



Western Australia

Aboriginal Heritage Act 1972

Aboriginal Heritage (Transitional Provisions) Regulations 2023

Aboriginal Heritage (Transitional Provisions) Regulations 2023

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Defined terms

Aboriginal Heritage (Transitional Provisions) Regulations 2023

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

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

2. Commencement

These regulations come into operation as follows —

- (a) Part 1 (other than regulation 4) — on the day on which these regulations are published on the WA legislation website;
- (b) the rest of the regulations — on the day on which the *Aboriginal Heritage Legislation Amendment and Repeal Act 2023* section 3 comes into operation.

3. Purpose

These regulations are made for the purposes of section 71(2) of the Act.

4. Terms used

In these regulations —

2021 Act —

- (a) means the *Aboriginal Cultural Heritage Act 2021*; and

- (b) unless otherwise indicated, includes regulations made under that Act;

Aboriginal ancestral remains has the meaning that was given in section 11 of the 2021 Act;

Aboriginal object has the meaning that was given in section 11 of the 2021 Act;

ACH Council means the body referred to in section 72(2)(a) of the Act;

ACH management plan has the meaning that was given in section 137(1) of the 2021 Act;

ACH permit has the meaning that was given in section 100 of the 2021 Act;

owner, in relation to land, has a meaning affected by section 18(1) and (1a) of the Act;

repeal day means the day on which the *Aboriginal Heritage Legislation Amendment and Repeal Act 2023* section 3 comes into operation;

secret or sacred object has the meaning that was given in section 11 of the 2021 Act.

Part 2 — Local Aboriginal cultural heritage services

5. Recovery of fees by local Aboriginal cultural heritage service for services provided before repeal day

- (1) Subregulation (2) applies to a person if, before repeal day —
 - (a) the person is designated under section 37(1) of the 2021 Act; and
 - (b) the person provides services for which the person may charge a fee under section 49 of the 2021 Act; and
 - (c) the person charges a fee for the services under section 49 of the 2021 Act; and
 - (d) the fee is not paid or is not paid in full.
- (2) Despite the repeal of the 2021 Act, the person may, on or after repeal day, recover the unpaid amount as a debt due in a court of competent jurisdiction.
- (3) Subregulation (4) applies if, before repeal day —
 - (a) a person is designated under section 37(1) of the 2021 Act; and
 - (b) the person provides services for which the person may charge a fee under section 49 of the 2021 Act; and
 - (c) the person does not charge a fee for the services under section 49 of the 2021 Act.
- (4) On and after repeal day, section 49 of the 2021 Act continues to apply in relation to the services as if the 2021 Act had not been repealed.
- (5) Section 80(2)(d) of the Act applies subject to this regulation.

6. Refund of fees charged by local Aboriginal cultural heritage service before repeal day for services not provided

- (1) This regulation applies to a person if, before repeal day —
 - (a) the person is designated under section 37(1) of the 2021 Act; and
 - (b) the person charges a fee for services under section 49 of the 2021 Act; and
 - (c) the fee is paid; and
 - (d) the person does not provide some or all of the services.
- (2) Despite the repeal of the 2021 Act, the person must, within 14 days after repeal day, refund, as the case requires —
 - (a) the whole of the fee; or
 - (b) so much of the fee as is attributable to the services that were not provided.
- (3) Subregulation (2) does not apply to the amount referred to in subregulation (2)(a) or (b) to the extent that the amount was refunded before repeal day.
- (4) If the person does not comply with subregulation (2), the person who was charged the fee may recover the unrefunded amount as a debt due in a court of competent jurisdiction.
- (5) Section 80(2)(d) of the Act applies subject to this regulation.

Part 3 — Remains and objects

7. Aboriginal ancestral remains transferred to Committee

- (1) This regulation applies to Aboriginal ancestral remains that are transferred into the custody of the Committee under section 82(3) of the Act.
- (2) On and after repeal day, section 55 of the 2021 Act continues to apply in relation to the ancestral remains as if the 2021 Act had not been repealed.

8. Duty of organisations to return Aboriginal ancestral remains

- (1) In this regulation —
organisation has the meaning that was given in section 53 of the 2021 Act.
- (2) This regulation applies to an organisation that was in possession of Aboriginal ancestral remains before repeal day.
- (3) Any duty of the organisation under section 57 of the 2021 Act in relation to the ancestral remains ceases at the beginning of repeal day.

9. Secret or sacred objects transferred to Committee

- (1) This regulation applies to a secret or sacred object that is transferred into the custody of the Committee under section 83(3) of the Act.
- (2) On and after repeal day, section 63 of the 2021 Act continues to apply in relation to the object as if the 2021 Act had not been repealed.

10. Duty of prescribed public authorities to return secret or sacred objects

- (1) In this regulation —
prescribed public authority has the meaning that was given in section 62 of the 2021 Act.
- (2) This regulation applies to a prescribed public authority that was in possession of a secret or sacred object before repeal day.
- (3) Any duty of the prescribed public authority under section 65 of the 2021 Act in relation to the object ceases at the beginning of repeal day.

Part 4 — Protected areas

11. Application for area to be declared as protected area

- (1) This regulation applies to an application made under section 72(1) or 83(1) of the 2021 Act that, immediately before repeal day, is on foot or otherwise has any effect.
- (2) At the beginning of repeal day, the application is terminated and otherwise ceases to have any effect (and, accordingly, on and after repeal day, nothing further can be done, or is to be done, on or in relation to the application).
- (3) This regulation does not affect the application of section 73 of the Act.

