



Western Australia

Aboriginal Heritage Act 1972

# **Aboriginal Heritage Amendment Regulations 2023**



# Aboriginal Heritage Amendment Regulations 2023

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## **Aboriginal Heritage Amendment Regulations 2023**

Made by the Governor in Executive Council.

**1. Citation**

These regulations are the *Aboriginal Heritage Amendment Regulations 2023*.

**2. Commencement**

These regulations come into operation on the day on which the *Aboriginal Heritage Legislation Amendment and Repeal Act 2023* section 3 comes into operation.

**3. Regulations amended**

These regulations amend the *Aboriginal Heritage Regulations 1974*.

**4. Part 1 heading inserted**

Before regulation 1 insert:

### **Part 1 — Preliminary**

**5. Regulation 2 amended**

In regulation 2 insert in alphabetical order:

*AH management system* means a system, provided via the Department's website, for the giving or publishing

of notices and other information, and for facilitating other processes under the Act;

**CEO** means the chief executive officer of the Department;

**Committee member** —

- (a) means a member of the Committee appointed under section 29(1) of the Act; and
- (b) has a meaning affected by regulation 26(3) and (4);

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

Note: The heading to amended regulation 2 is to read:

**Terms used**

**6. Part 2 heading inserted**

After regulation 2 insert:

**Part 2 — General provisions relating to  
Aboriginal sites, protected areas and other land**

**7. Regulation 3 amended**

In regulation 3:

- (a) delete “These regulations — ” and insert:

The provisions of this Part —

- (b) in paragraph (c) delete “member of the Aboriginal Cultural Material Committee,” and insert:

Committee member,

- (c) in paragraph (c) delete “his” and insert:

their

- (d) in paragraph (c) delete “these regulations” and insert:

the provisions of this Part

**8. Regulation 5 amended**

In regulation 5(2) delete the Penalty and insert:

Penalty for this subregulation: a fine of \$1 000.

**9. Regulation 6 amended**

- (1) In regulation 6:

- (a) in paragraph (b) delete “his duty,” and insert:

their duty,

- (b) in paragraph (b) delete “his name” and insert:

the person’s name

**r. 10**

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- (c) in paragraph (c) delete “him or under his control” and insert:

the person or under the person’s control

- (2) At the end of regulation 6 insert:

Penalty: a fine of \$1 000.

**10. Regulation 7 amended**

At the end of regulation 7 insert:

Penalty: a fine of \$1 000.

**11. Regulation 8 amended**

In regulation 8:

- (a) delete “he thinks” and insert:

they think

- (b) in paragraph (d) delete “his” and insert:

their

**12. Regulation 9 deleted**

Delete regulation 9.



**13. Regulation 10 amended**

- (1) In regulation 10(h) delete “he” and insert:

they

- (2) In regulation 10 delete the Penalty and insert:

Penalty: a fine of \$2 000.

**14. Regulation 11 amended**

In regulation 11(1) delete “his” and insert:

their

**15. Parts 3 and 4 inserted**

After regulation 12 insert:

**Part 3 — Consent to certain uses, and call-in of reviews**

**13. Definition of *native title party* for s. 18(1AA) of Act**

- (1) In this regulation —

***Badimia land dataset*** means the geographical information systems spatial dataset titled “WA\_BLACA\_20231025.shp” that was held by the CEO on 25 October 2023;

**Murujuga land dataset** means the geographical information systems spatial dataset titled “WA\_MACA\_20231025.shp” that was held by the CEO on 25 October 2023;

**representative body** has the meaning given in the *Native Title Act 1993* (Commonwealth) section 253;

**representative body area**, in relation to a representative body, means the area in relation to which the body is recognised under the *Native Title Act 1993* (Commonwealth) section 203AD;

**service provider** means a body to which funding is made available under the *Native Title Act 1993* (Commonwealth) section 203FE;

**specified area**, in relation to a service provider, means the specified area referred to in the *Native Title Act 1993* (Commonwealth) section 203FE in respect of which the service provider is enabled to perform functions as described in that section.

- (2) This regulation has effect for the purposes of paragraph (d) of the definition of **native title party** in section 18(1AA) of the Act.
- (3) Murujuga Aboriginal Corporation (ABN 51 627 395 274) is prescribed in relation to land in the area described in the Murujuga land dataset.
- (4) Badimia Land Aboriginal Corporation (ABN 31 775 861 208) is prescribed in relation to land (the **relevant land**) if —
  - (a) the relevant land is in the area described in the Badimia land dataset; and

- (b) there is no other native title party in relation to the relevant land under paragraph (a), (b) or (c) of the definition of *native title party* in section 18(1AA) of the Act.
- (5) A body listed in the Table to this subregulation is prescribed in relation to land (the *relevant land*) if —
  - (a) the relevant land is in the specified area or representative body area for the body (as is relevant); and
  - (b) there is no other native title party in relation to the relevant land.

