



Western Australia

Aboriginal Cultural Heritage Act 2021

## **Aboriginal Cultural Heritage Regulations 2022**



# Aboriginal Cultural Heritage Regulations 2022

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## Aboriginal Cultural Heritage Regulations 2022

### Part 1 — Preliminary

#### 1. Citation

These regulations are the *Aboriginal Cultural Heritage Regulations 2022*.

#### 2. Commencement

These regulations come into operation on 18 June 2022.

#### 3. Terms used

In these regulations —

***ACH Council member*** —

- (a) means a member of the ACH Council appointed under section 21(1) of the Act; and
- (b) has a meaning affected by regulation 9(3) and (4);

***ACH Council's website*** means a website maintained by, or on behalf of, the ACH Council;

***chairperson*** —

- (a) means a person appointed to be a member of the ACH Council under section 21(1)(a) of the Act; and
- (b) has a meaning affected by regulation 10(3) and (4);

***committee*** has the meaning given in section 19 of the Act.

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

*[Heading amended: SL 2023/25 r. 4.]*

### **Division 1 — Constitution of ACH Council**

#### **4. Nominations of persons for appointment as ACH Council members**

- (1) Before appointing a person as an ACH Council member under section 21(1) of the Act, the Minister must publish an advertisement seeking nominations of persons for appointment as members.
- (2) The advertisement —
  - (a) must be published for at least 14 days —
    - (i) on the ACH Council’s website; or
    - (ii) on the occasion of the first appointments to the ACH Council — on the Department’s website;
  - and
  - (b) may be published in any other manner that the Minister considers appropriate.

#### **5. Appointment as ACH Council member**

- (1) Before appointing a person as a chairperson, the Minister must be satisfied that the person has knowledge, skills and experience relevant to the position of chairperson.
- (2) Before appointing a person as an ACH Council member under section 21(1)(b) of the Act, the Minister must be satisfied that the person has knowledge about Aboriginal cultural heritage or has experience in matters relating to Aboriginal cultural heritage.
- (3) Before appointing a person as an ACH Council member, the Minister may take into account any matter relevant to the

person's ability to perform functions as an ACH Council member, including any knowledge, skills, experience or qualifications the person has in any of the following —

- (a) anthropology;
- (b) archaeology;
- (c) engineering;
- (d) ethnography;
- (e) governance;
- (f) history;
- (g) land management;
- (h) law;
- (i) natural resource management;
- (j) urban and regional planning.

**6. Term of office**

- (1) An ACH Council member holds office for the term specified in the member's instrument of appointment.
- (2) The term of office specified in an instrument of appointment must not exceed 5 years.
- (3) A person's eligibility for appointment as an ACH Council member or the term for which a person may be reappointed is not affected by an earlier appointment.
- (4) An ACH Council member whose term of office expires without a person having been appointed to fill the vacancy continues in office (unless the office of the member becomes vacant under regulation 7(2)) until whichever of the following happens first —
  - (a) a person is appointed to fill the vacancy;
  - (b) a period of 6 months elapses after the expiry of the term of office.

**7. Casual vacancies**

- (1) In this regulation —  
*misconduct*, in relation to an ACH Council member, includes conduct that renders the member unfit to hold office as a member even though the conduct does not relate to a duty of the office.
- (2) The office of an ACH Council member becomes vacant if the member —
- (a) dies; or
  - (b) resigns under subregulation (3); or
  - (c) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
  - (d) is convicted of an offence punishable by imprisonment for more than 12 months; or
  - (e) is convicted of an offence under regulation 12(1) or (2); or
  - (f) is removed from office by the Minister under subregulation (5).
- (3) An ACH Council member may resign from office by written notice given to the Minister.
- (4) The resignation takes effect on the later of the following —
- (a) receipt of the notice by the Minister;
  - (b) the day specified in the notice.
- (5) The Minister may remove an ACH Council member from office on the grounds of —
- (a) neglect of duty; or
  - (b) misconduct or incompetence; or



- (c) mental or physical incapacity, other than temporary illness, impairing the performance of the member's duties; or
- (d) absence, without leave, from 3 consecutive meetings of the ACH Council of which the member has had notice.

**8. Leave of absence**

- (1) The ACH Council may, on the terms and conditions determined by the Council, grant an ACH Council member leave to be absent from office for a period not exceeding 2 months.
- (2) The Minister may, on the terms and conditions determined by the Minister, grant an ACH Council member leave to be absent from office for a period exceeding 2 months.