12. Endorsements and notations

- (1) In this regulation —
endorsement or notation means an endorsement or notation that was referred to in section 87(5) of the 2021 Act;
Registrar has the meaning that was given in section 87(1) of the 2021 Act.
- (2) No endorsement or notation can be made on or after repeal day.
- (3) If an endorsement or notation was made before repeal day, the Registrar must —
 - (a) remove the endorsement or notation; and
 - (b) make any other amendment to the certificate of title or other register or record that the Registrar considers necessary as a consequence of, or to give effect to, the removal.

Part 5 — Matters relating to offences under Part 5 of 2021 Act

13. Compensation for harm

- (1) The repeal of the 2021 Act does not affect a determination made under section 99(3) of the 2021 Act before repeal day and, accordingly, compensation is payable on and after repeal day in accordance with the determination (to the extent not paid before repeal day).
- (2) On and after repeal day, section 99 of the 2021 Act continues to apply, as if the 2021 Act had not been repealed, in relation to an offence under Part 5 Division 2 of the 2021 Act —
 - (a) that is committed before repeal day; and
 - (b) in relation to which no determination is made under section 99(3) of the 2021 Act before repeal day.
- (3) For the purposes of subregulation (2) —
 - (a) the functions of the CEO under section 99(1), (3) and (5) of the 2021 Act are functions of the chief executive officer of the Department; and
 - (b) the function of the Minister in relation to the 2021 Act under section 99(1) of the 2021 Act is a function of the Minister; and
 - (c) the function of the ACH Council under section 99(5) of the 2021 Act is a function of the Committee.
- (4) Compensation payable on or after repeal day in accordance with a determination referred to in subregulation (1), or a determination made by virtue of subregulation (2), is payable by the chief executive officer of the Department.
- (5) The maximum amount that can be set as the compensation sum in a determination made by virtue of subregulation (2) is the amount of any fine imposed as a penalty for the offence.

14. Letter of advice may be used in evidence

Without limiting section 84(1) of the Act, section 104(5) of the 2021 Act applies, as if the 2021 Act had not been repealed, in relation to any proceedings for an offence under Part 5 Division 2 of the 2021 Act that are continued or commenced as referred to in section 84(1) of the Act.

Part 6 — Section 18 consents and other authorisations, approvals and consents

Division 1 — ACH permits

15. ACH permits transitioned as s. 18 consents

- (1) This regulation applies in relation to an ACH permit that, under section 76(2) of the Act, is a consent given under section 18(3)(a) of the Act.
- (2) The following apply to the consent —
 - (a) the land that is the subject of the consent is the area that, immediately before repeal day, is detailed in the ACH permit under section 120(3)(c) of the 2021 Act;
 - (b) the purpose for which that land may be used under the consent is the carrying out of the activity that, immediately before repeal day, is detailed in the ACH permit under section 120(3)(b) of the 2021 Act.
- (3) The person who holds the ACH permit immediately before repeal day is, for the purposes of the consent, an owner of the land the subject of the consent (whether or not the person is actually an owner of that land).
- (4) A condition under section 128(1) of the 2021 Act has no effect on and after repeal day in relation to the consent (subject to subregulation (5)).
- (5) If any reporting requirements are specified in the ACH permit immediately before repeal day —
 - (a) the consent is subject to a condition that an owner of the land the subject of the consent must comply with the reporting requirements; and

- (b) for the purposes of paragraph (a) —
 - (i) any references in the reporting requirements to the ACH Council are taken to be references to the Committee; and
 - (ii) the reporting requirements apply with any other necessary modifications.

Note for this subregulation:

The condition under this subregulation is based on the condition that was under section 128(1)(b) of the 2021 Act.

- (6) If a condition, other than a condition referred to in subregulation (4), applies to the ACH permit immediately before repeal day —
 - (a) the consent is subject to the condition; and
 - (b) for the purposes of paragraph (a) —
 - (i) any references in the condition to the ACH Council are taken to be references to the Committee; and
 - (ii) the condition applies with any other necessary modifications.
- (7) For the purpose of determining under subregulation (6) whether a condition applies to the ACH permit immediately before repeal day, it does not matter if the ACH permit did not take effect before repeal day.
- (8) A condition under subregulation (5) or (6) is taken to be a condition imposed by the Minister under section 18(3)(a) of the Act, and can be amended under section 18(6A), 18A(9) or 18B(3) of the Act accordingly.
- (9) Nothing in this regulation affects the application of section 84 of the Act in relation to a contravention of a condition before repeal day.
- (10) If the ACH permit did not take effect before repeal day, the consent takes effect on the day that was specified in the

ACH permit as was referred to in section 121(a)(ii) of the 2021 Act.

- (11) The consent expires at the end of the period of 4 years after —
- (a) if the ACH permit took effect before repeal day — the day on which the ACH permit took effect; or
 - (b) otherwise — the day on which the consent takes effect under subregulation (10).

Note for this subregulation:

The 4-year period is based on the 4-year period that was referred to in section 121(b) of the 2021 Act.

16. Applications for ACH permits transitioned as s. 18 notices

- (1) This regulation applies in relation to an application for an ACH permit that, under section 76(7) of the Act, is taken to be a notice given to the Committee under section 18(2) of the Act.
- (2) The following apply to the notice —
- (a) the land that is the subject of the notice is the area that, immediately before repeal day, is detailed in the application under section 115(2)(b) of the 2021 Act;
 - (b) the purpose for which that land is required to be used is the carrying out of the activity that, immediately before repeal day, is detailed in the application under section 115(2)(b) of the 2021 Act;
 - (c) the *Aboriginal Heritage Regulations 1974* regulation 14(2) to (7) apply as if the notice were given to the Committee on repeal day by the person who made the application for the ACH permit.
- (3) The person who made the application for the ACH permit —
- (a) is, for the purposes of the notice, an owner of the land the subject of the notice (whether or not the person is actually an owner of that land); and

- (b) if a consent is given under section 18(3)(a) of the Act in relation to the notice — is, for the purposes of the consent, an owner of the land the subject of the consent (whether or not the person is actually an owner of that land).

