)(b)(i) or authorised under section 165(1)(b)(i) in respect of the activities of a proponent that is in a partnership, each partner in the partnership has the same rights and duties as a party to the plan, whether or not the partner is named in the plan.

267. Liability of principals for offence by agent

- (1) If a person (the *agent*) acting, otherwise than as an employee, for or on behalf of another person (the *principal*) contravenes any provision of this Act, the principal is taken to have contravened the same provision.
- (2) For the purposes of this section, an agent and principal relationship exists —
 - (a) if a person (the *agent*) carries out, manages or controls an activity the subject of an authorisation under Part 6 Division 4 for or on behalf of the proponent for the activity (the *principal*);
 - (b) whether the agent is acting directly for the principal or acting indirectly through another person, or persons, including a contractor, subcontractor or consultant.

-
- (3) In proceedings against a principal for such a contravention, it is a defence to prove that the principal took all reasonable steps to prevent the commission of the offence by the agent.
- (4) In determining whether things done or omitted to be done by the principal constituted reasonable steps, a court must have regard to —
- (a) what the principal knew, or ought to have known, about the risk of the contravention occurring; and
 - (b) whether the principal could, by the exercise of due diligence, have prevented the contravention; and
 - (c) any other relevant matter.
- (5) A principal may be proceeded against and convicted under a provision of this Act in accordance with this section whether or not the agent has been proceeded against or convicted under that provision.

268. Liability of employer for offences by employee

- (1) If an employee of another person (the *employer*) contravenes any provision of this Act while acting as an employee, the employer is taken to have contravened the same provision, whether or not the employee contravened the provision —
- (a) without the employer's authority; or
 - (b) contrary to the employer's orders or instructions.
- (2) In proceedings against an employer for such a contravention, it is a defence to prove that the employer took all reasonable steps to prevent the commission of the offence by the employee.
- (3) In determining whether things done or omitted to be done by the employer constituted reasonable steps, a court must have regard to —
- (a) what the employer knew, or ought to have known, about the risk of the contravention occurring; and

- (b) whether the employer could, by the exercise of due diligence, have prevented the contravention; and
 - (c) any other relevant matter.
- (4) An employer may be proceeded against and convicted under a provision of this Act in accordance with this section whether or not the employee has been proceeded against or convicted under that provision.

269. Liability of employees and agents

It is not a defence to a charge of an offence under this Act that the accused person was, at the time of the commission of the offence, an employee or agent of another person.

Division 4 — Evidentiary provisions

270. Application of Division

- (1) This Division applies for the purposes of proceedings for an offence under this Act.
- (2) A provision of this Division that provides for a matter to be taken to be proved applies only in the absence of evidence to the contrary.
- (3) This Division is in addition to and does not affect the operation of the *Evidence Act 1906*.

271. Certain matters taken to be proved if alleged in prosecution notice or indictment

An allegation in a prosecution notice or indictment of any matter listed in the Table is taken to be proved.

Table

| Item | Matter |
|------|--|
| 1. | That the person who commenced the proceeding is authorised to do so |
| 2. | That specified land is land of a specified description Example for this item: Crown land |
| 3. | That on a specified day or during a specified period a specified person was the landholder of specified land |
| 4. | That a document purporting to have been signed or executed, as relevant, by the Minister, the CEO, an inspector, an Aboriginal inspector or the ACH Council was signed, or executed, as relevant, by a person who at the specified time was the Minister, the CEO, an inspector, an Aboriginal inspector or a person authorised to sign or execute the document on behalf of the Council, as the case requires |

272. Evidence of certain matters if stated in certificate

- (1) In this section —
authorised person means a person designated under subsection (2).
- (2) The Minister may, by notice published in the *Gazette*, designate a person to be an authorised person for the purposes of this section.
- (3) Production of a certificate purporting to be signed by the CEO and stating any of the matters listed in the Table is, without

proof of the CEO's signature, taken to be evidence of the facts stated in the certificate.

Table

| Item | Matter |
|-------------|--|
| 1. | That on a specified day or during a specified period a person was or was not — (a) the holder of an ACH permit; or (b) a party to an approved or authorised ACH management plan; or (c) a person given a Part 7 order |
| 2. | That on a specified day or during a specified period a specified instrument was or was not of effect |
| 3. | That on a specified day or during a specified period a specified instrument was or was not subject to a specified condition |
| 4. | That on a specified day or during a specified period a Part 7 order contained or did not contain a specified direction |
| 5. | That on a specified day or during a specified period a specified person was or was not authorised to carry out a specified activity under a specified instrument |
| 6. | That on a specified day or during a specified period a specified person was or was not designated as a local ACH service for a specified area |

| Item | Matter |
|-------------|--|
| 7. | That on a specified day or during a specified period a person was or was not a native title party for a specified area |
| 8. | That on a specified day or during a specified period a body was or was not a native title representative body for a specified area |
| 9. | That on a specified day or during a specified period a person was or was not an inspector, an Aboriginal inspector or a person authorised to assist an inspector or an Aboriginal inspector |
| 10. | That on a specified day or during a specified period a specified area did or did not include any area that was part of a protected area |
| 11. | That on a specified day or during a specified period specified Aboriginal cultural heritage was determined under section 176(1)(b) to be or not to be of State significance for the purposes of this Act |
| 12. | That on a specified day or during a specified period a person held or did not hold a specified office |

- (4) Production of a certificate purporting to be signed by an authorised person and stating any of the matters listed in the

Table is, without proof of the authorised person's signature, evidence of the facts stated in the certificate.

