



Western Australia

Aboriginal Heritage Act 1972

Aboriginal Heritage (Fees) Regulations 2023

Aboriginal Heritage (Fees) Regulations 2023

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Aboriginal Heritage (Fees) Regulations 2023

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Aboriginal Heritage (Fees) Regulations 2023*.

2. Commencement

These regulations come into operation on the day on which the *Aboriginal Heritage Legislation Amendment and Repeal Act 2023* section 20 comes into operation.

3. Terms used

In these regulations —

Aboriginal and Torres Strait Islander corporation means a commercial proponent that is —

- (a) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Commonwealth); or
- (b) a corporation that —
 - (i) is registered under the *Corporations Act 2001* (Commonwealth); and
 - (ii) satisfies the Indigeneity requirement under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Commonwealth) section 29-5;

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

CEO means the chief executive officer of the Department;

commercial proponent —

- (a) means a person carrying on a business; but
- (b) does not include any of the following —
 - (i) a government proponent;
 - (ii) a small business;
 - (iii) a non-profit organisation;

government proponent —

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

but

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

identified place, in relation to a notice given under section 18(2) of the Act, means a place on the land to which the notice relates —

- (a) that is —
 - (i) recorded as an Aboriginal site in a register under section 38 of the Act; and
 - (ii) specified in the notice;

or

- (b) that is not recorded as an Aboriginal site in a register under section 38 of the Act but is specified in the notice as being —
 - (i) an Aboriginal site; or
 - (ii) a place that may be an Aboriginal site;

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

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

proposed investigation site, in relation to a request for the Registrar to give an authorisation under section 16(2) of the Act, means a place (regardless of whether the place is an Aboriginal site) specified in the request as being either or both of the following —

- (a) a place that it is proposed to enter, excavate or both;
- (b) a place on or under which things are or may be located that are proposed to be examined, removed or both;

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

Part 2 — Fees under the Act

4. Fees under s. 16 of Act

- (1) A person who requests the Registrar to give an authorisation under section 16(2) of the Act in respect of 1 or more proposed investigation sites is liable to pay a fee of —
 - (a) unless paragraph (b) applies — \$250; or
 - (b) if the person is a commercial proponent or government proponent — an amount equal to the sum of —
 - (i) \$250; and
 - (ii) \$5 096 multiplied by the number of proposed investigation sites.
- (2) The fee must be paid within the period of 14 days after the day on which the request is made.
- (3) Despite subregulation (1), an Aboriginal and Torres Strait Islander corporation is not liable to pay the fee unless the corporation makes the request in connection with an undertaking that is for profit or commercial gain.

5. Fees under s. 18 of Act

- (1) A person who gives notice to the Committee under section 18(2) of the Act is liable to pay a fee of —
 - (a) unless paragraph (b) applies — \$250; or
 - (b) if the person is a commercial proponent or government proponent — an amount equal to the sum of —
 - (i) \$250; and
 - (ii) \$5 096 multiplied by the number of identified places specified in the notice.
- (2) The fee must be paid within the period of 14 days after the day on which the notice is given.

- (3) Despite subregulation (1), an Aboriginal and Torres Strait Islander corporation is not liable to pay the fee unless the corporation gives the notice in connection with an undertaking that is for profit or commercial gain.

Part 3 — General provisions

Division 1 — Changes to fee payment obligations

6. Fee waiver, reduction or refund

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

7. Extension of time within which to pay fees

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

8. CEO must give notice of waiver or reduction of fee or extension of time

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

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

Division 2 — Interest on and recovery of outstanding amounts

9. Interest on outstanding amounts

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

10. Recovery of outstanding amounts

- (1) The CEO may recover as a debt in a court of competent jurisdiction any outstanding amount of an overdue fee, or interest payable under regulation 9(1), from the person liable to pay the outstanding amount or interest.
- (2) The CEO may, in a certificate, do 1 or more of the following —
 - (a) specify an amount as being all or part of an overdue fee;
 - (b) specify an amount as being interest payable under regulation 9(1);
 - (c) specify a person as being liable to pay the specified amount or amounts;
 - (d) state that the specified amount or amounts are unpaid.
- (3) In proceedings under subregulation (1), a certificate is, without proof of the appointment of the CEO or of the authenticity of the signature, sufficient evidence of the matters specified or stated.

Aboriginal Heritage (Fees) Regulations 2023

Part 3 General provisions

Division 2 Interest on and recovery of outstanding amounts

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N. HAGLEY, Clerk of the Executive Council

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 and Torres Strait Islander corporation	3
business	3
CEO	3
commercial proponent	3
government proponent	3
identified place.....	3
non-profit organisation.....	3
payment period	3
proposed investigation site.....	3
small business	3

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