Division 2 — ACH management plans

17. Term used: proponent

In this Division —

proponent, for an ACH management plan, means the person who, immediately before repeal day, is identified in the ACH management plan under section 137(2)(a)(i) of the 2021 Act.

18. Approvals of ACH management plans transitioned as s. 18 consents

- (1) This regulation applies in relation to an approval of an ACH management plan that, under section 77(2) of the Act, is a consent given under section 18(3)(a) of the Act.
- (2) The following apply to the consent —
- (a) the land that is the subject of the consent is the area that, immediately before repeal day, is identified in the ACH management plan under section 137(2)(a)(iii) of the 2021 Act;
 - (b) the purpose for which that land may be used under the consent is the carrying out of the activity that, immediately before repeal day, is identified in the ACH management plan under section 137(2)(a)(iv) of the 2021 Act.
- (3) The proponent for the ACH management plan is, for the purposes of the consent, an owner of the land the subject of the consent (whether or not the proponent is actually an owner of that land).

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Part 6 Section 18 consents and other authorisations, approvals and consents

Division 2 ACH management plans

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- (4) A condition under section 153 of the 2021 Act has no effect on and after repeal day in relation to the consent (subject to subregulation (5)).
- (5) If any reporting requirements are specified in the ACH management plan immediately before repeal day —
 - (a) the consent is subject to a condition that an owner of the land the subject of the consent must comply with the reporting requirements; and
 - (b) for the purposes of paragraph (a) —
 - (i) any references in the reporting requirements to the ACH Council are taken to be references to the Committee; and
 - (ii) the reporting requirements apply with any other necessary modifications.

Note for this subregulation:

The condition under this subregulation is based on the condition that was under section 153(b) of the 2021 Act.

- (6) A condition under subregulation (5) is taken to be a condition imposed by the Minister under section 18(3)(a) of the Act, and can be amended under section 18(6A), 18A(9) or 18B(3) of the Act accordingly.
- (7) Nothing in this regulation affects the application of section 84 of the Act in relation to a contravention of a condition before repeal day.
- (8) If the approval of the ACH management plan did not take effect before repeal day, the consent takes effect on the day that was specified in the notice given under section 150(7) of the 2021 Act as was referred to in section 152(a) of the 2021 Act.

19. Authorisations of ACH management plans transitioned as s. 18 consents

- (1) This regulation applies in relation to an authorisation of an ACH management plan that, under section 77(2) of the Act, is a consent given under section 18(3)(a) of the Act.
- (2) The following apply to the consent —
 - (a) the land that is the subject of the consent is the area that, immediately before repeal day, is identified in the ACH management plan under section 137(2)(a)(iii) of the 2021 Act;
 - (b) the purpose for which that land may be used under the consent is the carrying out of the activity that, immediately before repeal day, is identified in the ACH management plan under section 137(2)(a)(iv) of the 2021 Act.
- (3) The proponent for the ACH management plan is, for the purposes of the consent, an owner of the land the subject of the consent (whether or not the proponent is actually an owner of that land).
- (4) A condition under section 167(1) of the 2021 Act has no effect on and after repeal day in relation to the consent (subject to subregulation (5)).
- (5) If any reporting requirements are specified in the ACH management plan immediately before repeal day —
 - (a) the consent is subject to a condition that an owner of the land the subject of the consent must comply with the reporting requirements; and
 - (b) for the purposes of paragraph (a) —
 - (i) any references in the reporting requirements to the ACH Council are taken to be references to the Committee; and

- (ii) the reporting requirements apply with any other necessary modifications.

Note for this subregulation:

The condition under this subregulation is based on the condition that was under section 167(1)(b) of the 2021 Act.

- (6) If a condition, other than a condition referred to in subregulation (4), applies to the authorisation immediately before repeal day —
 - (a) the consent is subject to the condition; and
 - (b) for the purposes of paragraph (a) —
 - (i) any references in the condition to the ACH Council are taken to be references to the Committee; and
 - (ii) the condition applies with any other necessary modifications.
- (7) For the purpose of determining under subregulation (6) whether a condition applies to the authorisation immediately before repeal day, it does not matter if the authorisation did not take effect before repeal day.
- (8) A condition under subregulation (5) or (6) is taken to be a condition imposed by the Minister under section 18(3)(a) of the Act, and can be amended under section 18(6A), 18A(9) or 18B(3) of the Act accordingly.
- (9) Nothing in this regulation affects the application of section 84 of the Act in relation to a contravention of a condition before repeal day.
- (10) If the authorisation of the ACH management plan did not take effect before repeal day, the consent takes effect on the day that was specified in the authorisation as was referred to in section 166(a)(ii) of the 2021 Act.

20. Applications for approval of ACH management plans transitioned as s. 18 notices

- (1) This regulation applies in relation to an application for approval of an ACH management plan that, under section 77(8) of the Act, is taken to be a notice given to the Committee under section 18(2) of the Act.
- (2) The following apply to the notice —
 - (a) the land that is the subject of the notice is the area that, immediately before repeal day, is identified in the ACH management plan under section 137(2)(a)(iii) of the 2021 Act;
 - (b) the purpose for which that land is required to be used is the carrying out of the activity that, immediately before repeal day, is identified in the ACH management plan under section 137(2)(a)(iv) of the 2021 Act;
 - (c) the *Aboriginal Heritage Regulations 1974* regulation 14(2) to (7) apply as if the notice were given to the Committee on repeal day by the person who made the application for approval of the ACH management plan.
- (3) The person who made the application for approval of the ACH management plan —
 - (a) is, for the purposes of the notice, an owner of the land the subject of the notice (whether or not the person is actually an owner of that land); and
 - (b) if a consent is given under section 18(3)(a) of the Act in relation to the notice — is, for the purposes of the consent, an owner of the land the subject of the consent (whether or not the person is actually an owner of that land).