**9. Alternate members**

- (1) If an ACH Council member other than a chairperson is unable or unavailable to act because of illness, absence or other cause, the Minister may appoint another person as an alternate member to act temporarily in the member's place.
- (2) If an ACH Council member is acting as a chairperson under regulation 10(2), the Minister may appoint another person as an alternate member to act in the member's place while the member is acting as a chairperson.
- (3) In regulations 15, 17(3), 19(2), 20(3) and (4), 21(1) and (3), 23 and 24(2)(a) a reference to an ACH Council member includes a reference to an alternate member acting in accordance with the appointment.
- (4) While acting in accordance with the appointment the alternate member is taken to be, and to have any entitlement of, an ACH Council member.
- (5) An act or omission of an alternate member cannot be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

**10. Acting chairperson or chairpersons**

- (1) If 1 or both chairpersons of the ACH Council are unable or unavailable to act because of illness, absence or other cause, or if there are no chairpersons or is 1 chairperson only, the Council may recommend to the Minister that a member or members of the ACH Council act as chairperson or chairpersons.
- (2) If a recommendation is made under subregulation (1), the Minister may —
  - (a) appoint the recommended member or members of the ACH Council to act temporarily as chairperson or chairpersons; or
  - (b) appoint another member or other members of the ACH Council to act temporarily as chairperson or chairpersons.
- (3) In regulations 17 and 20 a reference to a chairperson includes a reference to a person acting as a chairperson in accordance with the appointment.
- (4) While acting in accordance with the appointment the member acting as a chairperson is taken to be, and to have any entitlement of, a chairperson.
- (5) An act or omission of an ACH Council member acting as a chairperson cannot be questioned on the ground that the occasion to act had not arisen or had ceased.

**Division 2 — Conflicts of interest**

**11. Term used: relevant member**

In this Division —

***relevant member*** means —

- (a) an ACH Council member; and
- (b) an alternate member acting under regulation 9; and

- (c) a co-opted member acting under section 26 of the Act; and
- (d) the CEO, or a nominee of the CEO, attending a meeting of the ACH Council under regulation 18.

**12. Disclosure of interest**

- (1) A relevant member who has a material personal interest in a matter being considered or about to be considered by the ACH Council must, as soon as possible after the relevant facts have come to the relevant member's knowledge, disclose the nature and extent of the interest to the Council.  
Penalty for this subregulation: a fine of \$5 000.
- (2) A member of a committee who has a material personal interest in a matter being considered or about to be considered by the committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature and extent of the interest to the committee.  
Penalty for this subregulation: a fine of \$5 000.
- (3) Subregulation (2) applies to a person who is a member of a committee and is also a relevant member even though the person has already disclosed the nature of the interest to the ACH Council.
- (4) If a relevant member, or a member of a committee, has a material personal interest in a matter being considered or about to be considered by the ACH Council or a committee, as is relevant, a chairperson, or, if relevant, a person presiding at a meeting where the matter is being considered or about to be considered, may call on the member to disclose the nature and extent of the interest and, in default of any such disclosure, may determine that the member has the interest.

- (5) A disclosure under subregulation (1) or (2) or a determination under subregulation (4) must be made at, and recorded in the minutes of —
- (a) the meeting in which the matter is being considered or about to be considered; or
  - (b) if there is no such meeting, the next meeting of the ACH Council or the committee, as is relevant.

**13. Voting by interested member**

- (1) A relevant member, or a member of a committee, who has a material personal interest in a matter being considered or about to be considered by the ACH Council or a committee, as is relevant —
- (a) must not vote (whether at a meeting or otherwise) on the matter; and
  - (b) must not be in attendance (whether in person or remotely) while the matter is being considered at a meeting.
- (2) A reference in subregulation (1)(a) or (b) to a matter includes a reference to a proposed resolution under regulation 14 in respect of the matter, whether relating to that member or a different member.

**14. Regulation 13 may be declared inapplicable**

Regulation 13 does not apply if —

- (a) a relevant member, or a member of a committee, has disclosed under regulation 12 an interest in a matter; and
- (b) the ACH Council or committee, as is relevant, has at any time passed a resolution that —
  - (i) specifies the member, the interest and the matter; and

- (ii) states that the members voting for the resolution are satisfied that the interest is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct and should not disqualify the member from considering or voting on the matter.

