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Western Australia

Aboriginal Cultural Heritage Regulations 2022

Contents

Part 1 — Preliminary

1. Citation
2. Commencement
3. Terms used

Part 2 — Aboriginal Cultural Heritage Council

Division 1 — Constitution of ACH Council

4. Nominations of persons for appointment as ACH Council members
5. Appointment as ACH Council member
6. Term of office
7. Casual vacancies
8. Leave of absence
9. Alternate members
10. Acting chairperson or chairpersons

Division 2 — Conflicts of interest

11. Term used: relevant member
12. Disclosure of interest
13. Voting by interested member
14. Regulation 13 may be declared inapplicable
15. Minister may deal with matter if no quorum due to application of regulation 13
16. Minister may declare regulations 13 and 15 inapplicable

Aboriginal Cultural Heritage Regulations 2022**Contents**

Division 3 — ACH Council meetings and proceedings

- 17. Holding meetings
- 18. CEO may attend meetings
- 19. Quorum
- 20. Presiding members
- 21. Voting
- 22. Holding meetings remotely
- 23. Resolution without meeting
- 24. Minutes
- 25. Execution of documents

Defined terms

Aboriginal Cultural Heritage Act 2021

Aboriginal Cultural Heritage Regulations 2022

SL 2022/83

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

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

2. Commencement

These regulations come into operation on 18 June 2022.

3. Terms used

In these regulations —

ACH Council member —

(a) means a member of the ACH Council appointed under section 21(1) of the Act; and

(b) has a meaning affected by regulation 9(3) and (4);

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

chairperson —

(a) means a person appointed to be a member of the ACH Council under section 21(1)(a) of the Act; and

(b) has a meaning affected by regulation 10(3) and (4);

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

Aboriginal Cultural Heritage Regulations 2022**Part 2** Aboriginal Cultural Heritage Council**Division 1** Constitution of ACH Council**r. 4**

Part 2 — Aboriginal Cultural Heritage Council**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.

Aboriginal Cultural Heritage Regulations 2022

Aboriginal Cultural Heritage Council

Part 2

Constitution of ACH Council

Division 1**r. 6**

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- (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;

Aboriginal Cultural Heritage Regulations 2022**Part 2** Aboriginal Cultural Heritage Council**Division 1** Constitution of ACH Council**r. 7**

- (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

Aboriginal Cultural Heritage Regulations 2022

Aboriginal Cultural Heritage Council

Part 2

Constitution of ACH Council

Division 1**r. 8**

- (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.

Aboriginal Cultural Heritage Regulations 2022**Part 2** Aboriginal Cultural Heritage Council**Division 2** Conflicts of interest**r. 10**

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

Aboriginal Cultural Heritage Regulations 2022

Aboriginal Cultural Heritage Council

Part 2

Conflicts of interest

Division 2**r. 12**

- (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.

Aboriginal Cultural Heritage Regulations 2022**Part 2** Aboriginal Cultural Heritage Council**Division 2** Conflicts of interest**r. 13**

- (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

Aboriginal Cultural Heritage Regulations 2022

Aboriginal Cultural Heritage Council

Part 2

Conflicts of interest

Division 2**r. 15**

- (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.

Aboriginal Cultural Heritage Regulations 2022**Part 2** Aboriginal Cultural Heritage Council**Division 3** ACH Council meetings and proceedings**r. 17**

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.

Aboriginal Cultural Heritage Regulations 2022

Aboriginal Cultural Heritage Council

Part 2

ACH Council meetings and proceedings

Division 3**r. 21**

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- (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.

Aboriginal Cultural Heritage Regulations 2022**Part 2** Aboriginal Cultural Heritage Council**Division 3** ACH Council meetings and proceedings**r. 23**

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.

Aboriginal Cultural Heritage Regulations 2022Aboriginal Cultural Heritage Council
ACH Council meetings and proceedings**Part 2****Division 3****r. 25**

- (3) A document purporting to be executed in accordance with this regulation is presumed to be duly executed unless the contrary is shown.

V. MOLAN, Clerk of the Executive Council.

Aboriginal Cultural Heritage Regulations 2022**Part 2** Aboriginal Cultural Heritage Council**Division 3** ACH Council meetings and proceedings**r. 25****Defined terms***[This is a list of terms defined and the provisions where they are defined.**The list is not part of the law.]*

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