21. Applications for authorisation of ACH management plans transitioned as s. 18 notices

- (1) This regulation applies in relation to an application for authorisation of an ACH management plan that, under section 77(11) of the Act, is taken to be a notice given to the Committee under section 18(2) of the Act.
- (2) The following apply to the notice —
 - (a) the land that is the subject of the notice is the area that, immediately before repeal day, is identified in the ACH management plan under section 137(2)(a)(iii) of the 2021 Act;
 - (b) the purpose for which that land is required to be used is the carrying out of the activity that, immediately before repeal day, is identified in the ACH management plan under section 137(2)(a)(iv) of the 2021 Act;
 - (c) the *Aboriginal Heritage Regulations 1974* regulation 14(2) to (7) apply as if the notice were given to the Committee on repeal day by the person who made the application for authorisation of the ACH management plan.
- (3) The person who made the application for authorisation of the ACH management plan —
 - (a) is, for the purposes of the notice, an owner of the land the subject of the notice (whether or not the person is actually an owner of that land); and
 - (b) if a consent is given under section 18(3)(a) of the Act in relation to the notice — is, for the purposes of the consent, an owner of the land the subject of the consent (whether or not the person is actually an owner of that land).

Division 3 — Other matters

22. Previous consents under s. 18 of Act

- (1) This regulation applies to a consent under section 18 of the Act to which section 74(1) or (2) of the Act applies.
- (2) If section 325(1) of the 2021 Act applied to the consent immediately before repeal day, on and after repeal day that provision must be disregarded for the purpose of determining the duration of the consent.
- (3) If the consent was given under section 18(3)(a) of the Act subject to a condition, on and after repeal day the consent is subject to the condition as a condition under section 18(3)(a) of the Act.
- (4) If, immediately before repeal day, the consent is subject to a condition under section 18(6) of the Act as was inserted by section 340 of the 2021 Act, the condition ceases to have effect at the beginning of repeal day.
- (5) If, immediately before repeal day, the consent is subject to a condition under section 167(1) of the 2021 Act, the condition ceases to have effect at the beginning of repeal day.
- (6) Despite subregulation (3), if the consent was given under section 18(3)(a) of the Act subject to a condition that the consent is of effect only for 5 years, or any shorter period that is specified in the consent, beginning on the day on which the consent takes effect, the condition has no effect on and after repeal day.
- (7) Despite subregulation (3), if the consent was given under section 18(3)(a) of the Act subject to a condition that the consent holder must notify the Minister for Aboriginal Affairs if they become aware of any new information about Aboriginal cultural heritage in relation to the land that is the subject of the consent, the condition has no effect on and after repeal day.

- (8) Nothing in this regulation affects the application of section 74(5) of the Act to the consent.
- (9) Nothing in this regulation affects the application of section 84 of the Act in relation to a contravention of a condition before repeal day.

23. Marandoo Act area

- (1) A person to whom a consent is taken to have been given under section 78(2) of the Act is, for the purposes of the consent, an owner of the land the subject of the consent (whether or not the person is actually an owner of that land).
- (2) A consent that a person was taken to hold under section 328(1) of the 2021 Act has no effect on and after repeal day.

24. Previous other authorisations, approvals and consents

- (1) Subregulation (2) applies to an authorisation to which section 75(1) or (2) of the Act applies.
- (2) If the authorisation was given under section 16(2) of the Act subject to a condition, on and after repeal day the authorisation is subject to the condition as a condition under section 16(2) of the Act.
- (3) Subregulation (4) applies to an approval to which section 75(3) or (4) of the Act applies.
- (4) If the approval was given under the *Aboriginal Heritage Regulations 1974* regulation 7 subject to a condition, on and after repeal day the approval is subject to the condition as a condition imposed under that regulation.
- (5) Subregulation (6) applies to a consent to which section 75(5) or (6) of the Act applies.
- (6) If the consent was given under the *Aboriginal Heritage Regulations 1974* regulation 10 subject to a condition, on and

after repeal day the consent is subject to the condition as a condition imposed under that regulation.

25. Conditions under s. 18(6) of Act

(1) In this regulation —

relevant authority means any of the following —

- (a) the Minister;
- (b) the Minister in relation to the 2021 Act;
- (c) the ACH Council;

transitioned consent means any of the following —

- (a) a consent under section 18 of the Act to which section 74(1) or (2) of the Act applies;
- (b) an ACH permit that, under section 76(2) of the Act, is a consent given under section 18(3)(a) of the Act;
- (c) an approval of an ACH management plan that, under section 77(2) of the Act, is a consent given under section 18(3)(a) of the Act;
- (d) an authorisation of an ACH management plan that, under section 77(2) of the Act, is a consent given under section 18(3)(a) of the Act.

(2) This regulation applies if —

- (a) before repeal day, a person gave a notification (the ***original notification***) to a relevant authority in accordance with a condition that applied to a transitioned consent; and
- (b) the person is required to give the same notification, in substance, to the Minister in accordance with a condition under section 18(6) of the Act as in force on repeal day.

(3) The original notification is taken —

- (a) to be the notification that the person is required to give as referred to in subregulation (2)(b); and

- (b) to have been given to the Minister on repeal day.