Table

| Item | Matter |
|-------------|---|
| 1. | That on a specified day or during a specified period a specified place was or was not an Aboriginal place |
| 2. | That on a specified day or during a specified period a specified thing was or was not an Aboriginal object |
| 3. | That on a specified day or during a specified period a specified thing was or was not a secret or sacred object |
| 4. | That on a specified day or during a specified period specified human remains were or were not Aboriginal ancestral remains |
| 5. | That on a specified day or during a specified period a specified person was or was not a custodian of Aboriginal ancestral remains |
| 6. | That on a specified day or during a specified period a specified person was or was not a custodian of a specified secret or sacred object |
| 7. | That on a specified day or during a specified period a person was or was not a knowledge holder for a specified area |

- (5) Subsections (3) and (4) only apply if —
- (a) at least 28 days before the hearing at which the certificate is proposed to be produced, written notice

was given to the accused of the prosecutor's intention to produce the certificate; and

- (b) the accused has not, within 14 days after receipt of the notice, delivered to the prosecutor a notice requiring that the evidence of the CEO or the authorised person be given in person.
- (6) The court before which proceedings are held may, in addition to making any other order as to costs, make any order it thinks fit as to the expenses and remuneration to be paid for the services of the CEO or the authorised person.

273. Evidence in relation to documents

- (1) A document certified by the CEO to be a true copy of an instrument as at a specified date —
 - (a) is taken to be proved to be a copy of the original document as at that date; and
 - (b) is admissible in the same way, and has the same evidentiary value, as the original.
- (2) A document certified by the CEO to be a true copy of the ACH Directory, or any part of the Directory, as at a specified date is taken to be proof of the contents of the Directory, or that part of the Directory, as at that date.
- (3) A document certified by the CEO to be a true copy of specified guidelines as at a specified date or during a specified period is taken to be proof of the contents of the guidelines as at that date or during that period.
- (4) A document purporting to have been signed by a delegate of the Minister, the ACH Council or the CEO is taken to have been signed by a person who at the time was such a delegate and was authorised to sign it.
- (5) A copy of a document or record obtained by an inspector or an Aboriginal inspector exercising a power under Part 10

Division 3 is admissible in evidence if it is certified by the inspector or the Aboriginal inspector, as is relevant, as having been obtained in the exercise of that power.

274. Onus of proving certain matters

In any proceedings for an offence under this Act, the onus of proving a matter listed in the Table lies with the person asserting the matter.

Table

| Item | Matter |
|-------------|--|
| 1. | That a person has undertaken consultation in accordance with the consultation guidelines |
| 2 | That a person has undertaken a due diligence assessment in accordance with the ACH Management Code |
| 3. | That conduct was engaged in with reasonable excuse |

Part 12 — Review by State Administrative Tribunal

Division 1 — Preliminary

275. Application of Part

This Part applies where jurisdiction is conferred on the State Administrative Tribunal under Division 2 in relation to the review of a decision under this Act.

276. Terms used

In this Part —

affected person, in relation to a reviewable decision, has the meaning given in section 277(1)(b);

reviewable decision has the meaning given in section 277(1)(a).

Division 2 — Review by State Administrative Tribunal

277. Review of certain decisions

- (1) The Table sets out —
- (a) decisions made under this Act that are reviewable in accordance with this Part (*reviewable decision*); and
 - (b) who is eligible to apply for a review of a reviewable decision (the *affected person*).

Table

| Item | Reviewable decision | Affected person |
|------|---|------------------------------------|
| 1. | A decision of the Minister under section 154(1) to cancel or suspend the approval of an ACH management plan | A party to the ACH management plan |

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Part 12 Review by State Administrative Tribunal

Division 2 Review by State Administrative Tribunal

s. 277

| Item | Reviewable decision | Affected person |
|-------------|---|--|
| 2. | A decision of the Minister under section 180(1) to give a stop activity order | The person who was given the stop activity order |
| 3. | A decision of the Minister under section 188(1)(b)(i) to give a prohibition order | The person who was given the prohibition order |
| 4. | A decision of the Minister under section 191(1) to extend the term of a prohibition order | The person who was given the prohibition order |
| 5. | A decision of the Minister under section 194(1) to give a remediation order | The person who was given the remediation order |
| 6. | A decision by the Minister under section 203(1)(a) to amend or cancel a prohibition order | The person who was given the prohibition order A person referred to in section 187(3)(b) to (d) |

- (2) An affected person who is aggrieved by a reviewable decision may apply to the State Administrative Tribunal for a review of the decision.
- (3) The application must be made within 28 days after the day on which notice of the reviewable decision is given.
- (4) For the purposes of the *State Administrative Tribunal Act 2004* section 45(1)(b), each other affected person in relation to the reviewable decision is entitled to a copy of the application.

- (5) Despite the *State Administrative Tribunal Act 2004* section 61, the State Administrative Tribunal may —
 - (a) order that the hearing of a review, or any part of the hearing, be held in private; and
 - (b) specify the persons who may be present at the hearing.
- (6) The State Administrative Tribunal's power to make an order under subsection (5) is exercisable by —
 - (a) a legally qualified member; or
 - (b) if the Tribunal as constituted for a hearing does not consist of or include a legally qualified member, the presiding member.
- (7) The State Administrative Tribunal may make an order under subsection (5) if the Tribunal considers it necessary to do so.

