



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 —

***Aboriginal party*** has the meaning given in section 100 of the Act;

***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;

***ACH management system*** means a system for the management of applications, information and processes under the Act, accessed through the ACH Council's website;

***ancillary dwelling*** has the meaning given in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 1;

***application area*** has the meaning given in section 69 of the Act;

**boat** means a vessel, craft or floating platform of any description that is capable of use in or on water, whether floating or submersible;

**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);

**coastal waters** means the coastal waters of the State as defined in the *Off-shore (Application of Laws) Act 1982* section 2;

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

**common property** means —

- (a) in relation to a strata titles scheme as defined in the *Strata Titles Act 1985* section 3(1) — common property as defined in that section; or
- (b) in relation to a tier 1 scheme, tier 2 scheme or tier 3 scheme as defined in the *Community Titles Act 2018* section 3(1) — common property as defined in that section;

**emergency management** has the meaning given in the *Emergency Management Act 2005* section 3;

**grouped dwelling** has the meaning given in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 1;

**informed consent** has a meaning affected by section 146 of the Act;

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

**litter** has a meaning affected by the *Litter Act 1979* section 5(1);

**multiple dwelling** has the meaning given in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 1;

**organisation** has the meaning given in section 53 of the Act;

***planning and development lot*** means a lot as defined in the *Planning and Development Act 2005* section 4(1);

***public road*** means a road as defined in the *Road Traffic (Administration) Act 2008* section 4;

***residential building*** means a building occupied, or intended for occupation, as a place of residence;

***strata or community titles lot*** means —

- (a) a lot in a strata scheme or lot in a survey-strata scheme as defined in the *Strata Titles Act 1985* section 3(1); or
- (b) a lot as defined in the *Community Titles Act 2018* section 3(1);

***strata or community titles scheme*** means —

- (a) a strata titles scheme as defined in the *Strata Titles Act 1985* section 3(1); or
- (b) a tier 1 scheme, tier 2 scheme or tier 3 scheme as defined in the *Community Titles Act 2018* section 3(1);

***tracks*** includes walking tracks, horse tracks and access tracks;

***waterway*** includes the following —

- (a) a river, creek, brook or other naturally flowing stream of water, whether or not it flows permanently;
- (b) a lake, salt lake, claypan, lagoon, marsh or swamp;
- (c) a floodplain, estuary or inlet;
- (d) an artificial waterway as defined in the *Planning and Development Act 2005* section 4(1).

[Regulation 3 amended: SL 2023/41 r. 4.]

## **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.]*

**30. Other notices in relation to local ACH services**

In a circumstance set out in the Table, the ACH Council must give written notice to the person referred to in the description of the circumstance within the period set out for the circumstance.

**Table**

<b>Item</b>	<b>Circumstances of notice</b>	<b>Period for giving notice</b>
1.	The ACH Council decides to designate a person as the local ACH service for an area under section 37(1) of the Act	14 days after the decision is made
2.	The ACH Council decides to cancel the designation of a person who is designated as the local ACH service for an area under section 43(1) of the Act	14 days after the decision is made
3.	The ACH Council decides to amend the area for which a person is designated as the local ACH service under section 44(1) of the Act at the request of the person	14 days after the decision is made
4.	The ACH Council amends details or information of a person designated as a local ACH service under section 45(1)	As soon as practicable after the details or

**Aboriginal Cultural Heritage Regulations 2022**

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

**Division 4** Local Aboriginal cultural heritage services

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Item	Circumstances of notice	Period for giving notice
	of the Act at the request of the person	information are amended
5.	A person designated as a local ACH service requests the ACH Council to amend the person's details or information under section 45(1) of the Act and the ACH Council decides not to amend the details or information	As soon as practicable after the decision is made
6.	The ACH Council decides to approve a variation of a fee structure in response to a request by a person under section 50(1) of the Act	14 days after the decision is made

*[Regulation 30 inserted: SL 2023/41 r. 5.]*

## Part 3 — Protected areas

*[Heading inserted: SL 2023/41 r. 6.]*

### 31. Notice of Minister's direction to give public notice

- (1) This regulation applies if the Minister gives a direction to the ACH Council under section 78(4)(b) of the Act.
- (2) The ACH Council must give written notice of the direction to —
  - (a) the applicant under section 72(1) of the Act; and
  - (b) each person notified under section 75(1) of the Act.

*[Regulation 31 inserted: SL 2023/41 r. 6.]*

### 32. Conditions for protected area orders

For the purposes of sections 79(3)(c), 81(4)(c) and 83(3)(d)(iii) of the Act, the other matters to which a condition may relate are —

- (a) the activities, or classes of activities, that may be carried out in the protected area; or
- (b) the recognition, protection, conservation or preservation of the Aboriginal cultural heritage located in the protected area.

*[Regulation 32 inserted: SL 2023/41 r. 6.]*

### 33. Activities in protected areas

The following activities may be carried out in a protected area —

- (a) driving on a public road;
- (b) in relation to part of a protected area that is Crown land — burning carried out by a public authority for fire prevention or control purposes or other fire management works;

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- (c) measures to control declared pests under the *Biosecurity and Agriculture Management Act 2007*;
- (d) activities carried out in accordance with a remediation order;
- (e) a burial authorised under the *Cemeteries Act 1986* section 12 of an Aboriginal person;
- (f) activities carried out in accordance with the *Coroners Act 1996* in the course of determining whether human remains are Aboriginal ancestral remains;
- (g) activities carried out 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 animals;
- (h) activities undertaken by a public authority in an emergency situation for the purpose of preventing or minimising irreversible damage to a significant part of the environment;
- (i) installing, inspecting, maintaining, repairing or replacing road infrastructure or associated ancillary infrastructure in relation to public roads, carried out by or on behalf of the Commissioner of Main Roads.

*[Regulation 33 inserted: SL 2023/41 r. 6.]*

**34. Notices or signs for protected areas**

- (1) If the Governor makes an order under section 82(1) of the Act declaring an area as a protected area, the ACH Council may authorise a person to erect or place signs or notices —
  - (a) identifying the area as a protected area; and
  - (b) providing any information about the matters referred to in section 289(c)(i) to (iii) of the Act that the ACH Council considers appropriate.

- (2) A person who destroys, removes or otherwise interferes with a sign or notice erected or placed under subregulation (1) commits an offence.

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

- (3) *The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under subregulation (2).

*[Regulation 34 inserted: SL 2023/41 r. 6.]*

## **Part 4 — Managing activities that may harm Aboriginal cultural heritage**

*[Heading inserted: SL 2023/41 r. 6.]*

### **Division 1 — Terms used in Part 6 of Act**

*[Heading inserted: SL 2023/41 r. 6.]*

#### **35. ACH impact statements**

For the purposes of the definition of **ACH impact statement** in section 100 of the Act, an ACH impact statement must include —

- (a) details of the proposed activity, including the proposed duration of the activity and the extent of the ground disturbance caused by the activity; and
- (b) details of the impact (whether beneficial or detrimental) that the proposed activity may have on Aboriginal cultural heritage located in the area in which the activity is intended to be carried out, including —
  - (i) the impact on the value the Aboriginal cultural heritage has for Aboriginal persons, including the impact on social, spiritual, historical, scientific or aesthetic values; and
  - (ii) the extent to which the Aboriginal cultural heritage may be impacted; and
  - (iii) the cumulative impact on the Aboriginal cultural heritage that the activity may have in combination with the impact of past activities carried out in the area.

*[Regulation 35 inserted: SL 2023/41 r. 6.]*



### 36. Exempt activities

- (1) Subject to regulation 40, for the purposes of paragraph (b) of the definition of **exempt activity** in section 100 of the Act, the types of development are those described by Schedule 1 item 1.
- (2) Subject to regulation 40, for the purposes of paragraph (h) of the definition of **exempt activity** in section 100 of the Act, the activities are those described by the items in Schedule 1 under the Subdivision headings referring to exempt activities (other than item 1).

Example for this subregulation:

An item under the heading to Schedule 1 Division 1 Subdivision 1, "Exempt general activities".

*[Regulation 36 inserted: SL 2023/41 r. 6.]*

### 37. Tier 1 activities

Subject to regulation 40, for the purposes of the definition of **tier 1 activity** in section 100 of the Act, the activities are those described by the items in Schedule 1 under the Subdivision headings referring to tier 1 activities.

Example for this regulation:

An item under the heading to Schedule 1 Division 2 Subdivision 2, "Tier 1 emergency activities".

*[Regulation 37 inserted: SL 2023/41 r. 6.]*

### 38. Tier 2 activities

Subject to regulation 40, for the purposes of the definition of **tier 2 activity** in section 100 of the Act, the activities are those described by the items in Schedule 1 under the Subdivision headings referring to tier 2 activities.

Example for this regulation:

An item under the heading to Schedule 1 Division 3 Subdivision 2, "Tier 2 Aboriginal cultural heritage investigation activities".

*[Regulation 38 inserted: SL 2023/41 r. 6.]*

**39. Tier 3 activities**

Subject to regulation 40, for the purposes of the definition of ***tier 3 activity*** in section 100 of the Act, the activities are those described by the items in Schedule 1 under the Subdivision headings referring to tier 3 activities.

Example for this regulation:

An item under the heading to Schedule 1 Division 4 Subdivision 4, "Tier 3 activities impacting waterways or coastal waters".

*[Regulation 39 inserted: SL 2023/41 r. 6.]*

**40. Most specific description of activity applies**

- (1) This regulation applies if an activity is described by more than 1 item in Schedule 1.
- (2) The activity is taken to be described by the most specific item, and not by any other item, in Schedule 1.
- (3) The most specific item is —
  - (a) unless paragraph (b) applies — the item in Schedule 1 that most specifically describes the activity; or
  - (b) if 1 or more of the items set out in Schedule 1 that describe the activity are under a Subdivision heading referring to exempt activities — the item in Schedule 1 under a Subdivision heading referring to exempt activities that most specifically describes the activity.