26. Application of s. 18B of Act

- (1) This regulation applies in relation to a consent given under section 18(3)(a) of the Act if —
 - (a) a person —
 - (i) is, for the purposes of the consent, an owner of the land the subject of the consent by virtue of regulation 15(3), 16(3)(b), 18(3), 19(3), 20(3)(b), 21(3)(b) or 23(1); but
 - (ii) is not actually an owner of that land;
 - and
 - (b) the person ceases to use that land for the purpose for which the land may be used under the consent (the ***consented purpose***), other than because of the consented purpose having been achieved.
- (2) Section 18B of the Act applies as if references in that section to a change in ownership of land the subject of a consent under section 18(3)(a) of the Act also referred to the person ceasing to use the land for the consented purpose.

27. Outstanding notices under s. 18(2) of Act

- (1) Subregulation (2) applies to a notice given under section 18(2) of the Act before repeal day by the owner of any land if the notice is not submitted under section 18(2) of the Act to the Minister before repeal day.
- (2) The *Aboriginal Heritage Regulations 1974* regulation 14(2) to (7) apply in relation to the notice as if the notice were given to the Committee on repeal day.

- (3) Subregulation (4) applies to a notice given under section 18(2) of the Act before repeal day by the owner of any land if, before repeal day —
- (a) the notice is submitted to the Minister under section 18(2) of the Act; but
 - (b) the Minister does not make a decision under section 18(3) of the Act in relation to the notice.
- (4) The *Aboriginal Heritage Regulations 1974* regulation 14(7) applies in relation to the notice as if the notice were submitted to the Minister on repeal day.

Part 7 — Defences to certain charges

28. Application of Part

- (1) This Part applies to the following offences —
 - (a) an offence under section 17 of the Act;
 - (b) an offence under the *Aboriginal Heritage Regulations 1974* regulation 7 or 10.
- (2) The provisions referred to in subregulation (1)(a) and (b) apply subject to this Part.

29. Defence based on s. 96 and 98(a) of 2021 Act

- (1) It is a defence to a charge of an offence to prove —
 - (a) that the act constituting the offence —
 - (i) is done during the period of 1 year beginning on repeal day; and
 - (ii) is, or is part of, an authorised activity;
 - and
 - (b) that the substantial commencement condition is met.
- (2) The ***substantial commencement condition*** is met if the authorised activity referred to in subregulation (1)(a)(ii) was substantially commenced before repeal day.
- (3) The ***substantial commencement condition*** is also met if —
 - (a) the authorised activity referred to in subregulation (1)(a)(ii) can reasonably be regarded as part of a single project that consists only of —
 - (i) the authorised activity; and
 - (ii) 1 or more other authorised activities;
 - and
 - (b) the project was substantially commenced before repeal day.

- (4) An activity is *authorised* if —
- (a) to the extent that the activity was carried out before repeal day — the carrying out of the activity was authorised under section 109 or 110 of the 2021 Act; and
 - (b) to the extent that the activity is carried out on or after repeal day — the carrying out of the activity would have been authorised under section 109 or 110 of the 2021 Act had the 2021 Act not been repealed.
- (5) For the purposes of subregulation (4)(b) —
- (a) in applying sections 109(a) and 110(a) of the 2021 Act, in the *Aboriginal Cultural Heritage Regulations 2022* Schedule 1 —
 - (i) references to the ACH Directory are to the ACH Directory as it stood immediately before repeal day; and
 - (ii) references to an approved or authorised ACH management plan are to such a plan that was approved or authorised before repeal day; and
 - (iii) references to a written approval are to a written approval given before repeal day;and
 - (b) in applying sections 109(b) and 110(b) of the 2021 Act, references to a protected area are to an area that was a protected area under the 2021 Act immediately before repeal day; and
 - (c) in applying section 110(c) of the 2021 Act —
 - (i) any due diligence assessment undertaken on or after repeal day as provided for in section 102 of the 2021 Act must be in accordance with the ACH Management Code referred to in

section 102 of the 2021 Act as that Code was in effect immediately before repeal day; and

- (ii) the reference in section 102(a) of the 2021 Act to a protected area is to an area that was a protected area under the 2021 Act immediately before repeal day; and
- (iii) the modifications of the *Aboriginal Cultural Heritage Regulations 2022* Schedule 1 in paragraph (a) apply.

- (6) An activity is also ***authorised*** if it is carried out by a person and —

- (a) before the person commenced the activity, the person made an assessment, in undertaking a due diligence assessment in relation to the carrying out of the activity, that there was no risk of harm being caused to Aboriginal cultural heritage by the activity; and
- (b) in carrying out the activity, the person took all reasonable steps possible to avoid, or minimise, the risk of harm being caused to Aboriginal cultural heritage by the activity.

Note for this subregulation:

This subregulation is based on section 98(a) of the 2021 Act.

- (7) In subregulation (6) —

Aboriginal cultural heritage has the meaning that was given in section 12 of the 2021 Act;

due diligence assessment has the meaning that was given in section 102 of the 2021 Act;

harm has a meaning affected by section 90 of the 2021 Act.

- (8) In applying the definition of ***due diligence assessment*** in subregulation (7) —

- (a) any due diligence assessment undertaken on or after repeal day as provided for in section 102 of the

2021 Act must be in accordance with the ACH Management Code referred to in section 102 of the 2021 Act as that Code was in effect immediately before repeal day; and

- (b) the reference in section 102(a) of the 2021 Act to a protected area is to an area that was a protected area under the 2021 Act immediately before repeal day; and
- (c) the modifications of the *Aboriginal Cultural Heritage Regulations 2022* Schedule 1 in subregulation (5)(a) apply.