278. Notice of reviewable decisions must be given

- (1) The decision-maker must give written notice of a reviewable decision within 14 days after the decision is made to each person who is an affected person in relation to the decision.
- (2) 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 an affected person who is aggrieved by the decision has a right to apply for a review of the decision under section 277 within 28 days after the day the notice is given.

Part 13 — Miscellaneous

Division 1 — Aboriginal Cultural Heritage Account and Aboriginal Cultural Heritage Compensation Fund

Subdivision 1 — Aboriginal Cultural Heritage Account

279. Aboriginal Cultural Heritage Account

- (1) An account called the Aboriginal Cultural Heritage Account (*ACH Account*) is established.
- (2) The ACH Account is an agency special purpose account under the *Financial Management Act 2006* section 16(1).
- (3) The ACH Account must be administered by the CEO.
- (4) The Treasurer cannot give a direction in relation to the ACH Account under the *Financial Management Act 2006* section 20(1).
- (5) There is to be credited to the ACH Account the following —
 - (a) fees and charges paid or recovered under this Act;
 - (b) proceeds from the sale of any seized thing under section 241(4)(b);
 - (c) an amount equal to an uncommitted amount paid to the ACH Council under a condition imposed under section 51(4);
 - (d) any other amounts lawfully received by, or made available for, the purposes of the Account.
- (6) Money standing to the credit of the ACH Account may be applied for the following purposes —
 - (a) in payment of the costs of the administration and enforcement of this Act, including the remuneration and allowances payable under sections 26(3) and 32;

- (b) in payment of funding to persons designated as a local ACH service under section 51;
- (c) to proactively assist in the recognition, protection, conservation, preservation and management of Aboriginal cultural heritage, including, if relevant, by developing guidance materials;
- (d) any other purpose approved by the Minister.

Subdivision 2 — Aboriginal Cultural Heritage Compensation Fund

280. Aboriginal Cultural Heritage Compensation Fund

- (1) An account called the Aboriginal Cultural Heritage Compensation Fund (*ACH Compensation Fund*) is established.
- (2) The ACH Compensation Fund is an agency special purpose account under the *Financial Management Act 2006* section 16(1).
- (3) The ACH Compensation Fund must be administered by the CEO.
- (4) The Treasurer cannot give a direction in relation to the ACH Compensation Fund under the *Financial Management Act 2006* section 20(1).
- (5) Fines imposed under this Act must be credited to the ACH Compensation Fund.
- (6) Money standing to the credit of the ACH Compensation fund is to be applied in the payment under section 99 of compensation in respect of Aboriginal cultural heritage to which harm has been caused.

Subdivision 3 — Provisions relating to accounts established under this Division

281. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

(1) In this section —

account means each of the following —

- (a) the Aboriginal Cultural Heritage Account established under section 279(1);
 - (b) the Aboriginal Cultural Heritage Compensation fund established under section 280(1).
- (2) The *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of departments apply to and in relation to each account, other than as provided in sections 279(4) and 280(4).
- (3) The administration of each account is for the purposes of the *Financial Management Act 2006* section 52 to be regarded as a service of the Department.
- (4) Without limiting the *Financial Management Act 2006* section 61, the annual report for a financial year prepared under that section by the accountable authority of the Department (the **annual report**) must contain information about the operation of each account.
- (5) The annual report must include details of how money standing to the credit of each account was applied during the financial year (if at all).

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. Giving notice to landholder or occupier of land

- (1) If notice of a document is required or authorised to be given under this Act to a person because the person is a landholder or an occupier of land, the notice may be addressed to the person by the description of “the landholder” or “the occupier” of the relevant land, describing the relevant land, without further name or description.

- (2) If there are 2 or more landholders or occupiers, notice is sufficiently given to all of them if it is given to 1 of them, and is addressed to that 1 with the addition of the words “and others” or “and another”, as the case requires.
- (3) If notice of a document is to be given to a person because the person is a landholder, the notice may be given to the person by addressing the document to the landholder and giving it in accordance with section 283 to the occupier, if any, of the land.
- (4) If notice of a document is to be given to a person because the person is a landholder or occupier of land, the notice may be given to the person by addressing the document to the person and affixing it to a conspicuous part of the land.
- (5) Subsections (3) and (4) only apply if it is not practicable to give the notice in any of the ways provided for in section 283 and this Act does not otherwise state how the notice is to be given.

285. Giving certain notices

- (1) If notice of a document is required or permitted to be given under this Act to a landholder, an occupier of land or a knowledge holder for an area and it is not practicable to give the notice in accordance with section 283, the notice may be given by publishing a copy of the document in the prescribed manner.
- (2) Notice given in accordance with subsection (1) —
 - (a) may be directed to any number of —
 - (i) landholders or occupiers of land; or
 - (ii) knowledge holders for an area;and
 - (b) is taken to be given to —
 - (i) all of the landholders and occupiers of the land specified in the notice; or
 - (ii) all of the knowledge holders for the area specified in the notice.