**Table**

<b>Service providers</b>	
Central Desert Native Title Services Limited (ABN 53 124 921 811)	NTS Goldfields Ltd (ABN 54 635 417 042)
<b>Representative bodies</b>	
Kimberley Land Council Aboriginal Corporation (ICN 21)	Yamatji Marlpa Aboriginal Corporation (ICN 2001)

- (6) The CEO must ensure that the Badimia land dataset and the Murujuga land dataset are publicly available on the Department's website.

#### **14. Notices under s. 18(2) of Act**

- (1) If the owner of any land proposes to give the Committee notice under section 18(2) of the Act, they

must do so by using the AH management system or in another manner approved by the Minister.

- (2) If the owner of any land gives notice to the Committee under section 18(2) of the Act, the Committee may, for the purposes of that subsection, request further information from the owner and the owner must comply with the request within 14 days after the day on which notice of the request is given to the owner.
- (3) The Committee may extend the time limit under subregulation (2), but only once in any particular case.
- (4) If the owner of any land gives notice to the Committee under section 18(2) of the Act, the Committee must submit the notice, with recommendations, to the Minister within 70 days after the day on which the notice is given to the Committee.
- (5) The Minister may extend the time limit under subregulation (4) by up to 30 days, but only once in any particular case.
- (6) If the Committee requests further information under subregulation (2), the number of days allowed for it to comply with subregulation (4) does not include, for each occasion on which it requests further information under subregulation (2) —
  - (a) the day on which it requests the information; and
  - (b) each subsequent day on which the request is not complied with, up to the maximum number of days allowed for compliance with the request.
- (7) If a notice is submitted to the Minister under section 18(2) of the Act, the Minister must make a decision under section 18(3) of the Act within 28 days after the day on which the notice is submitted, or as soon as practicable after that.

**15. Review under s. 18(5) of Act**

- (1) If a person proposes to apply, under section 18(5) of the Act, for review of a decision, they must do so within 28 days after the day on which the Minister publishes notice of the decision under section 18(3A) of the Act.
- (2) A judicial member of the State Administrative Tribunal may, in a particular case, extend the time limit under subregulation (1) if satisfied that the circumstances of the application so require, whether or not the time limit has expired.
- (3) In subregulation (2) —  
*judicial member* has the meaning given in the *State Administrative Tribunal Act 2004* section 3(1).

**16. New information under s. 18(6) of Act**

- (1) If, under a condition imposed by section 18(6) of the Act, an owner is required to notify the Minister of new information, the owner must —
  - (a) notify the Minister of the new information within 21 days after the day on which the owner becomes aware of the new information; and
  - (b) do so by using the AH management system or in another manner approved by the Minister.
- (2) If the Minister must make a decision under section 18(6A) of the Act because of section 18(6B) of the Act, the Minister must do so within 28 days after the day on which the Minister becomes aware of the new information, or as soon as practicable after that.

- (3) If the owner referred to in subregulation (1) became aware of the new information before commencement day, the owner is taken to comply with subregulation (1)(a) if they notify the Minister of the new information within 21 days after commencement day.
- (4) In subregulation (3) —  
*commencement day* means the day on which the *Aboriginal Heritage Amendment Regulations 2023* regulation 15 comes into operation.

**17. Time limit for giving call-in directions**

For the purposes of section 18A(4)(a) of the Act, the longer period is 28 days.

**18. Time limit for making submissions under s. 18A(7) of Act**

- (1) If a person proposes to make a submission under section 18A(7) of the Act in relation to an application, they must do so within 28 days after the day on which section 18A(5)(a) of the Act is complied with.
- (2) The Premier may extend the time limit under subregulation (1), but only once in any particular case.

**19. Time limit for making determination under s. 18A(9) of Act**

- (1) If the Premier gives a direction under section 18A(3)(a) of the Act, the Premier must determine the application within 28 days after the last day on which a submission may be made under section 18A(7) of the Act, or as soon as practicable after that.

- (2) If the Premier gives a direction under section 18A(3)(b) of the Act, the Premier must determine the application within 28 days after the day on which the application, with recommendations, is referred to the Premier, or as soon as practicable after that.