30. Defence based on s. 98(d) of 2021 Act

- (1) It is a defence to a charge of an offence to prove —
 - (a) that the act constituting the offence —
 - (i) is done during the period of 1 year beginning on repeal day; and
 - (ii) is, or is part of, an emergency activity; and
 - (b) that the substantial commencement condition is met.
- (2) The ***substantial commencement condition*** is met if the emergency activity referred to in subregulation (1)(a)(ii) was substantially commenced before repeal day.
- (3) The ***substantial commencement condition*** is also met if —
 - (a) the emergency activity referred to in subregulation (1)(a)(ii) can reasonably be regarded as part of a response to an emergency situation that consists only of —
 - (i) the emergency activity; and
 - (ii) 1 or more other emergency activities; and
 - (b) the response to the emergency situation was substantially commenced before repeal day.

- (4) An activity is an ***emergency activity*** if it is carried out in an emergency situation for the purpose of preventing or minimising 1 or more of the following —
- (a) loss of life of people;
 - (b) prejudice to the safety of people;
 - (c) harm to the health of people.

Note for this subregulation:

This subregulation is based on section 98(d) of the 2021 Act.

Part 8 — Remediation

31. Authorisations to carry out remediation if remediation order contravened

- (1) In this regulation —
remediation order has the meaning that was given in section 11 of the 2021 Act.
- (2) An authorisation under section 197(1) of the 2021 Act that is in effect immediately before repeal day continues in effect on and after repeal day as if the 2021 Act had not been repealed.
- (3) Subregulation (4) applies to a contravention of a remediation order —
 - (a) that occurs before repeal day; but
 - (b) in relation to which no authorisation is given under section 197(1) of the 2021 Act before repeal day.
- (4) On and after repeal day, section 197(1) of the 2021 Act continues to apply in relation to the contravention as if the 2021 Act had not been repealed, and an authorisation may be given in relation to the contravention accordingly.
- (5) For the purposes of subregulation (4), an authorisation may be given by the Minister.
- (6) Nothing done that is authorised by an authorisation to which subregulation (2) applies, or an authorisation given by virtue of subregulation (4), constitutes an offence against the Act.
- (7) The provisions of the Act creating, or otherwise relating to, offences apply subject to subregulation (6).
- (8) Section 80(2)(b) of the Act applies subject to this regulation.

32. Recovery of remediation costs

- (1) Section 197(2) of the 2021 Act continues to apply on and after repeal day in relation to the following costs of remediation as if the 2021 Act had not been repealed —
 - (a) costs incurred before repeal day;
 - (b) costs incurred on or after repeal day by virtue of an authorisation to which regulation 31(2) applies;
 - (c) costs incurred on or after repeal day by virtue of an authorisation given by virtue of regulation 31(4).
- (2) For the purposes of subregulation (1), proceedings under section 197(2) of the 2021 Act may be continued or commenced by the Minister.
- (3) Section 80(2)(b) of the Act applies subject to this regulation.

33. Recovery of costs by person given remediation order

- (1) Section 199 of the 2021 Act continues to apply on and after repeal day in relation to costs of compliance incurred before repeal day as if the 2021 Act had not been repealed.
- (2) Section 80(2)(b) of the Act applies subject to this regulation.

Part 9 — ACH Directory

34. Transfer of information and documents included on ACH Directory

- (1) In this regulation —
ACH Directory means the directory established under section 211 of the 2021 Act.
- (2) Subregulation (3) applies to the information and documents included on the ACH Directory immediately before repeal day to the extent that the information and documents —
 - (a) are not those to which section 81 of the Act applies; and
 - (b) are of a kind that can be recorded in a register maintained under section 38 of the Act.
- (3) On repeal day, the information and documents must be transferred to, and recorded in, a register under section 38 of the Act.

Part 10 — Securing compliance

Division 1 — Preliminary

35. Terms used

In this Part —

authorised officer means an officer of the Department authorised under regulation 36(1);

CI Act means the *Criminal Investigation Act 2006*.

Division 2 — Application of *Criminal Investigation Act 2006*

36. Authorised officers

- (1) The chief executive officer of the Department may authorise officers of the Department for the purposes of this Division.
- (2) An authorised officer is authorised to investigate offences under the 2021 Act committed before repeal day.

Note for this subregulation:

These are offences to which section 84(1) of the Act applies.

37. Authorised officers to be public officers under CI Act

- (1) For the purposes of section 9(1) of the CI Act, the authorisation of an officer of the Department under regulation 36(1) is taken to be an appointment to an office.
- (2) For the purposes of the CI Act —
 - (a) the office of authorised officer is taken to be prescribed by the Act under section 9(1)(a) of the CI Act; and
 - (b) the following powers in the CI Act are taken to be prescribed by the Act under section 9(1)(b) of the CI Act in respect of that office —
 - (i) the powers in Part 2;
 - (ii) the powers in Part 5 Division 1;

- (iii) the powers in section 33;
- (iv) the powers in section 39, except subsection (1)(f);
- (v) the powers in Part 5 Division 3, except sections 43(8)(b)(ii) and 44(2)(f) and (g)(iv);
- (vi) the powers in Part 6;
- (vii) the powers in Part 7;
- (viii) the powers in Part 13.

38. Entering Aboriginal places

- (1) In relation to the investigation of an offence by an authorised officer, section 232 of the 2021 Act applies as if the 2021 Act had not been repealed.
- (2) For the purposes of subregulation (1), in section 232 of the 2021 Act —
 - (a) the reference to section 231(1)(a) of the 2021 Act is to any provision of the CI Act that gives a power to enter a place without a warrant; and
 - (b) references to an inspector are to an authorised officer.