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. No circumventing or contracting out

- (1) For the purposes of this Act, a term of a contract or other agreement that purports to do, or has the effect of doing, any of the following is of no effect —
- (a) exclude, limit or modify the operation of this Act;
 - (b) exclude, limit or modify any duty owed under this Act;
 - (c) transfer to another person any duty owed under this Act.

Note for this subsection:

The transfer of an ACH permit by the holder of the permit to another person referred to in section 127, or a change to a party to an approved or authorised ACH management plan referred to in section 171, is not the transfer to another person of a duty owed under this Act as described in subsection (1)(c).

- (2) A purported waiver, limitation or modification of a right, remedy or benefit conferred on a person under this Act is of no effect.

301. Delegation by Minister

- (1) The Minister may delegate any power or duty of the Minister under another provision of this Act, other than any power or duty under a provision listed in the Table, to any of the following —
- (a) the ACH Council;
 - (b) the CEO;
 - (c) a person employed or engaged in the Department.

Table

| | |
|------------------|--------------|
| s. 21(1) | s. 27(1) |
| s. 32 | s. 43(2) |
| s. 78(4) and (5) | s. 81(1) |
| s. 131(6) | s. 154(1)(b) |
| s. 155(4) | s. 165(1) |
| s. 168(1) | s. 170 |
| s. 180(1) | s. 182(1) |
| s. 188(1) | s. 191(1) |
| s. 194(1) | s. 203(1) |

- (2) A delegation must be in writing signed by the Minister.
- (3) A person or body to whom or which a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person or body exercising or performing a power or duty that has been delegated to the person or body 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 Minister to perform a function through an officer or agent.

302. Delegation by CEO

- (1) The CEO may delegate any power or duty of the CEO under another provision of this Act, other than any power or duty under a provision listed in the Table, to a person employed or engaged in the Department.

Table

| | |
|-----------|----------|
| s. 51(1) | s. 99(1) |
| s. 104(3) | |

- (2) A delegation must be in writing signed by the CEO.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person 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 CEO to perform a function through an officer or agent.

303. CEO may disclose information

- (1) In this section —
authorised officer means an officer designated under subsection (2);

officer, in relation to a prescribed entity, means —

- (a) an officer or person employed by or in —
 - (i) the prescribed entity; or
 - (ii) the Public Service of the State;

or

- (b) if the prescribed entity is the Police Force — a police officer;

Police Force means the Police Force of Western Australia provided for by the *Police Act 1892*;

prescribed entity means any of the following —

- (a) a public authority;
- (b) a body or person prescribed;

protocol means a protocol established under subsection (3);

relevant information, in relation to a prescribed entity —

- (a) means information relevant to the performance by the prescribed entity of a function of the prescribed entity under a written law; and
 - (b) includes culturally sensitive information.
- (2) The CEO may designate an officer of the Department as an authorised officer for the purposes of this section.
- (3) The CEO must establish protocols for the disclosure of relevant information under subsection (4).
- (4) An authorised officer may, in accordance with the protocols, and any regulations, disclose relevant information for a prescribed entity to an officer of the prescribed entity.
- (5) If relevant information is disclosed, in good faith, under subsection (4) —
- (a) no civil or criminal liability is incurred in respect of the disclosure; and
 - (b) the disclosure is not to be regarded as —
 - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
 - (ii) a breach of professional ethics or standards or any principles of conduct applicable to a person's employment; or
 - (iii) unprofessional conduct.
- (6) The regulations may make provision for and in relation to —
- (a) the circumstances in which relevant information may be disclosed under subsection (4); and
 - (b) the receipt and storage of relevant information disclosed under subsection (4), including —
 - (i) the period for which the information may be stored; and

- (ii) how it is to be disposed of;
and
- (c) the conditions subject to which relevant information may be disclosed under subsection (4); and
- (d) the restriction of access to relevant information disclosed under subsection (4).

304. Giving false or misleading information

- (1) A person must not do anything described in subsection (2) —
 - (a) in, or in connection with, an application made or a notice or other document given under this Act; or
 - (b) in compliance, or purported compliance, with a requirement, direction or request under this Act; or
 - (c) for any other purpose under this Act.

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

- (2) The things to which subsection (1) applies are as follows —
 - (a) making a statement knowing it to be false or misleading in a material particular;
 - (b) omitting from a statement made anything without which the statement is, to the person's knowledge, misleading in a material particular;
 - (c) giving information that —
 - (i) the person knows is false or misleading in a material particular; or
 - (ii) omits anything without which the information is, to the person's knowledge, misleading in a material particular.

305. Protection from liability for wrongdoing

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.

- (2) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

306. Confidentiality

- (1) A person must not, directly or indirectly, record, disclose or make use of any information obtained by reason of a function that the person has, or at any time had, in the administration of this Act except —
 - (a) for the purpose of, or in connection with, performing a function under this Act; or
 - (b) as required or allowed under this Act or another written law; or
 - (c) for the purposes of any legal proceedings arising under this Act; or
 - (d) with the written consent of the person to whom the information relates; or
 - (e) in other circumstances, if any, prescribed for the purposes of this paragraph.

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

- (2) Information relating to trade processes or financial information, or culturally sensitive information, that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by —
 - (a) the person to whom the information is disclosed; or

- (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

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

- (3) Subsection (1) does not extend to the recording, disclosure or use of —
 - (a) statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates; or
 - (b) information that is already in the public domain.