*[Regulation 40 inserted: SL 2023/41 r. 6.]*

## **Division 2 — ACH permits**

*[Heading inserted: SL 2023/41 r. 6.]*

**41. Notice of opportunity to submit views regarding tier 2 activity or extension of ACH permit**

- (1) A written notice given by a proponent under section 113(a) of the Act must set out an explanation of the opportunity to submit views under section 113(b) of the Act.
- (2) A written notice given by a permit holder under section 122(3)(a) of the Act must set out an explanation of the opportunity to submit views under section 122(3)(b) of the Act.

*[Regulation 41 inserted: SL 2023/41 r. 6.]*

**42. Additional documents and information accompanying application for ACH permit**

For the purposes of section 115(2)(h) of the Act, an application for an ACH permit must be accompanied by —

- (a) a copy of —
  - (i) each notice given under section 113(a) of the Act; and
  - (ii) any notification referred to in section 114 of the Act carried out in satisfaction of the notice requirements in section 113 of the Act;
- and
- (b) details of how the notice or notification was provided.

*[Regulation 42 inserted: SL 2023/41 r. 6.]*

**43. Additional documents and information accompanying application for extension of ACH permit**

An application for the extension of an ACH permit under section 122 of the Act must be accompanied by —

- (a) a copy of each notice given under section 122(3)(a) of the Act; and
- (b) details of how the notice was provided.

*[Regulation 43 inserted: SL 2023/41 r. 6.]*

**44. Minister may request further information when standing in for ACH Council**

- (1) This regulation applies if the Minister stands in the place of the ACH Council to decide an application under section 119(6) or 126(6) of the Act.
- (2) The Minister may make a written request to the applicant to do any of the following —
  - (a) provide the Minister with further information relevant to the application that the Minister requires to assess the application;
  - (b) verify any further information by statutory declaration.

*[Regulation 44 inserted: SL 2023/41 r. 6.]*

**45. Applications to revoke condition on ACH permit**

- (1) An application made under section 128(7)(b) of the Act for revocation of a condition must —
  - (a) set out why the condition should be revoked; and
  - (b) be made in the approved form.
- (2) The ACH Council may make a written request to an applicant under section 128(7)(b) 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 45 inserted: SL 2023/41 r. 6.]*

### **Division 3 — ACH management plans**

*[Heading inserted: SL 2023/41 r. 6.]*

#### **46. Additional matters in ACH management plan**

- (1) In this regulation —  
***AH Act section 18 consent*** has the meaning given in section 313 of the Act.
- (2) For the purposes of section 137(2)(i) of the Act, an ACH management plan must set out the following —
  - (a) details of the consultation about the carrying out of the activity that has been conducted with each of the persons to be consulted, including a summary of the outcomes of the consultation;
  - (b) evidence of the informed consent of each Aboriginal party (if any) to the plan, including —
    - (i) a summary of the information disclosed in accordance with section 146(1)(a) of the Act; and
    - (ii) evidence of the matters set out in section 146(1)(b) of the Act;
  - (c) the contact details of —
    - (i) each party to the plan; and
    - (ii) each interested Aboriginal party for the plan;
  - (d) in relation to the area to which the plan relates —
    - (i) a description of the ownership or tenure interest in the area held by the proponent; and
    - (ii) the details of each registered native title body corporate for the area or part of the area and any claim in relation to the area that is registered on the Register of Native Title Claims as defined in the Native Title Act section 253;

- (e) details of the steps taken to identify and obtain an understanding of —
  - (i) the Aboriginal cultural heritage located in the area; and
  - (ii) the characteristics of that Aboriginal cultural heritage;
- (f) details of the impact (whether beneficial or detrimental) that the activity may have on Aboriginal cultural heritage located in the area;
- (g) details of any rehabilitation and remediation measures for Aboriginal cultural heritage that will be impacted by the activity;
- (h) details of how any disputes between the parties in relation to new information about Aboriginal cultural heritage located in the area are to be resolved;
- (i) any measures that the parties must take to ensure compliance with the plan, including schedules for monitoring and reporting and roles and responsibilities regarding compliance;
- (j) the manner in which any Aboriginal party will be notified if the proponent changes;
- (k) if any Aboriginal party will be able to access Aboriginal cultural heritage located in the area while approval or authorisation of the plan is of effect — details of how the Aboriginal party will be able to access the Aboriginal cultural heritage;
- (l) details of any other ACH management plan —
  - (i) in which the proponent is identified under section 137(2)(a)(i) of the Act; and
  - (ii) that has been approved under section 150(1)(b)(i) of the Act or authorised under section 165(1)(b)(i) of the Act, regardless of

whether that approval or authorisation has ceased to be of effect; and

- (iii) that is relevant to the area or activity to which the plan relates;
- (m) details of any AH Act section 18 consent —
  - (i) granted to the proponent, regardless of whether the AH Act section 18 consent is no longer in force; and
  - (ii) that is relevant to the area or activity to which the plan relates.

Notes for this subregulation:

1. In relation to paragraph (l)(ii), see section 152 and 166 of the Act.
2. In relation to paragraph (m)(i), see section 319 of the Act.

*[Regulation 46 inserted: SL 2023/41 r. 6.]*

**47. Additional documents and information accompanying application for ACH management plan**

For the purposes of sections 147(2)(g) and 157(2)(g) of the Act, an application for the approval or authorisation of an ACH management plan must be accompanied by —

- (a) evidence of the consultation about the carrying out of the activity that has been conducted with each of the persons to be consulted; and
- (b) a copy of any report prepared by or for the applicant arising out of an investigation into 1 or more of the following —
  - (i) whether Aboriginal cultural heritage is present in the area to which the plan relates;
  - (ii) the characteristics of Aboriginal cultural heritage located in the area to which the plan relates.

Note for this regulation:

If a fee is payable in respect of the application under the *Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023*, see also regulation 10(1) and (2) of those regulations.

*[Regulation 47 inserted: SL 2023/41 r. 6; amended: SL 2023/82 r. 4.]*

**48. ACH Council must be satisfied in relation to compliance with Act s. 141**

For the purposes of sections 151(f) and 163(1)(e) of the Act, the ACH Council must be satisfied that the proponent has complied with section 141 of the Act.

*[Regulation 48 inserted: SL 2023/41 r. 6.]*

**49. Minister may request further information when standing in for ACH Council**

- (1) This regulation applies if the Minister stands in the place of the ACH Council to decide an application under section 150(6) of the Act.
- (2) The Minister may make a written request to the applicant to do any of the following —
  - (a) provide the Minister with further information relevant to the application that the Minister requires to assess the application;
  - (b) verify any further information by statutory declaration.

*[Regulation 49 inserted: SL 2023/41 r. 6.]*

**50. Requests from ACH Council in relation to ACH management plan**

A request by the ACH Council under section 160(4)(a) or (b) of the Act must be in writing.

*[Regulation 50 inserted: SL 2023/41 r. 6.]*



**51. Applications to revoke condition on authorisation of ACH management plan**

- (1) An application made under section 167(7)(b) of the Act for revocation of a condition must —
  - (a) set out why the condition should be revoked; and
  - (b) be made in the approved form.
- (2) The Minister may make a written request to an applicant under section 167(7)(b) of the Act to do any of the following —
  - (a) provide the Minister with further information relevant to the application that the Minister requires to assess the application;
  - (b) verify any further information by statutory declaration.

*[Regulation 51 inserted: SL 2023/41 r. 6.]*

**52. Notice of amendment to exclude protected area**

- (1) This regulation applies if the ACH Council approves an amendment to an approved or authorised ACH management plan under section 169(3) of the Act.
- (2) The ACH Council must give the parties to the plan written notice of the amendment within 14 days after the amendment is made.

*[Regulation 52 inserted: SL 2023/41 r. 6.]*

**53. Notice of determination about State significance**

- (1) This regulation applies if the ACH Council, or the Minister standing in place of the Council, makes a determination under section 176(1)(b) of the Act.
- (2) The ACH Council or the Minister must, as soon as practicable after making the determination —
  - (a) give public notice of the determination; and

- (b) give written notice of the determination to —
    - (i) if the application that gave rise to the determination is an application for approval or authorisation of an amendment to an approved or authorised ACH management plan — the parties to the approved or authorised ACH management plan; or
    - (ii) otherwise — the proponent and each interested Aboriginal party for the ACH management plan.
- (3) Notice given under subregulation (2)(a) must set out 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;
  - (c) the day on which the determination was made.
- (4) Notice given under subregulation (2)(b) must set out 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;
  - (c) the day on which the determination was made;
  - (d) an explanation of how section 177 of the Act applies in relation to the application that gave rise to the determination.
- (5) The ACH Council must notify the persons who were notified under section 175(4) of the Act that public notice has been given under subregulation (2)(a).

*[Regulation 53 inserted: SL 2023/41 r. 6.]*

## Part 5 — Prohibition orders

*[Heading inserted: SL 2023/41 r. 6.]*

### **54. Notice of decision not to extend duration of prohibition order**

- (1) This regulation applies if —
  - (a) the Minister has given written notice under section 191(3)(a) of the Act of a proposal to extend the duration of a prohibition order; and
  - (b) the Minister decides not to extend the duration of the order.
- (2) The Minister must give to the persons to whom notice was given under section 191(3)(a) of the Act written notice of the decision not to extend the duration of the order as soon as practicable after the decision is made.

*[Regulation 54 inserted: SL 2023/41 r. 6.]*

### **55. Notice of decision not to amend or cancel prohibition order**

- (1) This regulation applies if —
  - (a) the Minister has given written notice under section 203(2)(a) of the Act of a proposal to amend or cancel a prohibition order; and
  - (b) the Minister decides not to amend or cancel the order.
- (2) The Minister must give to the persons to whom notice was given under section 203(2)(a) of the Act written notice of the decision not to amend or cancel the order as soon as practicable after the decision is made.

*[Regulation 55 inserted: SL 2023/41 r. 6.]*

## **Part 6 — Aboriginal Cultural Heritage Directory**

*[Heading inserted: SL 2023/41 r. 6.]*

### **56. Prescribed information and documents on ACH Directory**

- (1) For the purposes of section 213(1) and (2)(b)(i) of the Act, the ACH Directory must contain the information and documents set out in Schedule 2.
- (2) A document on the ACH Directory may be the original document (in electronic, paper or another form) or a copy.