**20. Notice of change in ownership of land**

- (1) For the purposes of section 18B(2) of the Act, the period is 14 days after the day on which the change in ownership occurred.
- (2) A notice under section 18B(2) of the Act must include —
  - (a) a copy of the consent; and
  - (b) the name and contact details of each owner of the land; and
  - (c) the date on which the change in ownership occurred.
- (3) An owner of land who is required to give a notice under section 18B(2) of the Act must, within 28 days after the day on which the change in ownership occurred, give a copy of the notice to —
  - (a) the Committee; and
  - (b) any native title party in relation to the land.Penalty for this subregulation: a fine of \$1 000.
- (4) In subregulation (3) —  
*native title party*, in relation to land, has the meaning given in section 18(1AA) of the Act.

## **Part 4 — Committee procedures**

### **Division 1 — General**

#### **21. Terms used**

In this Part —

*chairperson* —

- (a) means a person appointed to be a member of the Committee under section 29(1)(a) of the Act; and
- (b) has a meaning affected by regulation 27(3) and (4);

*subcommittee* has the meaning given in section 31(2) of the Act.

### **Division 2 — Constitution of Committee**

#### **22. Nominations of persons for appointment as Committee members**

- (1) Before appointing a person as a Committee member under section 29(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 on a website maintained by, or on behalf of, the Committee; and
  - (b) may be published in any other manner that the Minister considers appropriate.

#### **23. Term of office**

- (1) A Committee 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 a Committee member or the term for which a person may be reappointed is not affected by an earlier appointment.
- (4) A Committee 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 24(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.

#### 24. Casual vacancies

- (1) In this regulation —  
*misconduct*, in relation to a Committee 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 a Committee 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 30(1) or (2); or

- (f) is removed from office by the Minister under subregulation (5).
- (3) A Committee 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 a Committee 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 Committee of which the member has had notice.

**25. Leave of absence**

- (1) The Committee may, on the terms and conditions determined by the Committee, grant a Committee 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 a Committee member leave to be absent from office for a period exceeding 2 months.

**26. Alternate members**

- (1) If a Committee 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 a Committee member is acting as a chairperson under regulation 27(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 33(1)(b), 35(3), 37(2), 38(3) and (4), 39(1) and (3) and 42(2)(a) a reference to a Committee member includes a reference to an alternate member acting in accordance with an appointment under this regulation.
- (4) While acting in accordance with an appointment under this regulation, the alternate member is taken to be, and to have any entitlement of, a Committee 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.

**27. Acting chairperson or chairpersons**

- (1) If 1 or both chairpersons of the Committee are unable or unavailable to act because of illness, absence or other cause, or if there are no chairpersons or there is only 1 chairperson, the Committee may recommend to the Minister that a member or members of the Committee 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 Committee to act temporarily as chairperson or chairpersons; or

- (b) appoint another member or other members of the Committee to act temporarily as chairperson or chairpersons.
- (3) In regulations 35 and 38 a reference to a chairperson includes a reference to a person acting as a chairperson in accordance with an appointment under subregulation (2).
- (4) While acting in accordance with an appointment under subregulation (2), the member acting as a chairperson is taken to be, and to have any entitlement of, a chairperson.
- (5) An act or omission of a Committee member acting as a chairperson cannot be questioned on the ground that the occasion to act had not arisen or had ceased.

**28. Subcommittees**

- (1) The Committee may establish subcommittees to assist it in performing its functions.
- (2) The Committee may discharge, alter or reconstitute a subcommittee.
- (3) The Committee may —
  - (a) determine the functions, membership and constitution of a subcommittee; and
  - (b) appoint members of the Committee or other persons as it thinks fit to be members of a subcommittee.
- (4) The Committee may give directions to a subcommittee on the following matters —
  - (a) the functions to be performed by the subcommittee;
  - (b) the subcommittee's procedures;

- (c) reporting by the subcommittee on the performance of its functions.
- (5) A subcommittee must comply with a direction of the Committee.
- (6) A subcommittee may determine its own procedures but the procedures must be consistent with any direction of the Committee.
- (7) A subcommittee must —
  - (a) keep minutes of its meetings to a standard approved by the Committee; and
  - (b) provide the Committee with a copy of the minutes of each meeting.

### Division 3 — Conflicts of interest

#### 29. Term used: relevant member

In this Division —

*relevant member* means —

- (a) a Committee member; and
- (b) an alternate member acting under regulation 26; and
- (c) the CEO, or a nominee of the CEO, attending a meeting of the Committee under regulation 36.