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.

Part 14 — Repeals and transitional matters

Division 1 — Repeals

[310, 311. have not come into operation.]

312. *Aboriginal Heritage (Marandoo) Act 1992 repealed*

The *Aboriginal Heritage (Marandoo) Act 1992* is repealed.

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

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- (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) On and after transition day, a former protected area order has effect as if it were a protected area order made under section 82(1).
- (2) Section 87 applies on and after transition day in respect of a former protected area order and for that purpose —
- (a) a former protected area order is taken to have been made under section 82(1) on transition day; and
 - (b) the CEO must comply with section 87 in relation to a former protected area order unless the Registrar, as defined in section 87(1), confirms that adequate notice for the purposes of section 87 has already been given in relation to the protected area to which the order relates.
- (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. Conditions on former protected area orders

- (1) The Governor may by order made on a recommendation of the Minister under subsection (2), amend a former protected area order, that has effect as if it were a protected area order made under section 82(1), to provide for the imposition of a condition, or conditions.
- (2) The Minister may, on the Minister's own initiative, recommend to the Governor that the Governor make an order amending a former protected area order to provide for the imposition of a condition, or conditions, to which the order is to be subject, relating to anything to which a condition may relate under section 81(4).
- (3) Sections 86 and 87 apply in relation to an order made under subsection (1) as if it were a protected area order made under section 82(1).
- (4) An order under subsection (1) must be made within the period of 2 years beginning on transition day.

Subdivision 3 — AH Act section 18 consents and AH Act approvals

318. Terms used

In this Subdivision —

Aboriginal party has the meaning given in section 100;

AH Act approval means —

- (a) an authorisation under the AH Act section 16(2); or
- (b) an approval referred to in the *Aboriginal Heritage Regulations 1974* regulation 7; or
- (c) a consent referred to in the *Aboriginal Heritage Regulations 1974* regulation 10;

authorised ACH management plan means an ACH management plan that has been authorised under section 165(1)(b)(i);

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no longer in force —

- (a) in relation to an AH Act section 18 consent — has the meaning given in section 319; or
- (b) in relation to an AH Act approval — has the meaning given in section 320;

owner, in relation to land the subject of an AH Act section 18 consent, means the person to whom the consent was given under the AH Act section 18.

319. AH Act section 18 consents no longer in force

An AH Act section 18 consent is *no longer in force* and has no further effect —

- (a) if the consent has expired in accordance with its terms, the AH Act or this Act, as is relevant; or
- (b) if the purpose specified in the consent has been achieved; or
- (c) if the owner of the land the subject of the consent cannot be identified or found, or no longer exists; or
- (d) if the owner of the land the subject of the consent has voluntarily surrendered the consent to the Minister; or
- (e) if the consent is an historical AH Act section 18 consent that has expired in accordance with section 325(1).

320. AH Act approvals no longer in force

An AH Act approval is *no longer in force* and has no further effect —

- (a) if the approval has expired in accordance with its terms; or
- (b) if the purpose for which the approval was given has been achieved or the activities to which the approval relates have been completed; or
- (c) if the person to whom the approval was given cannot be identified, or found or no longer exists; or

- (d) if the person to whom the approval was given has voluntarily surrendered the approval to the Minister.

321. AH Act section 18 consents taken to be authorised ACH management plans in some circumstances

- (1) On and after transition day, an AH Act section 18 consent is taken to be an authorised ACH management plan in the following circumstances only —
 - (a) in relation to protected area orders under Part 4 — for the purposes of sections 72(2)(e) and (4), 79(4)(c), 81(3)(b) and 169(3);
 - (b) in relation to ACH management plans under Part 6 Division 6 — for the purposes of sections 171(4)(b) and (5), 172(b)(ii) and 173;
 - (c) in relation to Part 7 orders and only if the AH Act section 18 consent is a transitional AH Act section 18 consent — for the purposes of sections 180(3)(b) and 185(3)(b);
 - (d) in relation to the ACH Directory under Part 9 — for the purposes of sections 213(1)(h) and 218(d)(ii) and (h);
 - (e) in relation to securing compliance with this Act under Part 10 — for the purposes of Part 10;
 - (f) in relation to legal proceedings under Part 11 — for the purposes of Part 11;
 - (g) in relation to miscellaneous provisions under Part 13 — for the purposes of Part 13.
- (2) For the purposes of giving effect to subsection (1) —
 - (a) the owner of land the subject of an AH Act section 18 consent, taken under subsection (1) to be an authorised ACH management plan, is taken to be the proponent for the activity to which the plan relates, subject to the application of section 175(5); and

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- (b) an AH Act section 18 consent, taken under subsection (1) to be an authorised ACH management plan, is taken —
 - (i) not to have any Aboriginal party; and
 - (ii) to be subject to the same conditions, if any, as the AH Act section 18 consent is subject.
- (3) For the purposes of giving effect to subsection (1)(c) —
new information about Aboriginal cultural heritage, in relation to an area of land to which a transitional AH Act section 18 consent (taken under subsection (1) to be an authorised ACH management plan) relates, means information not identified to the Minister or the ACMC (whether in the notice given to the ACMC under the AH Act section 18(2) in relation to the consent 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.
- (4) If an AH Act section 18 consent —
 - (a) is no longer in force on transition day — subsection (1) does not apply in relation to the consent; or
 - (b) becomes no longer in force at any time after transition day — subsection (1) ceases to apply in relation to the consent at that time.