**15. Minister may deal with matter if no quorum due to application of regulation 13**

- (1) If a quorum of ACH Council members, as provided under regulation 19(2), is not present during the consideration of a matter because a relevant member is disqualified under regulation 13 in relation to the matter then the Minister may deal with the matter insofar as the ACH Council cannot.
- (2) However, the Minister may not deal under subregulation (1) with a matter that relates to the performance of a function of the ACH Council in respect of which the Minister cannot give a direction under section 27(2) of the Act.

**16. Minister may declare regulations 13 and 15 inapplicable**

- (1) The Minister may by writing declare that regulation 13 or 15 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (2) The Minister must cause a copy of the declaration to be laid before each House of Parliament, or dealt with under section 308 of the Act, within 14 sitting days after the declaration is made.

**Division 3 — ACH Council meetings and proceedings**

**17. Holding meetings**

- (1) The first meeting of the ACH Council must be convened by both chairpersons, and subsequent meetings are to be held at

times and places determined by the Council, unless the meeting is convened under subregulation (2) or (3).

- (2) A special meeting of the ACH Council may at any time be convened by the Minister, a chairperson, or both chairpersons.
- (3) If at least half the number of ACH Council members in office give notice in writing to a chairperson requesting the chairperson to convene a meeting in relation to any matter, the chairperson must convene a meeting to be held within 14 days after the request is made.

**18. CEO may attend meetings**

The CEO, or a nominee of the CEO, is entitled to attend any meeting of the ACH Council and participate in its deliberations, but cannot vote at a meeting of the Council.

**19. Quorum**

- (1) A meeting of the ACH Council cannot commence unless a quorum is present.
- (2) A quorum of the ACH Council is formed by 5 ACH Council members.

**20. Presiding members**

- (1) Both chairpersons, if present at a meeting of the ACH Council, must preside jointly at the meeting.
- (2) If 1 chairperson only is present at a meeting of the ACH Council, that chairperson must preside at the meeting.
- (3) If there is no chairperson able or available to preside at a meeting, or at a part of a meeting, of the ACH Council, the ACH Council members present may elect 1 or 2 of their number to preside at the meeting, or the part of the meeting, as is relevant.

- (4) In any case of dispute, doubt or difficulty in relation to matters of procedure or order, the decision of the ACH Council member, or members, presiding is final.

**21. Voting**

- (1) At a meeting of the ACH Council, each ACH Council member present has a deliberative vote unless regulation 13 prevents the member from voting.
- (2) Questions arising at a meeting must be determined, in open voting, according to how a majority of votes are cast.
- (3) In the case of an equality of votes being cast on any question, each ACH Council member presiding has a casting vote in addition to a deliberative vote.
- (4) If, after votes are cast on a question under subregulation (3), there is still an equality of votes, the question is determined in the negative.

**22. Holding meetings remotely**

The presence of a person at a meeting of the ACH Council need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone, audiovisual communication or other means of instantaneous communication.

**23. Resolution without meeting**

A resolution in writing signed or otherwise assented to in writing by a quorum of ACH Council members, as provided under regulation 19(2), has the same effect as if it had been passed at a meeting of the ACH Council, and must be recorded in the minutes of the Council's next meeting.

**24. Minutes**

- (1) The ACH Council must cause accurate minutes to be kept of the proceedings at each of its meetings and each meeting of a committee.
- (2) Without limiting subregulation (1), the minutes must —
  - (a) record that an ACH Council member or a committee member, as is relevant, abstained from voting on or voted for or against a resolution if the member so requests; and
  - (b) include a record of attendance.

**25. Execution of documents**

- (1) A document is duly executed by the ACH Council if it is signed on behalf of the Council by —
  - (a) 2 ACH Council members authorised to do so under subregulation (2)(a); or
  - (b) an officer or employee employed in the Department authorised to do so under subregulation (2)(b).
- (2) The ACH Council may authorise any of the following persons to sign documents on behalf of the Council, either generally or subject to the conditions that are specified in the authorisation —
  - (a) an ACH Council member;
  - (b) an officer or employee employed in the Department.
- (3) A document purporting to be executed in accordance with this regulation is presumed to be duly executed unless the contrary is shown.



## **Division 4 — Local Aboriginal cultural heritage services**

*[Heading inserted: SL 2023/25 r. 5.]*

### **26. Further information in support of application**

The ACH Council may make a written request to an applicant under section 38 of the Act to do any of the following —

- (a) provide the Council with further information relevant to the application that the Council requires to assess the application;
- (b) verify any further information by statutory declaration.