#### 30. 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 Committee 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 Committee.

Penalty for this subregulation: a fine of \$1 000.

- (2) A member of a subcommittee who has a material personal interest in a matter being considered or about to be considered by the subcommittee 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 subcommittee.

Penalty for this subregulation: a fine of \$1 000.

- (3) Subregulation (2) applies to a person who is a member of a subcommittee and also a relevant member even if the person has already disclosed the nature of the interest to the Committee.
- (4) If a relevant member, or a member of a subcommittee, has a material personal interest in a matter being considered or about to be considered by the Committee or a subcommittee, 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 Committee or the subcommittee, as is relevant.

### **31. Voting by interested member**

- (1) A relevant member, or a member of a subcommittee, who has a material personal interest in a matter being

considered or about to be considered by the Committee or a subcommittee, 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 32 in respect of the matter, whether relating to that member or a different member.

**32. Regulation 31 may be declared inapplicable**

Regulation 31 does not apply if —

- (a) a relevant member, or a member of a subcommittee, has disclosed under regulation 30 an interest in a matter; and
- (b) the Committee or subcommittee, 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.

**33. Minister may deal with matter or reduce quorum if no quorum due to application of regulation 31**

- (1) If a quorum of the Committee, as provided under regulation 37(2), is not present during the consideration of a matter because a relevant member is disqualified

under regulation 31 in relation to the matter, the Minister may —

- (a) deal with the matter insofar as the Committee cannot; or
  - (b) reduce the number of Committee members required for a quorum in relation to the matter.
- (2) However, the Minister cannot deal, under subregulation (1)(a), with a matter that relates to the performance of a function of the Committee in relation to either of the following —
- (a) a particular person or matter;
  - (b) the giving of advice, or making of a recommendation, to the Minister under the Act.

**34. Minister may declare regulation 31 inapplicable**

- (1) The Minister may by an instrument in writing declare that regulation 31 does 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 within 14 sitting days after the declaration is made.

**Division 4 — Committee meetings and procedures**

**35. Holding meetings**

- (1) The first meeting of the Committee must be convened by both chairpersons, and subsequent meetings are to be held at times and places determined by the Committee, unless the meeting is convened under subregulation (2) or (3).



- (2) A special meeting of the Committee may at any time be convened by the Minister, a chairperson, or both chairpersons.
- (3) If at least half the number of Committee 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.

**36. CEO may attend meetings**

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

**37. Quorum**

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

**38. Presiding members**

- (1) Both chairpersons, if present at a meeting of the Committee, must preside jointly at the meeting.
- (2) If 1 chairperson only is present at a meeting of the Committee, 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 Committee, the Committee 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 Committee member, or members, presiding is final.

**39. Voting**

- (1) At a meeting of the Committee, each Committee member present has a deliberative vote unless regulation 31 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 Committee 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.

**40. Holding meetings remotely**

The presence of a person at a meeting of the Committee 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.

**41. Resolution without meeting**

A resolution in writing signed or otherwise assented to in writing by a quorum of the Committee, as provided under regulation 37(2), has the same effect as if it had been passed at a meeting of the Committee, and must be recorded in the minutes of the Committee's next meeting.

**42. Minutes**

- (1) The Committee must cause accurate minutes to be kept of the proceedings at each of its meetings and each meeting of a subcommittee.
- (2) Without limiting subregulation (1), the minutes must —
  - (a) record that a Committee member or a member of a subcommittee, 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.

**43. Execution of documents**

- (1) A document is duly executed by the Committee if it is signed on behalf of the Committee by —
  - (a) 2 Committee members authorised to do so under subregulation (2)(a); or
  - (b) an officer or employee authorised to do so under subregulation (2)(b).
- (2) The Committee may authorise any of the following persons to sign documents on behalf of the Committee, either generally or subject to the conditions that are specified in the authorisation —
  - (a) a Committee member;
  - (b) an officer of, 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.

**16. Schedule amended**

- (1) In the Schedule Form 1 delete “[s. 50 and reg. 12]” and insert:

[s. 50 and r. 11(2)]

- (2) In the Schedule Form 2:

- (a) delete “[reg. 12(b)]” and insert:

[r. 12]

- (b) delete “Aboriginal Affairs Department of Western Australia,” and insert:

*[name of Department]*

- (c) delete “he/she is” and insert:

they are

N. HAGLEY, Clerk of the Executive Council