322. AH Act section 18 consents taken to be authorisation under Part 6 Division 4 in some circumstances

- (1) On and after transition day, an activity being carried out in accordance with an AH Act section 18 consent is taken to be an activity that is authorised under Part 6 Division 4 in the following circumstances only —

- (a) in relation to providing a defence to a charge of an offence under Part 3 Division 2 — for the purposes of section 61(3)(a)(i);
 - (b) in relation to a defence to a charge of an offence under Part 5 Division 2 — for the purposes of section 96;
 - (c) in relation to Part 7 orders — for the purposes of sections 180(3)(a)(i) and 185(3)(a)(i);
 - (d) in relation to liability of principals for offences under this Act by agents — for the purposes of section 267(2)(a).
- (2) If an AH Act section 18 consent —
- (a) is no longer in force on transition day — subsection (1) does not apply in relation to the consent; or
 - (b) becomes no longer in force at any time after transition day — subsection (1) ceases to apply in relation to the consent at that time.

323. AH Act approvals taken to be ACH permits in some circumstances

- (1) On and after transition day, an AH Act approval is taken to be an ACH permit in the following circumstances only —
- (a) in relation to a protected area order under Part 4 — for the purposes of sections 72(2)(d) and (3), 79(4)(c), 81(3)(a) and 129(1);
 - (b) in relation to the contravention of conditions under Part 6 Division 5 — for the purposes of section 133;
 - (c) in relation to the ACH Directory under Part 9 — for the purposes of sections 213(1)(f) and 218(d)(i) and (g);
 - (d) in relation to securing compliance with this Act under Part 10 — for the purposes of Part 10;
 - (e) in relation to legal proceedings under Part 11 — for the purposes of Part 11;

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- (f) in relation to miscellaneous provisions under Part 13 —
for the purposes of Part 13.
- (2) For the purposes of giving effect to subsection (1) —
 - (a) the person who was given an AH Act approval, taken
under subsection (1) to be an ACH permit, is taken to be
the holder of the ACH permit; and
 - (b) an AH Act approval, taken under subsection (1) to be an
ACH permit, is taken to be subject to the same
conditions, if any, as the AH Act approval is subject.
- (3) If an AH Act approval —
 - (a) is no longer in force on transition day — subsection (1)
does not apply in relation to the approval; or
 - (b) becomes no longer in force at any time after transition
day — subsection (1) ceases to apply in relation to the
approval at that time.

**324. AH Act approvals taken to be authorisation under Part 6
Division 4 in some circumstances**

- (1) On and after transition day, an activity being carried out in
accordance with an AH Act approval is taken to be an activity
that is authorised under Part 6 Division 4 in the following
circumstances only —
 - (a) in relation to providing a defence to a charge of an
offence under Part 3 Division 2 — for the purposes of
section 61(3)(a)(i);
 - (b) in relation to a defence to a charge of an offence under
Part 5 Division 2 — for the purposes of section 96;
 - (c) in relation to Part 7 orders — for the purposes of
sections 180(3)(a)(i) and 185(3)(a)(i);
 - (d) in relation to liability of principals for offences by
agents — for the purposes of section 267(2)(a).
- (2) If an AH Act approval —

- (a) is no longer in force on transition day — subsection (1) does not apply in relation to the approval; or
- (b) becomes no longer in force at any time after transition day — subsection (1) ceases to apply in relation to the approval at that time.

325. Expiry of historical AH Act section 18 consents

- (1) An historical AH Act section 18 consent expires at the end of the period of 10 years beginning on transition day (*expiry day*) unless —
 - (a) it is no longer in force on expiry day; or
 - (b) subsection (2) applies.
- (2) An historical AH Act section 18 consent does not expire under subsection (1) if —
 - (a) an application in relation to the consent has been made to the Minister no later than 12 months before expiry day; and
 - (b) the Minister makes a decision in accordance with subsection (3) that the consent the subject of the application will not expire on expiry day; and
 - (c) the Minister gives the owner of the land the subject of the consent written notice of that decision before expiry day.
- (3) A decision under subsection (2)(b) can only be made if the Minister forms the opinion that the purpose for which the land the subject of the consent may be used, as specified in the consent, has been substantially commenced.
- (4) Transitional regulations may be made about —
 - (a) the manner in which applications referred to in subsection (2)(a) may be made; and
 - (b) the criteria to apply under subsection (3) in determining whether the purpose for which land the subject of an

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historical AH Act section 18 consent may be used, as specified in the consent, has been substantially commenced; and

- (c) the giving of notice, including the persons to be notified, about decisions made under subsection (2)(b).
- (5) A decision by the Minister under subsection (2)(b) can be delegated under section 301 only to the ACH Council.