*[Regulation 56 inserted: SL 2023/41 r. 6.]*

### **57. Requests to place information and documents on ACH Directory**

A request by a local ACH service or another person that information or a document be placed on the ACH Directory under section 213(4)(b) of the Act must be made in writing.

*[Regulation 57 inserted: SL 2023/41 r. 6.]*

### **58. Applications for access to ACH Directory**

- (1) A person or other entity seeking access to information or a document on the ACH Directory under section 217, 219 or 220 of the Act must make an application to the ACH Council.
- (2) An application under subregulation (1) must —
  - (a) be in a form approved by the ACH Council; and
  - (b) describe the information or document in a way that is sufficient to identify it; and
  - (c) set out why the applicant requires access to the information or document.

*[Regulation 58 inserted: SL 2023/41 r. 6.]*

**59. Conditions on access to ACH Directory**

- (1) The ACH Council may make a person's access to information or a document under section 217, 219 or 220 of the Act subject to conditions relating to —
  - (a) the use or disclosure of the information or document; or
  - (b) the storage of the information or document.
- (2) The ACH Council must give to the person written notice of any condition to which access is subject at the time at which access is granted.
- (3) A person given access to information or a document under section 217, 219 or 220 of the Act must not contravene a condition to which the access is subject.  
Penalty for this subregulation: a fine of \$10 000.
- (4) *The Criminal Code* section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under subregulation (3).

*[Regulation 59 inserted: SL 2023/41 r. 6.]*

**60. Information or documents excluded from Act s. 219**

For the purposes of section 219(2) of the Act, information or a document is excluded from the operation of section 219 of the Act if it is of a commercially sensitive nature.

*[Regulation 60 inserted: SL 2023/41 r. 6.]*

## **Part 7 — Securing compliance**

*[Heading inserted: SL 2023/41 r. 6.]*

### **61. Information provided with application for entry warrant**

- (1) In this regulation —  
*inspection purposes* has the meaning given in section 221 of the Act.
- (2) For the purposes of section 244(3) of the Act, the following information must be included with an application for an entry warrant authorising the entry of a place or vehicle under section 244(1) of the Act —
  - (a) the applicant's full name;
  - (b) details of the place or vehicle sufficient to identify it;
  - (c) details of the inspection purposes for which entry to the place or vehicle is required;
  - (d) why it is necessary to enter the place or vehicle for the inspection purposes;
  - (e) the period, not exceeding 30 days, during which the entry warrant is proposed to be executed;
  - (f) if section 245(3)(a) or (b) of the Act apply — details of why that section applies.

*[Regulation 61 inserted: SL 2023/41 r. 6.]*

### **62. CEO may require inspectors and Aboriginal inspectors to give report**

- (1) The CEO may by notice require an inspector or Aboriginal inspector to provide to the CEO a written report about specified matters related to the exercise of the inspector or Aboriginal inspector's powers or performance of the inspector or Aboriginal inspector's functions.

- (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 14 days after the day on which the notice is given.

*[Regulation 62 inserted: SL 2023/41 r. 6.]*

## **Part 8 — Miscellaneous**

*[Heading inserted: SL 2023/41 r. 6.]*

### **63. Prescribed periods**

- (1) For the purposes of a provision of the Act listed in Schedule 3, the period set out in Schedule 3 opposite the provision is prescribed.
- (2) Despite subregulation (1), the period for the purposes of section 76(1) or 79(1) of the Act does not include any period commencing on the day on which a request is made under section 73(1) of the Act 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.
- (3) Despite subregulation (1), the period for the purposes of section 76(1), 79(1), 81(1), 119(2), 126(2), 150(2) or 162(2) of the Act does not include any period commencing on the day on which a request is made under regulation 67 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.

*[Regulation 63 inserted: SL 2023/41 r. 6.]*

### **64. Other means of giving notice**

- (1) For the purposes of section 283(1)(f) of the Act, notice of a document required or permitted to be given under the Act to a person may be given to the person by making the notice accessible to the person through the ACH management system.
- (2) The time when notice of a document is taken to have been given to a person if the notice is given under subregulation (1) is when the notice becomes capable of being retrieved by the person through the ACH management system.



*[Regulation 64 inserted: SL 2023/41 r. 6.]*

**65. Giving certain notices to landholders, occupiers of land or knowledge holders**

- (1) For the purposes of section 285(1) of the Act, the notice may be given by publishing a copy of the document —
  - (a) for a period of not less than 14 days on —
    - (i) the ACH Council’s website; or
    - (ii) another website that the ACH Council considers appropriate, taking into account the likelihood that the person to whom the notice is given will access that website;
  - or
  - (b) in a newspaper circulating —
    - (i) generally throughout the State; or
    - (ii) in the area, or areas, to which the document relates.
- (2) The time when the notice is taken to have been given to a person is —
  - (a) if the notice is given under subregulation (1)(a) — the 1<sup>st</sup> day of the period during which the document is published on the website; or
  - (b) if the notice is given under subregulation (1)(b) — the day on which the document is published in the newspaper.

*[Regulation 65 inserted: SL 2023/41 r. 6.]*

**66. ACH Council must give notice if refusing to consider application or submission**

- (1) This regulation applies if the ACH Council decides —
  - (a) under section 74, 117, 124, 149 or 159 of the Act to refuse to consider, or consider further, an application by a person; or
  - (b) under section 209 of the Act to refuse to consider, or consider further, a submission by a person.
- (2) The ACH Council must, as soon as practicable after the decision is made, give to the person written notice of the decision setting out why the decision was made.

*[Regulation 66 inserted: SL 2023/41 r. 6.]*

**67. Requirement for statutory declaration**

- (1) The ACH Council may make a written request to an applicant under section 38, 72(1), 83, 115(1), 122(1), 128(7)(b), 147(1), 157(1), 169 or 170 of the Act to verify by statutory declaration any information provided with the application.
- (2) The Minister may make a written request to an applicant under section 167(7)(b) of the Act to verify by statutory declaration any information provided with the application.
- (3) The ACH Council may make a written request to a person who makes a request under section 44(2)(a) or 50(1) of the Act to verify by statutory declaration any information provided with the request.
- (4) The ACH Council may make a written request to a local ACH service that provides a report under regulation 28 or 29 to verify by statutory declaration any information provided in the report.
- (5) If the Minister requests further information under section 80 or 164 of the Act, the Minister may make a written request to the person to whom the request is made to verify the further information by statutory declaration.

- (6) A request under subregulation (1), (2), (3), (4) or (5) must —
  - (a) be in writing; and
  - (b) specify the period within which the request must be complied with.

*[Regulation 67 inserted: SL 2023/41 r. 6.]*

## 68. Disclosure of relevant information

- (1) In this regulation —
 

*authorised officer* has the meaning given in section 303(1) of the Act;

*prescribed entity* has the meaning given in section 303(1) of the Act.
- (2) For the purposes of paragraph (b) of the definition of *prescribed entity* in section 303(1) of the Act, a local ACH service is prescribed.
- (3) Information may only be disclosed by an authorised officer to an officer of a prescribed entity under section 303(4) of the Act on the written request of the prescribed entity.
- (4) A written request under subregulation (3) must —
  - (a) set out a description of the information sought to be disclosed sufficient to identify the information; and
  - (b) set out why the information is relevant to the performance by the prescribed entity of a function of the prescribed entity under a written law.
- (5) An authorised officer may, when disclosing information to an officer of a prescribed entity under section 303(4) of the Act, make the disclosure subject to conditions relating to —
  - (a) the use or disclosure of the information; or
  - (b) the storage of the information.

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- (6) The authorised officer must give to the officer of the prescribed entity written notice of any condition to which the disclosure is subject at the time at which the disclosure is given.
- (7) The prescribed entity must not contravene a condition to which the disclosure is subject.

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

*[Regulation 68 inserted: SL 2023/41 r. 6.]*

**69. How requests to CEO must be made**

A request under section 108(1) or 136(1) of the Act must be made —

- (a) through the ACH management system; or
- (b) by any other means approved by the CEO.

*[Regulation 69 inserted: SL 2023/41 r. 6.]*

**70. How applications and requests to ACH Council must be made**

- (1) This regulation applies to the following —
  - (a) an application under section 38, 72(1), 83, 115(1), 122(1), 147(1), 157(1), 169 or 170 of the Act;
  - (b) an application under regulation 58;
  - (c) a request under section 44(2)(a), 45(1) or 50(1) of the Act;
  - (d) a submission under section 207(1) of the Act.
- (2) The application, request or submission must be made —
  - (a) through the ACH management system; or
  - (b) by any other means approved by the ACH Council.

*[Regulation 70 inserted: SL 2023/41 r. 6.]*

## Part 9 — Transitional provisions

*[Heading inserted: SL 2023/41 r. 6.]*

### Division 1 — Preliminary

*[Heading inserted: SL 2023/41 r. 6.]*

#### 71. Terms used

In this Part —

**historical AH Act section 18 consent** has the meaning given in section 313 of the Act;

**transitional AH Act section 18 consent** has the meaning given in section 313 of the Act.

*[Regulation 71 inserted: SL 2023/41 r. 6.]*

### Division 2 — Historical AH Act section 18 consents

*[Heading inserted: SL 2023/41 r. 6.]*

#### 72. Application to avoid expiry of historical AH Act section 18 consent

An application under section 325(2)(a) of the Act in relation to an historical AH Act section 18 consent must —

- (a) provide evidence that the purpose for which the land the subject of the consent may be used, as specified in the consent, has been substantially commenced; and
- (b) be made in the approved form; and
- (c) be made —
  - (i) through the ACH management system; or
  - (ii) by any other means approved by the Minister.

*[Regulation 72 inserted: SL 2023/41 r. 6.]*

**73. Further information in support of application**

The Minister may make a written request to an applicant under section 325(2)(a) of the Act to do any of the following —

- (a) provide the Minister with further information relevant to the application that the Minister requires to assess the application;
- (b) verify information provided with the application, or any further information provided under paragraph (a), by statutory declaration.