39. Dealing with Aboriginal ancestral remains

- (1) This Division does not authorise the seizure of Aboriginal ancestral remains.
- (2) In relation to the investigation of an offence by an authorised officer, section 242 of the 2021 Act applies as if the 2021 Act had not been repealed.
- (3) For the purposes of subregulation (2) —
 - (a) in section 242 of the 2021 Act —
 - (i) references to an inspector are to an authorised officer; and

- (ii) the reference to Part 10 Division 3 of the 2021 Act is to the CI Act; and
 - (iii) the reference to the ACH Council is to the Committee;
- and
- (b) if human remains are transferred into the custody of the Committee under section 242(b) of the 2021 Act — section 82(4) of the Act applies as if the human remains had been transferred into the custody of the Committee under section 82(3) of the Act (whether or not the human remains are Aboriginal ancestral remains).
- (4) If human remains transferred into the custody of the Committee under section 242(b) of the 2021 Act are Aboriginal ancestral remains, regulation 7 applies accordingly.

40. Forensic examination of Aboriginal objects

In conducting a forensic examination of an Aboriginal object under section 21 of the CI Act, an authorised officer must not dismantle, damage or destroy the object.

Division 3 — Seized things

41. Security of seized things

- (1) Section 240(1) of the 2021 Act continues to apply on and after repeal day in relation to things seized before repeal day as if the 2021 Act had not been repealed.
- (2) Section 240(1) of the 2021 Act applies in relation to things seized in the exercise of powers under the CI Act by virtue of Division 2 as if —
 - (a) the 2021 Act had not been repealed; and
 - (b) the reference to an inspector seizing a thing were to an authorised officer seizing a thing.

- (3) For the purposes of subregulations (1) and (2), the function of an inspector under section 240(1) of the 2021 Act is a function of the chief executive officer of the Department.
- (4) A person must not move, tamper or otherwise interfere with a seized thing without the approval of the chief executive officer of the Department.
Penalty for this subregulation: a fine of \$1 000.
- (5) In subregulation (4) —
seized thing means —
 - (a) a seized thing (as was defined in section 221 of the 2021 Act) that was seized before repeal day; or
 - (b) a thing seized in the exercise of powers under the CI Act by virtue of Division 2.

42. Dealing with, and forfeiture of, seized things

- (1) Section 85 of the Act, and section 241 of the 2021 Act as it continues to apply under section 85 of the Act, apply with any necessary modifications in relation to things seized in the exercise of powers under the CI Act by virtue of Division 2 as those sections apply in relation to things seized before repeal day.
- (2) In section 258(1) of the 2021 Act, as it continues to apply under section 84 of the Act, references to a seized thing include a thing seized in the exercise of powers under the CI Act by virtue of Division 2.

43. Dealing with seized Aboriginal objects

- (1) This regulation applies to an Aboriginal object that is transferred into the custody of the Committee in accordance with —
 - (a) an order under section 84(5)(a) of the Act; or
 - (b) a direction under section 85(4)(a) of the Act.

- (2) If the object is a secret or sacred object, section 63 of the 2021 Act applies in relation to the object as if the 2021 Act had not been repealed.

44. Application of *Criminal and Found Property Disposal Act 2006*

Section 86 of the Act, and section 259(1) of the 2021 Act as it continues to apply under section 86 of the Act, apply with any necessary modifications in relation to things seized in the exercise of powers under the CI Act by virtue of Division 2 as those sections apply in relation to things referred to in section 86(1)(a) of the Act.

Part 11 — Other matters

45. Revival of things that ceased to have effect before repeal day

- (1) This regulation applies to anything that, before repeal day, ceased to have effect under the Act by virtue of the operation of sections 4A and 4B of the Act as in force before repeal day.
- (2) On and after repeal day, the thing has the same effect under the Act as it would have had if sections 4A and 4B of the Act had never been inserted.
- (3) This regulation does not apply to the following —
 - (a) a spent protected area order, as defined in section 73(1) of the Act;
 - (b) a consent under section 18 of the Act to which section 74(1) or (2) of the Act applies or a consent referred to in section 74(3) of the Act;
 - (c) an authorisation, approval or consent to which any of section 75(1) to (6) of the Act applies or an authorisation, approval or consent referred to in section 75(7) of the Act;
 - (d) a thing that, under Part 9 of the Act or another provision of these regulations, is stated to cease to have effect at the beginning of repeal day or to have no effect on and after repeal day.

Note for this subregulation:

The things listed in this subregulation include things that are excluded from the application of this regulation because their effect on and after repeal day is specifically dealt with in Part 9 of the Act or another provision of these regulations.

46. Things previously done by or in relation to Aboriginal Cultural Material Committee

- (1) In this regulation —

former Committee means the Committee referred to in section 72(1) of the Act.

- (2) Anything done by, or in relation to, the former Committee before repeal day is, to the extent necessary or convenient for the purpose of continuing its effect on and after repeal day (including by virtue of regulation 45(2)), taken to have been done by, or in relation to, the Committee.

Examples for this subregulation:

1. An opinion formed before repeal day by the former Committee for the purposes of section 5(c) of the Act.
2. The giving of a notice under section 18(2) of the Act to the former Committee before repeal day.

47. Disclosure of information under s. 303 of 2021 Act

Section 303(5) of the 2021 Act continues to apply on and after repeal day in relation to disclosures of information made before repeal day as if the 2021 Act had not been repealed.