326. Extension of duration of transitional AH Act section 18 consents

- (1) The duration of a transitional AH Act section 18 consent that would otherwise expire in accordance with its terms or the AH Act, as is relevant, may be extended as set out in subsections (2) and (4).
- (2) A transitional AH Act section 18 consent does not expire in accordance with its terms or the AH Act, as is relevant, if —
 - (a) an application in relation to the consent has been made to the Minister no later than 12 months before the consent would otherwise expire; and
 - (b) the Minister makes a decision in accordance with subsection (3) that the duration of the consent will be extended in accordance with subsection (4); and
 - (c) the Minister gives written notice of that decision to the owner of the land the subject of the consent before the consent would otherwise expire.
- (3) A decision under subsection (2)(b) can only be made if the Minister forms the opinion that the purpose for which the land the subject of the consent may be used, as specified in the consent, is a State significant project.
- (4) The duration of a transitional AH Act section 18 consent may be extended —
 - (a) on only one occasion; and

- (b) for —
 - (i) a period of 5 years beginning immediately after the consent would otherwise expire; or
 - (ii) any shorter period specified in writing by the Minister.
- (5) Transitional regulations may be made as to —
 - (a) the manner in which applications referred to in subsection (2)(a) may be made; and
 - (b) the criteria to apply under subsection (3) in determining whether the purpose for which the land the subject of a transitional AH Act section 18 consent may be used, as specified in the consent, is a State significant project; and
 - (c) the giving of notice, including the persons to be notified, about decisions made under subsection (2)(b).
- (6) A decision by the Minister under subsection (2)(b) cannot be delegated under section 301.

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;

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

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- (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. Purported section 18 consents are of no effect

- (1) On and after transition day, a purported section 18 consent is not a valid AH Act section 18 consent and is of no force or effect.
- (2) In subsection (1) —

purported section 18 consent means a consent given, or purportedly given, under the AH Act section 18 —

 - (a) before the commencement of the *Aboriginal Heritage (Marandoo) Act 1992*; and
 - (b) to use any of the Marandoo Act area for any purpose.

Subdivision 5 — Other matters

331. Information and documents on former register transferred to ACH Directory

On transition day, all of the information and documents that were, immediately before that day, recorded in the register maintained under the AH Act section 38 must be transferred to and included on the ACH Directory.

332. Unfinished business

- (1) On and after transition day, the Minister under the AH Act continues in existence for the purposes of dealing with and finalising any proceedings commenced by or against the ACMC or the Minister before that day.
- (2) While the Minister under the AH Act continues in existence under subsection (1), the Minister has the powers to do any act that the Minister considers necessary or expedient to do for the purpose for which the Minister is continued in existence.
- (3) This section applies despite the amendment and repeal of the AH Act by this Act.

333. ACMC abolished

On repeal day —

- (a) the ACMC, as in existence immediately before that day, is abolished; and
- (b) a person who, immediately before that day, was a member of the ACMC ceases to be a member; and
- (c) the records of the ACMC are taken to be the records of the ACH Council.

334. Completion of things commenced

Subject to section 332, anything commenced by the ACMC before repeal day may be continued by the ACH Council on and

after that day, to the extent to which the doing of that thing is within the functions of the Council.

335. References to *Aboriginal Heritage Act 1972*

If a written law or document refers to the *Aboriginal Heritage Act 1972* the reference is taken, if the context permits, to be a reference to —

- (a) on and after transition day and before repeal day — the *Aboriginal Heritage Act 1972* or the *Aboriginal Cultural Heritage Act 2021*, or both, as appropriate; and
- (b) on and after repeal day — the *Aboriginal Cultural Heritage Act 2021*.

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).

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- (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. Interpretation Act 1984 not affected

Except to the extent that this Part or regulations made under section 336 expressly provide differently, the *Interpretation Act 1984* applies in relation to the repeal of a written law referred to in Division 1.

Part 15 — *Aboriginal Heritage Act 1972* amended

Division 1 — Act amended

338. *Aboriginal Heritage Act 1972* amended

This Part amends the *Aboriginal Heritage Act 1972*.

Division 2 — Amendments commencing on day after assent day

339. Section 4 amended

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

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

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

section 9;

340. Section 18 amended

After section 18(5) insert:

- (6) If the owner of any land gives notice to the Committee under subsection (2) during the transitional period and the Minister gives consent under subsection (3)(a) in relation to the notice, it is a condition of the consent that —
- (a) the consent —
- (i) takes effect on the day after the day on which the owner is informed of the Minister’s decision under subsection (3); and

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(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 — Amendments commencing on transition day

341. Long title replaced

Delete the long title and insert:

An Act to provide for the determination of certain applications made, and notices given, under this Act before transition day and for related purposes.

342. Sections 4A and 4B inserted

At the beginning of Part II insert:

4A. Application of Act limited

This Act does not apply on and after transition day, other than as set out in section 4B.

4B. Act continues to apply for certain purposes only

This Act continues to apply on and after transition day for the following purposes only —

- (a) the determination of applications, made before transition day, for authorisations under section 16(2);
- (b) the determination of notices, given before transition day, under section 18(2);
- (c) the determination of applications, made before transition day, for —
 - (i) approvals referred to in the *Aboriginal Heritage Regulations 1974* regulation 7; or
 - (ii) consents referred to in the *Aboriginal Heritage Regulations 1974* regulation 10;
- (d) the making of applications to the State Administrative Tribunal for reviews of decisions under section 18(3).

Part 16 — Other Acts amended

343. *Conservation and Land Management Act 1984* amended

- (1) This section amends the *Conservation and Land Management Act 1984*.
- (2) In section 3 in the definition of **Minister for Indigenous Affairs** delete “*Aboriginal Heritage Act 1972*” and insert:

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- (3) In section 4(5)(a) delete “*Aboriginal Heritage Act 1972* —” and insert:

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- (4) Delete section 59(3)(c) and insert:

(c) if Aboriginal cultural heritage is located on the land, to the Minister for Indigenous Affairs.