*[Regulation 73 inserted: SL 2023/41 r. 6.]*

**74. Criteria for determining whether purpose has been substantially commenced**

For the purposes of section 325(3) of the Act, the criteria to apply include the following —

- (a) whether the land is being used for the purpose specified in the consent;
- (b) whether relevant licences, permits and approvals have been obtained to use the land for the purpose specified in the consent;
- (c) whether any of the following activities have been undertaken on or in relation to the land in preparation for the purpose specified in the consent —
  - (i) clearing or other site works to support the construction of key infrastructure;
  - (ii) construction of new roads, tracks, trails, pathways or parking areas to service key infrastructure;
  - (iii) installation of new services including power, water, sewer or telecommunications services to service key infrastructure;
- (d) whether activities referred to in paragraph (c) have been undertaken on or in relation to any other land in

connection with a larger project of which the purpose specified in the consent forms a part.

*[Regulation 74 inserted: SL 2023/41 r. 6.]*

**75. Notice of Minister's decision under Act s. 325**

If the Minister makes a decision under section 325 of the Act regarding an application in relation to an historical AH Act section 18 consent, the Minister must give written notice of the decision to the applicant within 14 days after the decision is made.

*[Regulation 75 inserted: SL 2023/41 r. 6.]*

**Division 3 — Transitional AH Act section 18 consents**

*[Heading inserted: SL 2023/41 r. 6.]*

**76. Application to extend duration of transitional AH Act section 18 consent**

An application under section 326(2)(a) of the Act in relation to a transitional AH Act section 18 consent must —

- (a) provide evidence 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; and
- (b) be made in the approved form; and
- (c) be made —
  - (i) through the ACH management system; or
  - (ii) by any other means approved by the Minister.

*[Regulation 76 inserted: SL 2023/41 r. 6.]*

**77. Further information in support of application**

The Minister may make a written request to an applicant under section 326(2)(a) of the Act to do any of the following —

- (a) provide the Minister with further information relevant to the application that the Minister requires to assess the application;
- (b) verify information provided with the application, or any further information provided under paragraph (a), by statutory declaration.

*[Regulation 77 inserted: SL 2023/41 r. 6.]*

**78. Criteria for determining whether purpose is State significant project**

For the purposes of section 326(3) of the Act, the criterion to apply is whether the purpose is of critical strategic importance to the State.

*[Regulation 78 inserted: SL 2023/41 r. 6.]*

**79. Notice of Minister's decision under Act s. 326**

If the Minister makes a decision under section 326 of the Act regarding an application in relation to a transitional AH Act section 18 consent, the Minister must give written notice of the decision to the applicant within 14 days after the decision is made.

*[Regulation 79 inserted: SL 2023/41 r. 6.]*

**Division 4 — Other transitional matters**

*[Heading inserted: SL 2023/41 r. 6.]*

**80. 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 80 inserted: SL 2023/41 r. 6.]*

## **Schedule 1 — Exempt activities and tier 1, 2 and 3 activities**

[r. 36, 37, 38, 39 and 40]

[Heading inserted: SL 2023/41 r. 7.]

### **Division 1 — General activities**

[Heading inserted: SL 2023/41 r. 7.]

#### **Subdivision 1 — Exempt general activities**

[Heading inserted: SL 2023/41 r. 7.]

1. The following types of development —
  - (a) development set out in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 61(1) the Table item 1, 2, 3, 4, 7, 8 or 13 column 1, other than in relation to a building that is Aboriginal cultural heritage about which information is contained on the ACH Directory;
  - (b) the demolition of a multiple dwelling or grouped dwelling, other than in relation to a multiple dwelling or grouped dwelling that is Aboriginal cultural heritage about which information is contained on the ACH Directory;
  - (c) internal building work, other than in relation to a building that is Aboriginal cultural heritage about which information is contained on the ACH Directory;
  - (d) the erection or installation of, or alterations or additions to, any of the following on the same planning and development lot or strata or community titles lot as a multiple dwelling —
    - (i) an ancillary dwelling;
    - (ii) an outbuilding;
    - (iii) an external fixture;
    - (iv) a boundary wall or fence;
    - (v) a patio;
    - (vi) a pergola;
    - (vii) a verandah;

- (viii) a deck;
- (ix) a garage;
- (x) a carport;
- (xi) a swimming pool;
- (xii) shade sails;
- (e) the installation of a water tank that complies with the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 61(1) the Table item 12 column 2 conditions (b) and (c);
- (f) the erection or installation of a flagpole that complies with the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 61(1) the Table item 14 column 2 conditions (a) to (d);
- (g) development carried out on a subdivided parcel of land if —
  - (i) a residential building is located on the land, or will be constructed on the land; and
  - (ii) the subdivision was the subject of an approved or authorised ACH management plan; and
  - (iii) the development is consistent with the subdivision.

Note for this item:

See regulation 36(1) and paragraph (b) of the definition of **exempt activity** in section 100 of the Act.

2. Construction, renovation or demolition of a residential building on a strata or community titles lot that is less than 1 100 m<sup>2</sup>.
3. Installing or maintaining reticulated electricity, gas, water, sewerage, drainage or telecommunications services if the works are located between —
  - (a) the boundary of a planning and development lot, a strata or community titles lot in a strata or community titles scheme, or common property in the strata or community titles scheme if —
    - (i) a residential building is located on the lot, or will be constructed on the lot; and
    - (ii) the lot is less than 1 100 m<sup>2</sup>;

and

- (b) 1 of the following —
  - (i) the residential building;
  - (ii) a building ancillary to the residential building;
  - (iii) where the residential building or an ancillary building will be constructed.
- 4. Installing a driveway or crossover on a planning and development lot, a strata or community titles lot in a strata or community titles scheme, or common property in the strata or community titles scheme if —
  - (a) a residential building is located on the lot, or will be constructed on the lot; and
  - (b) the lot is less than 1 100 m<sup>2</sup>.
- 5. Subdivision of land that results in the creation of no more than 5 planning and development lots or strata or community titles lots, each of which is less than 1 100 m<sup>2</sup>.
- 6. Maintaining existing infrastructure in a way that does not involve disturbance to ground beyond that which was disturbed during the construction of, or earlier works in relation to, the infrastructure.
- 7. The demolition of a structure, other than a building, in a way that does not involve disturbance to ground beyond that which was disturbed during the construction of, or earlier works in relation to, the structure.
- 8. Undertaking an activity in an area that results in land use or development that —
  - (a) is no greater in surface area or height than existing land use or development in the area; and
  - (b) is either —
    - (i) no greater in depth than existing land use or development in the area; or
    - (ii) only greater in depth than existing land use or development in the area in a part of the area in which the depth of the existing land use or development extends 10 m or lower below natural ground level.

9. Temporarily placing equipment on an existing area of ground disturbance.
10. Visually inspecting an area as part of undertaking a due diligence assessment.
11. Lifestyle and general maintenance activities associated with a residential building, including gardening, repairs and carrying out minor development (for example installing a chicken coop or play equipment).
12. Driving a vehicle on an existing area of ground disturbance.
13. Setting up and using a temporary camp —
  - (a) in a way that does not involve clearing the camp site; and
  - (b) that involves only 1 or more of the following forms of accommodation —
    - (i) swags;
    - (ii) tents;
    - (iii) camper trailers;
    - (iv) caravans.
14. Aerial transportation that does not involve clearing at the landing site.
15. A burial authorised under the *Cemeteries Act 1986* section 12 of an Aboriginal person.
16. A burial under the *Cemeteries Act 1986* section 11, other than a burial authorised under section 12 of that Act.
17. Caring for, controlling or managing a cemetery declared under the *Cemeteries Act 1986* section 4(1).

*[Subdivision 1 inserted: SL 2023/41 r. 7.]*

#### **Subdivision 2 — General tier 1 activities**

*[Heading inserted: SL 2023/41 r. 7.]*

18. Temporarily placing a structure on an existing area of ground disturbance.
19. Removing plant and equipment.

20. Maintaining existing infrastructure in a way that does not, over the course of 1 calendar year, involve any of the following —
- (a) removing more than 4 kg of material;
  - (b) disturbing more than 10 m<sup>2</sup> of ground in total;
  - (c) disturbing more than 1 m<sup>2</sup> of contiguous ground;
  - (d) excavating to a depth of more than 0.5 m.
21. The demolition of a structure, other than a building, in a way that does not, over the course of 1 calendar year, involve any of the following —
- (a) removing more than 4 kg of material;
  - (b) disturbing more than 10 m<sup>2</sup> of ground in total;
  - (c) disturbing more than 1 m<sup>2</sup> of contiguous ground;
  - (d) excavating to a depth of more than 0.5 m.
22. Erecting or installing a fence in a way that does not involve clearing.
23. Driving a vehicle in a way that does not result in a new track being formed.
24. Clearing for tracks in a way that does not, over the course of 1 calendar year, involve any of the following —
- (a) removing more than 4 kg of material;
  - (b) disturbing more than 10 m<sup>2</sup> of ground in total;
  - (c) disturbing more than 1 m<sup>2</sup> of contiguous ground;
  - (d) excavating to a depth of more than 0.5 m.
25. Drilling, carried out as part of bore construction, in a way that does not involve any of the following —
- (a) disturbing more than 10 m<sup>2</sup> of ground in total;
  - (b) disturbing more than 1 m<sup>2</sup> of contiguous ground.
26. Stockpiling on an established stockpile.
27. Stockpile sampling.
28. Removing a stockpile.
- [Subdivision 2 inserted: SL 2023/41 r. 7.]*

**Subdivision 3 — General tier 2 activities**

*[Heading inserted: SL 2023/41 r. 7.]*

29. Construction or renovation of —
- (a) a residential building on a planning and development lot, or strata or community titles lot in a strata or community titles scheme, that is 1 100 m<sup>2</sup> or larger; or
  - (b) a building ancillary to such a building on —
    - (i) the planning and development lot; or
    - (ii) the strata or community titles lot or common property in the strata or community titles scheme.
30. Installing or maintaining reticulated electricity, gas, water, sewerage, drainage or telecommunications services if the works are located between —
- (a) the boundary of a planning and development lot, a strata or community titles lot in a strata or community titles scheme, or common property in the strata or community titles scheme if —
    - (i) a residential building is located on the lot, or will be constructed on the lot; and
    - (ii) the lot is 1 100 m<sup>2</sup> or larger;and
  - (b) 1 of the following —
    - (i) the residential building;
    - (ii) a building ancillary to the residential building;
    - (iii) where the residential building or an ancillary building will be constructed.
31. Installing a driveway or crossover on a planning and development lot, a strata or community titles lot in a strata or community titles scheme, or common property in the strata or community titles scheme.
32. Erecting or installing a structure on undisturbed ground in a way that does not involve building foundations for the structure.