48. Protection from liability for wrongdoing

Despite the repeal of the 2021 Act, section 305 of the 2021 Act continues to apply, on and after repeal day, in relation to the following —

- (a) the performance or purported performance, before repeal day, of a function under the 2021 Act;
- (b) the performance or purported performance, on or after repeal day, of a function under the 2021 Act as the 2021 Act continues to apply under Part 9 of the Act, these regulations or otherwise.

49. Records of ACH Council

At the beginning of repeal day, the records of the ACH Council become the records of the Committee and, on and after repeal day, the Committee may hold, record, use or disclose the records for the purpose of, or in connection with, performing its functions.

50. Confidentiality

- (1) A person must not, directly or indirectly, record, disclose or make use of any confidential information except —
 - (a) for the purpose of, or in connection with, performing a relevant function; or
 - (b) as required or allowed under a relevant provision; or
 - (c) for the purposes of any relevant legal proceedings; or
 - (d) with the written consent of the person to whom the information relates.

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

- (2) For the purposes of subregulation (1) —
 - (a) **confidential information** is information obtained by reason of a function that the person has, or at any time had, in the administration of —
 - (i) the 2021 Act as in force before repeal day; or
 - (ii) the 2021 Act as the 2021 Act continues to apply under Part 9 of the Act, these regulations or otherwise;
 - and
 - (b) a **relevant function** is a function under —
 - (i) the Act; or

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- (ii) the 2021 Act as the 2021 Act continues to apply under Part 9 of the Act, these regulations or otherwise;
 - and
 - (c) a **relevant provision** is a provision of —
 - (i) the Act or another written law; or
 - (ii) the 2021 Act as the 2021 Act continues to apply under Part 9 of the Act, these regulations or otherwise;
 - and
 - (d) **relevant legal proceedings** are legal proceedings —
 - (i) arising under the Act; or
 - (ii) arising under the 2021 Act as in force before repeal day or as the 2021 Act continues to apply under Part 9 of the Act, these regulations or otherwise.
- (3) Information relating to trade processes, financial information or culturally sensitive information that has been disclosed for a particular purpose under subregulation (1), or under section 306(1) of the 2021 Act before repeal day, must not be used for any other purpose by —
- (a) the person to whom the information is disclosed; or
 - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.
- Penalty for this subregulation: a fine of \$1 000.
- (4) In subregulation (3) —
- culturally sensitive information** has the meaning that was given in section 11 of the 2021 Act.

- (5) Subregulation (1) does not extend to the recording, disclosure or use of —
 - (a) statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates; or
 - (b) information that is already in the public domain.

51. Use of information

- (1) On and after repeal day, 2021 Act information may be held, recorded, disclosed or made use of in, or otherwise for the purposes of, the administration of the Act.
- (2) In subregulation (1) —
2021 Act information means information —
 - (a) obtained before repeal day in, or otherwise for the purposes of, the administration of the 2021 Act; or
 - (b) obtained on or after repeal day in, or otherwise for the purposes of, the administration of the 2021 Act as the 2021 Act continues to apply under Part 9 of the Act, these regulations or otherwise.
- (3) On and after repeal day, 1972 Act information may be held, recorded, disclosed or made use of in, or otherwise for the purposes of, the administration of the 2021 Act as the 2021 Act continues to apply under Part 9 of the Act, these regulations or otherwise.
- (4) In subregulation (3) —
1972 Act information means information obtained before, on or after repeal day in, or otherwise for the purposes of, the administration of the Act.

52. References to *Aboriginal Cultural Heritage Act 2021*

If, on or after repeal day, a written law or document refers to the *Aboriginal Cultural Heritage Act 2021* the reference is taken, if

the context permits, to be a reference to the *Aboriginal Heritage Act 1972*.

53. Delegations by Minister

On and after repeal day, section 13 of the Act applies to any functions of the Minister under the 2021 Act as the 2021 Act continues to apply under Part 9 of the Act, these regulations or otherwise.

54. Delegations by chief executive officer

- (1) Subject to subregulation (2), the chief executive officer of the Department may delegate to an officer of the Department any functions of the chief executive officer under the 2021 Act as the 2021 Act continues to apply under Part 9 of the Act, these regulations or otherwise.
- (2) The chief executive officer of the Department cannot delegate the function that the chief executive officer has under section 99(1) of the 2021 Act as that section continues to apply under regulation 13.

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)
1972 Act information	51(4)
2021 Act.....	4
2021 Act information	51(2)
Aboriginal ancestral remains	4
Aboriginal cultural heritage	29(7)
Aboriginal object	4
ACH Council	4
ACH Directory.....	34(1)
ACH management plan.....	4
ACH permit.....	4
authorised.....	29(4), 29(6)
authorised officer	35
CI Act.....	35
confidential information.....	50(2)
consented purpose.....	26(1)
culturally sensitive information	50(4)
due diligence assessment	29(7)
emergency activity	30(4)
endorsement or notation.....	12(1)
former Committee.....	46(1)
harm	29(7)
organisation.....	8(1)
original notification.....	25(2)
owner	4
prescribed public authority	10(1)
proponent	17
Registrar.....	12(1)
relevant authority	25(1)
relevant function	50(2)
relevant legal proceedings.....	50(2)
relevant provision	50(2)
remediation order	31(1)
repeal day	4
secret or sacred object.....	4
seized thing	41(5)
substantial commencement condition	29(2), 29(3), 30(2), 30(3)
transitioned consent	25(1)



Western Australia

Aboriginal Heritage Act 1972

Aboriginal Heritage (Fees) Regulations 2023

Aboriginal Heritage (Fees) Regulations 2023

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Defined terms

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;

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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



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

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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

Service providers	
Central Desert Native Title Services Limited (ABN 53 124 921 811)	NTS Goldfields Ltd (ABN 54 635 417 042)
Representative bodies	
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