- (5) After section 59(3) insert:

- (3A) In subsection (3)(c) —

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.

344. *Constitution Acts Amendment Act 1899* amended

- (1) This section amends the *Constitution Acts Amendment Act 1899*.

- (2) In Schedule V Part 3:
- (a) after the item relating to The Aboriginal Advisory Council insert:

The Aboriginal Cultural Heritage Council established under the *Aboriginal Cultural Heritage Act 2021*.

- (b) delete the item relating to the Aboriginal Cultural Material Committee.

345. *Control of Vehicles (Off-road Areas) Act 1978* amended

- (1) This section amends the *Control of Vehicles (Off-road Areas) Act 1978*.
- (2) Delete section 38(2)(e) and insert:

- (e) an inspector or Aboriginal inspector, under the *Aboriginal Cultural Heritage Act 2021*; or

346. *Coroners Act 1996* amended

- (1) This section amends the *Coroners Act 1996*.
- (2) After section 19A insert:

19B. Investigations and Aboriginal ancestral remains

- (1) In this section —
- Aboriginal ancestral remains* has the meaning given in paragraph (b)(iv) of the definition of *Aboriginal cultural heritage* in the *Aboriginal Cultural Heritage Act 2021* section 12;

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Aboriginal Cultural Heritage Council means the body established under the *Aboriginal Cultural Heritage Act 2021* section 20(1).

- (2) If a coroner investigating a death believes that the body is, or is likely to be, Aboriginal ancestral remains, the coroner must notify the Aboriginal Cultural Heritage Council.

347. *COVID-19 Response and Economic Recovery Omnibus Act 2020* amended

- (1) This section amends the *COVID-19 Response and Economic Recovery Omnibus Act 2020*.
- (2) Delete section 13(4)(b).

348. *Environmental Protection Act 1986* amended

- (1) This section amends the *Environmental Protection Act 1986*.
- (2) After section 41(4) insert:
 - (5) Subsections (2) and (3) do not apply to a decision in relation to a proposal if the decision is made under the *Aboriginal Cultural Heritage Act 2021*.

349. *Heritage Act 2018* amended

- (1) This section amends the *Heritage Act 2018*.
- (2) In section 9(b) delete “Aboriginal tradition or culture.” and insert:

Aboriginal cultural heritage, as defined in the *Aboriginal Cultural Heritage Act 2021* section 12.

(3) Delete section 10(a) and insert:

(a) the *Aboriginal Cultural Heritage Act 2021*; or

(4) In section 12(2)(b) delete “Aboriginal tradition or culture.” and insert:

Aboriginal cultural heritage, as defined in the *Aboriginal Cultural Heritage Act 2021* section 12.

350. *Planning and Development Act 2005* amended

(1) This section amends the *Planning and Development Act 2005*.

(2) In section 277(6) delete example 1 and insert:

1. An ACH permit or an approved or authorised ACH management plan under the *Aboriginal Cultural Heritage Act 2021* Part 6.

351. *Railway (Tilley to Karara) Act 2010* amended

(1) This section amends the *Railway (Tilley to Karara) Act 2010*.

(2) Delete section 6.

352. *Sentencing Act 1995* amended

(1) This section amends the *Sentencing Act 1995*.

(2) In Schedule 1 after the item relating to the *Aboriginal Communities Act 1979* insert:

*Aboriginal Cultural Heritage
Act 2021*

Aboriginal Cultural Heritage
Compensation Fund

s. 353

353. State Records Act 2000 amended

- (1) This section amends the *State Records Act 2000*.
- (2) Delete section 76(1)(a) and (b) and insert:
 - (a) Aboriginal cultural heritage, as defined in the *Aboriginal Cultural Heritage Act 2021* section 12; or
 - (b) any other matter relating to Aboriginal Australians,

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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> (other than s. 310 and 311) | 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. 2); s. 316(3): 30 Jun 2023 (see s. 2(e) and SL 2023/40 cl. 2(a)); 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, |

Aboriginal Cultural Heritage Act 2021
Notes Uncommenced provisions table

| Short title | Number and year | Assent | Commencement |
|--|-----------------|-------------|---|
| | | | 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)); |
| <i>Aboriginal Cultural Heritage Amendment Act 2021</i> | 28 of 2021 | 22 Dec 2021 | s. 1 and 2: 22 Dec 2021 (see s. 2(a)); Act other than s. 1 and 2: 18 Jun 2022 (see s. 2(b) and SL 2022/76 cl. 2) |
| <i>Directors' Liability Reform Act 2023 Pt. 3 Div. 1</i> | 9 of 2023 | 4 Apr 2023 | 1 Jul 2023 (see s. 2(b)(ii)) |

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 s. 310 and 311</i> | 27 of 2021 | 22 Dec 2021 | 1 Jan 2024 (see s. 2(d)) |
| Aboriginal Heritage Legislation Amendment and Repeal Act 2023 s. 3(1) | 23 of 2023 | 24 Oct 2023 | 15 Nov 2023 (see s. 2(d) and SL 2023/161 cl. 2) |

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