33. Maintaining existing infrastructure, other than as described in item 20, in a way that does not involve any of the following —
- (a) removing more than 20 kg of material;
  - (b) disturbing more than 200 m<sup>2</sup> of ground in total;
  - (c) disturbing more than 10 m<sup>2</sup> of contiguous ground;
  - (d) excavating to a depth of more than 1 m.
34. The demolition of a structure, other than a building and other than as described in item 21, in a way that does not involve any of the following —
- (a) removing more than 20 kg of material;
  - (b) disturbing more than 200 m<sup>2</sup> of ground in total;
  - (c) disturbing more than 10 m<sup>2</sup> of contiguous ground;
  - (d) excavating to a depth of more than 1 m.
35. Undertaking an activity in an area that results in land use or development that is no greater in surface area than existing land use or development in the area.
36. An activity that will, through repetition by the proponent, result in a new track being formed.
37. Clearing for tracks, other than as described in item 24, in a way that does not involve any of the following —
- (a) removing more than 20 kg of material;
  - (b) disturbing more than 200 m<sup>2</sup> of ground in total;
  - (c) disturbing more than 10 m<sup>2</sup> of contiguous ground;
  - (d) excavating to a depth of more than 1 m.
38. Internal building work in relation to a building that is Aboriginal cultural heritage about which information is contained on the ACH Directory.
39. Burning, other than as part of an activity described by another item in Divisions 1 to 8.
40. A burial authorised under the *Cemeteries Act 1986* section 12 of a non-Aboriginal person.
41. Air core drilling.



42. Drilling, carried out as part of bore construction, other than as described in item 25, in a way that does not involve any of the following —
- (a) disturbing more than 200 m<sup>2</sup> of ground in total;
  - (b) disturbing more than 10 m<sup>2</sup> of contiguous ground.
43. Establishing a stockpile with a surface area of 200 m<sup>2</sup> or less.  
*[Subdivision 3 inserted: SL 2023/41 r. 7.]*

**Subdivision 4 — General tier 3 activities**

*[Heading inserted: SL 2023/41 r. 7.]*

44. Subdivision of land.
45. Maintaining existing infrastructure, other than as described in item 20 or 33.
46. The demolition of a structure, other than a building and other than as described in item 21 or 34.
47. Clearing for tracks, other than as described in item 24 or 37.
48. The demolition of a building that is Aboriginal cultural heritage about which information is contained on the ACH Directory.
49. Blasting.
50. Drilling, other than as part of an activity described by another item in Divisions 1 to 8.
- Examples for this item:
- 1. Rotary mud drilling.
  - 2. Diamond drilling.
  - 3. Percussion drilling.
  - 4. Drilling carried out as part of bore construction that involves disturbing more than 200 m<sup>2</sup> of ground in total or more than 10 m<sup>2</sup> of contiguous ground.
51. Establishing or expanding a cemetery declared under the *Cemeteries Act 1986* section 4(1).
52. Establishing a stockpile, other than as described in item 43.  
*[Subdivision 4 inserted: SL 2023/41 r. 7.]*

**Division 2 — Emergency activities**

*[Heading inserted: SL 2023/41 r. 7.]*

**Subdivision 1 — Exempt emergency activities**

*[Heading inserted: SL 2023/41 r. 7.]*

- 53. An emergency management activity intended to prevent imminent loss of life, prejudice to the safety, or harm to the health, of people or animals.
- 54. An activity undertaken in an emergency situation for the purpose of preventing or minimising irreversible damage to a significant part of the environment.

*[Subdivision 1 inserted: SL 2023/41 r. 7.]*

**Subdivision 2 — Tier 1 emergency activities**

*[Heading inserted: SL 2023/41 r. 7.]*

- 55. Fire hazard reduction.
- 56. Inspecting, protecting, providing or restoring essential services.
- 57. Complying with a notice given under the *Bush Fires Act 1954* section 33(1) or a direction given under section 33(4)(a) of that Act.

*[Subdivision 2 inserted: SL 2023/41 r. 7.]*

**Division 3 — Aboriginal cultural heritage investigation activities**

*[Heading inserted: SL 2023/41 r. 7.]*

**Subdivision 1 — Exempt Aboriginal cultural heritage investigation activities**

*[Heading inserted: SL 2023/41 r. 7.]*

- 58. Investigation of Aboriginal cultural heritage, carried out on foot, that does not involve excavation or removal of Aboriginal cultural heritage.

Examples for this item:

- 1. Site recording and assessment.
- 2. Monitoring and auditing.

3. Digital capture of Aboriginal cultural heritage.
  4. Non-digital photography.
  5. Probing.
59. Removal or relocation of an Aboriginal object located in an area by, or with the written approval of, a local ACH service for the area.
60. Investigation of Aboriginal cultural heritage located in an area by, or with the written approval of —
- (a) a local ACH service for the area; or
  - (b) if there is not a local ACH service for the area —
    - (i) a native title party for the area; or
    - (ii) if there is not a native title party for the area — a native title representative body for the area.

*[Subdivision 1 inserted: SL 2023/41 r. 7.]*

**Subdivision 2 — Tier 2 Aboriginal cultural heritage investigation activities**

*[Heading inserted: SL 2023/41 r. 7.]*

61. Investigation of Aboriginal cultural heritage that does not involve any of the following —
- (a) the use of non-handheld equipment;
  - (b) test pitting, excavation or other ground disturbance over a surface area that is greater than 1 m<sup>2</sup>;
  - (c) removing any more Aboriginal cultural heritage than necessary for investigation purposes;
  - (d) rock chipping or making moulds of petroglyphs or rock art.

Examples for this item:

1. Radiocarbon dating.
2. Luminescence dating.
3. Dosimetry.
4. Extraction of scarred element parts from scarred trees.
5. Mechanical sieving.

*[Subdivision 2 inserted: SL 2023/41 r. 7.]*

**Subdivision 3 — Tier 3 Aboriginal cultural heritage investigation activities**

*[Heading inserted: SL 2023/51 r. 7.]*

62. Investigation of Aboriginal cultural heritage other than as part of an activity described by another item in this Division.

*[Subdivision 3 inserted: SL 2023/51 r. 7.]*

**Division 4 — Activities impacting waterways or coastal waters**

*[Heading inserted: SL 2023/41 r. 7.]*

**Subdivision 1 — Exempt activities impacting waterways or coastal waters**

*[Heading inserted: SL 2023/41 r. 7.]*

63. Anchoring a boat in a waterway or coastal waters.
64. Maintenance of a waterway or coastal waters, including the bed or banks of a waterway or coastal waters, to rectify accretion and erosion of natural material.

*[Subdivision 1 inserted: SL 2023/41 r. 7.]*

**Subdivision 2 — Tier 1 activities impacting waterways or coastal waters**

*[Heading inserted: SL 2023/41 r. 7.]*

65. Taking water from a waterway or coastal waters without causing ground disturbance.
66. Discharging water into a waterway or coastal waters in a way that does not involve disturbance to the bed or banks of the waterway or coastal waters.
67. Monitoring and sampling in relation to a waterway or coastal waters in a way that does not, over the course of 1 calendar year, involve any of the following —
- (a) removing more than 4 kg of material;
  - (b) disturbing more than 10 m<sup>2</sup> of the bed or banks of the waterway or coastal waters in total;
  - (c) disturbing more than 1 m<sup>2</sup> of contiguous bed or banks of the waterway or coastal waters;

- (d) excavating the bed or banks of the waterway or coastal waters to a depth of more than 0.5 m.
- 68. Removing litter from a waterway or coastal waters in a way that does not involve disturbance to the bed or banks of the waterway or coastal waters beyond that which was caused by leaving the litter.
- 69. Removing flora from a waterway or coastal waters in a way that does not, over the course of 1 calendar year, involve any of the following —
  - (a) removing more than 4 kg of material (not counting the flora);
  - (b) disturbing more than 10 m<sup>2</sup> of the bed or banks of the waterway or coastal waters in total;
  - (c) disturbing more than 1 m<sup>2</sup> of contiguous bed or banks of the waterway or coastal waters;
  - (d) excavating the bed or banks of the waterway or coastal waters to a depth of more than 0.5 m.
- 70. Placing pipe or cable on the bed or banks of a waterway or coastal waters without anchoring the pipe or cable to the bed or banks.
- 71. Installing a structure into, or anchoring a structure to, the bed or banks of a waterway or coastal waters in a way that does not, over the course of 1 calendar year, involve any of the following —
  - (a) removing more than 4 kg of material;
  - (b) disturbing more than 10 m<sup>2</sup> of the bed or banks in total;
  - (c) disturbing more than 1 m<sup>2</sup> of contiguous bed or banks;
  - (d) excavating the bed or banks to a depth of more than 0.5 m.

*[Subdivision 2 inserted: SL 2023/41 r. 7.]*

### **Subdivision 3 — Tier 2 activities impacting waterways or coastal waters**

*[Heading inserted: SL 2023/41 r. 7.]*

- 72. Discharging water into a waterway or coastal waters, other than as described in item 66.
- 73. Monitoring and sampling in relation to a waterway or coastal waters, other than as described in item 67.