*[Regulation 26 inserted: SL 2023/25 r. 5.]*

### **27. Circumstances in which CATSI Act corporation or Corporations Act corporation represents local Aboriginal community in area**

For the purposes of section 40(3) of the Act, a CATSI Act corporation or a Corporations Act corporation represents the local Aboriginal community in an area if representing the rights, interests or views of the community is the principal object, or 1 of the main objects, of the corporation.

*[Regulation 27 inserted: SL 2023/25 r. 5.]*

### **28. Annual reports to ACH Council about matters related to provision of local ACH service functions**

- (1) For the purposes of section 48(1)(h) of the Act, a local ACH service for an area must —
  - (a) prepare a written report for each financial year, in a form approved by the ACH Council, about matters related to the provision of local ACH service functions in the area, including —
    - (i) what local ACH service functions were provided in the area, and the persons in relation to whom they were provided, in the financial year; and

- (ii) anything that occurred in the financial year that affected the local ACH service's ability to provide local ACH service functions in the area in the financial year, or that may affect the local ACH service's ability to provide local ACH service functions in the area in the future;
  - and
  - (b) provide a copy of the report to the Council within 90 days after the end of the financial year.
- (2) If a local ACH service is designated for an area between 1 January and 30 June (inclusive) in a year —
- (a) the local ACH service is not required to prepare and provide a report under subregulation (1) for the financial year (the *initial financial year*) in which the local ACH service is designated; but
  - (b) the local ACH service's report prepared and provided under subregulation (1) for the following financial year must relate to both the initial financial year and the following financial year.

*[Regulation 28 inserted: SL 2023/25 r. 5.]*

**29. ACH Council may request report about matters related to provision of local ACH service functions**

- (1) For the purposes of section 48(1)(h) of the Act, the ACH Council may by notice require a local ACH service for an area to provide to the Council a written report, in a form approved by the Council, about specified matters related to the provision of local ACH service functions in the area.
- (2) A notice under subregulation (1) must —
  - (a) be in writing; and

- (b) specify the day by which the report must be provided,  
which must not be less than 30 days after the day on  
which the notice is given.

*[Regulation 29 inserted: SL 2023/25 r. 5.]*

### **Part 3 — Miscellaneous**

*[Heading inserted: SL 2023/25 r. 6.]*

#### **30. Prescribed periods**

For the purposes of a provision of the Act listed in Schedule 1, the period set out in Schedule 1 opposite the provision is prescribed.

*[Regulation 30 inserted: SL 2023/25 r. 6.]*

## Part 4 — Transitional provisions

*[Heading inserted: SL 2023/25 r. 6.]*

### 31. Consultation under Act s. 329(2)

- (1) If the consultation guidelines have not been made when the Minister begins to consult under section 329(2) of the Act, the consultation is not required to be carried out in accordance with the consultation guidelines.
- (2) If the knowledge holder guidelines have not been made when the Minister begins to consult under section 329(2) of the Act then, for the purposes of sections 107(1)(b)(ii) and 329(2)(b) of the Act, the knowledge holders for the specified area are —
  - (a) the members of Banjima Native Title Aboriginal Corporation RNTBC (Indigenous Corporation Number 7971); and
  - (b) the members of Wintawari Guruma Aboriginal Corporation RNTBC (Indigenous Corporation Number 4730).

*[Regulation 31 inserted: SL 2023/25 r. 6.]*



## Schedule 1 — Prescribed periods

[r. 30]

*[Heading inserted: SL 2023/25 r. 7.]*

Provision	Prescribed period
<b>Part 2 of the Act</b>	
Section 46(1)	The period of 28 days after the day on which notice of the decision to refuse to designate is given under section 47 of the Act
Section 46(2)	The period of 28 days after the day on which notice of the decision to which the objection relates is given under section 47 of the Act

*[Schedule 1 inserted: SL 2023/25 r. 7.]*

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## Notes

This is a compilation of the *Aboriginal Cultural Heritage Regulations 2022* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table.

### Compilation table

Citation	Published	Commencement
<i>Aboriginal Cultural Heritage Regulations 2022</i>	SL 2022/83 17 Jun 2022	18 Jun 2022 (see r. 2)
<i>Aboriginal Cultural Heritage Amendment Regulations 2023</i>	SL 2023/25 5 Apr 2023	r. 1 and 2: 5 Apr 2023 (see r. 2(a)); Regulations other than r. 1 and 2: 6 Apr 2023 (see r. 2(b))



## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

Defined term	Provision(s)
ACH Council member .....	3
ACH Council's website .....	3
chairperson .....	3
committee .....	3
initial financial year .....	28(2)
misconduct .....	7(1)
relevant member .....	11