74. Stabilising the bed or banks of a waterway or coastal waters using handheld equipment only, including —
- (a) matting installation; or
  - (b) brushing; or
  - (c) surface preparation for application of materials.
75. Removing flora from a waterway or coastal waters, other than as described in item 69, in a way that does not involve any of the following —
- (a) removing more than 20 kg of material (not counting the flora);
  - (b) disturbing more than 200 m<sup>2</sup> of the bed or banks of the waterway or coastal waters in total;
  - (c) disturbing more than 10 m<sup>2</sup> of contiguous bed or banks of the waterway or coastal waters;
  - (d) excavating the bed or banks of the waterway or coastal waters to a depth of more than 1 m.
76. Installing a structure to enable the movement of fauna within a waterway or coastal waters.
77. Installing a mooring into, or anchoring a mooring to, the bed or banks of a waterway or coastal waters.
78. Installing a structure into, or anchoring a structure to, the bed or banks of a waterway or coastal waters, other than as described in item 71, in a way that does not involve any of the following —
- (a) removing more than 20 kg of material;
  - (b) disturbing more than 200 m<sup>2</sup> of the bed or banks in total;
  - (c) disturbing more than 10 m<sup>2</sup> of contiguous bed or banks;
  - (d) excavating the bed or banks to a depth of more than 1 m.

*[Subdivision 3 inserted: SL 2023/41 r. 7.]*

**Subdivision 4 — Tier 3 activities impacting waterways or coastal waters**

*[Heading inserted: SL 2023/41 r. 7.]*

79. Stabilising the bed or banks of a waterway or coastal waters using non-handheld equipment.

- 80. Reclaiming land from a waterway or coastal waters or reshaping a beach.
- 81. Capital dredging.
- 82. Removing flora from a waterway or coastal waters, other than as described in item 69 or 75.
- 83. Establishing new, or expanding existing, trench irrigation.
- 84. Establishing an aquaculture or mariculture pen and supporting infrastructure.
- 85. Erecting or installing a dam, weir or waterway diversion.
- 86. Installing a structure into, or anchoring a structure to, the bed or banks of a waterway or coastal waters, other than as described in item 71 or 78.
- 87. Erecting, installing or expanding a structure in a waterway or coastal waters, other than as part of an activity described by another item in this Division.

*[Subdivision 4 inserted: SL 2023/41 r. 7.]*

**Division 5 — Agriculture and natural resource management activities**

*[Heading inserted: SL 2023/41 r. 7.]*

**Subdivision 1 — Tier 1 agriculture and natural resource management activities**

*[Heading inserted: SL 2023/41 r. 7.]*

- 88. Controlling feral or pest fauna without digging or excavating.
- 89. Managing weeds or flora in a way that does not, over the course of 1 calendar year, involve any of the following —
  - (a) removing more than 4 kg of material (not counting the weeds or flora);
  - (b) disturbing more than 10 m<sup>2</sup> of ground in total;
  - (c) disturbing more than 1 m<sup>2</sup> of contiguous ground;
  - (d) excavating to a depth of more than 0.5 m.

*[Subdivision 1 inserted: SL 2023/41 r. 7.]*

**Subdivision 2 — Tier 2 agriculture and natural resource management activities**

*[Heading inserted: SL 2023/41 r. 7.]*

90. Controlling feral or pest fauna, other than as described in item 88.
91. Managing weeds or flora, other than as described in item 89, in a way that does not involve any of the following —
- (a) removing more than 20 kg of material (not counting the weeds or flora);
  - (b) disturbing more than 200 m<sup>2</sup> of ground in total;
  - (c) disturbing more than 10 m<sup>2</sup> of contiguous ground;
  - (d) excavating to a depth of more than 1 m.
92. Erecting or installing new agricultural infrastructure on existing agricultural land.

Examples for this item:

1. Erecting or installing a stock watering point.
2. Erecting or installing a new yard.

*[Subdivision 2 inserted: SL 2023/41 r. 7.]*

**Subdivision 3 — Tier 3 agriculture and natural resource management activities**

*[Heading inserted: SL 2023/41 r. 7.]*

93. Managing weeds or flora, other than as described in item 89 or 91.
94. Conducting agricultural activities in an area not previously subject to agricultural activities.
95. Establishing a new farm or pastoral station.
96. Establishing a new tree plantation.
97. Harvesting trees in an area not previously subject to tree harvesting.

*[Subdivision 3 inserted: SL 2023/41 r. 7.]*



**Division 6 — Field investigation activities**

*[Heading inserted: SL 2023/41 r. 7.]*

**Subdivision 1 — Tier 1 field investigation activities**

*[Heading inserted: SL 2023/41 r. 7.]*

98. An aerial survey.
99. A field investigation (including exploration) that does not, over the course of 1 calendar year, involve any of the following —
- (a) removing more than 4 kg of material;
  - (b) disturbing more than 10 m<sup>2</sup> of ground in total;
  - (c) disturbing more than 1 m<sup>2</sup> of contiguous ground;
  - (d) excavating to a depth of more than 0.5 m.

*[Subdivision 1 inserted: SL 2023/41 r. 7.]*

**Subdivision 2 — Tier 2 field investigation activities**

*[Heading inserted: SL 2023/41 r. 7.]*

100. A field investigation (including exploration), other than as described in item 99, that does not involve any of the following —
- (a) removing more than 20 kg of material;
  - (b) disturbing more than 200 m<sup>2</sup> of ground in total;
  - (c) disturbing more than 10 m<sup>2</sup> of contiguous ground;
  - (d) excavating to a depth of more than 1 m.
101. A seismic survey that does not involve using a seismic vibrator truck.

*[Subdivision 2 inserted: SL 2023/41 r. 7.]*

**Subdivision 3 — Tier 3 field investigation activities**

102. A field investigation (including exploration), other than as described in item 99 or 100.
103. A seismic survey, other than as described in item 101.
104. Costeaning.

*[Subdivision 3 inserted: SL 2023/41 r. 7.]*

**Division 7 — Mining activities**

*[Heading inserted: SL 2023/41 r. 7.]*

**Subdivision 1 — Tier 1 mining activities**

*[Heading inserted: SL 2023/41 r. 7.]*

- 105. Marking out under the *Mining Act 1978*.
- 106. Metal detecting.
- 107. Scrape and detect activities using handheld equipment only.
- 108. Extracting basic raw materials —
  - (a) from within existing pits; and
  - (b) in a way that does not involve an increase to the area of ground disturbance.

*[Subdivision 1 inserted: SL 2023/41 r. 7.]*

**Subdivision 2 — Tier 2 mining activities**

*[Heading inserted: SL 2023/41 r. 7.]*

- 109. Bulk leach extractable gold (BLEG).
- 110. Reopening underground mine workings.

*[Subdivision 2 inserted: SL 2023/41 r. 7.]*

**Subdivision 3 — Tier 3 mining activities**

*[Heading inserted: SL 2023/41 r. 7.]*

- 111. Scrape and detect activities using non-handheld equipment.
- 112. Activities involved with establishing a new, or expanding an existing, mine or mine site.

*[Subdivision 3 inserted: SL 2023/41 r. 7.]*

## **Division 8 — Rehabilitation and remediation activities**

*[Heading inserted: SL 2023/41 r. 7.]*

### **Subdivision 1 — Exempt rehabilitation and remediation activities**

*[Heading inserted: SL 2023/41 r. 7.]*

113. Removing surface waste, litter or contaminated or waste material from —
- (a) a planning and development lot on which a residential building is located, or will be constructed; or
  - (b) a strata or community titles lot on which a residential building is located, or will be constructed, or common property in the relevant strata or community titles scheme.

*[Subdivision 1 inserted: SL 2023/41 r. 7.]*

### **Subdivision 2 — Tier 1 rehabilitation and remediation activities**

*[Heading inserted: SL 2023/41 r. 7.]*

114. Preliminary contaminated site investigation.
- Examples for this item:
- 1. Identifying potential sources of contamination, contaminants of concern, receptors that may be exposed to contamination and exposure pathways.
  - 2. Carrying out a site inspection.
115. Removing surface waste, litter or contaminated or waste material in a way that does not, over the course of 1 calendar year, involve any of the following —
- (a) removing more than 4 kg of material (not counting the surface waste, litter or contaminated or waste material);
  - (b) disturbing more than 10 m<sup>2</sup> of ground in total;
  - (c) disturbing more than 1 m<sup>2</sup> of contiguous ground;
  - (d) excavating to a depth of more than 0.5 m.
116. Revegetation using handheld equipment only.

117. Rehabilitation of drill holes, including casing removal, sealing and capping.

*[Subdivision 2 inserted: SL 2023/41 r. 7.]*

**Subdivision 3 — Tier 2 rehabilitation and remediation activities**

*[Heading inserted: SL 2023/41 r. 7.]*

118. Detailed contaminated site investigation.

Examples for this item:

1. Collecting and evaluating site-specific data.
2. Carrying out a detailed site investigation to establish ground conditions.
3. Collecting soil and groundwater samples.

119. Removing surface waste, litter or contaminated or waste material, other than as described in item 115, in a way that does not involve any of the following —

- (a) removing more than 20 kg of material (not counting the surface waste, litter or contaminated or waste material);
- (b) disturbing more than 200 m<sup>2</sup> of ground in total;
- (c) disturbing more than 10 m<sup>2</sup> of contiguous ground;
- (d) excavating to a depth of more than 1 m.

120. Revegetation using non-handheld equipment.

121. A remediation activity not described by another item in this Subdivision or Subdivision 2, that does not involve any of the following —

- (a) removing more than 20 kg of material;
- (b) disturbing more than 200 m<sup>2</sup> of ground in total;
- (c) disturbing more than 10 m<sup>2</sup> of contiguous ground;
- (d) excavating to a depth of more than 1 m.

122. A rehabilitation activity not described by another item in this Subdivision or Subdivision 2 that is carried out in an area that has been subject to ground disturbance.

*[Subdivision 3 inserted: SL 2023/41 r. 7.]*

**Subdivision 4 — Tier 3 rehabilitation and remediation activities**

*[Heading inserted: SL 2023/41 r. 7.]*

- 123. Removing surface waste, litter or contaminated or waste material, other than as part of an activity described by another item in this Division.
- 124. Landform re-contouring or reshaping.
- 125. A remediation activity not described by another item in this Division.
- 126. A rehabilitation activity not described by another item in this Division.

*[Subdivision 4 inserted: SL 2023/41 r. 7.]*

**Division 9 — Other activities**

*[Heading inserted: SL 2023/41 r. 7.]*

**Subdivision 1 — Other tier 1 activities**

*[Heading inserted: SL 2023/41 r. 7.]*

- 127. An activity that —
  - (a) is not described by an item in any other Division of this Schedule; and
  - (b) is not an exempt activity; and
  - (c) does not, over the course of 1 calendar year, involve any of the following —
    - (i) removing more than 4 kg of material;
    - (ii) disturbing more than 10 m<sup>2</sup> of ground in total;
    - (iii) disturbing more than 1 m<sup>2</sup> of contiguous ground;
    - (iv) excavating to a depth of more than 0.5 m.

*[Subdivision 1 inserted: SL 2023/41 r. 7.]*

**Subdivision 2 — Other tier 2 activities**

*[Heading inserted: SL 2023/41 r. 7.]*

128. An activity that —
- (a) is not described by an item in any other Division of this Schedule; and
  - (b) is not an exempt activity or tier 1 activity; and
  - (c) does not involve any of the following —
    - (i) removing more than 20 kg of material;
    - (ii) disturbing more than 200 m<sup>2</sup> of ground in total;
    - (iii) disturbing more than 10 m<sup>2</sup> of contiguous ground;
    - (iv) excavating to a depth of more than 1 m.

*[Subdivision 2 inserted: SL 2023/41 r. 7.]*

**Subdivision 3 — Other tier 3 activities**

*[Heading inserted: SL 2023/41 r. 7.]*

129. An activity that —
- (a) is not described by another item in this Schedule; and
  - (b) is not an exempt activity.

*[Subdivision 4 inserted: SL 2023/41 r. 7.]*

## **Schedule 2 — Prescribed information and documents on ACH Directory**

[r. 56]

*[Heading inserted: SL 2023/41 r. 7.]*

### **1. Information about protected areas**

- (1) In relation to each protected area, the following information —
  - (a) the name of the area;
  - (b) the boundaries of the area;
  - (c) the conditions, if any, to which the protected area order is subject;
  - (d) a description of the Aboriginal cultural heritage of outstanding significance for the purposes of the Act that is located in the area;
  - (e) if the protected area order declaring the area as a protected area under section 82(1) of the Act is repealed — the day on which the order is repealed.
- (2) Each previous version of the information set out in subclause (1)(a), (b) or (c) and, in relation to each previous version —
  - (a) the day on which the information changed; and
  - (b) the reason the information changed.

*[Clause 1 inserted: SL 2023/41 r. 7.]*

### **2. Information about local ACH services**

- (1) In relation to each person designated as a local ACH service for an area, the following information —
  - (a) the name of the person;
  - (b) details of how the person may be contacted;
  - (c) a description of the area;
  - (d) the day on which the person's designation takes effect under section 42(1)(a) of the Act;

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- (e) if the designation is suspended under section 43(2)(a) of the Act —
    - (i) the day on which the suspension takes effect; and
    - (ii) the period of the suspension; and
    - (iii) if the suspension is not in relation to all of the area — a description of the part of the area to which the suspension relates;
  - (f) if the designation is cancelled in relation to the whole of the area under section 43(2)(b) of the Act — the day on which the cancellation takes effect;
  - (g) if the designation is cancelled in relation to a part of the area under section 43(2)(b) of the Act —
    - (i) the day on which the cancellation takes effect; and
    - (ii) a description of the part of the area to which the cancellation relates;
  - (h) the fee structure under section 49(2) of the Act for services that the person provides in connection with any local ACH service functions that they provide in relation to the area.
- (2) Each previous version of the information set out in subclause (1)(a) or (c) and, in relation to each previous version —
- (a) the day on which the information changed; and
  - (b) the reason the information changed.

*[Clause 2 inserted: SL 2023/41 r. 7.]*

**3. Information about native title parties**

In relation to each native title party for an area, the following information —

- (a) the name of the native title party;
- (b) a description of the area;
- (c) details of how the native title party may be contacted, including the native title party's preferred contact method.

*[Clause 3 inserted: SL 2023/41 r. 7.]*



**4. Information about knowledge holders**

In relation to each person identified by the ACH Council as a knowledge holder, the following information —

- (a) the name of the knowledge holder;
- (b) a description of the Aboriginal cultural heritage about which the knowledge holder holds knowledge;
- (c) details of how the knowledge holder may be contacted, including the knowledge holder's preferred contact method;
- (d) if the knowledge holder is a knowledge holder in relation to an area — a description of the area.

*[Clause 4 inserted: SL 2023/41 r. 7.]*

**5. Information about ACH protection agreements**

In relation to each ACH protection agreement endorsed under Part 8 of the Act, the following information —

- (a) the name of each party to the agreement;
- (b) the day on which the agreement was endorsed;
- (c) a description of the Aboriginal cultural heritage to which the agreement relates.

*[Clause 5 inserted: SL 2023/41 r. 7.]*

**6. Information about ACH permits**

- (1) In relation to each ACH permit, the following information —

- (a) the name of the holder of the permit;
- (b) details of how to contact the holder of the permit;
- (c) the activity to which the permit relates as set out in the permit granted under section 119(1)(c)(i) of the Act;
- (d) the area to which the permit relates;
- (e) a description of the Aboriginal cultural heritage located in the area to which the permit relates;
- (f) the day on which the permit takes effect;
- (g) if the holder of the permit applies for the term of the permit to be extended under section 122(1) of the Act — the name of,

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- and details of how to contact, each of the persons notified under section 122(3) of the Act about the proposed extension;
- (h) the day on which the permit is set to expire;
  - (i) if the permit is suspended under section 130(1)(a) of the Act —
    - (i) the day on which the suspension takes effect; and
    - (ii) the period of the suspension;
  - (j) if the permit is cancelled under section 130(1)(b) of the Act — the day on which the cancellation takes effect;
  - (k) any conditions imposed on the permit by the ACH Council under section 128(2) of the Act;
  - (l) any condition on the permit imposed or amended by the ACH Council under section 128(3) of the Act and the day on which the condition, or the amendment of the condition, takes effect;
  - (m) the name of, and details of how to contact, each of the persons notified under section 113 of the Act about the activity to which the permit relates.
- (2) Each previous version of the information set out in subclause (1)(a), (d), (e) or (h) and, in relation to each previous version —
- (a) the day on which the information changed; and
  - (b) the reason the information changed.

*[Clause 6 inserted: SL 2023/41 r. 7.]*

**7. Information about approved ACH management plans**

- (1) In relation to each ACH management plan approved under section 150(1)(b)(i) of the Act, the following information —
- (a) the names of —
    - (i) each party to the plan; and
    - (ii) each interested Aboriginal party for the plan;
  - (b) details of how to contact each party to the plan and each interested Aboriginal party for the plan;

- (c) the name of, and details of how to contact, each of the persons to be consulted about the activity to be carried out under the plan;
  - (d) a description of the area to which the plan relates;
  - (e) a description of the Aboriginal cultural heritage located in the area to which the plan relates, and the characteristics of that Aboriginal cultural heritage;
  - (f) a description of the activity to which the plan relates;
  - (g) the conditions that must be complied with before, during and after the activity is carried out;
  - (h) the day on which the plan takes effect;
  - (i) the day on which the plan expires;
  - (j) if the approval of the plan is suspended under section 154(1)(a) of the Act —
    - (i) the day on which the suspension takes effect; and
    - (ii) the period of the suspension;
  - (k) if the approval of the plan is cancelled under section 154(1)(b) of the Act — the day on which the cancellation takes effect.
- (2) Each previous version of the information set out in subclause (1)(a), (d), (e), (f), (g) or (i) and, in relation to each previous version —
- (a) the day on which the information changed; and
  - (b) the reason the information changed.
- (3) In relation to each ACH management plan approved under section 150(1)(b)(i) of the Act, a copy of any report that, under regulation 47(b), accompanies the application for approval of the plan.

*[Clause 7 inserted: SL 2023/41 r. 7.]*

## **8. Information about authorised ACH management plans**

- (1) In relation to each ACH management plan authorised under section 165(1)(b)(i) of the Act, the following information —
- (a) the names of —

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- (i) each party to the plan; and
    - (ii) each interested Aboriginal party for the plan;
  - (b) details of how to contact each party to the plan and each interested Aboriginal party for the plan;
  - (c) the name of, and details of how to contact, each of the persons to be consulted about the activity to be carried out under the plan;
  - (d) a description of the area to which the plan relates;
  - (e) a description of the Aboriginal cultural heritage located in the area to which the plan relates, and the characteristics of that Aboriginal cultural heritage;
  - (f) a description of the activity to which the plan relates;
  - (g) the conditions that must be complied with before, during and after the activity is carried out;
  - (h) the conditions to which authorisation of the plan is made subject under section 167(2) or (3) of the Act;
  - (i) the day on which the plan takes effect;
  - (j) the day on which the authorisation of the plan ceases to have effect;
  - (k) if the authorisation of the plan is suspended under section 168(1)(a) of the Act —
    - (i) the day on which the suspension takes effect; and
    - (ii) the period of the suspension;
  - (l) if the authorisation of the plan is cancelled under section 168(1)(b) of the Act — the day on which the cancellation takes effect.
- (2) Each previous version of the information set out in subclause (1)(a), (d), (e), (f), (g), (h) or (j) and, in relation to each previous version —
- (a) the day on which the information changed; and
  - (b) the reason the information changed.
- (3) In relation to each ACH management plan authorised under section 165(1)(b)(i) of the Act, a copy of any report that, under

regulation 47(b), accompanies the application for authorisation of the plan.

*[Clause 8 inserted: SL 2023/41 r. 7.]*

**9. Information about State significance determinations**

In relation to each determination under section 176(1)(b)(i) of the Act that Aboriginal cultural heritage is of State significance for the purposes of the Act, the following information —

- (a) the day on which the determination is made;
- (b) a description of the Aboriginal cultural heritage and the location of the Aboriginal cultural heritage.

*[Clause 9 inserted: SL 2023/41 r. 7.]*

**10. Information about Part 7 orders**

In relation to each Part 7 order, the following information —

- (a) the name of the person to whom the order is given;
- (b) the area to which the order relates;
- (c) a brief description of the Aboriginal cultural heritage the subject of the order;
- (d) the day on which the order takes effect;
- (e) the duration of the order, including any extension of the duration of the order under section 182 or 191 of the Act;
- (f) if the order is cancelled under section 203(1) of the Act — the day on which the cancellation takes effect;
- (g) if the order is a prohibition order that is amended under section 203(1)(a) of the Act — the amendment to the order;
- (h) a brief description of the grounds for giving the order;
- (i) the directions that are to be complied with under the order.

*[Clause 10 inserted: SL 2023/41 r. 7.]*



## Schedule 3 — Prescribed periods

[r. 63]

*[Heading inserted: SL 2023/41 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
<b>Part 3 of the Act</b>	
Section 56(1)	The period of — (a) if the organisation or individual is in possession of the Aboriginal ancestral remains immediately before transition day — 2 years after that day; or (b) otherwise — 6 months after the day on which the Aboriginal ancestral remains come into the possession of the organisation or individual
Section 57(1)	The period of 3 years after the day on which the notice is given under section 56(1) of the Act
Section 57(4)	The period of 14 days
Section 58(1)	The period of 6 months after the day on which the notice is given under section 56(1) of the Act

<b>Provision</b>	<b>Prescribed period</b>
Section 64(1)	The period of — (a) if the person is in possession of the secret or sacred object immediately before transition day — 2 years after that day; or (b) otherwise — 6 months after the day on which the secret or sacred object comes into the possession of the person
Section 65(1)	The period of 3 years after the day on which the notice is given under section 64(1) of the Act
Section 65(4)	The period of 14 days
Section 68(1)	The period of — (a) if the person knew of the existence of the Aboriginal place, Aboriginal object or Aboriginal ancestral remains immediately before transition day — 2 years after that day; or (b) otherwise — 90 days after the day on which the person becomes aware of the existence of the Aboriginal place, Aboriginal object or Aboriginal ancestral remains
<b>Part 4 of the Act</b>	
Section 75(3)(c)	The period of 28 days after the day on which the notice is given
Section 76(1)	The period of 28 days after the end of the period for submissions Note for this item: Working out of this period may be affected by regulation 63(2) or (3)



<b>Provision</b>	<b>Prescribed period</b>
Section 77(3)(b)	The period of 28 days after the day on which the public notice is given
Section 78(2)	The period of 28 days after the day on which the notice is given
Section 79(1)	<p>The period of 28 days after the end of the period for making submissions</p> <p>Note for this item:</p> <p>Working out of this period may be affected by regulation 63(2) or (3)</p>
Section 81(1)	<p>The period of 60 days after —</p> <p>(a) if further information is requested in relation to the application area under section 80 of the Act — the day on which the request is complied with or the day on which the time period for complying with the request expires, whichever occurs first; or</p> <p>(b) otherwise — the day on which the ACH Council makes the recommendation</p> <p>Note for this item:</p> <p>Working out of this period may be affected by regulation 63(3)</p>
<b>Part 6 of the Act</b>	
Section 113(b)	The period of 28 days after the day on which the notice is given
Section 116(2)	The period of 14 days after the day on which the request is made
Section 118(2)	The period of 28 days after the day on which the notice is given

<b>Provision</b>	<b>Prescribed period</b>
Section 119(2)	The period of 14 days after the end of the period for making submissions under section 118(2) of the Act in relation to the application  Note for this item:  Working out of this period may be affected by regulation 63(3)
Section 122(3)(b)	The period of 28 days after the day on which the notice is given
Section 123(2)	The period of 14 days after the day on which the request is made
Section 125(2)	The period of 28 days after the day on which the notice is given
Section 126(2)	The period of 14 days after the end of the period for making submissions under section 125(2) of the Act in relation to the application  Note for this item:  Working out of this period may be affected by regulation 63(3)
Section 127(1)	The period of 14 days after the day on which the permit is transferred
Section 128(8)	The period of 14 days after the day on which the decision is made
Section 129(2)	The period of 14 days after the day on which the ACH Council amends the area
Section 131(1)	The period of 28 days after the day on which notice of the decision to refuse to grant the permit is given under section 132 of the Act

<b>Provision</b>	<b>Prescribed period</b>
Section 131(2)	The period of 28 days after the day on which notice of the decision to which the objection relates is given under section 132 of the Act
Section 131(4)	The period of 14 days after the day on which the objection is made
Section 143(2)(a)	The period of 140 days
Section 148(2)	The period of 28 days after the day on which the request is made
Section 150(2)	<p>If a fee is payable in respect of the application under the <i>Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023</i>, the period of 28 days after —</p> <ul style="list-style-type: none"> <li>(a) unless paragraph (b) applies — the day on which the fee is received; or</li> <li>(b) if the application is, under section 161 of the Act, considered as an application under section 147(1) of the Act — the later of the following days — <ul style="list-style-type: none"> <li>(i) the day on which the fee is received;</li> <li>(ii) the day on which the applicant and each interested Aboriginal party have advised the ACH Council under section 161 of the Act that they have reached agreement on the terms of the plan</li> </ul> </li> </ul> <p>If no fee is payable in respect of the application under the <i>Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023</i>, the period of 28 days after —</p>

Provision	Prescribed period
	<p>(a) unless paragraph (b) applies — the day on which the application is made; or</p> <p>(b) if the application is, under section 161 of the Act, considered as an application under section 147(1) of the Act — the day on which the applicant and each interested Aboriginal party have advised the ACH Council under section 161 of the Act that they have reached agreement on the terms of the plan</p> <p>Notes for this item:</p> <ol style="list-style-type: none"> <li>Working out of this period may be affected by regulation 63(3).</li> <li>In relation to when a fee is received, see the <i>Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023</i> regulation 21.</li> </ol>
Section 155(1)	The period of 28 days after the day on which notice of the decision to which the objection relates is given under section 156 of the Act
Section 158(2)	The period of 60 days after the day on which the request is made
Section 162(2)	<p>If a fee is payable in respect of the application under the <i>Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023</i>, the period of 90 days after —</p> <p>(a) unless paragraph (b) applies — the day on which the fee is received; or</p> <p>(b) if section 177(1)(a) or (c) of the Act applies — the later of the following days —</p> <ol style="list-style-type: none"> <li>the day on which the fee is received; or</li> </ol>

<b>Provision</b>	<b>Prescribed period</b>
	<p>(ii) the day on which the determination is made under section 176(1)(b)(i) of the Act</p> <p>If no fee is payable in respect of the application under the <i>Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023</i>, the period of 90 days after —</p> <p>(a) unless paragraph (b) applies — the day on which the application is made; or</p> <p>(b) if section 177(1)(a) or (c) of the Act applies — the day on which the determination is made under section 176(1)(b)(i) of the Act</p> <p>Notes for this item:</p> <ol style="list-style-type: none"> <li>Working out of this period may be affected by regulation 63(3).</li> <li>In relation to when a fee is received, see the <i>Aboriginal Cultural Heritage (Cost Recovery) Regulations 2023</i> regulation 21.</li> </ol>
Section 171(1)(b)	The period of 14 days after the day on which the person ceases to be an interested Aboriginal party for the plan
Section 171(4)	The period of 14 days after the day on which the former proponent ceases to be the current proponent
Section 175(3)(c)	The period of 28 days after the day on which the notice is given
Section 176(1)	The period of 35 days
<b>Part 7 of the Act</b>	
Section 186(4)	The period of 10 days ending on the day on which the stop activity order expires

<b>Provision</b>	<b>Prescribed period</b>
Section 187(2)(c)	The period of — (a) if the notice relates to a recommendation under section 185(1) of the Act — 28 days after the day on which the notice is given; or (b) if the notice relates to a recommendation under section 186(1)(b) of the Act — 14 days after the day on which the notice is given
Section 192(1)(d)	The period of 28 days after the day on which the notice is given
Section 204(c)	The period of 28 days after the day on which the notice is given
<b>Part 8 of the Act</b>	
Section 208(2)	The period of 28 days after the day on which the request is made
Section 210(2)	The period of 60 days after the day on which the ACH protection agreement is submitted for endorsement

*[Schedule 3 inserted: SL 2023/41 r. 7; amended: SL 2023/82 r. 5.]*

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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. For provisions that have not yet come into operation see the uncommenced provisions 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))
<i>Aboriginal Cultural Heritage Amendment Regulations (No. 2) 2023</i>	SL 2023/41 19 May 2023	r. 1 and 2: 19 May 2023 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2023 (see r. 2(b))
<i>Aboriginal Cultural Heritage Amendment Regulations (No. 3) 2023</i>	SL 2023/82 23 Jun 2023	r. 1 and 2: 23 Jun 2023 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2023 (see r. 2(b) and SL 2023/41 r. 2(b))

### Uncommenced provisions table

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

Citation	Published	Commencement
<i>Aboriginal Heritage Legislation Amendment and Repeal Act 2023</i> s. 3(2) assented to 24 Oct 2023		15 Nov 2023 (see s. 2(d) and SL 2023/161 cl. 2)

Defined terms

## Defined terms

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

Defined term	Provision(s)
Aboriginal party .....	3
ACH Council member .....	3
ACH Council's website .....	3
ACH management system.....	3
AH Act section 18 consent .....	46(1)
ancillary dwelling .....	3
application area .....	3
authorised officer .....	68(1)
boat .....	3
chairperson.....	3
coastal waters.....	3
committee .....	3
common property.....	3
emergency management.....	3
grouped dwelling .....	3
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